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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

O God, who is the strength of our lives. Let us live to tell of Your wondrous works. How magnificent are Your acts, O Lord. How deep are all Your thoughts. You will not give Your glory to another, for You are omnipotent. Help us to endure the discipline of Your loving correction. Empower us to decrease, so that Your spirit may increase in our lives.

Bless our lawmakers today. Give them an eternal perspective on the myriad issues they face. Renew their minds with truth and sharpen their skills in each important area of living. Bless the members of their staffs who labor into the evenings for freedom's cause.

Bring healing to the sick and comfort to those who mourn. Inspire us all to sow bountifully that we may reap bountifully. Blessed be Your Name forever and ever, for wisdom and power belong to You. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 17, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU 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. Mr. President, this morning we will resume consideration of the Defense authorization bill. Under the order, Senator BOND will offer an amendment relating to energy employees, and I understand there may be a modification to the amendment. Therefore, the amendment may be accepted without a recorded vote.

The chairman and ranking member also discussed the possibility last night of considering several missile defense amendments this morning, and I defer to the chairman as to what debate times will be necessary on these amendments after discussion with the ranking member. I do anticipate rollcall votes will be required in relation to these amendments.

We will have a very busy session today as we continue to make progress on the Defense authorization bill. I am pleased with the progress that is being made, though last night I did file cloture on the bill as a necessary tool, in my mind, to facilitate and help bring the bill to closure.

We will continue to discuss the issue of how best to bring the bill to closure. I am in constant discussion with the Democratic leadership and with the ranking member and the chairman as to how we can best finish this important bill. We will be updating the Senate over the course of the day as to our progress.

Once again, I remind our colleagues that we will continue to schedule votes on judges throughout each day's session. We will set votes on those judicial nominations as we set votes on the defense amendments over the course of the day. I do want to thank Chairman WARNER and Senator LEVIN for their tremendous work on the bill thus far, and I look forward to another very full and very complete day.

I will defer for a minute as far as the schedule goes.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

VOTING

Mr. REID. If I could ask, through the Chair, to the distinguished majority leader, it is obvious we have a number of amendments to dispose of. As we talked publicly last night with the two managers, we have four missile defense amendments over here. There will be at least two second degrees, maybe more, that will be offered on those amendments. As we have said, as soon as we see them, I am sure we can set out a reasonable period of time to debate them and vote on them, and we should get rid of these with—I do not mean that in a negative sense but move on past these in a fairly short period of time.

We also have indicated that Senator BIDEN wishes to offer the amendment that has been no secret around here to take some of the higher bracket tax cuts and use those moneys for what is going on in Iraq.

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

Anyway, all of this stuff is fairly known now, what we have to do. I believe we can move through these at a fairly decent rate.

Senator LEVIN mentioned last night that people have been waiting for several days to offer amendments, and we have to make sure they have that opportunity. The main reason for rising now is to say I hope that—I should not say I hope; I guess it should be in the form of a question—on Monday that we are going to have some votes on some substantive defense-related amendments, and I do not know what time the distinguished majority leader wants to do that. If it is going to be at the regular time, 5:30, we should know that. If it is going to be earlier, we should alert our folks to that now. Because of certain things that also are quite known around here, we will not have votes tomorrow, unless the majority leader decides to have a cloture vote. Other than that, there will not be any other votes, I am very confident of that.

Does the majority leader have an idea whether he is going to move things up on Monday?

Mr. FRIST. It is absolutely critical that we make today a productive day, and I think we have a good plan for today. Tomorrow needs to be a productive day. The scheduled cloture vote for tomorrow would likely be the only vote tomorrow, and again I think we need to discuss that over the course of the day and then see what the plan would be for Friday and Monday. We will be voting Monday absolutely. We will probably do it later in the day. Again, we will defer to the managers about that.

We need to make Monday a very full and productive day if we are going to finish this bill.

Mr. REID. Mr. President, I want to make sure everyone understands that tomorrow will be a tremendously good day to offer amendments. There would be time to debate whatever they want to lay down, and even though there would not be votes scheduled on them tomorrow that would sure be a good way to get things done. Some Members have already expressed to me that they would be willing to lay down their amendments tomorrow. So tomorrow, in addition to Monday, should be a productive day on this legislation.

Mr. FRIST. I agree, tomorrow would be a great day to lay down amendments if they are absolutely necessary and important amendments, but for amendments we do not need to consider or that can be considered later, we do not need to lay down too many amendments tomorrow because I want to be able to finish this bill. But tomorrow is going to be a productive day.

MEDICAL LITIGATION REFORM

Mr. FRIST. Mr. President, I know we are going to go straight to the bill, but first I want to make a few comments on another very important issue, and now during leader time is the most appropriate time for me to comment. It is an issue that is very close to my heart and an issue that has tremendous impact on people in every State.

I will speak to one State, that is Massachusetts, on the issue of medical liability.

It was just this week that the American Medical Association added another State—Massachusetts—to its growing list of States that can be classified as being in medical crisis because of out-of-control medical litigation system.

For several months, as we brought a series of bills to the floor to try to bring this issue to debate and to focus the attention of this body on it, we have been using the number of 19 States. Now it is 20 States in this great country of ours that are in medical crisis because of this single issue.

According to the AMA, access to quality health care is increasingly endangered. What this means is decreased access to doctors. If you need a doctor, if you are in an automobile accident or if you are a mom or future mom and you need an obstetrician, access to care is increasingly endangered due to a broken medical litigation system. It is a problem in all States and in at least 20 it is a crisis. It is spreading across the country and that is why I take this opportunity to at least mention it and shine a light on it once again. It is a problem, it is a growing problem, and we have a responsibility to address it.

Three weeks ago, I had a wonderful opportunity to present what is called the Shattuck lecture before the Massachusetts Medical Society. I had done my training in Massachusetts and I have tremendous respect for that organization. They report that the litigation crisis has become so severe in Massachusetts that numerous high-risk specialists, such as obstetricians, neurosurgeons or trauma surgeons, have reduced their scope of practice. This applies to 29 percent of general surgeons,—a general surgeon is the one who might come to the emergency room to sew up your child if they have a laceration—36 percent of obstetricians, 41 percent of orthopedic surgeons, and greater than 50 percent of all neurosurgeons. If you are in an accident and you are going to a hospital, you want a neurosurgeon there to evaluate and appropriately treat.

Those are the percentages of those who have said they are reducing their scope of practice. In other words, if you are a neurosurgeon, you might do elective cases but you might not put your name on the list to show up in the middle of the night to treat somebody. Why? Because your insurance would go from $100,000 to $300,000, just so you could have the opportunity to come in late at night to treat somebody. That is about as simple as I can say it. The problem is quality of care is being affected.

The facts in Massachusetts reflect a growing trend. I gestured going up. It should be going down, because it is almost like a downward spiral that is occurring over the last several weeks and months and years. We have heard it again and again on the floor with anecdotes reinforcing what the medical societies are telling us, what hospitals are telling us, and what physicians are telling us, and that is that doctors are leaving and narrowing the scope of their practice. They are leaving the opportunity to deliver babies, maybe just to do the medical aspects of gynecologic care, or no longer taking calls in trauma centers, or they are moving to less litigious States.

I was in Pennsylvania a few months ago. I believe 1,400 doctors in the last 2 years have left the Philadelphia area and they cite the high medical liability rates they are paying as the No. 1 reason they are forced to leave. Many doctors are retiring from practice altogether.

Neurosurgeons and obstetricians are being hurt the most. If you talk to people in the emergency room or if you have friends, nurses, or technicians there, just ask them because emergency rooms are having an increasingly difficult time getting the high-risk specialists, and those are the people you want if an injury occurs. If driving home tonight you are in an accident, you want somebody there or someone who can get there very quickly. That is what is at risk.

I keep mentioning the doctors. It is not just the doctors; it is the patients who are ultimately hurt. The doctors probably will be OK. They will move and incomes can sort of adjust. It is ultimately the patients who are being hurt when health care is being threatened.

The good news is we know how to address the crisis. It is not just a problem that is getting worse that cannot be fixed. We actually know how to address the crisis. Commonsense comprehensive medical litigation reform, which has taken place in some States, has been proven to be overwhelmingly successful. It strengthens our system by addressing the abuses in the system. We want a strong tort system. We want to make sure medical malpractice is aggressively addressed. What we don't want are frivolous, unnecessary lawsuits that drive up the cost of health insurance for the physician, but ultimately the cost of health care throughout the system, and destroy the quality of the great health care that we do have in this country.

Being a physician, obviously this is close to my heart because I see it and I happen to be around physicians a lot and I happen to be around patients a lot. I am not going to give up on this issue. We are going to keep bringing it back again and again until we make headway on this increasing problem.

I don't know how many more States it will take. Massachusetts was added this week. I don't know how many more States we are going to have to add to this medical crisis before we act.

How many women are going to have to put up with their obstetricians leaving halfway through the pregnancy, either moving or dropping obstetrics, and having to find another obstetrician, or in rural areas not being able to find an obstetrician at all?

So I do call on my colleagues to stand with America's patients, the American people, and resist the powerful special interests—we know they are out there today—that want no change whatsoever.

I am determined to press forward. We will try once again at some point in the future to address this on the floor of the Senate. This is not a partisan issue. It goes way beyond that. People say we have these partisan votes, but it is not a partisan issue. This should not be and cannot be a partisan issue. So let's make Massachusetts the last State added to this list. Let's reduce that list. The only way we can do that is by acting on the floor of the Senate. Let's act now to stop the crisis from spreading and let's work together to put America's patients first.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities for 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 Services, and for other purposes.

Pending:

Reed amendment No. 3352, to increase the end strength for Active-Duty personnel of the Army for fiscal year 2005 by 20,000 to 502,400.

Warner amendment No. 3450 (to amendment No. 3352), to provide for funding the increased number of Army Active-Duty personnel out of fiscal year 2005 supplemental funding.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Missouri, Mr. BOND, will be recognized to call up the Bond-Harkin amendment.

AMENDMENT NO. 3384

Mr. WARNER. I wonder if the Senator will yield for a minute? The Senator from Missouri, perhaps the Senator from Iowa, could they advise the Senate with regard to your desire to make a change to the amendment? Has that been completed yet?

Mr. BOND. Mr. President, I would advise the distinguished chairman of the committee that we have made a modification on this to change the offset to an across-the-board reduction in the DOE appropriations. Discussions are continuing with you. We would like to have the same treatment for these workers as the other workers who were described in the Bunning amendment.

This is a work in progress. We do have an across-the-board offset in authorization for all DOE programs in this bill, but, obviously, we are going to have to continue to work with you and work in conference to make sure this is an effective, agreeable offset.

Mr. WARNER. Fine. I would say we will continue to work. At the moment, from the managers' perspective, at least this manager would have to take a close look at this.

I hope in a short time we could establish a time agreement so we could move on with other matters.

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

Mr. BOND. Mr. President, I yield to the distinguished Senator from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized to offer his amendment under the previous order.

Mr. REID. Will the Senator from Missouri yield for a question?

Mr. BOND. I am happy to yield to the distinguished minority whip.

Mr. REID. I am wondering if the two proponents of this legislation, the Senator from Iowa and the Senator from Missouri, would give us a general idea of how long they will speak on this?

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

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

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BOND. Mr. President, I believe we can have the discussions on the substance of amendment No. 3384 as we work with the managers on both sides and perhaps the Finance Committee to make sure we have the appropriate offset.

The amendment I wish to address, and I know Senator HARKIN and Senator TALENT will address it, is the Energy Workers Special Exposure Cohort Designation Act of 2004, which I will be offering on behalf of myself, Senator HARKIN, and Senator TALENT.

It will designate former nuclear production facilities in Missouri and Iowa as special exposure cohorts under the Energy Employees Occupational Illness Compensation Program Act of 2000. This was a very compassionate act designed to provide lump sum payments of $150,000 to people who had worked in the nuclear weapons production program from 1942 to 1967—way before we understood the dangers of radiation—and who suffered very high levels of radiation and have now been diagnosed, suffered, and many have died from multiple cases of cancer.

This problem was brought to my attention by Denise Brock, whose father had died while waiting for the bureaucracy to work through the steps set up under the program to qualify for that particular $150,000 compensation.

There are a very convoluted set of steps that have to be followed unless you are in a special cohort. There were four States that were designated as having needs that automatically qualified these workers.

We have found upon research that the exposure to the workers in Missouri was in many instances the highest exposure in any place. My colleague and I have met with those workers. Eight workers came into my office with Ms. Brock last spring, in May. Since then, three of them have died. They had multiple cancers. A brave fellow that I met when I met with the group in St. Charles County several months ago, Jim Mitalski, wheelchair-bound because cancer was in his right foot, had at least three other cancers. I am sad to say he slipped into a coma yesterday. His doctors suggest this may be his final coma. He has not been compensated.

The Mallinkrodt workers, who worked at the St. Louis downtown site from 1942 to 1958 and moved out to the Weldon Springs facility in St. Charles County, which operated until 1967, were exposed to levels of radionuclides and radioactive materials that were much greater than the current maximum allowable Federal standards. Many workers were exposed to 200 times the recommended levels of maximum exposure.

The chief safety officer for the Atomic Energy Commission during the Mallinkrodt St. Louis operations described that as one of the two worst plants with respect to worker exposures. Workers were excreting in excess of a milligram of uranium per day, which caused kidney damage.

A recent epidemiological survey found excess levels of nephritis kidney cancer from inhalation of uranium dust.

The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium which were highly radioactive. NIOSH admits that the operation at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides. The institute has virtually no personnel monitoring data for Mallinkrodt workers which would be necessary for them to reconstruct the dosages to make them qualify under the act. Under these circumstances, I believe simple justice and equity demands that we provide assistance for these severely ill workers and for their surviving families.

This amendment would add the Mallinkrodt facilities, along with the Iowa Army Ammunition Plant, to the four existing special exposure cohort sites. These are sites where a group of employees with specific cancers who worked at specific nuclear facilities or participated under certain nuclear weapons tests and met other requirements are eligible for expedited compensation. This special exposure cohort designation would make the workers at these Missouri and Iowa sites eligible for the expedited compensation as opposed to requiring them to participate in the long, complex, and cumbersome bureaucratic process known as ''dose reconstruction.'' They are faced with a situation where the bureaucrats are asking them to go back and help them reconstruct the dosages over 50 years ago—or more. They have no records. They are very sick people. They are dying of multiple cancers, the kinds of cancers and other problems caused by exposure to radioactivity. It is not feasible for them to go back and reconstruct. Without the records, we know that these people are seriously ill and are afflicted with all kinds of cancers. We, therefore, ask our colleagues if they will accept the amendment as we work to modify the offset.

The total cost over 10 years for the people who worked in the Missouri and Iowa sites is expected to be $180 million. That is over 10 years. Given the fact that these people are suffering from very serious cancers, I hope my colleagues will join Senator HARKIN, Senator TALENT, and me in saying these people badly need the assistance this designation will provide them.

I will withhold submitting the amendment until we have further discussions with the managers to ascertain their desires and the appropriate offset. But offset or no, let me reemphasize to my colleagues that $180 million for people who are suffering mightily from multiple cancers is the least we can do to take care of the brave atomic workers who helped us develop the weapons that ended World War II and who are now paying every day with the suffering from the exposure to that radioactivity.

I yield the floor.

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

Mr. TALENT. Madam President, I rise today in support of the Bond-Harkin amendment. I am going to be brief because I think my colleague from Missouri has covered the ground. I imagine the Senator from Iowa will wish to speak further.

I want to begin by recognizing the work they have both put into this amendment. My friend from Missouri has been a tiger in support of compensation for these employees. He was moved—as I was moved and as the Senator from Iowa was moved—by the unique claim these individuals have on justice. This is not some kind of giveaway, but it is just compensation that is owed to them for the sacrifices they made on behalf of this country. That is really what this amounts to.

I was pleased to cosponsor this amendment. I am grateful to the Senator from Virginia and the Senator from Michigan for their attempts to work this out. I hope we can do that. I know they want to. I know they recognize the justice of the claims.

We certainly understand the importance of doing this the right way. I just hope we can do this. At the end of the day, if we have to put it in without all of the t's crossed and the i's dotted and work on it in conference, I hope we can do that because we will have other opportunities further down the road in the Defense bill to tie up any loose ends which may exist. Certainly the Senators from Missouri and Iowa have worked in good faith, as I have, in trying to make this acceptable to the managers of the bill.

In Missouri, an estimated 3,500 people worked at sites which handled and processed highly radioactive material. These workers were exposed—and in most instances unknowingly—to dangerous levels of radiation. It is not necessarily important to blame people for that. Those were in many cases the early years of nuclear work and people just didn't know, and it was necessary to do this work. That is why, without trying to point fingers, Congress created the Energy Employees Occupational Illness Compensation Program Act—EEOICPA—of 2000, which was designed to provide these employees with the compensation they deserve.

Unfortunately, the process, as any of us know who sit on the Armed Services Committee or on the Energy Committee—both of which I sit on—is complex, it is disjointed, and in many cases outright mishandled. As a result, in Missouri, hundreds of claims have been filed by surviving individuals who have received not only no compensation but no progress in the processing of their claims. In many cases those individuals faced 200 times the dosage of radiation that would be considered acceptable today. We know that happened because we know the nature of the processes in which they were working, and we can see the illnesses they now have.

That doesn't mean they can go back and reconstruct from worksheets that no longer exist—and which they wouldn't have access to anyway—exactly what happened on a given day 50 or 60 years ago, which is the reason Senator BOND explained so lucidly we need a special exposure cohort, or an SEC, to expedite compensation for these employees. The amendment would simply allow these employees to be included in an SEC. They already exist for employees in other States.

An SEC is a group of employees with specific cancers who worked at specific nuclear facilities or who meet other requirements under the act. The designation would provide former employees at the site with expedited compensation for going through the lengthy and oftentimes impossible process of dose reconstruction.

I could go on. I know the bill handlers want to get the bill finished. The program so far has one of the most abysmal records of performance which I have witnessed in my now 10 years in the Congress on one side of the Capitol or the other. As the Department of Energy and the Department of Labor create bureaucratic paperwork burdens for sick former employees, this amendment, which would remove the barrier of dose reconstruction for those cases, is a small step forward toward giving them the justice which they so clearly deserve.

I believe workers in Missouri and Iowa ought to qualify for inclusion in the SEC.

It is a pleasure for me to cosponsor this amendment. I hope we can work out the issues that remain surrounding it and get it included in the bill.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARKIN. Madam President, my colleague, Senator BOND from Missouri, and I are on the floor today to basically work with the committee to do the right thing. We are here to simply add former atomic workers, nuclear workers, who worked in our ammunition plants in Missouri and Iowa, to a group of workers who are already eligible for special compensation.

This category is already in effect for workers from Kentucky, Ohio, Alaska, and Tennessee. But since the original legislation was passed in 2000, we have learned a great deal more about the facilities in Iowa and Missouri which makes it necessary to include these workers as well.

I spoke at length on this issue yesterday on the floor. I will not go over those again. I want to make a couple of brief points today.

In Iowa, between 1947 and 1975, almost 4,000 people were employed handling nuclear weapons. So great was the secrecy that 5 and a half years later we still don't know exactly to what the workers were exposed.

At the time the bill passed in 2000, Congress recognized that there were likely to be more situations where it was simply not feasible to reconstruct workers' doses because the records don't exist, or they are inadequate, because it might take so long to reconstruct a dose for a group of workers that they would all be dead before we would have an answer to determine their eligibility. That is precisely the situation we find ourselves in in Iowa, and the workers also find themselves in in Missouri.

Speaking just about the Iowa facility, the Army ammunition facility in

Burlington was in operation from 1947 to 1975. The people who worked there and who are still alive today are elderly. Many are sick and many have cancers. They are ill and they are dying. Yet almost 4 years into this program, only 38 Iowans have received compensation. That is because after 3 years of hard work by researchers at the University of Iowa, and at the same time by the National Institute of Occupational Safety and Health, we have learned that Iowa has the worst records documenting worker exposure to radioactivity of any facility in the country. Without good documents, you simply cannot do good dose reconstruction.

When Congress passed this law, they explicitly said workers could be added to a cohort when the records didn't exist to make it feasible to do dose reconstruction. Now, NIOSH has concluded that there are no records anywhere that document the level of internal radiation exposures to which workers at the Iowa Army Ammunition Plant were exposed. None, no records.

With regard to external doses, up until 1968, the highest percent of the DOE employees who were monitored was 7 percent, or 23 workers out of a workforce of 800.

It is time to admit that both in Iowa and Missouri we have two sites where it simply is not possible to perform dose reconstruction. The Government simply doesn't know what went on at these facilities and to what the workers were exposed. That makes it impossible to do timely dose reconstruction.

Some may say the law provides for people to be added to a cohort administratively. Well, 10 days ago, after 3½ years of waiting, the Department of Health and Human Services issued a rule setting out the procedure. This only occurred as a result of congressional pressure. The process set out under the rule is likely to take several more years because there are no statutory deadlines that must be met.

So the workers who worked there, who had high exposure to radioactive materials, who are sick and many have had multiple cancers, quite frankly, cannot wait any longer.

We took an important step in fixing about half of this program yesterday with the Bunning amendment. Now it is time to finish the job and give the workers in Iowa and Missouri the same ability to be compensated as those workers in Kentucky, Ohio, Alaska, and Tennessee.

Again, my colleague from Missouri has an amendment now that is being worked out. We hope it is going to be accepted once all of the T's are crossed and I's are dotted. Basically, it is an equity argument to make sure these workers will be treated fairly and in the same manner as workers who were exposed in other places.

I have met with these workers, as Senator BOND has, and it just tears your heart out. These were patriotic individuals. I have talked to some of them who told me they were told what they did was top secret and they could not discuss it with anybody, not even their doctors. So years later, because they were patriotic, hard-working Americans, they never told anyone about the kind of work they did. In fact, I had to work with some of my colleagues a few years ago to get the Department of Defense to get them a written document that said it is OK for them now to talk about what they did. So, as a result of that, we are now getting a clearer picture of the kind of work these individuals did. They handled highly radioactive materials. Many times, they did not even wear dose badges. They had no idea what they were handling. When you listen to workers talk about how, when they worked, certain things would happen to them, such as the hairs on their arms and legs would stand up when they were getting near this material, they had no idea what it was.

Sadly, many of them have already died. Sadly, many of them died at an early age and they left young children. Some of their kids who are alive today tell me about how their father died and how they had all these illnesses and sores and cancers. Many died when they were in their forties or early fifties. They had no idea it was because of the radiation exposure they had when they worked in those plants.

I think it is time for us to do this, acknowledge their patriotic service, the work they did, the dangers they were exposed to and were never really told about. What Senator BOND and I are seeking to do is simply make this equitable. There is no reason why his workers in Missouri, or mine in Iowa, should be treated any differently than those in the four States I mentioned. I believe those in the four States should be compensated, too, and they have been. We thought ours were going to be compensated, but in the intervening 4 years, we found out that no records exist. So they cannot do the dose reconstruction. They have tried to get around it, but they cannot. So we are left on the floor of the Senate to make this equity argument in the hope the Senate will concur and allow us to move ahead in a way that, hopefully, before the year is out, we will be able to include these workers in this special cohort that will allow them to be compensated out of a fund that was established 4 years ago to compensate these workers. The fund still has, as I am told, plenty of money in it. So we are not actually spending any new money. We are simply adding some people to the fund to be compensated.

I am hopeful we can get this all worked out and that we can accept this amendment and move ahead to adequately compensate and acknowledge the work these people did, at least in Iowa and Missouri. I thank my colleague, Senator BOND, for his leadership on this issue. I thank Senator TALENT for his comments earlier.

Madam President, I yield the floor, and I will be back when we have the amendment fully ready.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Washington.

AMENDMENT NO. 3427, AS MODIFIED

Mrs. MURRAY. Madam President, I call up amendment No. 3427 and ask unanimous consent to have the amendment, which is at the desk, modified.

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

Mr. WARNER. Reserving the right to object, and I do not intend to object, I think the managers are doing our very best to move along this morning. We have had a number of unexpected switches by a number of Senators who start amendments and stop them for various reasons. We are prepared now to go ahead with the amendment of the Senator from Washington. But I say to our colleagues, when they have informed the managers they are prepared to go ahead, and then abruptly have to stop, it makes it increasingly difficult for us to work on this bill.

I thank the Democratic whip. He has been most helpful. We have lost a lot of time this morning due to unexpected decisions.

Mr. REID. Madam President, if the Senator will yield, we on this side certainly understand the travails of the managers of this bill. Several days ago, we had written on our sheet ''voice vote.'' We thought the amendment of the Senator from Washington had been accepted. There were miscommunications and, of course, that happens. It is certainly no fault of the Senator from Washington. She was ready several days ago, and we told her not to push it because we thought it would be accepted.

Mr. WARNER. We will proceed with the amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 3427, as modified.

Mrs. MURRAY. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To facilitate the availability of child care for the children of members of the Armed Forces on active duty in connection with Operation Enduring Freedom or Operation Iraqi Freedom)

At the end of subtitle E of title VI, add the following:

SEC. 653. CHILD CARE FOR CHILDREN OF MEMBERS OF ARMED FORCES ON ACTIVE DUTY FOR OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM.

(a) CHILD CARE FOR CHILDREN WITHOUT ACCESS TO MILITARY CHILD CARE.—(1) In any case where the children of a covered member of the Armed Forces are geographically dispersed and do not have practical access to a military child development center, the Secretary of Defense may, to the extent funds are available for such purpose, provide such funds as are necessary permit the member's family to secure access for such children to State licensed child care and development programs and activities in the private sector that are similar in scope and quality to the child care and development programs and activities the Secretary would otherwise provide access to under subchapter II of chapter 88 of title 10, United States Code, and other applicable provisions of law.

(2) Funds may be provided under paragraph (1) in accordance with the provisions of section 1798 of title 10, United States Code, or by such other mechanism as the Secretary considers appropriate.

(3) The Secretary shall prescribe in regulations priorities for the allocation of funds for the provision of access to child care under paragraph (1) in circumstances where funds are inadequate to provide all children described in that paragraph with access to child care as described in that paragraph.

(b) PRESERVATION OF SERVICES AND PROGRAMS.—The Secretary shall provide for the attendance and participation of children in military child development centers and child care and development programs and activities under subsection (a) in a manner that preserves the scope and quality of child care and development programs and activities otherwise provided by the Secretary.

(c) FUNDING.—Amounts otherwise available to the Department of Defense and the military departments under this Act may be available for purposes of providing access to child care under subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ''covered members of the Armed Forces'' means members of the Armed Forces on active duty, including members of the Reserves who are called or ordered to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, for Operation Enduring Freedom or Operation Iraqi Freedom.

(2) The term ''military child development center'' has the meaning given such term in section 1800(1) of title 10, United States Code.

Mrs. MURRAY. Madam President, as my colleagues know, I have been working for several months on proposals to help ease the burden on Guard and Reserve families who have a loved one serving our country. Today, I am offering an amendment to help families get childcare so a parent can go back to work while their spouse is deployed overseas.

This amendment applies to activated only, and it is discretionary. I want to make sure that is clear. I think there was a misunderstanding with regard to that issue. It is for activated soldiers, and it is discretionary. This will help relieve the childcare squeeze that is hurting so many families who are silently sacrificing for all of us.

Hopefully, with the success of this amendment, the Senate will then have adopted several proposals to help our Guard and Reserve families get health care through TRICARE, pay for their equipment, help them stay on their payrolls through employer tax credits, and, today, with a critical piece on childcare.

Each one of these steps is part of the much larger effort to help ease the burden on families who are trying so hard to make ends meet while their spouse serves our country overseas.

Six months ago, on January 9, I sat down with members of the Guard's 81st Armored Brigade and their families at Camp Murray in Fort Lewis, WA, and at that meeting Guard and Reserve members told me about the tremendous challenges their spouse and their children would face once they were deployed.

I could see how worried and concerned they were that they would not have time to get their families on sound footing with a job, with childcare, and with health care before they deployed to Iraq. I listened closely to all of their concerns, and I spent several weeks crafting a bill to address a number of those issues.

On February 12, I introduced S. 2068, the Guard and Reserve Enhanced Benefit Act. That is a comprehensive bill that will minimize the challenges at home when these brave men and women leave their jobs, leave their schools, and leave their families to protect our homeland and fight terrorism.

Since that meeting back in January, many of the Guard and Reserve members with whom I met have now been deployed to Iraq. Currently, more than 5,400 brave Washington National Guard and Reserve soldiers have been activated, including 3,200 members of the 81st Armored Brigade who are serving in Iraq today. They are part of the more than 168,000 Guard and Reserve troops who have been called to active duty from States around the country.

Our Washington Guard and Reserve troops are among the more than 22,000 total troops from Washington State who are supporting Operation Iraqi Freedom and Operation Enduring Freedom.

As I have talked with family members since the deployment, I have learned a lot about the tremendous challenges they are facing. Today, I want to report back to them on the steps we have taken in the Senate to help ease their burden.

I am proud that in the past month, the Senate has delivered on three of those challenges I outlined in my bill back in February. The first one we delivered on was health care. My bill proposed providing access to TRICARE for all members of the Guard and Reserve, and their families, regardless of their employment or insurance status. That is an issue that Senators DASCHLE, REID, GRAHAM, and others have been working very hard on over the years. I was a cosponsor of that TRICARE amendment. I voted for it on June 2, and I am very pleased that it passed the full Senate.

Now we need the House of Representatives to agree that our citizen soldiers and their families deserve health care.

Secondly, we made progress on another challenge: the strains facing those who employ Guard and Reserve members. My bill offered tax credits to employers to encourage their support of activated Guard and Reserve. It is something that Senator KERRY and Senator LANDRIEU have worked on. I was the original cosponsor of an amendment to provide a tax credit to employers who continue to pay active Reserve and Guard employees, and that passed the Senate with my support on May 11.

Third, we have provided help for soldiers and families who had to provide equipment because the military did not provide it to them in a timely fashion. Back on October 17, on the Senate floor, I told the story of SPL Ian Willet, who was deployed to Iraq on his 21st birthday last September. His father David wrote to me and told me that Ian and his family will have to buy equipment that the military should have provided.

This week in the Senate we did the right thing for soldiers such as SPL Ian Willet and his family. On Monday, I voted for an amendment directing the Secretary of Defense to provide reimbursement to soldiers who face this hardship. I was proud to be a cosponsor of the Dodd amendment that passed this body by an overwhelming margin.

Today, the Senate has the opportunity to pass the Murray childcare amendment, and that will be another important and critical step forward for families who are sacrificing for all of us.

I have raised these issues time and again on the Senate floor because I believe if the American people are told about the silent sacrifices that so many families are making, they will demand that we do more.

President Bush is visiting Fort Lewis in my State tomorrow, and I hope during his visit he shines a bright light on the sacrifices that families are making while their loved ones serve our country overseas. I think it is critical that he hears directly from these families, as I have, about the burdens our Guard and Reserve are facing today. It is important that he support the steps we have taken in the Senate to help those families with health care, payroll, equipment, and, today, childcare. I hope the President will make it clear to those in the House of Representatives that the support we provided in the Senate cannot be removed from the Defense bill in the dark of night.

One critical support we need to take care of is this amendment on childcare that I am offering today. I offer this amendment in honor of all the Guard and Reserve troops who are sacrificing for us overseas, and I offer this amendment in honor of their spouses and their children who are sacrificing so much for us at home.

Let me explain why childcare is such a challenge for many of our military families. Often when a member of the Guard or Reserve is deployed overseas,

the remaining spouse has to go to work to support the family and to make up for the income their spouse has given up because of their military service. Unfortunately today, as we all know, high-quality childcare is very expensive and often out of reach of a single parent.

In addition, many Guard and Reserve families do not live anywhere near a military installation, so they cannot use the services that are available.

I will tell my colleagues about a Washington wife and a mother whose life was turned upside down when her husband was called to active duty. Danielle and Jack Lucas have three children. They worked opposite shifts to avoid the cost of daycare. In February, Jack was told to report to the 81st Armored Brigade at Fort Lewis. Danielle scrambled to figure out how to keep her job and care for her children, including a newborn. Unfortunately, as so many of us find, the cost of daycare was prohibitive and she was forced to quit her job, after 10 years of work, when her husband was deployed.

Jack's monthly military pay was $1,000 less than his civilian job. So when it became impossible to make ends meet, Danielle moved to another part of my State where rent was less expensive. She has now gone back to work, but the cost of daycare is still not affordable. She juggles today with help from her family and her friends to watch her three children, and she often has as many as three different people watching her children in one 8-hour period.

While SPL Jack Lucas is taking the same risks as all Active-Duty soldiers in Iraq, his family has faced emotional and financial turmoil that will be alleviated with the Murray amendment. We cannot continue to ignore the needs of our Guard and Reserve families.

Unfortunately, Danielle's situation is not an isolated case. When MAJ Jake Callahan was called back to duty, his wife Kathleen and two small children were suddenly faced with a childcare dilemma. Kathleen's job requires her to travel and attend work events on weekends and evenings, but her son has special needs, and the cost of childcare is financially out of the question. Kathleen struggles with the stress of abandoning her career now or continuing to rely heavily on her family for childcare.

Kathleen is not alone. Lisa Palmer made the difficult decision to quit her job as a registered nurse when her husband was deployed to Iraq with the 81st Armored Brigade. After her husband was deployed, her two sons began experiencing severe emotional problems due to their father's departure. Lisa believed it was important for one parent to be at home to help her sons through these challenges. Her son's depression, his nightmares, his overwhelming sadness require constant assurance and support by her. Lisa has now started to work part time at the hospital to help lessen the tremendous financial strain of their greatly reduced family income. However, like Danielle and Kathleen, Lisa is only able to do so by leaning heavily on her family and friends to provide childcare.

All three of these women tell me they honestly do not know how they are going to make it through until their husbands return home. The current support system for our deployed and activated Guard and Reserve families is broken. We need a fix to keep our families strong while their spouses serve our Nation. Unless we soften the tremendous burdens they face, we may have trouble retaining the soldiers we have and recruiting the new soldiers we need.

This amendment is about easing the burden on those who serve us today, recognizing that we ask more of them so we need to provide them with more support, ensuring that we can recruit and retain our Guard and Reserve members for our future security.

I have heard some of my colleagues argue that some of these Guard and Reserve proposals are too expensive. We may hear that claim again today. But I think we need to look at the costs of abandoning these families who are serving. We need to look at how much pain it causes them. I have talked with these families. They are trying to serve our country honorably, but they cannot do it when they are so worried about how they are going to keep their children safe and secure while they work to keep their families financially capable. We need to look at how this issue threatens our ability to recruit and retain the voluntary military we need to protect us.

We are spending $5 billion a month on the war in Iraq, and virtually all of this spending goes right to the deficit that our grandchildren are going to inherit. Supporting our Guard and Reserve families is not cheap but we need to do it if we still want to have a Guard and Reserve system after all of these long, extended deployments. These families are part of our war effort. They are part of the war on terrorism. They are part of the war in Iraq. They are part of our homeland security efforts.

All of our military families are sacrificing today. Our Guard and Reserve troops are doing the right thing. They are meeting their obligations. They are protecting our people and they are serving our country with honor.

We have to acknowledge that our unprecedented deployment of Guard and Reserve Forces is creating tremendous new hardships that we have not had to deal with before. The amendment before the Senate now gives us the opportunity to do the right thing for these families and for the loved ones who are serving. We are asking so much of our Guard and Reserve members and their families. We have an obligation to make it easier for their spouses and their children during these long deployments.

The Murray childcare amendment and the other steps we have taken tell our Guard and Reserve soldiers that they can serve our country overseas, even on long deployments, and know their families will be financially secure and they will be able to get childcare and health care.

So my message to our Guard and Reserve families is: We gave you access to health care through TRICARE. We made sure you were reimbursed if you had to buy protective equipment. We made sure employers can continue to keep your loved ones on the payroll by providing employer tax credits. Today, this body will assure you that you have an ease of mind when it comes to your children that you left behind, that they have the childcare that is so critical to the well-being of your family.

We made progress. We have much more to do. We need to keep the pressure on to make sure when we get to conference behind closed doors these measures are not lost.

There are several other elements of my original comprehensive bill that have not been addressed yet, but today I think it is extremely important that we adopt this amendment.

The DOD is supportive of this amendment. It is for our activated soldiers. I urge the Senate to adopt this amendment today. I hope we can do it efficiently and quickly because I think we will send a strong message to those who are serving us so honorably overseas today.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Virginia.

Mr. WARNER. Mr. President, I commend our colleague. This is a subject that certainly will be approached in a very bipartisan way.

I am wondering, do we have any procedural requirement on that family who needs childcare, to express some sort of need for it before it is automatically granted? Would the Secretary adopt regulations? I just ask the distinguished Presiding Officer if I may enter into a colloquy with our distinguished colleague on that.

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

Mrs. MURRAY. Mr. President, this would allow the DOD Secretary of Defense to promulgate the process for the families to go through. It would be discretionary for him.

Mr. WARNER. That is very helpful.

Mr. LEVIN. Will the Senator yield for a question on that point?

Mr. WARNER. Yes, of course.

Mr. LEVIN. In the form of a question to the Senator from Washington, whose amendment fills in such a gap and really meets such an incredibly important need for childcare, but is it not true that in section (a)(3), the bottom of page 2, you do provide specifically:

> The Secretary shall prescribe in regulations priorities for the allocation of funds for provision of access to child care. . . .

So the amendment itself does provide for those regulations to be adopted by the Secretary of Defense?

Mrs. MURRAY. The Senator is absolutely correct. I think it is also important to point out there is no direct

spending. It simply authorizes the Secretary of Defense to help geographically dispersed Active-Duty military families.

Mr. WARNER. I thank our colleague. I asked the question so as to make it a part of the record of the proceedings today. So often when Congress acts on an amendment such as this, which is so important to so many families, they suddenly hear from Washington, ''You got childcare.'' But I think we better put in a caution: Yes, childcare hopefully will be made available, but there has to be some showing of a requirement. Because it is my understanding the Department of Defense now has a number of childcare centers here in the Greater Washington area. Frankly, the adequacy is questionable. Some families do not have access to them. But those families, I point out, might not be able to meet the criteria in the opening section 1:

In any case where the children of a covered member of the Armed Forces are geographically dispersed. . . .

Those families theoretically are not geographically dispersed, but they are caught in between the class that you are establishing and those who are near a major military installation here in Washington, yet there are inadequate childcare facilities.

Those are the types of things that are going to have to be worked out should this become law.

Mrs. MURRAY. Mr. President, there is no doubt the childcare is an issue that is very difficult for many families, and to provide all this support for every family is something that will be extremely difficult. We all acknowledge that. But there is a specific group of families serving us overseas today in Iraq and Afghanistan who are absolutely excluded from any help whatsoever. My amendment assures that they are not excluded.

Mr. WARNER. Fine. We definitely want to care for those. Those families who are not serving overseas yet have been pulled up abruptly from Reserve or Guard status, yet where the husband or the wife—whichever the case the uniform may be worn—is not deployed overseas, they may have a critical problem, too.

Mrs. MURRAY. The amendment before us is in support of all activated personnel.

Mr. WARNER. You make reference to those families overseas repeatedly. I just want to make sure about some of those at home.

Mrs. MURRAY. The Senator is correct.

Mr. WARNER. Fine. On the basis of that, we are prepared to accept the amendment on this side.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me first commend the Senator from Washington. She has been tenacious, absolutely determined to provide childcare for military personnel. She has devised this amendment to take care of the ones who are currently employed in Iraq and Afghanistan, because their families surely are the ones who, first and foremost, we have to try to take care of, where they have no other alternative on base because they are geographically dispersed.

This amendment provides funds for childcare for members of the Armed Forces who do not have access to military childcare programs because they are geographically dispersed and there is no military childcare program available to them. These will mainly be Guard and Reserve people but not exclusively. There may be families of Active-Duty people who are normally on active duty, who because their loved one is now in Iraq or Afghanistan, for instance, take the family back home and who also will have access to childcare because of this amendment.

It is discretionary spending. I note the Department of Defense supports this amendment. It seems to me the fact that the Senator from Washington was able to work with the Department of Defense to actually obtain their support for her amendment is a notable success for which she is entitled to the commendation of this body and the thanks of this Nation.

I hope this amendment will be adopted by the Senate. I do not know if a rollcall is necessary. If it is, I hope we strongly support this amendment, and I commend Senator MURRAY for her tenacity and for the sensitivity which she shows in so many issues, but in this case on the childcare needs of this country.

Mr. WARNER. Mr. President, I have indicated that colleagues on this side of the aisle are very anxious to work to make this childcare available subject to the availability of funds, as the amendment states. We are prepared to move on, make it totally bipartisan, and voice-vote this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, without objection the amendment is agreed to.

The amendment (No. 3427) was agreed to.

Mr. WARNER. 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.

Mr. WARNER. Mr. President, we are prepared to proceed with the amendment on important aspects of missile defense by our colleague from California.

The PRESIDING OFFICER. The Senator from California is recognized.

AMENDMENT NO. 3368

Mrs. BOXER. Mr. President, I call up amendment No. 3368.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 3368.

Mrs. BOXER. 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 allow deployment of the ground-based midcourse defense element of the national ballistic missile defense system only after the mission-related capabilities of the system have been confirmed by operationally realistic testing)

On page 33, after line 25, insert the following:

SEC. 224. LIMITATION ON DEPLOYMENT OF GROUND-BASED MIDCOURSE DEFENSE ELEMENT OF THE NATIONAL BALLISTIC MISSILE DEFENSE SYSTEM.

The ground-based midcourse defense element of the national ballistic missile defense system may not be deployed for initial defensive operations before the Secretary of Defense certifies to Congress that the capabilities of the system to perform its national ballistic missile defense missions have been confirmed by operationally realistic testing of the system.

Mrs. BOXER. Mr. President, we are going to face a series of amendments on the missile defense system, and I believe I have an amendment which I am surprised we even have to have a long debate about because it is so straightforward. It says let us not spend the money to deploy the system until it has been tested and until it has been certified as passing those tests by the one office that has the capability of doing it, which is the Office of Director of Operational Test and Evaluation.

We want to ensure that the ballistic missile defense system the President plans to deploy later this year has passed these tests.

In 1983, Congress created the Office of the Director of Operational Test and Evaluation—DOT&E. It is now headed by Mr. Thomas Christie.

The Office of DOT&E was created under the ''fly before you buy'' law. ''Fly before you buy'' makes a lot of sense for our taxpayers. Frankly, when it comes to defending our country, my goodness, how much more important can it be before we tell our people they are protected that we actually know they are protected and that the tests which have been done have been signed off on by the very office that has been created for that purpose?

The office oversees the operational testing programs of all major military systems. Operational testing is intended to be as realistic as possible. This includes testing at night, testing in bad weather, using soldiers rather than contractors who have a special interest in the outcome of the test, and using expected enemy countermeasures.

Let me repeat that. In order to have operational tests that you can trust, the testing has to be done under realistic circumstances. We don't know if our enemy is going to attack us on a beautiful, clear day with the wind blowing at a certain rate. The fact is, we need to test under the harshest conditions so that we know what we are deploying works. It must be a realistic test. Most importantly, the tests must be conducted by the Office of DOT&E—

the program that is developing the weapons system.

I am sure you are going to hear people stand up and fight against this amendment.

I have to tell you that if you really look at the facts, they do not have them on this side. If I were to ask one of my constituents, who knew nothing about this at all, who they would rather have testing our military systems to make sure they work, the contractor, who has an economic interest in it; the program director, who has an economic interest in getting the program funded; or basically an independent office that was set up by Congress, the Office of Director of Operational Test and Evaluation, I think the answer would be clear. People would want an objective test.

My amendment requires that the Secretary of Defense confirm that the ground-based, midcourse missile defense system has passed these operational tests prior to deployment for initial defensive operations. It is very simple—fly before you buy, test before you deploy, common sense, following the wishes of Congress that knew this was a problem when we set up that office.

Here is why it is important. This amendment is important because the current plan of the Missile Defense Agency does not include any operational testing at any time in the foreseeable future.

Let me say that again. The current plan of the Missile Defense Agency does not include any operational testing at any time in the foreseeable future. And this statement I just made has been confirmed by the Office of Director of Operational Test and Evaluation.

Imagine: We are about to spend $10 billion on this program. It is the biggest program in the defense budget, as I understand it, and we are going to deploy without operational testing.

On December 17, 2002, President Bush announced that the United States will declare a midcourse ballistic missile defense system ready for defense operations at the end of the year. That is interesting. He declared and announced that we would be ready to deploy before the system was tested. He should say: Assuming it passes the tests by the appropriate evaluation agency, which is DOT&E. But he didn't say that. The Pentagon's current plan is to deploy the first interceptor missile in late July, and before the system becomes operational by the end of September when five interceptors are in place at Fort Greeley, AK. The Missile Defense Agency hopes to have a total of 10 interceptor missiles in place by the end of January 5 at both Fort Greeley and Vandenberg Air Force Base in California.

They are moving ahead without any operational testing done by the office that was created to do this.

This plan that I described to you, known as Block 2004, will eventually result in the deployment of 20 missile interceptors by the end of next year.

There is a serious problem here. We have no way of knowing that these interceptor missiles will actually be able to protect us from an incoming ballistic missile attack. The system President Bush is deploying has been tested eight times—not by the Director of the Office of Operational Test and Evaluation, it has been tested by the DOD. The contractor was involved in those tests, and the program director was involved in those tests of the Missile Defense Agency, but not the office that has been created to be the objective tester. The tests were conducted, again, by the Pentagon's Missile Defense Agency in cooperation with the contractor—not the DOT&E.

These tests were highly scripted. They occurred in an unrealistic test environment, and only five of the eight were successful.

Here is the GAO report.

The date is April of 2004. This is a relatively new report. In this report, the GAO criticizes the administration's plan, saying:

> as a result of testing shortfalls and the limited time available to test the BMDS [Ballistic Missile Defense System] being fielded, system effectiveness will be largely unproven when the initial capability goes on alert at the end of September 2004.

That is when the initial five missiles will be deployed.

This report from the General Accounting Office, which is the investigative arm of the Congress, goes on to say:

> the Missile Defense Agency predicts with confidence that the September 2004 defensive capability will provide protection of the United States against limited attacks from Northeast Asia. However, testing in 2003 did little to demonstrate the predicted effectiveness of the system's capability to defeat ballistic missiles as an integrated system.

And from the GAO, who we pay a lot of money to, to advise us, they go on to say:

> None of the components of the defensive capability have yet to be flight tested in their fielded configuration (i.e., using production-representative hardware).

My friends, the GAO has essentially exposed the fact that the President plans a ''Wizard of Oz'' defense. We have seen the Wizard of Oz. That Wizard of Oz was scary, but when you pull back the curtain, it was just some little guy.

I want to see a successful missile defense system. I want to see it work. Ever since I have been in Congress, I have been voting continually for research, research, so we have one system in place that works. It would be the greatest to have. We may eventually have it. I hope to God we do. I am from California. I want a missile defense system. I am worried. I am just as worried, however, that if we tell our people they are defended and we do not have objective testing behind it, it will be a very hard blow to people and a waste of money that, God knows, we need in other areas of the military and in other ways to defend our people from the suitcase bomb or an attack on a nuclear power plant, which we know the terrorists are looking at.

The President's decision, in my view, before the testing is done, is a waste of our resources. The total amount requested for missile defense in 2005 is $10.2 billion, more than any other defense system in one year ever.

To put this $10.2 billion in perspective, let me read the budgets of some of the programs in agencies critical to protecting us from the threat of terrorism. I have a chart listing what we spend in other areas that are key in our fight against terrorism.

The entire missile defense system is $10.2 billion. That includes everything, research and everything else. I am talking about the deployment costs, which are about $3.7 billion of the $10 billion. This chart shows the $10.2 billion, which is the entire missile defense cost. The money we are talking about spending is $3.7 billion to deploy these 20 missiles.

Look what we have spent on the other areas to protect our people. The customs and border protection is $6.2 billion. My colleague, Senator MCCAIN, right now is holding a hearing—unfortunately I could not do it because I had to be here—on our problems at the border, protecting our borders from terrorism. The fact is, we need to spend more in high-tech equipment to better protect our people from terrorists crossing the border. The total is $6.2 billion, compared to $10.2 billion on missile defense; Transportation security, $5.3 billion; Coast Guard, $7.4 billion; FEMA, $4.8 billion; Office of Domestic Preparedness, $3.5 billion. This is what we are talking about spending on this deployment—$3.7 billion of the $10 billion—before it is operationally tested by the office that is supposed to do that.

We know the customs and border protection is the front line in protecting the American public against terrorism. Transportation Security Administration—we all know what happened on 9/11; they are responsible for keeping our airlines safe but also our railroads and our ports secure—$5.3 billion, and we are going to spend $3.7 billion on an untested deployment? Coast Guard, $7.4 billion. Imagine that is what we spend on the Coast Guard, and they are right in the line of fire. I visit my Coast Guard ports all the time. They are the lead Federal agency in maritime safety. They are so important. We spend $7.4 billion. And we are spending $10.2 billion on the entire missile defense and ready to toss out $3.7 billion of that in this initial deployment.

All of FEMA, the lead agency for preparing us to respond to all domestic disasters, including acts of terrorism, $4.8 billion. We are about to spend $3.7 billion on an untested system, and we are spending $4.8 billion on FEMA.

Office of Domestic Preparedness, $3.5 billion, which is less than we will spend on an untested system. They are the

lead agency responsible for preparing the Nation against terrorism by assisting States and local governments in preparing for terrorists acts.

The Presiding Officer must hear the same things I hear at home from the police officers, from nurses, from the first responders, the firefighters. They are hurting. They need our help. Would it not be better at the moment now not to waste $3.7 billion on this initial deployment, if we have that extra funding, but to put it into the fight on terrorism?

My amendment does not cut any money from this program. My amendment does not cut one dollar from the program. However, it says, do not spend the money until the system is operationally tested. We will have other attempts because other people will be taking out some funding. I do not touch the funding. All I say is, test it before you deploy it. If the Office of Operational Test and Evaluation comes back with a good report, then I say please deploy but not until that time.

We are at war with al-Qaida and with terrorism. The only four nations that have ever successfully tested a nuclear capable intercontinental missile are Russia, France, Britain, and China. We are not at war with them.

We will talk about Korea and Iran. There are fears, and I share the fears, that this technology could get into the hands of the wrong countries or somehow a terrorist could get his or her hands on one of these missiles. That is why I want to protect our country against the potential of this kind of a strike. However, I do not want a make-believe system. I do not want a Wizard of Oz system.

I want a system I can look my people in the eye and say: We spent $3.7 billion deploying the first aspects of this system, and we know it works. I think my people deserve to know that.

When I was in the House, I was on the Armed Services Committee, and I worked very hard on procurement reforms. I enjoyed so much being on the Armed Services Committee in the House. I was there for years. We had some wonderful debates. What we found is: ''Fly before you buy'' is essential. And that is all we are saying. We want to know the system works. We want to be able to tell the people the system works. And, clearly, we should look at the threat we face.

Now, the reason I am for this program, the reason I have voted for this program many times for research, is because I want to have a system that works. Why? North Korea. I am very fearful of North Korea. Although I believe we can try our best and do more to negotiate with them, there is no question I am worried about a potential missile system in North Korea.

But here is the issue. We have a capability that is not talked about that much here, but the Pentagon's former Director of DOT&E, Philip Coyle, has said: We would never wait until North Korea has launched a missile attack. ''We'd blow it up on the ground.'' We have the capability to know when these missiles are being moved into place. Let me repeat what Philip Coyle said, the Pentagon's former Director of DOT&E:

> We would never wait until the thing was launched. We'd blow it up on the ground.

Now, I subscribe to that theory. I want to blow it up on the ground. I think Philip Coyle is right. With our capabilities, we could see any movement, and we would know. But wouldn't it be great to intercept a missile once it is in the air? Absolutely. If we could not destroy it before it was launched, definitely. But let's operationally test the system first, with the people who are hired to do this for the taxpayers.

Now, let's hear what the Union of Concerned Scientists is saying. They are an independent nongovernmental organization. They released an analysis of the President's plan to deploy a missile defense system. Let me read you two of their findings:

> The Block 2004 missile defense will have no demonstrated capability to defend against a real attack since all flight intercept tests have been conducted under highly scripted conditions with the defense given advance information about the attack details.

Now, do we think our enemies are going to place a call to us and say here is what we are going to do; here is what time we are going to do it; here is the weather we are going to do it in; here is the day? No. The fact is, we have not realistically tested this system.

This is what the Union of Concerned Scientists says:

> Unsophisticated countermeasures that could readily be implemented by countries such as North Korea remain an unsolved problem for mid-course defenses against long-range missiles.

So they are calling our countermeasures that we are using unsophisticated. It is a problem. This means that any country able to launch an ICBM is also capable of using countermeasures to fool our interceptors.

The Union of Concerned Scientists report ends with their recommendation that the Pentagon's Missile Defense Agency should:

> [H]alt its deployment of the Block 20O4 Ground-based Mid-course Defense system and Congress should require MDA to conduct operationally realistic testing of the system before it is deployed.

I thank the Union of Concerned Scientists because it was their very clear writing that led me to this amendment. In addition, common sense led me to this amendment. In addition, many former generals who have spoken out on this led me to this amendment. I agree with the scientists. That is why my amendment says that before we declare the system operational, we should know that it has been tested in a realistic manner.

I want to show you the list of 49 generals who have written on this issue. I say to the Presiding Officer, I think you would find this very interesting. This is a list of 49 generals and admirals who call for missile defense postponement because they do not believe the testing is adequate.

In a recent statement these 49 generals and admirals have written to President Bush asking that the deployment of a ground-based midcourse missile defense system be postponed. Their letter points out that the Pentagon has waived the operational testing requirements that are essential to determining whether this highly complex system of systems is effective and suitable.

The last paragraph of their letter sums up the concerns of these generals and admirals:

> As you have said, Mr. President, our highest priority is to prevent terrorists from acquiring and deploying weapons of mass destruction. We agree. We therefore recommend, as the militarily responsible course of action—

The militarily responsible course of action—

> that you postpone operational deployment of the expensive and untested GMD system and transfer the associated funding to accelerated programs to secure the multitude of facilities containing nuclear weapons and materials and to protect our ports and borders against terrorists who may attempt to smuggle weapons of mass destruction into the United States.

Mr. President, I ask unanimous consent to have printed in the RECORD this letter signed by 49 retired generals and admirals.

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

MARCH 26, 2004.

President GEORGE W. BUSH,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: In December 2002, you ordered the deployment of a ground-based strategic mid-course ballistic missile defense (GMD) capability, now scheduled to become operational before the end of September 2004. You explained that its purpose is to defend our nation against rogue states that may attack us with a single or a limited number of ballistic missiles armed with weapons of mass destruction.

To meet this deployment deadline, the Pentagon has waived the operational testing requirements that are essential to determining whether or not this highly complex system of systems is effective and suitable. The Defense Department's Director of Operational Test and Evaluation stated on March 11, 2004, that operational testing is not in the plan ''for the foreseeable future.'' Moreover, the General Accounting Office pointed out in a recent report that only two of 10 critical technologies of the GMD system components have been verified as workable by adequate developmental testing.

Another important consideration is balancing the high costs of missile defense with funding allocated to other national security programs. Since President Reagan's strategic defense initiative speech in March 1983, a conservative estimate of about $130 billion, not adjusted upward for inflation, has been spent on missile defense, much of it on GMD. Your Fiscal Year 2005 budget for missile defense is $10.2 billion, with $3.7 billion allocated to GMD. Some $53 billion is programmed for missile defense over the next five years, with much more to follow. Deploying a highly complex weapons system

prior to testing it adequately can increase costs significantly.

U.S. technology, already deployed, can pinpoint the source of a ballistic missile launch. It is, therefore, highly unlikely that any state would dare to attack the U.S. or allow a terrorist to do so from its territory with a missile armed with a weapon of mass destruction, thereby risking annihilation from a devastating U.S. retaliatory strike.

As you have said, Mr. President, our highest priority is to prevent terrorists from acquiring and employing weapons of mass destruction. We agree. We therefore recommend, as the militarily responsible course of action, that you postpone operational deployment of the expensive and untested GMD system and transfer the associated funding to accelerated programs to secure the multitude of facilities containing nuclear weapons and materials and to protect our ports and borders against terrorists who may attempt to smuggle weapons of mass destruction into the United States.

Mrs. BOXER. Mr. President, the admirals and generals are essentially asking to take that money, that $3.7 billion, out of the $10 billion, and divert it to other programs. I am not doing that. I am simply fencing the money and saying: You can spend it when the tests pass. So they are really asking more than I am doing.

The people who wrote this letter are some of our most distinguished military men and women. I am going to read the names of these generals and admirals:

ADM William J. Crowe, United States Navy, Retired; GEN Alfred G. Hansen, United States Air Force, Retired; GEN Joseph Hoar, U.S. Marine Corps, Retired; LTG Henry E. Emerson, Army, Retired; LTG Robert Gard, Jr., Army, Retired; VADM Carl Hanson, Navy, Retired; LTG James Hollingsworth, Army, Retired; LTG Arlen Jameson, Air Force, Retired; LTG Robert Kelley, Air Force, Retired; LTG John Kjellstrom, Army, Retired; LTG Dennis McAuliffe, Army, retired;—they are all retired, so I will not continue to say that—LTG Charles P. Otstott, Army; LTG Thomas Rienzi, Army; VADM John Shanahan, Navy; LTG Dewitt Smith, Jr., Army; LTG Horace G. Taylor, Army; LTG James Thompson, Army; LTG Alexander Weyand, Army; MG Robert Appleby, Army.

Mr. REID. Will the Senator from California yield for a question?

Mrs. BOXER. Yes.

Mr. REID. I have spoken to the two managers. Senator LEVIN wants to speak in support of your amendment for 5 minutes. They want 25 minutes to respond to your statement.

Mrs. BOXER. Sure.

Mr. REID. We would like to set a vote for around 12:30.

Mrs. BOXER. OK.

Mr. REID. Which is 40 minutes from now.

Mr. WARNER. Mr. President, and no second degrees prior to the vote.

Mr. REID. Yes.

Mrs. BOXER. I am happy to take another 7, 8 minutes and then finish.

Mr. WARNER. That runs us into about 35 minutes on your time.

Mrs. BOXER. I will finish in 5 minutes.

Mr. REID. Yes. Senator BOXER will speak for 5 minutes. He will speak for 5 minutes. That will give you 40 minutes and will be about evenly balanced.

I ask unanimous consent that on the pending Boxer amendment, there be 10 minutes left on the proponents' side, 5 minutes for Senator BOXER, and 5 minutes for Senator LEVIN, and the remaining time be under the control of Senator WARNER, and that there be a vote at 12:30 with no second-degree amendments prior to the vote.

Mr. WARNER. Reserving the right to object, could we state no later than 12:30? We may be yielding back time.

The PRESIDING OFFICER. Does the Senator so modify his request.

Mr. REID. Yes, and that Senator BOXER could have 1 minute prior to the vote.

Mr. WARNER. We will take on this side equal time with 1 minute prior to the vote.

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

Mrs. BOXER. May I ask the Senator, I do get a vote on this?

Mr. REID. Yes, at 12:30.

Mrs. BOXER. The reason I am reading these names is because these are names we know. These are our heroes: Major General Appleby, Major General Boatner, Major General Bradshaw, Major General Brady, Major General Burns, Rear Admiral Center, Major General Crawford, Major General Edmonds, Rear Admiral Elliot, Major General Faith, Rear Admiral Gormley, Major General Griffitts, Rear Admiral Grojean, Major General Haddock, Major General Holbein, Major General Hyman, Major General Jackson, Major General Lawson, Major General Luchsinger, Major General LeCleir, Major General Willoughby, Brigadier General Cannon, Brigadier General Costa, Brigadier General Cowan, Brigadier General Foote, Brigadier General Forney, Brigadier General Grubbs, Brigadier General Hastings, Brigadier General Johns, Brigadier General Roush.

This is not easy for these people to come out here now and do this. They believe, as I do, and as I hope colleagues on both sides of the aisle feel—and I don't know what will happen with this—that with all of the threats we face today, we have to take care of everything. But for goodness' sake, before we make a $3.7 billion deployment decision, let us test the system with the agency that was set up to do it, not with the program that is kind of fighting for its life always because that is what happens around here, whether it is in the military or any service. You can't rest with that and with the contractors that have the economic stake. This separate objective office is the one.

I stand with the scientists who say we need the realistic test. I stand with the 49 former generals and admirals who say the militarily responsible course is not to spend this money until these tests pass. The Pentagon's current Director of the DOT&E, Thomas Christie, says we can't be sure the system will work against a real North Korean missile. So why wouldn't we fly before we buy? Why wouldn't we be sure that we are spending the money for the taxpayers in a wise way?

I want this as much as anybody else. I want this very much to work. But I don't want to spend the money until we know we have tested the system realistically, and that is common sense.

Again, I named the names of these admirals. They want to go even further. They want to postpone this. I am saying let's not take away the money. Keep the money in place. Let's just make sure the appropriate agency does the testing. That appropriate agency is the Director of Operational Test and Evaluation. It is very simple. I hope my colleagues will support this. We are being told by the people who know that it is not ready yet for deployment.

I thank my colleagues for their patience. I yield the floor. I look forward to a good vote.

Mr. WARNER. Mr. President, I yield myself such time as I may require. I would like to enter into a brief colloquy with our colleague from California. If we can keep the answers short, I want to frame, for those Members following this debate, my perception of what your amendment does. I start by pointing out that last year, this body, this Congress, in a conference report, approved 20 ground-based interceptors—they have been authorized—16 of which will be based at Fort Greely, AK, and four of which will be placed at Vandenberg, CA. They are being fielded as part of a missile defense test bed. This test bed is required for operational realistic testing and provides some measure of operational capability which serves as a basis for the IDO.

Is that basically a correct statement of what we did last year?

Mrs. BOXER. I am sorry. My staff was pointing out something. You are asking me if what?

Mr. WARNER. What we did last year, this body authorized moving ahead on 20 test bed sites, 16 in Alaska and the balance in your State. Am I correct?

Mrs. BOXER. Yes.

Mr. WARNER. Is not the purpose of your amendment to stop that process?

Mrs. BOXER. Absolutely not.

Mr. WARNER. Then how do you proceed to do any testing if you stop the test bed?

Mrs. BOXER. We want operational testing. We want the tests to be done by the appropriate office. That is the purpose of the amendment. That is exactly what the generals are saying. That is what the admirals are saying.

Mr. WARNER. I thank my colleague.

Mrs. BOXER. Sure.

Mr. WARNER. I interpret it quite differently. The amendment would prohibit deployment of the ground-based midcourse missile defense system until

the Secretary certifies to Congress that the capabilities of the system to perform its national missile defense missions have been demonstrated in operationally realistic testing.

We authorized precisely what was to be done last year. We are proceeding on that basis right now. And as I look at this amendment, it would be in effect to reverse what we did last year and start off in an entirely different direction. The test bed capabilities will include space, ground, sea-based sensors, missile defense interceptors, battle management facilities, software, command and control, and communications facilities. To provide additional realism, military operators participate in the tests, and the warfighter is developing a concept of operations.

So, basically, what we are doing, if we were to adopt this amendment, is to put a halt on this system.

As I said, I rise in strong opposition to the Boxer amendment. This amendment would prohibit deployment of the ground-based midcourse missile defense system until the Secretary certifies to Congress that the capabilities of the system to perform its national missile defense missions have been demonstrated in operationally realistic testing.

This amendment, however, is flawed.

Let me start by noting that the Missile Defense Agency, with the strong support of the Pentagon's Director of Operational Test and Evaluation, is fielding an extensive missile defense test bed. This test bed is key to operationally realistic testing.

The test bed capabilities will include space, ground, and sea-based sensors; missile defense interceptors; battle management facilities and software; and command, control, and communications facilities and software. To provide additional realism, military operators participate in the tests, and the warfighter is developing a concept of operations.

The test bed facilities, the participation of military operators, and a good concept of operations provide MDA the ability to test realistically but also provide the initial defensive capability of the BMD System. This initial capability is based on the operational capabilities inherent in the test bed. We are, in fact, on track to field an initial, limited defensive capability later this year. That is what a number of Senators have described as a missile defense deployment.

Indeed, the Commander of U.S. Strategic Command strongly supports the early operational exploitation of test bed capabilities. He is the individual charged with assessing the military utility of the BMD system. He testified forcefully to our committee that the BMD system provides a useful military capability, contributes to deterrence, and provides a useful option to military commanders and national command authorities, even in the early phases of testing. He testified that he intends to ''take full and early operational advantage of the system's antimissile capabilities under development.'' He also wrote in a recent letter, ''U.S. STRATCOM supports the continued appropriate development of missile defense capabilities . . . under the evolutionary approach of concurrent test and operation.''

The amendment does not recognize the connection between the test bed and the fielding of operational capability. If you prohibit this ''deployment,'' you prohibit operationally realistic testing—and prevent the very basis for the certification that the amendment requires.

The BMD system is already being rigorously tested. I would argue that it is one of the most thoroughly tested systems—at this point in its development—that we have. It has gone through thousands of hours of ground testing. The ground-based midcourse missile defense element that we are discussing has achieved successful intercepts in five of eight tests and proven the basic soundness of the hit-to-kill technology. The operational test community is deeply involved in the test program, each test includes operational test goals in addition to developmental test goals.

Each test already includes a measure of operational realism. That testing will continue and will become progressively more realistic and challenging as the system matures. Testing successes will provide greater confidence that the system is performing as we expect it will.

I would further note that the fielding of BMD systems is threat driven. Serious ballistic missile threats exist today and will increase in the future. Congress addressed this issue years ago in the National Missile Defense Act of 1999, which states that it is the policy of the United States to deploy a national missile defense as soon as technologically possible. The Senate passed that act by a vote of 97–3. We need to proceed expeditiously with fielding.

This is entirely consistent with past practice. Our nation has often fielded military systems without completion of operational testing in response to an urgent military need. These systems include the Joint STARS system in the first Persian Gulf War, and the Global Hawk and Predator UAVs in the war on terror. Deployment of these systems—which had not completed testing—greatly increased the security of our nation. The same will be true when we have fielded the missile defense system.

I urge my colleagues to oppose this amendment.

I ask the chairman of the subcommittee to address the Senate and allocate the time on this side.

Mr. ALLARD. Mr. President, I thank the chairman for yielding to me. Senator KYL was on the Senate floor. I thought I would go ahead and give him an opportunity to make some comments. I would like to make some comments following his remarks.

Mr. WARNER. Does the Senator from Colorado agree with me as to what this amendment does?

Mr. ALLARD. I do. If you take down the test bed, you in effect are going to stop the progress of the missile defense program. The real issue is, if you take down any part of it, it is so intertwined and interconnected, you slow down and stop the whole system. Your comments are very pertinent. They are very much in order. I have tremendous concern that this in effect is going to undo what the Congress has worked so hard to do.

If you remember, initially the legislation directed that we move forward on missile defense as soon as technologically feasible. We are ready to move ahead, and we need to.

I yield 10 minutes to the Senator from Arizona.

Mr. KYL. Mr. President, with regard to the amendment before us, the chairman of the committee and of the subcommittee have made precisely the right point. Congress has passed a law to get us to this point today, to begin the kind of operational testing that everybody agrees we need to do, that even critics of the missile defense program want us to do. Yet now they say let's stop building the missiles that would be used for the operational testing.

The essence of this is captured in one of the first comments of the Senator from California.

She talked about the concept of ''fly before you buy,'' which ordinarily is the way we buy military equipment but not always. She noted that is one of the reasons why the Office of Test and Evaluation was created, and she noted there had been problems as a result of the fact that not all of the operational testing had been done on this program.

Let me quote from the person who heads that office, the Director for Operational Test and Evaluation, Thomas Christie, on this precise issue in his recent testimony before the Senate Armed Services Committee:

> . . . I think the issue we're talking about here is the building of missiles that will be put into silos that are part of the test bed, and we have to have this test bed in order to do some of the testing that will become more realistic engagements, geometrics, for example, than we've been able to do before. And some of these attributes of this test bed are in response to criticism that came from my office and my predecessor in previous administrations. . . .

Mr. President, that is the precise point. The criticism has been that not all of the testing has been under the kind of realistic conditions that would be the real battlefield we need to be able to test against. It has been done by contractors, and, of course, that is the way you have to start out to test the components and make sure they work. Eventually, you have to build the missiles, put them into the ground, and test them in real conditions. What better way to do that than to put them in the actual silos in which they will have to be located in Alaska?

By the way, when Thomas Christie speaks of this, he talks about the places for the best chance of intercepting missiles, where we think they might come in. Where is that? Alaska. Weather conditions in Alaska are not necessarily the best. We have to test these missiles under conditions where there would be several feet of snow or ice on top of the missile silo, the lid that has to be blown off for the ground-based missile interceptor to be shot off. That is why we have to have missiles precisely in the place where they can be tested under these operational conditions. That is precisely why we have to, A, authorize and, B, fund this group of 10 missiles which will be part of the test bed.

Now, the fact that they may also have the capability in an extreme emergency of actually shooting down a hostile missile should not be a bad thing. If, God forbid, a hostile country should challenge us and either mistakenly launch a missile at us or intentionally do so against us, wouldn't it be nice to have the missile in the silo to shoot it down with? I fear some opponents—certainly not anybody on the Senate floor—would say you cannot do that because we have not certified yet that it is an operational system.

In the 1991 gulf war, for example, when we had an air defense system called Patriot and Saddam Hussein began sending Scud missiles at our troops in Saudi Arabia and Kuwait, we actually sent that air defense system to Saudi Arabia, doing some fixes to it on the way over, and we put it on the ground. As the Scuds were launched, we fired Patriot missiles at them. We didn't hit them all, but I think we hit something like about a third of the Scud missiles.

That system wasn't designed to shoot down missiles. It had never been operationally tested and hadn't been certified for deployment, but in an emergency we needed it. We have done that with other systems, such as JSTARS and some of our unmanned aerial vehicles. There are some other programs we can talk about that we didn't ''fly before we buy'' with those systems. We had them in a developmental process, and all of a sudden we needed them and we used them. Thank God, they were there to be used.

So even if we had to use one of these missiles in an emergency, God forbid, would anybody object to us doing that? Would we have to say, wait a minute, we don't have the certification called for in the Boxer amendment yet? Sorry, we cannot defend ourselves.

I think not. It is an unrealistic requirement. More importantly, it is a requirement that even the head of the group that we have set up, the Director of the Operational Test and Evaluation Office, has said is unnecessary.

We need to move forward in building these missiles so we can put them in the silos and conduct the operational tests that we all agree need to be conducted.

I note that our colleague from California said she has always voted for research. I accept her word on that. But part of the problem for missile defense is that a lot of us vote for research, but when it comes to bending the metal, actually building the system and putting it into the ground, that is when people say we need to slow up, we have not done enough testing, we are not sure it will work against everything. So we have spent an awful lot of money on missile defense and, frankly, a lot of research, but we have not been able to put something into the ground.

President Bush said, when he came into office, we are going to put something into the ground that will work. We may have to let it evolve as it moves forward, and we will make changes as we learn more and more. But that is all right. At least we have an initial capability that might work, God forbid, should somebody accidentally launch something against us, or even do so intentionally. I look at our weapons systems, such as the F–16s that are tested at Luke Air Force Base in Arizona. I am not sure which version of the F–16 we are flying now, but it is not the A, B, C, or D. We build systems and we keep improving them. We evolve in our technology and keep putting that new technology into the systems.

That is precisely what we have decided to do with missile defense, rather than trying to come up with the perfect system that will defeat any kind of offensive system against us. We understand we need to start with something that will be rudimentary and at least will deal with a threat coming from a country like—let's say North Korea, and it may not work against one of the old Soviet systems, for example. But as we get better, we will include those new technologies into these systems, improve them; so as our adversaries develop systems, we will be one step ahead of them.

Finally, part of the purpose of this is deterrence. It is not just to be able to defeat a missile that might be thrown against us. The message we want to send to North Korea, Iran, and other countries is the same one we sent to Soviet Union, which it heard loudly and clearly. It was the message President Reagan sent: We have the economy to outspend you, out-research you, out-build you, and we are going to build a missile defense that will defeat you. Why go to the trouble, since you cannot afford to do it, of trying to build an offensive system that we can defeat? That is the message we want to send to these potential enemies. We can deploy a system and we will always be able to have a system that will defeat what you throw against us. Why take the time and trouble to develop that kind of system? It has a deterrent effect as well.

We need to move forward with this system and defeat the Boxer amendment. Both Chairman WARNER and the Senator from Colorado, Senator ALLARD, are precisely correct in their opposition to this amendment.

Mr. ALLARD. I thank the Senator for his statement. I recognize in a public way his great work on this particular issue, and his comments are very enlightening.

I will yield myself 6 minutes.

I rise in strong opposition to the Boxer amendment. Today, we face a clear threat from long-range missiles in North Korea. Iran has made no secret of its intent to develop long-range missiles. We may have to deal with that threat in the not-too-distant future. That is the truth.

Consequently, I have great concern about this amendment, which seems relatively straightforward but it is potentially devastating to the effort to defend our Nation from long-range missile threats. I say ''seems straightforward'' because I can actually read this amendment three different ways. None of these readings seem useful to the defense of this country.

If I focus on mission, I would note that Admiral James Ellis, Commander of Strategic Command, has testified to our committee that the ground-based midcourse element of the ballistic missile defense system enhances deterrence and provides him a militarily useful capability. On that basis, perhaps the Secretary could provide the certification required by the amendment, even at this stage of the testing. I don't believe that is what the Senator from California has in mind.

If I focus on operations, I might read this amendment to say we can deploy all we want, but we cannot use what we deployed operationally. Taken literally, that would mean if North Korea or some other nation would launch a missile at us, we would be forbidden by law from trying to defend ourselves. I don't believe that is what the Senator has in mind either. Of course, to be able to try to intercept such a missile, the ground-based midcourse element would have to be on alert and operationally ready. This is precisely why Admiral Ellis strongly supports taking advantage of the operational capabilities of the missile defense test bed.

That brings us to the third reading focusing on deployment. If I read the amendment correctly, it would impose a prohibition on any deployment of defenses against long-range ballistic missiles. Any additional deployment would be prohibited until the Secretary of Defense certifies that operationally realistic testing has demonstrated that the ground-based midcourse defense element can perform its mission.

If that is the Senator's intent, as I read this, if this amendment were to become law at the beginning of the new fiscal year, no further fielding of ground-based midcourse interceptors, radars, battle management facilities, command and control facilities, or communications assets would be permitted. These are the components of the BMD test bed on which the initial defense capability of the GMD element are based.

This has the potential to cause extraordinary harm to the GMD effort by disrupting ongoing efforts to acquire assets for the BMD test bed, including all of the assets I just mentioned. Recovering from this disruption, depending on how long fielding of capabilities were to be suspended, could take years and cost hundreds of millions of dollars. But beyond that, as a consequence of this disruption, and the consequent harm to the BMD test bed, it is not clear to me at all how the Missile Defense Agency could achieve the operationally realistic testing that all of us support.

Furthermore, I believe this amendment fails to grasp the essentials of how the Department of Defense and the Missile Defense Agency are attempting to field missile defenses as effectively and expeditiously as possible.

The ballistic missile defense program is a spiral development effort. That means, in essence, develop missile defenses and field those defenses if the warfighter believes the capability has military utility without necessarily waiting for the 100-percent solution. Further development then allows those defenses to be improved in subsequent spirals.

This amendment does not seem to take account of this spiral development, that the ground midcourse defense system element will be able to perform at a certain level early in its fielding and will improve in its capabilities over time or that continued testing will demonstrate new capabilities as they are developed. Testing, which already incorporates operational goals and some measure of operational realism, gets more realistic and more rigorous with time.

This method of development, testing, and fielding does not seem to me to be compatible with the one-time certification by the Secretary. We all support operationally realistic testing, but banning deployment until a certification appears to me to be self-defeating.

I urge my colleagues to join me in opposing this amendment.

I would like to bring to the attention of my colleagues a quote by Christie, who is the Director of the Operational Test and Evaluation Program:

> I continue to strongly support the construction and integration of the BMDS test bed. This test bed will provide the elements that make up the initial defense operations or. . . .

the architecture of the missile defense system.

Who is this director? He is the chief tester. This is what the chief tester himself is saying about how important it is that we move forward with spiral development where we can operationally show in a test bed the dual capability.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator has used 6 minutes.

Mr. ALLARD. Mr. President, I yield the floor and yield—how much time does the Senator from Alabama wish?

Mr. SESSIONS. Five minutes.

Mr. ALLARD. I yield 5 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, I thank Senator ALLARD for his great leadership on the issue of national missile defense, space technology, and all the related issues. We are fortunate to have him as chairman of the Strategic Forces Subcommittee. He understands the issue. He has been dealing with it for many years. He studied it and brought his scientific background to the issue. I agree with him, and I also very much agree with the comments of our distinguished Senator JON KYL from Arizona, who also has studied this issue for many years.

We voted back when President Clinton was President, and he signed the bill to deploy a national missile defense system as soon as technologically feasible. It was an amendment, I recall, by Senator THAD COCHRAN and Senator JOE LIEBERMAN. It passed by a very large vote, and we made a commitment to do that. There was a lot of debate about it then.

I think some people still are somewhat motivated by their criticism of President Reagan's Star Wars maybe; that this would not work; it could not work. They just did not like it. But we voted on it after a national commission had reported unanimously that we needed to have this defense. Overwhelmingly the Senators voted for it. Since then, there has been a steadfast effort to slow, delay, and undermine the actual deployment of this system.

We are now on the move to deploy this system in September in Alaska, to put, I believe, five missiles in the ground, and this will give us the ability to conduct realistic testing, the kind of testing that can actually deal with the realistic conditions around the world, our radar systems, our interceptor systems, the nature of the launch facilities in Alaska, which is the perfect place, people have convinced us, to deploy a system and cover all the United States. It will protect us now. It has military capability to protect this country when deployed.

It also could, in addition to perhaps a threat from a nation such as North Korea that actually rattled its missiles a number of times and are working steadfastly to improve their missile system, help us deal with an accidental launch from a country that has a missile defense program. It would give us the ability to have protection today for the entire United States. That is what we committed to do.

We voted to begin this deployment in September, and General Kadish and his entire team, General Holly and others, have worked so hard to prove the feasibility of this system. A bullet can meet a bullet. We have done it. We know it will work. Now we need to set up an operational system, a very realistic system, deploy these missiles, and continue to test them. We will learn to make them even better to deal with some of the problems we have not anticipated today from this deployment and the testing that can occur there.

We are doing this as part of the spiral development, the idea that when you are developing a new system such as this, it is not possible to anticipate everything that may occur, every challenge that may be out there, and as we learn, we continue to improve the system.

We in Congress in the past have made mistakes sometimes about mandating a new weapon system, a new production, and then demand it meet 10 characteristics, when we may find, as we go along in the development of it, if we drop off 1 of those characteristics and keep 9 of them, we have even more capability and a better system. We are giving them some freedom to deploy and test as they go.

I believe we are well on the way under Senator ALLARD's leadership and Senator WARNER, the chairman of our committee, to deal with any scientific difficulties that have come up in the past.

I thank the Chair for recognizing me to speak on this issue. I join with Chairman WARNER and Chairman ALLARD in urging defeat of the amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the pending amendment would prevent deployment of the missile defense system before that missile defense system is shown to be workable by operationally realistic testing. That is what we are supposed to do around here. This is nothing new. What is new is the deployment of a system before it has been realistically tested and operationally tested with no plans to ever test the system.

There are a couple of examples where we have deployed systems, but we have never deployed a system without a plan to at least operationally test at some point. There are no such plans here. It violates the spirit and, in one case, the letter of the law relative to testing and relative to ''fly before you buy.''

These laws are intended to prevent the purchase and deployment to the field of billions of dollars in military equipment prior to it being adequately tested. What we have heard on the floor is a giant rationalization for deploying a system which may or may not work. We have been told this morning that we have to deploy in Alaska because that is where the operational testing is going to take place. How can there be operational testing unless these missiles are put in the ground?

The problem is, that is not accurate. There is not going to be flight testing of these missiles from Alaska. That is not just me saying that; this is what the Department of Defense has told us. I will quote from the DOT&E fiscal year 2003 annual report:

> Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

I am going to repeat it:

Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

So these missiles are not going to be put in Alaska in order to have some place from which to operationally test a missile. It is not going to happen.

Mrs. BOXER. Will the Senator yield for a question on that point?

Mr. LEVIN. I would be happy to yield.

Mrs. BOXER. So when Senator WARNER says essentially we need to go ahead because we are going to test this once they are deployed, what I hear my colleague saying the Pentagon told him, and they put it in writing, is because of safety concerns there will be no operational testing at those sites; is that correct?

Mr. LEVIN. At these sites, they are not going to be fired. So you want to deploy before you test. Do not deploy because you think that is where you are going to be testing from. We are not. That is according to the Department of Defense.

Now another reason we are given is that will work against the real North Korean missile threat. That is what we are told. Yet on March 11, the Pentagon's own chief tester, Tom Christie, testified in front of the Armed Services Committee and Senator JACK REED asked him whether it was true that at this time we cannot be sure the actual missile defense system would work against a real North Korean missile threat, to which Mr. Christie replied, ''I would say that's true.''

Now, there are good arguments to test a missile defense system which will work. It seems to me to say that a missile defense system which may or may not work, which we have not tested operationally or realistically, is a deterrent against some potential threat, is totally inaccurate as well. It is wishful thinking. Something is not deterred with a system which may not work. There is testing to get a system which does work and then deterrence may be possible, because if there is going to be a missile attack against us, we always have to remember that the people who would shoot at us, No. 1, would destroy themselves, not us. They may or may not destroy us depending on how accurate the missile is, but they would destroy themselves because the retaliation would be swift, clear, certain, and massive. That is the deterrent that works and has always worked in the area of missiles.

Nonetheless, if one wants a defense against such an attack, if they do not think they can deter an attack by the certainty of massive retaliation, if they think some country is going to shoot a missile at us even though it will lead to their own destruction, then the value of that system would be ''if it works.'' But no operational testing here.

Senator BOXER's amendment would prevent deployment of the administration's national missile defense before the capabilities of the system have been confirmed by operationally realistic testing. This amendment does exactly the right thing. The administration currently plans to deploy a national missile defense before the capabilities of the system have been confirmed by operationally realistic testing. This violates the entire spirit, if not the letter, of the ''fly-before-you-buy'' laws, because these laws are intended to prevent the purchase and deployment to the field of billions of dollars of military equipment prior to it being adequately tested to show that it would work in actual combat.

Sometime in September of this year, the Bush administration will declare a national missile defense system deployed and operational, probably with much fanfare. However, the system has never been realistically tested, against targets that actually look like an enemy missile. Instead, the targets have had beacons on them, telling the national missile defense where they are, instead of using the national missile defense radars to do that. An enemy missile will not have a beacon on it. Yet, the DoD has never yet tested this system without the target having one. Nor has the system been tested against targets that look like a threat missile might look, with the simple countermeasures that any ICBM-capable country would almost certainly have.

The Pentagon's chief test official, who is required by law to independently oversee and approve all operational testing of major weapon systems, has not been given any authority over the missile defense test plans. This chief test official is the only true independent judge of the Pentagon's weapon system. The law established his position to ensure that political or other pressures did not result in a weapon system being deployed before it was ready. But the Bush administration has consistently tried to marginalize the role of the Pentagon's test official in missile defense.

The result is that the testing for the national missile defense system has remained unrealistically simple. The tests have been designed to ensure test success, and ''rack up the score,'' not to ensure the system actually works in wartime. Despite the artificial simplicity of the tests, the last major test of the system was a failure. That was back in December of 2002, and the DoD has not conducted another such test in the 18 months since then. This long delay has been due to a number of developmental problems with the system's interceptors. The Pentagon still has not fixed the developmental problems with the system, which is why the next test, originally scheduled for March, has been delayed by 4 months. Yet despite these continuing problems, test failures, and the substantial delays, the administration still plans to deploy the system in September, as it has for more than a year. This is putting perceived political advantages of a Presidential election-year before technical reality, and fiscal responsibility.

Senator BOXER's amendment would require realistic operational tests, under the control of the Pentagon's chief tester, prior to deployment of a national missile defense. I support Senator BOXER's amendment, which would put common sense ahead of missile defense politics, and would reinforce the intent of existing ''fly-before-you-buy'' laws which protect men and women in uniform, the taxpayer, and our national security. I urge others to support this amendment as well.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. ALLARD. My colleague said all we have to have is mutually assured deterrence. That is a policy out of the cold war: Blow me up and I am going to blow you up. We are past that in this day and age. We are dealing with leaders in other countries who do not care, and that is where our threat is coming from, it is coming from countries such as Iran and North Korea. We need to figure out a new system, and we need to get it in place as quickly as we possibly can to make sure we can continue to provide the security to this country that the American people expect. The missile defense system is the answer.

We are talking about a test bed that is overlapping with an operational capability, and anything we do to delay the operational capability, we delay testing. When testing is delayed, the cost of the program is run up and the program is delayed out. Then pretty soon there are cost overruns and then the opposition says, well, we cannot move forward because of all of these delays and cost overruns.

The fact is, we are on schedule. We expect to get these missiles in the ground this fall, and we are going to begin to have a system in place where we can defend this country from an unexpected missile attack that may occur out of North Korea or Iran.

Mr. Christie, who I had quoted earlier, in simple terms, was our chief tester, and he states that the test bed is necessary for evolution improvement to the ballistic missile defense system, and that the challenge is to do testing in a manner that will improve the system while supporting an operational system.

Stating something Mr. Christie said from his recent testimony to the full committee, he says that fielding the test bed provides an opportunity to gather operational data on system performance, safety, survivability, availability, and maintainability. We should expect these data to drive system enhancements. The challenge will be in achieving a defensive posture that is flexible enough to accommodate the necessary changes to hardware, software, and processes that will be necessary to maintain a highly available

ballistic missile defense system, while supporting a comprehensive testing program that is designed to mature, improve, and demonstrate mission capabilities through continued development.

Mr. Christie believes the Missile Defense Agency test program is a strong one, and that it is working. Unnecessary delays are unnecessary. We simply cannot tolerate those. This issue is too important to the security of this country. So I am asking that my colleagues join me in opposing the Boxer amendment. This is a devastating amendment. It is creating all sorts of problems as far as the defense of this country is concerned, and it is going to severely hinder what we are trying to do with ballistic missile defense.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. BOXER. Mr. President, is there any time for me to rebut some of what was said?

The PRESIDING OFFICER. The Senator from California has 1 minute 20 seconds remaining; the Senator from Colorado has 8 minutes 20 seconds remaining.

Mrs. BOXER. Mr. President, I will take this time to rebut some of what has been said.

The amendment I am offering with Senator LEVIN does not cut one slim dime from the National Missile Defense Program. All it says is, let us make sure the system works before we expend $3.7 billion to deploy it. How people can say that is devastating is beyond belief.

If one wants to talk about devastating, devastating is investing money in something that will not work when it is needed. Devastating is something where the people of this country are told they are protected when they are not because the agency that was set up to test this is not in charge of the operational testing.

The opponents to this amendment also say something else over and over again: It is important we deploy these. Then we will test.

The fact is, the Pentagon themselves—and I ask unanimous consent to have printed in the RECORD this Pentagon report in which they say:

Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

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

[From the Director, Operational Test and Evaluation]

FY 2003 ANNUAL REPORT

DOD PROGRAMS, ARMY PROGRAMS, NAVY AND MARINE CORPS PROGRAMS, AND AIR FORCE PROGRAMS

Ground-Based Midcourse Defense (GMD)

The Ground-based Midcourse Defense (GMD) element is an integrated collection of components that perform dedicated functions during an ICBM engagement. As planned, the GMD element includes the following components:

GMD Fire Control and Communications. The communications network links the entire element architecture via fiber optic links and satellite communications. For IDO, all fire control will be conducted within the GMD element.

Long-range sensors, including the Upgraded Early Warning Radar, the COBRADANE radar, and the Ground-Based Radar Prototype. In December 2005, a sea-based X-band (SBX) radar is to be incorporated.

Ground Based Interceptors and emplacements, consisting of a silo-based ICBM-class booster motor stack and the Exoatmospheric Kill Vehicle (EKV). The plan for the 2004 Test Bed plan places six Ground Based Interceptors at Fort Greely, Alaska, and four at Vandenberg Air Force Base, California. In 2005, plans are to place ten more at Fort Greely.

GMD soon plans to interface with other BMDS elements and existing operational systems through external system interfaces. Through FY06, these plans include GMD interfacing with the Aegis SPY–1B radars and satellite-based sensors and communications.

To date, the GMD program has demonstrated the technical feasibility of hit-to-kill negation of simple target complexes in a limited set of engagement conditions. The GMD test program in FY03 was hindered by a lack of production representative test articles and from test infrastructure limitations. Delays in production and testing of the two objective booster designs have put tremendous pressure on the test schedule immediately prior to fielding. The most significant test and infrastructure limitations and mitigation plans are described in the table below.

MAJOR GMD TEST LIMITATIONS AND MDA MITIGATION PLANS

Limitation	Comments	MDA mitigation plan
Lack of a deployable boost vehicle	The Orbital booster has been tested in developmental flight tests without attempted intercepts. The Lockheed booster testing has slipped such that it may not be available for IDO.	MDA is proceeding with deployment plans emphasizing the Orbital booster. Testing will continue with both designs as Lockheed booster production resumes.
Lack of a realistically placed midcourse sensor	The GMD test radar is collected at the interceptor launch site. The FPQ–14 radar, a non-deployable asset that tracks a transmitter attached to the test target, currently accomplishes the midcourse tracking and discrimination functions.	GMD is developing a mobile, sea-based radar. The scheduled employment of this radar in the GMD Test Bed occurs in the post-2005 time frame.
Fixed intercept point	All of the flight tests to date have had similar flyout and engagement parameters. This limitation includes range constraints and a requirement not to create space debris.	The 2004 Test Bed expands the flyout range and engagement conditions. Space debris creation remains a problem.[a] Transitioning between testing and operations is a concern.

[a] These factors constrain test engagements to relatively low target intercept altitudes and downward directed velocities for both the target and interceptor.

Intercept Flight Test–9 (IFT–9) took place on October 14, 2002, resulting in a successful intercept. The target suite consisted of a mock warhead and a number of decoys launched from the Vandenberg Air Force Base, California, towards the Reagan Test Site. IFT–9 (largely a replay of IFT–8) was designed to increase confidence in the GMD capability to execute hit-to-kill intercepts. Overall, the test execution was nominal although the EKV experienced the track gate anomaly previously observed in IFT–7 and IFT–8. The software changes incorporated in IFT–9 to mitigate this problem were not successful. Further changes were made prior to IFT–10.

In December 2002, GMD attempted a night intercept in IFT–10. In this test, the EKV failed to separate from the surrogate boost vehicle and therefore the ability to intercept the target could not be tested. The failure to separate was attributed to a quality control failure combined with shock and vibration loads on the EKV. As a result, corrective measures taken to fix the track gate anomaly found in previous tests could not be used.

GMD suspended intercept flight testing after the EKV failed to separate from the surrogate booster in IFT–10. IFT–11 and IFT–12 that employed the problematic surrogate booster were eliminated from the schedule. This decision was reasonable given the increased risk of surrogate boost vehicle failure, the resources that would have to be diverted from tactical booster development to fix the problems, and the limited amount of additional information to be gained in IFT–11 and IFT–12 over that available from previous flight tests. It does, however, leave very limited time for demonstration of boost vehicle performance, integration of the boost vehicle to the new, upgraded EKV, and demonstration of integrated boost vehicle/interceptor performance. IFT–13A and IFT–13B remain in the schedule as non-intercept flight tests to confirm booster integration and performance. IFT–13C was added to the schedule and represents a significant exercise of the Test Bed infrastructure. It will be the first system-level flight test to use the Kodiak, Alaska, facility to launch a target missile. While it is not a planned intercept attempt, it will fully exercise the system and may result in an intercept. IFT–13C also addresses a long-standing concern over target presentation that has not yet been tested. IFT–14 and IFT–15 are the next official intercept attempts and are scheduled for May 2004 and July 2004, respectively.

The Orbital Sciences Corporation booster was successfully tested with a mock EKV on August 16, 2003. Shock and vibration environments were measured and compared to previous test levels. Preliminary analyses suggest that the new booster produces lower than expected vibrations at the EKV. Performance of the real EKV mated with the Orbital booster will be demonstrated in IFT–14 prior to IDO. Similar demonstration flights for the Lockheed Martin booster design are slipping due to technical difficulties and several explosions at the missile propellant mixing facility. Silos and related construction projects at Fort Greely, Alaska; Kodiak, Alaska; and Vandenberg Air Force Base, California, are proceeding on schedule. Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

To date, EKV discrimination and homing have been demonstrated against simple target complexes in a limited set of engagement conditions. Demonstrations of EKV performance are needed at higher closing velocities and against targets with signatures, countermeasures, and flight dynamics more closely matching the projected threat. In addition, system discrimination performance against target suites for which there is imperfect a

prior knowledge remains uncertain. GMD is developing a SBX radar mounted on a semi-submersible platform. The SBX radar, scheduled for incorporation into the GMD element in December 2005, is designed to be a more capable and flexible midcourse sensor for supporting GMD engagements. This radar will improve the operational realism of the flight test program by providing a moveable mid-course sensor.

A flight demonstration of the BMDS capability using Aegis SPY–1B data (particularly for defense of Hawaii) is planned for IFT–15 in FY04. A flight demonstration of COBRADANE is currently not planned, and its capability will need to be demonstrated by other means until an air-launched target is developed. IFT–14 and IFT–15, scheduled for FY04, are intended to provide demonstrations of integrated boost vehicle/EKV performance. Even with successful intercepts in both of these attempts, the small number of tests would limit confidence in the integrated interceptor performance.

Mrs. BOXER. Here we have a situation where you have an amendment that does not cut any money from this, that just says fly before you buy. I hope my colleagues will approve it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I know we are under a time agreement. I ask unanimous consent for a couple of minutes to report on what is happening with the bill so far. I was asked this morning to give a report on this. I would like to do that.

Mr. ALLARD. Would you repeat your request?

Mr. REID. I would like a couple of minutes to give the Senate a report on what we have done on the bill so far, the number of amendments and such.

Mr. ALLARD. On the Defense authorization bill? We have no objection.

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

Mr. REID. Mr. President, we have been on this bill 12 days counting today, but 4 of those days are our famous—or infamous, however you look at it—Mondays and Fridays. So actually we spent 8 days on this bill. When we dispose of this amendment, the Boxer amendment, we will have disposed of 79 amendments. During this period of time, counting the Boxer amendment, we will have had 12 rollcall votes.

For a Defense authorization bill, we have not spent an inordinate amount of time on it. We have not spent very much time at all. There have been very few quorum calls. The quorum calls we had this week have been most productive. We have been able to work out the problem dealing with the South Carolina situation, as the Presiding Officer knows. We were able to work out various other problems with the quorum calls we had. Even having had quorum calls, they were very short. So I think we have accomplished quite a bit in a very short period of time on this bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I would like to call on the Senator from Mississippi and yield him 3 minutes to comment on the Boxer amendment. I want to recognize, in a public way, that he is the one who carried the initial amendments on the missile defense system that said we move forward when technologically feasible and he has been a real leader in the defense of this country.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COCHRAN. I thank the distinguished Senator from Colorado for yielding to me. I also thank him for his leadership on this issue in the Armed Services Committee. He has been a key proponent and a very persuasive supporter of the National Missile Defense Program and missile defense generally.

This amendment would undermine the ability of our Department of Defense to go forward in the deployment and protection of our country through the use of ballistic missile technology and capabilities. These capabilities have been developed in response to legislation that was approved by the Congress and signed by the Chief Executive to develop a missile defense capability that could defend the United States against missile attack.

We have made great progress since those initial authorizations were approved by the Congress. We are now in a position of actually deploying a system that is workable. The testimony of General Kadish before our Appropriations Committee and before the Armed Services Committee has clearly indicated the successful progress of this program to date. We should continue to support it and we should defeat this Boxer amendment.

Mr. ALLARD. Mr. President, I would like to know what time remains on the Boxer amendment.

The PRESIDING OFFICER. There is 6 minutes 50 seconds.

Mr. ALLARD. On our side. How about the other side?

The PRESIDING OFFICER. All time has expired, other than the 2 minutes preceding the vote.

Mr. ALLARD. Mr. President, I would like to yield myself 2 minutes. I would like to make a couple of summary comments.

First, technologically we are ready to move ahead. The various components of this missile defense system have been shown to be functional and scientifically can happen. What needs to be established is all the communications systems that run from California to Alaska to Colorado, to some of our space satellites, to some of our ships at sea, to the Hawaiian Islands, to the Kwajalein Islands, over thousands and thousands of miles, that they can communicate with one another.

There is only one way to do that. You have to put together a large test bed. This test bed happens to also be the same thing we would use to operationally defend ourselves. To not continue on a dual pathway does not make any sense at all. That is why it is so very important that we defeat this Boxer amendment.

Mr. Christie, who is the tester, is the one who has been following this. It has been stated time and time again that he is satisfied with the progress, the way we are moving forward. He is the expert. He says: You are doing a good job. Keep it up. I am satisfied. I am responsible and accountable for how this program has gone ahead. He has been before the committee and made that statement.

It is very important that we defeat this Boxer amendment. I ask my colleagues to join me.

I think the chairman has a concern or two he wants to raise. I yield the floor.

Mr. WARNER. Mr. President, I wish to advise Senators, Senator LEVIN and I have conferred. We have the next amendment following this vote to be provided by the Senator from Rhode Island, Mr. REED, No. 3354. I reserve the right to put on a second-degree amendment. As soon as we provide the second-degree amendment to the other side, it is my expectation, during the course of the deliberations, we will be able to work out a time agreement.

Mr. LEVIN. Hopefully, we can work out a time agreement after we see the second-degree amendment.

Mr. WARNER. That is correct. There is no restriction. Offer the amendment.

Mr. LEVIN. And the second-degree amendment is not available at this point?

Mr. WARNER. It momentarily will be available. I think we can yield back all time. I didn't know whether the Senator wanted another minute to speak to the amendment. Did she ask for it?

The PRESIDING OFFICER. The Senator from California is recognized for 1 minute.

Mrs. BOXER. I thank the Senator.

I think we have had a good debate. I am just saying to colleagues, these are the names of retired admirals and generals you all admire. They are saying we have to delay this deployment because we have no idea that this system works.

To my colleagues who said let's deploy it and then test it, the Pentagon in its own words has said they can't do it. It is not safe. Here it is. They say:

Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

So the Pentagon has said very clearly—and good for them because it would be too dangerous—they are not going to operationally test from the missile fields. So what are we doing? We are investing $3.7 billion out of the $10 billion to move forward with a system that is untested.

For those people who say this is a devastating amendment, why do they support ''fly before you buy,'' which is the way we do things around here? This is a way to get around realistic testing. That doesn't make us any safer; it makes us weaker. It makes us vulnerable.

So I hope you will stand with these 49 generals and admirals and Senator

LEVIN and me and vote for the Boxer-Levin amendment.

The PRESIDING OFFICER. There is 1 minute remaining.

Mr. WARNER. I say to our colleagues, this issue was acted upon last year. Money was authorized and appropriated. The program is underway. The effect of this amendment is to cancel what the Congress did last year.

I yield the remainder of our time. I think a vote is now in order.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment.

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

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

The clerk will call the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 124 Leg.]

YEAS—42

Akaka	Dorgan	Leahy
Baucus	Durbin	Levin
Biden	Edwards	Lincoln
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Breaux	Graham (FL)	Pryor
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Conrad	Jeffords	Sarbanes
Corzine	Johnson	Schumer
Daschle	Kennedy	Snowe
Dayton	Kohl	Stabenow
Dodd	Lautenberg	Wyden

NAYS—57

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Brownback	Frist	Nickles
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Campbell	Gregg	Sessions
Chafee	Hagel	Shelby
Chambliss	Hatch	Smith
Clinton	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Collins	Landrieu	Talent
Cornyn	Lieberman	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner

NOT VOTING—1

Kerry

The amendment (No. 3368) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we have advised the Senate that the Senator from Rhode Island, Mr. REED, will have an amendment.

Mr. President, if the Senator is ready to send his amendment to the desk, then I would like to send up a second-degree amendment, and we will proceed.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Virginia yield the floor?

Mr. WARNER. Yes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

AMENDMENT NO. 3354

Mr. REED. Mr. President, I call up amendment No. 3354.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED] proposes an amendment numbered 3354.

Mr. REED. 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 require baselines for and testing of block configurations of the Ballistic Missile Defense System)

On page 33, after line 25, insert the following:

SEC. 224. BASELINES AND OPERATIONAL TEST AND EVALUATION FOR BALLISTIC MISSILE DEFENSE SYSTEM.

(a) OPERATIONAL TESTS.—(1) The Director of the Missile Defense Agency shall prepare for and conduct, on an independent basis, operationally realistic tests of each block configuration of the Ballistic Missile Defense System being fielded.

(2) The tests shall be designed to permit the evaluation of each block configuration of the Ballistic Missile Defense System being fielded by the Director of Operational Test and Evaluation.

(3) The Director of the Missile Defense Agency shall carry out tests under paragraph (1) through an independent agent, assigned by the Director for such purpose, who shall plan and manage such tests.

(b) APPROVAL OF PLANS FOR TESTS.—The Secretary of Defense shall assign the Director of Operational Test and Evaluation the responsibility for approving each plan for tests developed under subsection (a).

(c) EVALUATION.—(1) The Director of Operational Test and Evaluation shall evaluate the results of each test conducted under subsection (a) as soon as practicable after the completion of such test.

(2) The Director shall submit to the Secretary of Defense and the congressional defense committees a report on the evaluation of each test conducted under subsection (a) upon completion of the evaluation of such test under paragraph (1).

(d) COST, SCHEDULE, AND PERFORMANCE BASELINES.—(1) The Director of the Missile Defense Agency shall establish cost, schedule, and performance baselines for each block configuration of the Ballistic Missile Defense System being fielded. The cost baseline for a block configuration shall include full life cycle costs for the block configuration.

(2) The Director shall include the baselines established under paragraph (1) in the first Selected Acquisition Report for the Ballistic Missile Defense System that is submitted to Congress under section 2432 of title 10, United States Code, after the establishment of such baselines.

(3) The Director shall also include in the Selected Acquisition Report submitted to Congress under paragraph (2) the significant assumptions used in determining the performance baseline under paragraph (1), including any assumptions regarding threat missile countermeasures and decoys.

(e) VARIATIONS AGAINST BASELINES.—In the event the cost, schedule, or performance of any block configuration of the Ballistic Missile Defense System varies significantly (as determined by the Director of the Ballistic Missile Defense Agency) from the applicable baseline established under subsection (d), the Director shall include such variation, and the reasons for such variation, in the Selected Acquisition Report submitted to Congress under section 2432 of title 10, United States Code.

(f) MODIFICATIONS OF BASELINES.—In the event the Director of the Missile Defense Agency elects to undertake any modification of a baseline established under subsection (d), the Director shall submit to the congressional defense committees a report setting forth the reasons for such modification.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 3453 TO AMENDMENT NO. 3354

Mr. WARNER. Mr. President, at this time I send an amendment to the desk in the second degree to the pending amendment.

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3453 to amendment No. 3354.

The amendment is as follows:

(Purpose: To require the Secretary of Defense to prescribe and apply criteria for operationally realistic testing of fieldable prototypes developed under ballistic missile defense program)

In the matter proposed to be inserted, strike subsections (a) and (b) and insert the following:

(a) TESTING CRITERIA.—Not later than February 1, 2005, the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation, shall prescribe appropriate criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program. The Secretary shall submit a copy of the prescribed criteria to the congressional defense committees.

(b) USE OF CRITERIA.—(1) The Secretary of Defense shall ensure that, not later than October 1, 2005, a test of the ballistic missile defense system is conducted consistent with the criteria prescribed under subsection (a).

(2) The Secretary of Defense shall ensure that each block configuration of the ballistic missile defense system is tested consistent with the criteria prescribed under subsection (a).

(c) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to exempt any spiral development program of the Department of Defense, after completion of the spiral development, from the applicability of any provision of chapter 144 of title 10, United States Code, or section 139, 181, 2366, 2399, or 2400 of such title in accordance with the terms and conditions of such provision.

Mr. WARNER. Mr. President, we would be happy, on this side, to work out a time agreement as soon as the Senator from Rhode Island is able to indicate to us the amount of time he desires. We will quickly respond as to the amount of time we would desire.

Mr. REED. Mr. President, I think if I could have an hour on my side.

Mr. WARNER. I say to the Senator, an entire hour on your side?

Mr. REED. I would not attempt to simply fill the hour. I would yield back time if we have reached a point where we have sufficiently discussed it.

Mr. WARNER. Mr. President, I would request we have an hour on this side, with the expectation we will be able to yield time back.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia has the floor and makes a unanimous consent request.

Mr. WARNER. Mr. President, I am happy to yield to the Senator for purposes of a statement.

The PRESIDING OFFICER. Does the Senator from Michigan wish to be recognized?

Mr. LEVIN. I thank the Chair.

Mr. President, the suggestion of an hour on this side relative to the Reed amendment, would that include the proposed time for the second-degree amendment to be offered by Senator WARNER? Does the hour that you have estimated you would need include time for debate on the Warner second degree?

The next question is this: If the Warner second-degree amendment prevails, which is a substitute, then the question is, Would the hour that you are referring to, then—without seeing, knowing exactly what would be in the second-degree amendment that would be offered—cover the debate time for your second-degree amendment to the substitute?

Mr. REED. If I may respond, it would be appropriate if we took an hour debating both the Reed first degree and the Warner second degree. At the conclusion of a vote on the Warner second-degree amendment, then there would be no time agreement entered into. It would be my intention to offer——

Mr. LEVIN. If that substitute were adopted——

Mr. REID. Could I be recognized? Would anybody be insulted if I asked for a quorum call?

Mr. WARNER. No.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Mr. President, we are moving along in a very cooperative spirit. We are going to ask for a time agreement on the Reed amendment and the Warner second-degree amendment as a package. They will be considered in the course of 2 hours, hopefully less. At the conclusion of the debate on these two amendments, we will then proceed to a record vote on the Warner amendment. In the event the Warner amendment prevails, then the Chair would recognize the Senator from Rhode Island for the purpose of a perfecting amendment, which he has a right to do under the rules, but in order to keep the sequence moving, I would like to advise the Senate that it would be done in that way. At this time, until we see the perfecting amendment, we cannot set a time agreement on that. But it would be my hope that we can move along expeditiously, first by crunching the 2 hours to less, moving to a vote, and then the perfecting amendment and concluding, hopefully, a brief colloquy, debate on that, and vote, if that becomes necessary. Have I correctly stated it?

Mr. REID. Mr. President, of course, there would be no amendments in order to either of the amendments, the one of Senator REED or your second degree.

Mr. WARNER. That is correct. But there would be in order an amendment to the perfecting amendment.

Mr. REID. I understand that. I have no objection to that. We have no objection to that.

The PRESIDING OFFICER. So the Chair gets it straight, if the Senator from Virginia could clarify, this is a request for a 2-hour time agreement on the second-degree amendment?

Mr. WARNER. Let me try that again. We have before the Senate at this time the underlying Reed amendment. We have the Warner amendment in the second degree. We ask for an hour on each. At the conclusion of that period of time, which I hope will be less than 2 hours, the Senate would proceed to a record vote on the Warner amendment. I am asking for the yeas and nays incorporated in this. After that is taken, the Chair would then recognize the Senator from Rhode Island for the purpose presumably of offering a perfecting amendment.

Mr. REID. Mr. President, however, if the Warner amendment does not pass, then we would vote on the underlying Reed amendment.

Mr. WARNER. The Senator is correct.

Mr. LEVIN. Immediately.

Mr. WARNER. Immediately.

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

The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that following the votes or vote, whatever the case may be, there will be probably a number of judges we might be called to vote on. My point is at around 3 or thereabouts, there could be a series of as many as four or five votes.

Mr. WARNER. That is a leadership request, I so advise the Democratic whip.

Mr. REID. It is not a unanimous consent request.

Mr. WARNER. It is just an advisory for Senators. But I understand that my leader will be making that request.

The PRESIDING OFFICER. The Senator from Virginia asked for the yeas and nays on the second-degree amendment; is that correct?

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Are the yeas and nays ordered on the underlying amendment of the Senator from Rhode Island? If not, I so ask.

The PRESIDING OFFICER. The Chair informs the Senator, it is not in order to request the yeas and nays on the first-degree amendment at this time without consent.

Does the Senator from Virginia yield the floor?

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. Who yields time under the unanimous consent agreement?

Mr. REED. Mr. President, I yield myself such time as I may consume.

I rise to offer an amendment which would implement the recommendations of the General Accounting Office for missile defense testing and base alignment. Last month the GAO issued a report on missile defense entitled ''Missile Defense Actions Are Needed To Enhance Testing And Accountability.'' In its report, the GAO makes some commonsense recommendations to improve the testing of missile defense and to increase accountability of Congress for missile defense programming.

The principal recommendation is that at some point there is developed and executed a plan for operational testing. That is a very critical point. As the GAO pointed out, they would recommend to the Missile Defense Agency that they prepare for and conduct, on an independent basis, not within the purview of the Missile Defense Agency but on an independent basis, operationally realistic tests of those missile defenses. This is the way we develop and deploy major weapons systems in the United States. We do initial testing. We prove out the technologies. But before we field them, we go ahead and do a test on their operational capacities. That is the basic approach. It is a good approach, a sound approach. The GAO recommendations would make the missile defense programs consistent in this regard with all other programs.

The second aspect of the proposed amendment would be to require the Missile Defense Agency to require course baselines so that we know how much we are spending with respect to missile defense. We know what the course goals are. We know when they are exceeded or when they are constrained by good planning and good management. These are two fundamental aspects of any sound military procurement program.

Missile defense is one of the most complicated programs we will ever attempt to field in the history of this country.

I believe it is appropriate at this juncture to take a look at this missile defense system as it exists today. I think you will hopefully concur with

me that we do need some realistic operational testing.

First, this is the basic architecture of the system. The system we are deploying in Alaska is designed principally, if not exclusively, to counter one potential threat—the threat of a missile coming from North Korea. Now, the system is composed of several major elements. I will review them.

First is the DSP early warning satellite. This is a defense system that has been flying since the 1970s. It is well proven, but essentially all this system does is spot the lift-off of an enemy missile, or potential adversary missile, coming out of North Korea or anyplace else. It was put up in the 1970s as part of the cold war to identify a Russian missile or Chinese missile being ignited. That is a rather established technology. It provides just the cue that an enemy missile has been launched.

The next part of the proposed system is the Aegis ships. They have radar, but it was designed not to track ICBMs. Rather, it is to track cruise missiles and close-in aircraft. They are being essentially pushed into the role of trying to acquire the target after it lifts off and track it as far as it can. It really cannot track that far because of built-in limitations. Again, this version was not designed to track long-range ICBMs. Their radar doesn't seem to be powerful enough to protect and track accurately to places such as Hawaii. Also, these Aegis ships have never guided an interceptor to its target in a single intercept test. They have done preliminary activities but have not guided an interceptor to a target in a test. The operational tracking software of Aegis has never been tested in an integrated test. So you have one element that is still not quite up to the speed we would like it to be in terms of the Aegis system.

The next part is the Cobra Dane radar system in Alaska. Cobra Dane is another 1970s version. It has been updated, but it has no real discrimination capability in terms of determining what a missile warhead would be or what a decoy would be. It is incapable of tracking a North Korean missile bound for Hawaii. So, again, we have a problem in terms of providing coverage. It has never been used in an intercept test, and there are no plans to do so because we do not have an ICBM target that can fly in Cobra Dane's field of view. Then we were going to have to replace Cobra Dane and x-band radar on Shemya Island. We don't have the x-based, land-based system. We are working on a sea-based x-band radar, not primarily for operational use but for test use, to be ready in fiscal year 2005.

The final one is the interceptor with the kill vehicle on top. Both the interceptor and kill vehicle are brand-new, and neither have been tested together in an intercept test. The new version of the kill vehicle hasn't been flight tested at all. It is coming off of production. There are new systems within the kill vehicle. It is an improvement, we hope, over the previous prototypes but has not yet been flight tested. Problems with the kill vehicle are seen as delaying the next scheduled test. That is the IFT–13c. That test is being touted by the Missile Defense Agency as a fly-by. So the next test—the one before this system is declared deployable and deployed—is not designed to knock the missile down but to simply fly by it. If it does knock it down, I am sure the Missile Defense Agency will take great pleasure in it, with great claim. By declaring it just a fly-by, they will have wiggle room for saying the test succeeded and saying we didn't intend to knock it down either. Ask yourself, if we are deploying a missile system in a most recent test to fly by the missile, is that going to protect the U.S.? I don't think that is the case.

My amendment would require that we do operational testing, which is something done on every major system. It is under the purview of Dr. Tom Christie in the Office of Test and Evaluation at the Department of Defense. He is charged by Congress with independently evaluating these systems on behalf of the Defense Department.

Some argue that we need to go ahead and deploy this system right away, that we have done it before, and that is fine. It turns out that we have deployed systems before in emergencies, such as the Predator in Kosovo in 1999. That system had already on the books operational testing plans. Indeed, when this emergency deployment was completed, that operational test was carried out the following year, 2000. This system is a rudimentary system with huge gaps in technology, which has never been fully tested on an integrated basis. None of these parts have been put together in one intercept test yet. This system has no plans for operational testing, which denies the obvious point of the custom and practice and the law in many cases.

The JSTAR surveillance system is another one which individuals will say was put into the fray before it was operationally tested. That is also true. In 1991, JSTARs were deployed in Desert Storm. Following the deployment, even though the Senate Armed Services Committee was so impressed that they wanted to deploy it without testing, the Air Force insisted upon operational testing. They found defects because of the testing. They completed the operational testing in 1995, and this testing revealed problems with respect to the inability to operate at the right altitude and inadequate mission reliability. These were corrected, so the JSTAR system is much more reliable today than it would have been without operational testing.

Once again, this system is untested in a systematic way, and it is not even scheduled for operational testing. The point of my amendment is not to delay or defer this deployment; it is simply to say at some point in time—some point when the Missile Defense Agency feels they are ready for operational testing—we should at least have operational testing. I believe that is absolutely critical.

There are examples now, too, of the tests that have been conducted. These suggest that the tests are not up to the level of operational testing. For example, for the tests conducted so far on this system, all of the targets have had beacons on them, telling the National Missile Defense Agency and the shooters, if you will, the exact location of the missiles coming in. I don't think anybody believes that an adversary would put a beacon on the missile to warn us. Those are the types of rudimentary tests taking place today. They are important tests but not operational tests. Indeed, I asked the Director of the MDA in March when we would stop using beacons on our target vehicles. He simply said he didn't know. That is not exactly the kind of realistic testing the General Accounting Office called for.

I mentioned Cobra Dane, which is the radar that is a critical piece. It will track this target for a long way, and it would hopefully be able to discriminate between decoys and the actual warheads. But we have, as I mentioned before, no plans to test this radar because we lack an appropriate testing vehicle, ICBM.

The other point, which is very important—and it goes to the heart of realistic testing—is that every intelligence analyst who looks at this problem has suggested that if a nation is capable of putting a nuclear device on a long-range missile, and particularly if they are so motivated to use it against us, they are likely to be just as capable of having sophisticated decoys or even rudimentary decoys on the missile.

We have never conducted tests against very sophisticated or even realistic decoys. As a result, we are prepared to deploy a system that has not been adequately tested. But more importantly, there are no plans to adequately test it.

My amendment would simply ask the Department of Defense, through the normal procedures, through the Office of Test and Evaluation, to prepare such plans and conduct those tests when appropriate.

These are just some of the examples I have given with respect to this particular system. There is a whole laundry list of what should be done to ensure that this system, when deployed, is appropriately ready for the challenge. This chart shows yes and no in terms of obvious parameters for a system that is about to be fielded. Most of the parameters have not been accomplished. In fact, the vast majority have not been accomplished.

There is no full system operational test. There are no tests, to my mind, that have integrated every part of this system, from Cobra Dane, the Aegis warships, to the interceptor with the new-kill vehicle with the new booster

attached and flying out and engaging a target.

There is no full system operational test scheduled. We are not talking about a situation where we have to wait a few months or a year and there is an operational test planned for. By the way, these operational tests are not something that can be done on 2 or 3 days' notice. These takes months and months to prepare and plan and are extremely costly.

I do not really know, because it is hard to figure out the budget for MDA, whether they have put aside money for operational testing. It is hard to tell. We are not even scheduling these tests.

It has not been tested in bad weather. It has not been tested at night. Experts in the field indicate that is a very important aspect of ensuring the system will work.

Again, I do not think there is any American who does not want to see a workable system in place, but we have to raise questions when we have not done the testing to assure the American public that this system will work and will work as it is designed to work.

Tested three-stage booster and intercept test: This new package of the booster and kill vehicle has not been tested yet.

Tested without interceptor knowing in advance warheads infrared and radar signature, I mentioned that before. All of the data of the enemy warhead is essentially given to the forces that are trying to engage it. That is not a realistic test.

It has not been tested against a tumbling warhead, when the warhead detaches from the boost vehicle and spinning. That has not been tested.

Tested against realistic decoys and countermeasures: Realistic decoys would be something that looked like a warhead; just one other body that looks like a warhead. We have not done that. The decoys that have been used to date have been large spheres that look completely unlike the warhead.

It has not been tested against complex decoys. These are much more sophisticated decoys. We certainly have not done that. We have not reached the realistic level, let alone the complex level.

It has not been tested against more than one warhead on a missile. Again, if there is a nation out there that is capable of producing a nuclear warhead and putting it on a missile, they are probably capable—it may take a little longer—of producing multiple warheads and putting them on a missile.

It has not been tested against more than one incoming missile. If North Korea is going to attack us, why would they do something that would spell doom, first because of our overwhelming power to deter them, but second, what makes us think they will fire just one missile at us? I would assume they would fire multiple missiles, and we have not tested against that.

Again I mention this, we have not tested this without a GPS system, a beacon on the adversary missile and warhead.

Tests have been conducted by the contractors and managers. That is the first ''yes'' accomplished.

Tests overseen by Pentagon's independent test office: No, and that is the core of our debate today, because looking at the chairman's amendment to my amendment, what they are essentially saying is: Listen, we do not want the independent tester to look at this; we want the Secretary of Defense to prescribe this. That is not the way to do this because it just invites all of the problems with individuals testing themselves.

This is not as much a technical problem as a problem of human nature. You tend to pass every test you give yourself, particularly if it is important you pass the test. That is why we set up, in the eighties, this Office of Test and Evaluation with an individual who is appointed by the President, not the Secretary of Defense, to conduct these tests.

SBIRS high early warning satellites: This will be the follow-on to the DSP satellites. SBIRS is not yet flying. The original plan was to have SBIRS in this system instead of the old DSP system.

SSTS space tracking and surveillance system: This is another system not in place.

Cobra Dane radar upgraded: Yes, it has been upgraded, but not the x-band radar contemplated for this system. It does not have the power of the x-band. Even with this upgrade, it is still not capable of the discrimination that you need to separate decoys from the warheads.

The ground-based x-band radar I mentioned is not deployed. It has been essentially canceled.

Sea-based x-band radar is being developed. It is not yet deployed.

Question: Will it protect Hawaii? It is a question because of the coverage of the Cobra Dane, because the fact the Aegis system is providing an important part of the tracking system.

Fly before you buy: We are certainly violating that. We are buying the system without flying. That is the fundamental problem we are facing today. Yet we are going to declare the system operational. We can argue about that, and we have. Senator BOXER had an amendment which talked to that specifically.

My amendment is not about deploying the system. My amendment is about conducting operational tests at some juncture. I believe this operational testing scheme has hit a nerve because, as I saw the chairman's substitute to my amendment, he basically said yes, we will do operational—in fact, he specifies a date. I believe it is October of 2005. That is pretty ambitious since we are not planning for any tests yet. It is also pretty ambitious since we do not have a suitable missile target vehicle that could fly from the vicinity of North Korea and go through the space in which Cobra Dane operates.

As a result, in a very short time, we would have to build a target missile, we would have to plan for the test, and we would have to integrate all these other pieces. Yet that is what the amendment offered by my colleague from Virginia would say.

The problem with the amendment is that it takes out of the loop the one person who is there to guarantee the independence, the rigor, and the accuracy of this test, and that is the Director of the Office of Test and Evaluation at the Pentagon. That is something I think is critical.

Again, given this list of items to be accomplished, it seems stunning to me that we are actually debating about whether we should just authorize and require at some point—and at this point, after deployment—operational testing, or at least to plan it. But that is the substance of the debate, and just as importantly, not just the operational testing, but the fact it is going to be conducted by an independent agency within the Pentagon, not by the people who are graded by whether they pass or fail. Again, not high tech but human nature. I think more people are comfortable with having someone objectively design the test and supervise the test than having the people who have everything to lose and everything to gain do that.

There is one other aspect of my amendment I want to mention, which is important, and that is the notion of baselines. The GAO came back to us and said: No one seems to know how much the system is costing because there are no baselines.

They pointed out, for example, that there was a $1 billion overrun of the cost goal of missile defense to be fielded starting in September, but the Department of Defense never explained to Congress this overrun. Instead, they simply changed the cost goal.

How can we evaluate this system? How can we make difficult choices between investing in missile defense and increasing the end strength of our Army, if MDA suddenly says, well, our objective was X, but we found it cost us a billion dollars more, so now it is X plus one billion? We have to have a baseline. This is all designed to have appropriate control and appropriate notification to the Congress about the status of this very complex system.

Additionally, this cost goal change was surprising because the GAO also noted that originally the system in Alaska to be deployed in September was to have 10 interceptors, and now it is 5. So not only did they change the cost goal by increasing the amount of money they are spending, but they lowered the number of interceptors and also, I think by fair inference, the capability of the system. High cost, lower capability, but yet it was not communicated to us.

My amendment would ask them to prepare the baseline, to communicate to us when those baselines are exceeded. If we do not have that, then we will

not have the ability to do our job, which is to supervise appropriately and oversee the activities of the Missile Defense Agency in the development of this very complicated system.

There has been a great debate about whether we should deploy this system. I found it interesting to note that President Reagan was approached years ago by some Congressmen and Congresswomen who wanted to deploy then the existing system. This was in August of 1986. According to the Frances Fitzgerald's book about President Reagan ''Way Out There in the Blue,'' here is what he told those Congressmen:

I know there are those who are getting a bit antsy [to deploy a missile defense] but to deploy systems of limited effectiveness now would divert limited funds and delay our main research. It could well erode support for the program before it's permitted to reach its potential.

Once again, we are not debating today the deployment in this amendment. We have had that debate previously with Senator BOXER. We are not debating deployment. We are simply debating let us plan to do the operational testing. Let us get that operational testing done at some point because otherwise we are literally getting a system that is untried. No one wants the first time this system is fully operationally tested to be in the deplorable and horrific situation of a missile heading toward us.

So I would hope that we could, in fact, adopt the Reed amendment, have operational testing planned for it, have baselines established to be able to monitor this system as we should and be able, I hope, to assure the American public that when we say it is in service, it will work. There is a difference between telling them it works and proving it in operational and realistic testing. I hope we can do that.

I reserve the remainder of my time in response to my colleagues.

The PRESIDING OFFICER. The Senator yields the floor and reserves the remainder of his time.

Who yields time?

The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. ALLARD. Mr. President, I rise in opposition to the Reed amendment that was before us prior to the amendment from Senator WARNER, and I want to talk about that briefly. Then I want to talk about the second-degree amendment by Senator WARNER.

With respect to the Reed amendment, from my standpoint and the standpoint of the Missile Defense Agency and the Pentagon's office of Test and Evaluation and Formal Operation, tests at this juncture simply would not be helpful.

According to a letter I received on May 17, 2004—and I think this is the most current position—the letter from the Pentagon's Director of Operational Test and Evaluation, Mr. Tom Christie, in response to several questions I asked him, Mr. Christie writes—he is the chief tester we referred to, and he is responsible for overseeing much of the testing that goes on at the Department of Defense and obviously has a deep interest in what is happening as far as accountability in the missile defense system.

Mr. Christie writes, and this is important:

The Ground-based Midcourse Defense element is currently at a maturity level that requires continued developmental testing with oversight and assistance from operational test personnel.

I would add at this point that the Missile Defense Agency is currently stressing the system is involved in every developmental test to ensure that they are as realistic as possible.

Mr. Christie continues in his letter:

Conducting realistic operational testing in the near-term for the GMD element would be premature and not beneficial to the program.

I ask unanimous consent that his letter of May 17, 2004, be printed in the RECORD.

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

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, DC, May 17, 2004.

Hon. WAYNE ALLARD,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ALLARD: Thank you for your May 11, 2004, letter concerning my role in the Ballistic Missile Defense System (BMDS).

The Missile Defense Agency (MDA) is building a BMDS test bed that is essential to support realistic testing, and is absolutely essential for conducting adequate operational testing in the future. The test bed is also key to developing operational concepts, techniques, and procedures, while allowing my office to exploit and characterize its inherent defensive capability.

The Ground-based Midcourse Defense (GMD) element is currently at a maturity level that requires continued developmental testing with oversight and assistance from operational test personnel. Conducting realistic operational testing in the near-term for the GMD element would be premature and not beneficial to the program.

My office has unprecedented access to GMD, and I am satisfied with the cooperation between the program office and the test community. I will continue to advise the Secretary of Defense and the Director, MDA, on the BMDS test program. I will also provide my characterization of system capabilities, and my assessment of test program adequacy annually, as required by Congress.

Sincerely,

THOMAS P. CHRISTIE,
Director.

Mr. ALLARD. In testimony before the Senate Armed Services Committee, Mr. Christie expressed his support for the approach the Missile Defense Agency is taking to incorporate operational realism in the developmental test and is conducting, in his words, continuous operational assessments of the ballistic missile defense system.

We must consider that missile defense is a capabilities-based spiral development evolutionary acquisition program—this is a mouthful—and under this approach the missile defense programs are designed to focus on developing capabilities to meet a range of possible threats. These programs are developed incrementally in blocks with the recognition that full capability would not be reached in the first block.

Missile defense does not have a final architecture that is defined in the first block but will continue to evolve over time. Therefore, testing of the system should occur as we continue to develop it.

We should also consider rethinking how we do formal tests and evaluation. Formal operational testing carries with it certain requirements. There can be no developmental goals because of that. Contractors cannot be involved.

The Director of Operational Test and Evaluation must approve the operational test plans. Even the current Director of Operational Test and Evaluation recognizes the need to adopt a new acquisition paradigm for tests and evaluation.

Here is what Mr. Christie said about that in his speech just 2 months ago:

The concept of milestone driven operational test and evaluation appears to be becoming a process of the past. Either we change our way of doing business, adapt to the new acquisition paradigms and the realities of the war on terrorism, or we will find ourselves becoming irrelevant with dire consequences for our operational forces. . . . Users need up to the minute, continuous test and evaluation to keep them informed of system capabilities and limitations. Even after fielding, the acquisition community needs continuous evaluation to feed spiral development and other evolutionary acquisition concepts.

I ask unanimous consent that a copy of Mr. Christie's speech be printed in the RECORD.

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

TEST AND EVALUATION IN THE ''NEW WORLD OF 2004''—TUESDAY, MARCH 2

(By the Honorable Thomas Christie)

Let me express my thanks to Gen. Farrell and the leadership of NDIA for, once again, affording me the opportunity to discuss with you some of my views and concerns with T&E. I have had the opportunity to do this for the last two years, and recall that, when I spoke in Savannah [March 2002], I warned you that I might sound like a ''stick-in-the-mud'' or some sort of Cassandra because I couldn't help but say that I had seen and heard all this acquisition reform stuff before. I'm not sure my remarks here this morning will paint a much different picture than I presented in my talk in Savannah, where I contended that the problems we face as operational testers may have to take different forms than previously, but remain formidable. Recall that the Cassandra I referred to was a princess of Troy who could foresee the future—but the penalty for her gift was that the Gods made it so that no one would believe her. If you don't believe—I will understand.

The theme for this Conference is ''Operational Test and Evaluation: Twenty Years and Counting: Doing OT&E Better After Twenty Years of Practice.'' That title seems

to imply two things: that we are doing OT&E better after twenty years and that we have been doing OT&E only in the last twenty years. Our conference chairman, Jim O'Bryon has assembled many of the historic—I won't say ancient—personalities in the field. I challenge each of them to demonstrate that we are doing OT&E better after twenty years of so-called practice. I would offer my observation—or at least concern—that program offices and developers appear at times to be learning faster how to avoid testing then we are learning to do it better. This conference should consider that.

I think Jim may have confused the ''Practice makes Perfect'' adage with the professional use of the word practice. Doctors have a practice; and I always worry about that when I go to them. I don't want them to practice on ME. For a variety of reasons, Program Managers don't want T&E to be practiced on them either. I know Walt Hollis used to think that they taught ''Test Avoidance 101'' to program managers at the Defense Systems Management College.

This morning, I thought it would be appropriate for us to spend some time thinking about the history of OT&E in preparation for the insight to be offered by the elder statesmen that you will hear from over the next few days: first, the early reform efforts that set the stage for the creation of DOT&E; then, a little bit of history of the office itself, and I am sure that we will get more of that during the conference because all the living DOT&Es will be here; then, finally, we should discuss some of the challenges that the fast changing acquisition process and accompanying practices are posing.

EARLY REFORM EFFORTS

While I know that the theme of this conference is about the twentieth anniversary of the law on OT&E, for me, OT&E's relevance to OSD goes back, not twenty years, but well over thirty years. The 1970 Blue Ribbon Defense Panel, also known as the Fitzhugh Commission, addressed a whole host of defense management issues, to include ''Defense acquisition policies and practices, particularly as they relate to costs, time and quality.''

This Commission found the acquisition strategies in being then to be ''highly inflexible . . . and also based on the false premise that technological difficulties can be foreseen prior to the detailed engineering effort on specific hardware.''

With respect to OT&E, the Blue Ribbon Presidential Commission made several cogent observations. Let me, once again, recall for you four of them, because they relate to early involvement by operational testers, joint test capability, and T&E funding—all of which are coming around again as important issues:

It has been customary to think of OT&E in terms of physical testing. While operational testing is a very important activity . . . it is emphasized that the goal is operational evaluation and that physical testing is only one means of attaining that goal. This is an important point, since it is often argued that operational testing must await production of an adequate number of operationally-configured systems; and, by this time, it is too late to use the information gathered to help decide whether to procure the new system or even influence in any significance way the nature of the system procured.

If OT&E, as a total process, is to be effective, it must extend over the entire life cycle of a system, from initial requirements to extending its life by adaptation to new uses. It must use analytical studies, operations research, systems analysis, component testing, testing of other systems, and eventually testing of the system itself.

There is no effective method for conducting OT&E that cuts across Service lines although, in most actual combat environments, the U.S. must conduct combined operations.

Because funds earmarked for OT&E do not have separate status in the budget, or in program elements, they are often vulnerable to diversion to other purposes.

DOT&E HISTORY

Some ten or more years after the recommendations of the Fitzhugh Commission, the Congress perceived a lack of responsiveness on the part of the Office of the Secretary of Defense with respect to the call for an independent entity overseeing and reporting on OT&E. Congress then legislated the creation of the D,OT&E in 1983. As many of us recall, the Congressional Military Reform Caucus of the 1980s played the key role in this initiative. Among the players in that reform caucus and that legislation were names you would still recognize: Dave Pryor, Bill Roth, Nancy Kassenbaum, Denny Smith, Dick Cheney, Newt Gingrich, . . . They pushed through legislation that created the DOT&E over the adamant objections of the Pentagon, particularly from the acquisition office at that time. Over the past twenty years, these reformers and their successors have protected the office and the independence of OT&E from continued pressures to eliminate or downgrade its function and to vitiate the independence and influence of the OT&E community throughout the Department.

To my three predecessors as DOT&Es, we testers as well as the men and women in our combat forces owe a great debt of gratitude for their courageous efforts in protecting and nourishing the independence and relevance of OT&E. Over the years, each in some way stood up when it counted and made significant contributions to strengthened testing in the Department.

It took over a year and a half after the landmark legislation of 1983 to actually get the DOT&E office up and running and to bring the first Director—Jack Krings—onboard.

Jack did a masterful job of putting the office together and on its feet. He took the initiative—against the grain in most cases—to initiate many of the processes and activities that we take for granted now: the notion of Early Operational Assessments; responsive reports on systems to the decision-makers in the building and on the Hill; the Central T&E Investment Program; and DOT&E oversight of the Automated Information Systems.

Cliff Duncan, who headed the office during the first President Bush's administration, expanded on many of Jack's initiatives, pushed earlier involvement by OTers and enhanced the evaluation capabilities of the organization with particular focus on Independent Evaluations by DOT&E.

In the 1990s, when the budgets for testing and the infrastructure were being slashed by the Services, there was not a greater champion for testing than Phil Coyle. And I believe his vision for ''testing as learning'' and ''making it all count'' will continue to guide DOT&E as it adapts to new acquisition strategies.

Over the years, we've developed a ritual here at the NDIA Conference. That is, every year we give Phil Coyle a copy of the Annual Report. We won't disappoint him this year. Here is your very own copy. All the rest of you will be able to see what is in it early tomorrow, when it appears on Phil's web site.

One thing that Phil tried very hard to promote while he was the DOT&E was the proper use of models and situations. It fit in well with the Blue Ribbon Panel comment: that the goal is operational evaluation and that physical testing is only one means of attaining that goal. He had one of the most favorable environments in which to promote modeling and simulation that will be around for many administrations: the use of modeling and simulation in T&E became one of the ''Bill Perry's Themes.'' But, in the end, despite Phil's dedicated efforts, I contend that modeling and simulation in support of T&E has been a mixed bag, at best.

MY LEGACY: EARLY INVOLVEMENT, NO SURPRISES AND THE WARFIGHTER AS THE CUSTOMER

As I walked through this short history, you may have wondered what my hopes and desires for the office are. Making early involvement pay off, cutting down on surprises, better serving the operator—these are among my hopes.

Of course, early involvement is not new to DOT&E. Jack Krings did the first early operational assessment, and Phil Coyle worked hard to great effect to make it the normal way of doing business. There is tremendous power that comes from having operational testers involved early. Some of that power is technical, and some of it comes from the added credibility of having an independent tester looking at the system from the outset.

Obviously, if operational testers, to include my office, are involved in programs from the outset—reviewing requirements or desired capabilities; developing and assessing test plans, to include development testing; participating in critical design reviews; monitoring closely DT along with the deficiencies and corrections that arise from it—all of these efforts help to preclude the big surprises at the last stage of programs that operational testers are blamed for.

THE WARFIGHTER IS THE CUSTOMER

Another direction that I have emphasized is a refocus on who our customer really is. The operational test community, to include DOT&E, should consider the prime customer for its efforts to be the user—the men and women in the trenches, on-board the ships, flying our fighter/attack aircraft, maintaining our complex systems, etc., etc. We are in an era where we are rushing to field new equipment to the warfighters in the Global War on Terrorism. We need to be timely and we need to tell it like it is in informing them of the capabilities and limitations of the new system they are being asked to employ in the field.

In that context, I see a critical need to expand our contacts with operational users across-the-board and to cultivate them as principal recipients of our assessments. Right or wrong, the concept of milestone-driven OT&E appears to be becoming a process of the past. Either we change our way of doing business, adapt to the new acquisition paradigms and the realities of the war on terrorism, or we will find ourselves becoming irrelevant with dire consequences for our operational forces. When so many of our systems go to war before IOT&E and before full rate production, users need up-to-the-minute, continuous T&E to keep them informed of system capabilities and limitations. Even after fielding, the acquisition community needs continuous evaluation to feed spiral development and other evolutionary acquisition concepts.

MISSION FOCUS/JOINT TESTING

Also important, I would like to continue the evolving improvements to the OT&E process we have seen over the years: early involvement—testable operational requirements; backing away from the ''pass/fail'' mentality; truly testing for learning; mission-oriented focus; more emphasis on evaluation. These are all very ''old-time,'' but

just as true now as in 1970. Developing and fielding joint force capabilities requires adequate, realistic test and evaluation in a joint operational context. To do this, the Department will need to provide new testing capabilities and institutionalize the evaluation of joint system effectiveness as part of new capabilities-based processes. DOT&E has been directed to develop a roadmap no later than May 2004 that addresses the changes necessary to ensure that test and evaluation is conducted in a joint environment to enhance fielding of needed joint capabilities. We are working with the Service and Defense Agency test communities to satisfy this direction.

ACQUISITION SYSTEM COMMENTS

You all know that the acquisition process changes much faster than we actually acquire anything. DoD would be much better off if we could produce systems as fast as we produce new Acquisition Regulations. So a major acquisition program during its development passes through, not just milestones that used to be called 1,2,3 and are now called A, B, C, but perhaps even several whole acquisition processes. Programs, such as the V–22 Osprey and the F–22 Raptor, have seen an acquisition system that has been called Need-Based, then one called Simulation-Based, then one called (in the Air Force) Reality-Based, and now one called Capability-Based. These changes are not at the root of the problems encountered by these programs, but they certainly haven't helped. The situation may be getting worse rather than better: I believe I am the first DOT&E to sign two versions of the 5000.2 and I've been in the job less than three years.

TESTING TO SUPPORT NEW ACQUISITION STYLES

Among the major new initiatives, as I just mentioned, is Capabilities-Based Acquisition. The idea here, as I see it, is a continuous process of design, development and testing of a new concept or system until we demonstrate and validate a level of capability deemed worth considering for procurement and deployment. At that point, the decision-maker—hopefully, based on the informed advice of the potential user as well as the acquisition and testing communities—decides that the system has indeed demonstrated a needed warfighting capability and approves advancing it, perhaps into full-scale engineering development, or even directly into production and deployment to our operational forces. One of the features of this approach is that, up to this point, there are no hard and fast requirements, threat-based or otherwise, against which to measure the operational effectiveness or suitability of the system. I said two years ago, ''How all this will work in detail is still a little murky.'' We are still feeling our way. The Ballistic Missile Defense System is a major test bed, in fact, for the operational test community in working with this new acquisition paradigm. In this approach to acquisition, we testers won't be making judgments as to a system's effectiveness or suitability against some ORD-based bench-marks, but rather presenting our best judgment as to the capability demonstrated to-date in whatever environments—open-air testing, hardware-in-the-loop, or human-in-the-loop—the system has been subjected to. Interesting enough, we have some helpful guidance in a statement in the new 5000.1 DoD Directive: The Defense Acquisition System. The Directive has only three policies identified, the second of which I quote: ''The primary objective of Defense acquisition is to acquire quality products that satisfy user needs with measurable improvements to mission capability and operational support, in a timely manner, and at a fair and reasonable price.''

METHODOLOGY: MISSION FOCUS/COMPARISON TESTING

This directs me, as I see it, to define some marks on the wall with respect to capabilities that must be improved upon. It also keeps a strong mission-oriented focus. The ''measurable improvement'' phase in the new 5000.1 also highlights the need for comparative evaluations to show improvement. When formal requirements are missing, the current mission capability provides a natural point from which to measure any improvement. This may seem like a simple idea. And we have used it in a number of cases to assist the evaluation. For example, in one Army system, the requirements had specified a timeline for movement after shooting. Well, that requirement was not met in testing, but did that mean the system was ineffective? When we compared the actual time to that of the current system, we found that the new system provided significantly better survivability, even though it did not meet the ''Requirement.'' We used the comparison as part of the justification for calling the system effective.

Now the comparison test idea is often criticized—understandably so in many instances—as being expensive. We need to move to collect data on the capabilities of current systems and forces from ongoing exercises in order to avoid burdening new programs with the time and resources needed to test and collect such data to establish a baseline. But that will require establishing meaningful, accredited databases for operational capabilities of existing forces/equipment/TTPs. As Walt well knows, the information from tests—the databases—quickly become unusable. Archiving the databases should be part of a more robust T&E infrastructure.

TESTING TO SUPPORT ACQUISITION: T&E INFRASTRUCTURE/PEOPLE

While Spiral Development and Block Upgrades might be somewhat different animals, their treatment by the T&E community is somewhat similar. As an aside, we have quite a bit of experience with such approaches, particularly in testing software-intensive systems to include the myriad of automated information systems. Here, we plan our T&E strategies to assess incremental improvements in capabilities as opposed to using the full-up, or ultimate, system requirements spelled out in an operational requirements document as a benchmark. At the least, our assessments should consider whether each spiral or block provides a measurable improvement in military capability over its predecessor. What may be called spiral or block developments, may just be the block upgrades of the past. The T&E community has dealt with those for quite some time now. We should step back now and translate our lessons learned in this context into more concrete policies or strategies for the future.

Undoubtedly, the biggest financial commitment by a program in this context will be to field the first spiral or Block I. Therefore, at a minimum, Block I should clearly demonstrate that it does not represent a decrease in military capability over legacy systems. In addition, If new functionality is added in a spiral or block, we will probably need to carry out some level of regression testing. There will also have to be some assessment of the growth potential of this spiral or block.

The new functionality—if it is to be worth the disruption to the force by requiring retraining, additional training or new operational concepts—ought to represent a significant improvement that should be easy to confirm. We should accept it as our responsibility to confirm, not only that improvement, but that the system continues to be effective and suitable for combat after fielding. In spiral developments, we will need a formal feedback mechanism—spiral reporting, so to speak—to ensure that problems or deficiencies identified in T&E for each spiral are addressed and corrected by the developer. The information needs during spiral development seem to include at least: (1) what is the added capability of the new spiral, (2) what direction should the next spiral take to address the residual deficiencies of the incomplete system and (3) is the new spiral's increase in capability worth the disruption of introducing it into the force—the reconfiguration, the revised training or the changed tactics, techniques and procedures the new spiral might imply.

These considerations lead me to a need for some form of continuous testing, evaluation and reporting even after the system is deployed. Presumably, with increased use of spirals, there will be many more potential engineering change proposals. Hopefully, priorities accorded these proposals will be based on evaluation of data that shows what needs to be fixed depending on the most value to the war fighter.

We need to look to the future beyond the items addressed above—the increasing complexity of systems and tactics to be tested, the need for better trained people in the T&E business, the massive amounts of data becoming available and the concomitant requirement for more sophisticated evaluation techniques/approaches.

T&E INFRASTRUCTURE/TOOLS/MODELING AND SIMULATION

Let me address in some fashion the modeling and simulation disappointment which I inferred earlier. A success story in this context is the AIM–9X. But you have to understand the very special circumstances of that success. First and foremost, the contractor was willing to go down the path. The model was developed by the contractor and was open to the government. The DT program was used to develop and validate the model. The model was a design tool. The OT program also validated the model. The close collaboration of government and contractor was necessary where there are too many cases to cover in a live test program. In the Aim-9X, there were over 500 scenarios that were in the Operational Requirements Document.

However, the experience with M&S, overall, has been a major disappointment of promises undelivered. Why? First, there have been unreasonable expectations. Surely, some design problems can be modeled, but these tend to be small changes in well-understood designs. Defense systems do not tend to be of this ilk. When the system technology is cutting edge, its real limits are probably not well understood. You cannot replace testing with modeling in that case. As Jack Krings used to say, model to interpolate, not extrapolate.

Second is the money problem. Many program managers would like to finance the development of models with money from testing—trade off testing for modeling. That timing is off—modeling, to be successful, has to start early; using OT money is too late. The trade is not what ought to be the goal. Defense systems encounter a lot of problems in development—a fact that the OT community is painfully aware of because so many of those problems appear in IOT&E. To overcome these, in the best case, takes additional time and money. The role of modeling should be as something extra that can be done to help the success of the program—not some trade off with testing.

T&E INFRASTRUCTURE/RESOURCES/T&E CYCLE TIME

Unfortunately, I am concerned that our T&E infrastructure is not in the best of

shape needed to meet the challenges of the future. Past failures of the acquisition process, with all the program slips, have tended to ease the burden faced by the test ranges. Lord knows what would happen if all the programs that claimed to be ready for testing in 2004 actually showed up for testing. If the latest acquisition initiatives deliver what they hope for, then a greater fraction of programs should be ready for testing on or near their schedules. In this respect, I fear the T&E community might not be prepared for success in acquisition reform. A capable test infrastructure to include appropriate targets, instrumentation, etc., will have to be available at our test ranges and facilities.

So, what's the bottom line? First and foremost, we have a lot to be proud of over the past several years in our demonstrated flexibility and responsiveness to an ever-changing acquisition landscape. Our record of early involvement and the fruits of that involvement are also praiseworthy. We have not choice but to continue and even expand our involvement earlier and continuously throughout the life cycle of systems. But, I am concerned with the increasing demands on our resources necessary to make those involvements continue to pay off.

We need to do more in cultivating and serving the users, the operational forces, as prime customers for our products. The Joint Test and Evaluation Capability should play a big role here. Warfighters need to know the capabilities and limitations of the new systems they are deploying, based on our best estimates of what the testing to-date has demonstrated.

The Joint Test and Evaluation Capability will probably borrow a lot from the Joint Training Capability. One key that I believe will connect them is the careful enumeration of the military tasks that is catalogued in the Universal Joint Task List. The tasks, standards, and conditions there can be a basis for comparison of current and new capabilities. It ought to be an important item in the new ''Requirements Generation'' process we will hear about later that is called JCIDS—the Joint Capabilities Integration and Development System.

While acquisition reform has aimed at making substantial reductions in cycle-time, by at least a half in most cases, we in the testing community should be looking at ways of cutting testing turn-around times in half.

I reject the claims of the many critics of the testing process that overall OT&E costs and schedules are excessive—in fact, they're a very small part of system costs (recent Rand study); the costs of skipping tests, of avoiding adequate tests, of skimping on either DT or OT can be huge (as well as cause loss of lives). We started the RAH–66 Comanche, V–22 Osprey and F–22 Raptor programs in the early 1980s. After roughly $7 billion and twenty years of effort, the Comanche is being terminated while still several years from its IOT&E and a production decision. The V–22 program has spent over $16 billion and taken more than twenty years, during which it unfortunately skimped on DT and paid the price in a failed OPEVAL in 2000. It is now embarked on an event-driven test program that will culminate in a second OPEVAL in early 2005. After $36 billion and nearly twenty years in development, the F–22 is about to enter its IOT&E heading for a production decision this coming fall. Now, I challenge you to show me where operational testing has held these programs up or has cost us an arm and a leg as some of our critics would claim.

In closing, I continue to believe the T&E community—in both industry and government, both technical and operational testers—has served the department very well over the years. The success of our operational forces in the last several conflicts reflects that dedication to deploying systems proven effective, suitable and survivable on our ranges and in our facilities. But, the increasing complexity of systems and tactics should be tested, the need for better trained people in the T&E busienss, the massive amounts of data becoming available and the concomitant requirement for more sophisticated evaluation techniques/approaches, all call for new and innovative strategies and capabilities for T&E. I hope this conference does not degenerate into a reminiscence session. We face challenges in the future as we have in the past in ensuring that our soldiers, sailors and airmen are equipped with the best equipment our nation can provide.

Mr. ALLARD. This quote that I just shared describes exactly what he is doing with testing and the Missile Defense Program. Heavy involvement in the developmental test program, with the intent to achieve operational test goals during development, continued test evaluation assessments to keep the warfighter informed of system capabilities and limitations, and continuous evaluation after fielding to feed spiral development. That is the role the Director of the OT&E describes for himself, and that is the role he is playing in missile defense testing.

Everyone on both sides of the aisle, and I would add everyone in the Pentagon, supports operational realistic testing of the ballistic missile defense system, and that is why we are building a missile defense test bed today. That is why the Director of OT&E has over 100 operational test agents influencing and providing input for the GMD. That is why military operators are being used in the tests. Perhaps more importantly, that is why operational test goals are incorporated into each developmental test.

Now, make no mistake, the threat drives this program. We are building missile defenses to meet that threat. The test bed is needed to perform operationally realistic tests of the ballistic missile defense system and testing will proceed, becoming progressively more realistic, and will improve the system. Yet it is these same test bed capabilities that would afford us an early operational capability.

We cannot forget that we have no defense against long-range missiles. The Armed Services Committee has seen intelligence information which illustrates, more than ever, that the ballistic missile threat is real and growing. We are vulnerable and it is time to change that vulnerability. We need a missile defense capability in the field as soon as possible. For that reason, I will oppose the Reed amendment as it was introduced, and I urge my colleagues to oppose those efforts that would tie up our system in a way that adds delays and adds to our inability to defend ourselves from emerging threats in other parts of the world.

With the Warner second-degree amendment, my view of this amendment of Senator REED changes; that is, if we adopt the Warner amendment. This is why I think we need to support Senator WARNER's amendment. The intent is to assure that the Department of Defense conducts operational realistic testing of the BMD system and to support Senator WARNER's second-degree amendment because I believe we will achieve our common goal of operational, realistic testing while avoiding some of the potential pitfalls.

Everyone on both sides supports operational realistic testing, as I mentioned earlier, on the ballistic missile system. I certainly support the Senator's intent to make sure the BMD system is tested. The question is how best to test effectively while improving system capabilities and fielding capabilities as quickly as we can.

Formal operation and testing carries with it certain requirements where there can be no developmental goals. Contractors cannot be involved and the Director of Operational Test and Evaluation approves of the operational test plan.

I think the Warner amendment improves on what was proposed by the Senator from Rhode Island. This is operational testing.

Again, as I said earlier, we are looking at a two-way path here. While we are doing testing, we want to get something in place that is operational. The more we tie this down in a step-by-step process, which happens with the Reed amendment, with accountability on every little finite step in development, the more you delay the process and the more you add to the cost of the program. That is why I am supporting the Warner amendment.

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

Mr. ALLARD. I ask for an additional 1 minute.

The PRESIDING OFFICER. The Senator has that right. He is yielded an additional minute.

Mr. ALLARD. What happens with the step-by-step process in the Reed amendment which leads to delays and additional costs, the Warner amendment refines that down so it is more streamlined and becomes palatable to us who would like to see rapid deployment of some kind of missile defense system for this country.

It is not going to be perfect. That is why we have spiral development. We are going to develop it and improve upon it with time. This is a process we have used before. It works and it is something that is going to assure us that we will have security rapidly deployed for this country where we have emerging threats in Iran and North Korea.

The PRESIDING OFFICER. The time of the Senator has expired. He yields the floor. Who yields time?

Mr. REED. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Rhode Island has 35 minutes 38 seconds remaining.

Mr. REED. Mr. President, if you could interrupt in 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. REED. Mr. President, I was very interested in hearing about the letter from Mr. Christie. I have not seen it. I am getting a copy of it.

But as I heard my colleague from Colorado, Mr. Christie seems to be saying that this system is not ready for operational testing yet, that it was premature to operationally test it. But it is ready for deployment in September? I think the notion of deployment is this thing is ready to operate; certainly it is at least ready to begin the threshold operation for testing. So I can't think of anything else that more strongly emphasizes the need for operational testing.

We have all heard the terminology, evolutionary spiral development, new techniques, et cetera, but the basic question here is: Does it work? No evolutionary spiral jargon avoids that question. Related to the question, does it work, is: What can it do? What do we expect this system to do? And then, of course, you validate that by testing under realistic conditions.

None of this is taking place. None of this is planned. I believe my colleagues when they say they want to see this operational testing. But there is no plan to operationally test now.

I find interesting the notion that Mr. Christie says it is premature to test, yet in the amendment to my amendment offered by Senator WARNER there is a specific deadline of October 1, 2005, that a test will be completed.

My amendment doesn't do that because I do recognize the fact that these are very difficult technological issues, that there is great concern about getting the system up and running. There are multiple pieces from space-based radar to ships at sea to land-based radar to booster rockets and kill vehicles. Yet interestingly enough, the Warner amendment would lock in a date of October 1, 2005, to test the ballistic missile system. Yet Mr. Christie is talking about it is too premature, et cetera.

I think the approach I have taken is simply saying at some time in the future we need operational testing. Please lay out a plan—a plan, of course, can be modified—and before these new steps in the process are put into effect, let's have the operational testing. I think it makes a great deal more sense.

Also, there is a question about limiting developmental testing and operational testing by saying, when you do operational testing, you can't do developmental testing. Actually both can be conducted in virtually the same test. I think one of the major differences between developmental testing and operational testing is that developmental testing is designed by the proponent agency and the contractors and they are supervised by the proponent agencies and contractors. Operational testing is designed by Dr. Christie's office, the Office of Operational Test and Evaluation, and supervised and conducted by those individuals from that particular office. It is quite appropriate. It is done frequently.

The Patriot was an example of a system that had both operational and developmental testing taking place. Indeed, the Patriot is another good example of the need for operational testing.

The upgrade PAC–3 missile defense system had a very good record when it was in its developmental phase. It was just doing extremely well. Then they started the operational combat, realistic test phase, and the Patriot PAC–3 failed each of these operational tests. It had four consecutive operational test failures. What did that suggest to you about this system? This system might pass all these tests, as some have argued watered down as they are, but it could pass all of them. Well, the PAC–3 system passed all the development tests and then had four consecutive failures in a row in an operational test.

If we have four consecutive failures in a real operational test of this system, I think the American people will be quite shocked, given the fact we are not planning any operational test, yet we are deploying the system.

Luckily, with the PAC–3, there was time to fix the problem.

These operational tests were not only conducted, but the problems were fixed. In Operation Iraqi Freedom, the system was deployed. It worked very well when it engaged missiles. But again, there are still some difficulties. At least one friendly aircraft was engaged and destroyed by a PAC–3 system. Two were destroyed, suggesting that all the problems with the system in terms of target identification, in terms of proper response and enemy versus friendly targets in the air have not been fully resolved. It is a complex system. This system is much more complex and complicated. But the PAC–3 is a very good example of what we should be doing here—that is, operational testing, learning from those tests, fix the system, and keep doing it continuously.

Again, I think it is an interesting notion about this spiral development and everything else. There has to be consistent, constant testing because that is how you learn so you can make the changes. Yet, again, we don't have an operational test planned for this particular system. I believe we have to have something like that. Again, the national missile system is very complex. We have to have this system.

Part of the Warner amendment to my amendment takes out the Director of Operational Test and Evaluation and lets the Secretary of Defense prescribe the criteria. Let me suggest that in the last several years, Dr. Christie has been advising and consulting. But nothing has happened in terms of operational testing. Each year, he reports to his superiors and to the public at large. In each one of those reports, he calls for more realistic testing. Apparently he is consulting and is not particularly effective. But that is exactly what the Warner amendment to my amendment would do—simply make him a consultant.

The reality is, as a consultant, his voice would be no more prominent than it is today. We don't have an operational testing plan. We have not conducted operational testing yet, and yet we are deploying the system. It seems to me that the Warner amendment waters down further the operational testing. He calls it operational testing, but then it takes out the operational testing, giving it to the Secretary of Defense.

We have seen that this Secretary of Defense is committed to getting this program into the ground by September of this year regardless. That doesn't give me and I don't think it should give the public the confidence that a rigorous realistic testing scheme will be developed. But then the amendment goes on to say within a year we are going to have that, we are going to mandate the test. It seems to be slightly schizophrenic. We don't want the normal procedures, we don't want the Director of Test and Evaluation to be doing it, we want the Secretary of Defense to do it, but he is going to do it by October 1 of 2005.

Again, I don't think the amendment really responds to the problem and the issue. The issue and the problem is developing, as we have done for every other system. PAC–3 is an excellent example of operational testing and planning, and then ensuring that the operational tests take place—not just calling for operational tests but having the independent operational testing agency within the Pentagon designing and conducting the test. That is what my amendment does. It doesn't call for any specific deadline. If the conclusion of Mr. Christie were to be that it couldn't be feasible for 18 months or 2 years, at least we have gotten an operational test plan, and we will conduct the test. That, to me, would be a vast improvement over the current situation.

I hope my colleagues will not favorably respond to Senator WARNER's amendment and give me a chance to have this amendment agreed to.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, I support the Warner amendment to the Reed amendment because it adds flexibility with accountability. The second-degree amendment will allow the Missile Defense Program to field capabilities expeditiously and to improve those capabilities rapidly and avoids the disadvantages I see in Senator REED's approach, which requires realistic testing broken off into blocks.

Specifically, Senator WARNER's second-degree amendment will require the Secretary of Defense, in consultation with the Director of OT&E, to set forth formal criteria to define operationally realistic testing for the ballistic missile defense system as a spiral development program. It will require operationally realistic testing consistent

with those criteria during the fiscal year 2005, and it will require operationally realistic testing of each block or spiral of the ballistic missile defense system.

The Warner second-degree amendment provides the flexibility needed to incorporate both operational test goals and developmental test goals in missile defense tests—flexibility that is denied in the Reed amendment. Thus, it avoids the substantial replanning, delay, and additional costs that would result if the Reed amendment is adopted.

But the second-degree amendment also helps ensure that the testing of the missile defense system is realistic and will result in a well-tested system that will be capable of defending our Nation. It requires a formal and appropriate role for the Director of OT&E, and it requires this realistic testing to be conducted during fiscal year 2005—almost certainly sooner than the formal OT&E required in Senator REED's amendment, perhaps even sooner.

I urge my colleagues to support the Warner second-degree amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Rhode Island.

Mr. REED. Mr. President, I am just a bit taken aback by the claim of flexibility. The Warner amendment actually sets out a date certain when the tests will be conducted. Particularly, since it is a year away, particularly Mr. Christie is talking about it is premature because it is in the developmental stage. I thought his letter was quite specific. The ground-based midcourse defense element is currently at a material level which requires continued developmental testing with oversight and assistance from operational testing personnel conducting realistic testing in the near term. I guess the question is, What is ''in the near term''? I suggest it would be a year or more. It would be premature and not beneficial to the program.

Let me reiterate that this is an extraordinary letter. It says basically this system is not mature enough to test, but we are going to deploy it. I think that is very unusual, particularly given the history of having other systems where, even though they had not completed their operational testing—like the Predator and JSTARS—the plan for operational testing had already been sketched out—not by the Secretary of Defense but by the Office of the Director of Operational Test and Evaluation.

I think the flexibility is in my central amendment. It talks about before you deploy a block or a spiral—the new terminology might be ''spiral,'' but what they are going to do essentially is what we do so often: build the system to a certain capability; then, through tests or experience or through actual field trials, develop new software, new technology, and new complements that can make it better. At a certain point, rather than just simply tweaking here and there, you go back in and you develop a new block. That is roughly to me what the spiral development is, minus the catchphrase. Before you do that, we should have operational testing.

I think this is a very critical aspect. My amendment does not intend to stifle flexibility. It has no correlation with deployment. That is an issue that is going to be determined—and has been determined. We had votes on that, but somewhere along the line we need to do operational testing.

I must say I would be much more impressed with the degree of commitment to this operational testing if at least we had a plan for operational tests, a plan prepared by Mr. Christie. We do not have that. At least that would signal that we are serious about operational testing. In fact, that should have been done. It says this system is so immature that we cannot even get to the point of developing a plan to test.

Once again, the amendment is not only reasonable but it is compelling. This is what we do when we develop systems. Again, I suggest it is something we should do.

There is another aspect of my amendment which is very important and that is the baseline. Again, we have to know how much is being spent, what are the cost goals, what are the capability goals with respect to the system.

The GAO discovered—we did not discover this because of the way the books are kept—a $1 billion cost overrun. Rather than reporting it, making it obvious or tracking it, they simply changed the cost goals. In conjunction with that, we find that rather than having 10 interceptors, as they originally talked about in terms of cost goals, they now have 5 interceptors. The situation is that the costs have gone up by $1 billion and capability has gone down by half. Now we have a situation where we were unaware of it until the GAO discovered this.

Call it spiral development, call it evolutionary development, that should not be. One would hope this sophisticated development process, this new form of development, would mean that costs are more transparent, more accurate, and the capability is more obvious. That does not seem to be the case.

Along with the notion of developing operational testing is developing the baseline. None of that is in the Warner substitute to my amendment. I cannot see any discussion of establishing baselines, of making sure the costs are appropriate, of alerting Congress to overruns, rather than just changing goals.

I hope my amendment would be adopted and could be adopted.

I yield the floor, and ask at the conclusion we might think about whether it is appropriate to continue debating or to yield back time.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Colorado.

Mr. ALLARD. Mr. President, on this side, most Members have said whatever they want to say.

I, again, state we have a number of amendments we dealt with last year and this year which, in effect, add delays because of an excess reevaluation of the program. What we are striving for is a commonsense approach to accountability in the missile defense program without so much evaluation that we delay it. Each delay adds more and more costs to the program. Then those people who oppose the missile defense program will use that as a reason to defeat the program.

The fact is, right now we are in the process of putting those missiles in the ground. This fall we expect them to be operational. In order to have the proper developmental process in place, we have to have a test bed. While we are putting the test bed in place, it requires such a wide area we might as well make it operationally functional at the same time. That is what we are trying to do.

The Warner amendment provides the flexibility but still the accountability that we need. I am happy with what he has laid out in that amendment.

Dr. Thomas Christie has indicated time and time again that he is satisfied with his current role and the role his office plays in ballistic missile defense testing. He has testified. He states in his recent letter to me—and maybe I need to read the substance of this letter just to give my colleague an opportunity to hear clearly what his position is—the following:

> The Missile Defense Agency (MDA) is building a BMDS test bed that is essential to support realistic testing, and is absolutely essential for conducting adequate operational testing in the future. The test bed is also key to developing operational concepts, techniques, and procedures, while allowing my office to exploit and characterize its inherent defense capability.
>
> The Ground-based Midcourse Defense (GMD) element is currently at a maturity level that requires continued developmental testing with oversight and assistance from operational test personnel. Conducting realistic operational testing in the near-term for the GMD element would be premature and not beneficial to the program.
>
> My office has unprecedented access to GMD, and I am satisfied with the cooperation between the program office and the test community. I will continue to advise the Secretary of Defense and the Director, MDA, on the BMDS test program. I will also provide my characterization of system capabilities, and my assessment of test program adequacy annually, as required by Congress.

This is the chief accountability officer. He is responsible to make sure everything is ready to move forward. He is satisfied. There is no doubt that he is satisfied with the way things are going.

In order to meet some of Senator REED's concerns, the Warner amendment allows that. We address some of his concerns. Now we need to adopt the Warner amendment so we can still have the flexibility we need to deal with changing technology and perhaps

some unexpected events as we move forward.

I don't think anyone who has watched the development of military systems ever figures we have it right the first time. We come awfully close. With each passing year, new technology evolves and new ideas evolve and there are things we can do to improve the system. That is what spiral development is all about.

Again, Dr. Christie indicates that he is satisfied with his role and the role his office plays in the Missile Defense Program. He states that his office has ''unprecedented access'' to the ground-based midcourse effort and that cooperation is very good between the program office and his office.

He testified that he makes recommendations related to the developmental test program and his office has the ability to bring input into and influence the GMD test program.

Again, to quote Dr. Christie:

My staff and I remain involved on a daily basis with the Missile Defense System and the BMDS element program offices in order to ensure that operational tests are addressed in their testing.

We have over 100 operational test agents involved in the missile defense test program. A considerable amount of resources are being put forward to make sure we have accountability.

He goes on and indicates again that he is clearly satisfied with emphasis on operational test goals in the BMD system test plan. I will quote directly:

The GMD [Ground-based Midcourse] program combined test force effectively integrated the operational testers into the program development activities and the test design and planning efforts.

He approved the operational test goals for the last three integrated flight tests.

He recently testified as follows:

While I am very encouraged by the improved testing environment and capability that the BMDS test bed will provide, I am even more pleased with the increased emphasis on system integration and user involvement that I have seen over the past year.

We go on and on about his testimony as to how he has testified. The fact is, it is working. We are ready to put it in the ground this fall. We all recognize there are going to be improvements as we move along, but we are in a position to make those improvements.

I think the commonsense approach is to support the Warner amendment. I support it and encourage my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, how much time does the Senator from Rhode Island have remaining?

The PRESIDING OFFICER. There is 20 minutes 20 seconds.

Mr. LEVIN. I ask the Senator if he will yield me 8 minutes.

Mr. REED. Mr. President, I yield 8 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the amendment of the Senator from Rhode Island simply says that the usual rules will apply in this case, that we are not going to change the rules because some people believe strongly this is an important weapons system. We have lots of important weapons systems of which we apply the rules that you must have operational testing at some point.

Now, there have been a couple of instances where operational testing has been delayed until after there has been some deployment, but there has been operational testing then. There have been plans for operational testing. The two examples which are used frequently are JSTARS and an unmanned aerial vehicle called Predator. Those are the two examples that have been used where a system has been deployed or partially deployed, and then the operational testing has occurred after that deployment.

But in those two cases—this is the critical issue which the Senator from Rhode Island addresses—as in all other cases, operational testing has occurred; and it has been designed by and implemented by the independent Office of Test and Evaluation.

The difference between the amendment offered by the Senator from Rhode Island and the second-degree amendment offered by the Senator from Virginia is that the Senator from Rhode Island preserves the rule, which as far as I can tell has never been violated, that the Office of Test and Evaluation does the testing. That is an independent test office.

Too often these days we see rules being ignored in order to meet some particular goal: We are not going to apply the Constitution here because we have needs over here. We are not going to apply the usual rules as to how we treat captives and how we treat prisoners because we have other needs over here. We are going to bend rules. We are going to ignore rules because of some particular goal that exists.

In this case, there is a proposal made that we ignore the rule, which has been in place for I don't know how many years, with a very important purpose behind it: that we have independent testing of weapons systems before or during or at some point after deployment by an independent test office—not by the Department of Defense in consultation with the test office but by that test office itself. It is the way we have protected our men and women in the military, to make sure that weapons systems work. It is the way we have protected this Nation, by making sure that weapons systems work.

We should not make an exception for it here. No matter how strongly people feel national missile defense will contribute to our national security, it will only contribute to our security if it works. To make sure it works, you need an independent testing office to do the testing and to lay out the criteria—not to consult, not to have a voice, but to do what they do with all other weapons systems that we deploy, which is to do the testing themselves.

This amendment does not prevent the administration from deploying missile defenses prior to operational testing. That was the amendment which was just defeated. This amendment allows that deployment but says you have to have operational testing sometime, at some point, and—this is the difference between the first-degree and the second-degree amendment—in the case of the first-degree amendment, that testing has to be done by that independent Office of Test and Evaluation, as all other testing of all other weapons systems that we have been able to research. You have to have plans. You have to make a decision: Yes, we are going to test this, and we are going to have our independent Office of Test and Evaluation do it.

Now, as I said, some defense programs have been deployed before operational testing was completed, and among them is the Predator, which was deployed in Kosovo in 1999, prior to the initial operational test and evaluation. But the operational testing for the Predator was planned for long before the Kosovo deployment, and it was completed in the next year after that deployment. The testing was done by that independent office, not by people who are out there in the field arguing for a system, but independently by the independent test office.

The JSTARS surveillance aircraft is another example of a military system which was deployed prior to operational testing. There was a great need. It was decided they could do the operational testing after the deployment. So two JSTARS aircraft were deployed during Desert Storm in 1991.

Interestingly enough, following that deployment, the Senate Armed Services Committee wanted to accelerate the program, but the Air Force thought the effort in the gulf war had not alleviated the need for operational testing. Indeed, it illuminated areas that needed more attention in development. So operational testing was performed on JSTARS in 1995, and the operational tests revealed some significant problems. Some of those problems in JSTARS, which independent operational testing—and the word ''independent'' is just as important as the word ''operational'' and just as important as the word ''testing''—those independent operational tests revealed some significant problems, including the inability to operate at the required altitude, inadequate tactics and procedures, and inadequate mission reliability and time-on-station.

What this amendment would do is to insist that the usual rules about operational testing by an independent test office apply here, not before deployment—that approach was defeated when the Boxer amendment was defeated—but at least sometime, and sometime is critically important, and just as critical is that those tests be done not just in consultation with but by the Office of Test and Evaluation.

If you do not like the rules, change the rules, change the law about OT&E, the Office of Test and Evaluation, change the law, but do not simply say we are going to ignore the law here because that law has an important purpose. That law requiring independent test and evaluation is a law which every Member of this body ought to defend. We fought a long time to put it in place. It has had some wonderful results. Our weapons systems have worked better because we have an independent office that does the testing.

So it is not good enough, as the second-degree amendment says: Well, we will have some consultation with that independent office. That does not give them the critical decision as to whether a weapons system is effective or is not effective. To put billions of dollars into systems which are not shown to be effective at some point, which are not operationally tested at some point by an independent office, is to increase the likelihood that billions of dollars will be wasted.

I thank the Chair and yield the floor.

Mr. REID. Mr. President, will the Senator yield?

Mr. REED. Mr. President, I yield to the Senator from Nevada.

Mr. REID. Six minutes?

Mr. REED. Six minutes.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, first, I share a name with the sponsor of this amendment. I have, once in a while, given him some advice. When it comes to military matters, there is no one who I have greater confidence in than the Senator from Rhode Island. He is the only Member of the Senate who is a graduate of the United States Military Academy at West Point. He is someone who has taught at that fine school. He is someone who has maintained his military contacts. And he is a student of what has been going on in the military since his retirement from the military. So I feel very confident and comfortable that the Senator—being a member of this most important committee, the Armed Services Committee, and having offered this amendment—is trying to do what he believes is the right thing for this country.

I express my appreciation to him for his studious efforts in offering this amendment and for often answering my questions about the military. He is such a valuable person to have in the Senate.

As I told the majority leader a few weeks ago, when I get up in the morning, the first thing I read is the sports page. I do that because there is always some good news in it. The rest of the newspaper you have to search hard for the good news. But after I finish the sports page, I reluctantly go to the first section of the paper.

This morning I went to the Washington Post. On the front page is a story. We have all seen the headlines about the 9/11 Commission, that according to available evidence, Iraq and Saddam Hussein had nothing to do with the terrorist attacks of 9/11. Another front-page story dealt with Abu Ghraib prison and some of the abuses that took place there.

On page 3 there is a feature story about a soldier that has been laid to rest in Arlington Cemetery. Page 4, there is some discussion about what we did yesterday dealing with the Leahy amendment.

The reason I mention these items very briefly is, you have to go all the way to page A19—I was stunned when I read this—the fourth paragraph, to read:

> Three U.S. soldiers were also killed Wednesday. . . .

It is like a throwaway.

> Three U.S. soldiers were also killed Wednesday. . . .

Three more deaths didn't warrant anything better than a throwaway line in the fourth paragraph on the 19th page of this newspaper.

We know these soldiers who have been killed—more than 800—are fathers, sons, neighbors, loved ones, all different categories. The families of these men and some women who have lost their lives since the war are paying a terrible price. I am stunned that we have come to the point in this war where we now say:

> Three U.S. soldiers were also killed Wednesday. . . .

I don't know how to describe how I felt when I read that. These three soldiers deserved more than that.

I hope we are not at a point where the death of American soldiers in combat is considered so routine that it is barely mentioned, and instead of meritorious placement in a newspaper, it is buried. We need to do better than that.

Hopefully, one of the things this bill will do is focus attention on the sacrifices being made by the men and women in Iraq. I hope the families of these three men get more attention than page A19 in the future.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I see the Senator from Alabama is here. I appreciate Senator SESSIONS serving on the Strategic Subcommittee with me and serving on the Armed Services Committee. He works very hard on that committee. The defense of this country is important. He agrees with that. He brings a stroke of common sense to our deliberations which I, for one, truly appreciate. I yield 5 minutes to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Chairman ALLARD for his leadership and his expertise. He is becoming perhaps the most authoritative Member of the Senate on this issue. He has worked on national missile defense since he has been in the Senate. It is great to work with him.

We do need to do the right thing. We have committed as a country to deploy a national missile defense system. We voted to deploy that system as soon as technologically feasible. That was back in the 1990s, and President Clinton signed the statute we passed. I believe it got 90-plus votes in the Senate. Although there were a lot of people who were opposed to it until the very end, in the end everybody realized that we needed to defend America, and we had the capability of doing so.

There has been a cottage industry of skeptics out there that has made fun of President Reagan. They called his vision for national missile defense Star Wars. Then when President Reagan said no to Gorbachev's proposal in Reykjavik, which accepted so many of the things President Reagan wanted so badly but told President Reagan he would have to stop national missile defense, he thought about that very hard on the eve of the reelection campaign. He knew he would be criticized, but he said, no; national missile defense is important to America. It was important to peace in the world because, instead of worrying about how many of the enemy we could kill, we could begin focusing on how to protect our people from being killed by missile attacks. It was a defining moment in the cold war. One expert recently said that was the moment that signaled the end of the Soviet Union.

We debated it here in the late 1990s. Senator THAD COCHRAN and JOE LIEBERMAN proposed the deploying amendment to go from research and talk to actual deploying and setting a goal for it. We had a bipartisan national commission that unanimously voted that the threat to the United States from missile attack was real, more imminent than intelligence agencies had previously said, and that we needed to move forward to deploy a system.

Under General Kadish, we have achieved a magnificent result. General Kadish—history will record—has been a tremendous leader, a man of substance and honesty and stability and good judgment, under all kinds of pressure. He has been beaten.

Senator LEVIN, the ranking member on our committee, is such a fine Senator. He and Senator REED have been critics of the program. They have raised questions about the program. I don't think it has hurt the program. It has probably helped the program. I know they have never been big fans of it. We made that decision.

We are going forward today. The amendment Senator REED has proposed, I am afraid, would cost us in the long run and provide little benefit. The provisions for cost, schedule, and performance baselines that he mandates have essentially been adopted now by the Department of Defense. It was part of a General Accounting Office study, and the Department of Defense has gone along with that study.

The provision for conducting operationally realistic tests for each block configuration is not unreasonable. Each test we conduct today, however, has developmental objectives. And

since this statute would prohibit the agency from approving developmental tests, we would have a real problem there. Those tests may be a problem. Each test would have developmental capabilities. It would require a significant replanning of the test program, slow the development, and increase costs in the long run.

We made a commitment to a new type of strategy for developing this unprecedented system. It is called spiral development. We said to the military, you develop this system. We are not going to put you in a straitjacket. We are going to allow you to move forward. And as you bring on new science and new capabilities, you decide and make recommendations to us as to how you would deploy it.

Maybe we decided it would be unwise for us to mandate exactly how this system should come out. I think that is what I would have as my biggest complaint with Senator REED's well-meaning amendment. I think it puts too much restraint on the freedom and initiative of the leaders in the Department of Defense to be creative in making the system and utilizing the money we put into the system effectively to come up with the best results.

I have been extremely proud of what has been accomplished so far. In September, we will deploy a missile in Alaska—the spot in the world that allows us to protect all of our States. It can knock down missiles that might be produced by the North Koreans, who have acted bizarrely many times in recent years. It would also allow us to knock down a missile launched by mistake, which could happen at any time. It would not be a complete system yet, and we will begin to test from that platform. In other words, to have a national missile defense system, you have to have a headquarters, radar, a communications system, Aegis-deployed radar to pick up missiles as soon as possible after launch.

This system has to work together as a coherent whole, and you need to have the ability to identify early an incoming missile and knock it down. We have proven hit-to-kill technology, bullet hitting bullet, that has been proven in quite a number of tests, and we continue to try to make it even better. I think the best way to test the system is to go forward with the plan we have today, get it in the ground so we can test it in the harsh Alaskan winters, and in the summer, when the humidity is up and maybe there is condensation in the tubes, and we can see how the radar works, and we can make sure we can have communication with our ships and see how the command structure works in order to make a decision. That is the way we need to test.

General Kadish and his team have accomplished a technological feat that many people in this country believe is second only to putting a man on the Moon. It is incredible. They have proven that they love America, that they are willing to advance rapidly toward a goal but at the same time be honest and prudent with the taxpayers' money.

I would not favor an amendment that would constrict them too much. That is what I am afraid this amendment does. That is why I am supportive of Chairman WARNER's proposal, which I think would accomplish much of what Senator REED would favor, without adverse consequences.

I thank the Chair and yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. REED. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Rhode Island has 7 minutes remaining. The Senator from Colorado has 29 minutes remaining.

Mr. ALLARD. Does the Senator from Rhode Island wish to draw this to a close and move to a vote?

Mr. REED. I think I will speak for about 5 minutes, and at that point we can call for a vote.

Mr. ALLARD. And I will make just a brief closing comment for about a minute or two. Why don't we go ahead. The Senator can make his statement, then I will make my brief statement, and we will move forward to a vote. I think we may have to go into a quorum call briefly before the vote and get things in order.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, first, I want to emphasize, again, that this amendment does not affect the deployment decisions that have been made with respect to the missile system. Again, also, we have all talked about operational testing, its importance, and that you have to do it. I would be much more confident if, in fact, there was at least a plan today for operational testing. Mr. Christie and the Department of Defense could have developed that over the last year or two. His letter said this system is so immature that I cannot even begin to think about operational testing.

Once again, let me raise the obvious. If it is that immature, then what do we have up in Alaska? Is it going to be a deployed missile system or a test bed? Or is it going to be both? That is the real core of my amendment. The real core is that sometimes, unrelated to deployment, we have to have operational testing.

I argue that my amendment provides even more flexibility to the Department of Defense because it doesn't set a date certain of October 1, 2005, when this test must be conducted. I don't think we can make that date, frankly. I think we will find ourselves back here on the next Defense authorization bill striking that, extending it, or pushing it out because, to me, that is an unrealistic, inflexible deadline.

For that reason alone, I urge my colleagues to think particularly about the Warner amendment. There is a suggestion I would unduly hobble development. As I read Senator WARNER's language, he directs the Secretary of Defense to ensure that each block configuration of the ballistic missile system is consistent with the operational scheme, which is precisely what I am saying. But I am not dictating a specific time to do that. The real key difference between Senator WARNER's proposal and mine is that he is reversing the customary and prudent way to do independent operational testing. He is taking away the independence.

The independence, institutionally, is found in Mr. Christie's office, the Office of Operational Test and Evaluation, not in the Office of the Secretary of Defense. Everybody here has to recognize that there is no more political, ideological issue than missile defense in terms of the national security debate. It has been that way for 20 years.

To suggest that the Secretary of Defense and members of the Cabinet are going to be as independent as someone whose job and career it has been to render objective judgments about weapons systems and deployability and effectiveness is, I think, defying logic. This is not rocket science, it is human behavior. Why are we going to build into the system all those objective judgments and objective pressures that any Secretary, regardless of party, regardless of administration, must feel when something this big is before him to decide?

That is why we created a system 20 years ago where there is an independent Office of Operational Test and Evaluation, with a director appointed by the President and who is not directly subject to political whims, the whims of contractors, or the needs of contractors to make sure the funds keep flowing. That is the big distinction between our amendments. We want operational testing, but we want it to be independent. That is the GAO recommendation—independent, realistic operational testing.

We are not specifying to do it next week. We are not saying you cannot deploy until you test. In fact, I am removing myself from the timing. As I said before, I think it is unrealistic to assume that there can be an accurate operational test by October 1 of next year. It is not going to slow down the deployment or development; I don't think so. It is going to make sure we learn from each step, each mistake, and each achievement. That is what good operational testing does.

I feel very strongly that the Warner amendment is trying to talk about operational testing, but the heart of it is not. It is subjective evaluation that has been going on now for years with respect to this missile program. I think we have to get back to independent evaluation. We can do it with my amendment, and we can also ensure that we get baseline information about how much is being spent, and the MDA cannot, in 1 year, decide that they are a billion dollars off in the cost estimate so they change the cost estimate.

That is another example documented by GAO of the temptation to funding programs when you are the tester and the testee. That is what the Warner amendment would do.

So I hope, sincerely, that the Warner amendment can be defeated and that we can move on and adopt the Reed amendment. In the spirit of our prior comments, I will yield back my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield myself 1 minute. I want to make a very brief comment, and that is this: The key argument is that the Pentagon's chief tester says the operational test is premature. The Warner second-degree amendment requires the definition of ''realistic testing,'' and it requires a test according to these criteria next year. That means we will get realistic testing years sooner than with the Reed amendment.

The Warner second-degree amendment provides a formal and appropriate role for the Director of the Office of Test and Evaluation in a developmental program. That is an unusual step and actually enhances his role in the ballistic missile test program. It does all this without incurring the cost and delay of the Reed amendment.

Mr. President, I yield back the remainder of my time and ask my colleagues to vote in support of the Warner amendment.

Mr. President, I have a unanimous consent request that I need to propound.

Mr. President, I ask unanimous consent that following the vote in relation to the pending Warner second-degree amendment, the Senate proceed to executive session and consecutive votes on the confirmation of the following nominations: James L. Robart, Roger Benitez, and Jane Boyle. I further ask unanimous consent that prior to each of the judge votes there be 4 minutes equally divided for debate on the nominations; provided further, that following the votes, the President be notified of the Senate's action, and the Senate then resume legislative session.

Mr. REID. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, I, first, ask the distinguished acting manager to modify his request to have the votes following the Warner second-degree amendment vote to be 10-minute votes.

Mr. ALLARD. I agree to modify the request to 10-minute votes on the two following the initial vote—or does the Senator want all three of them?

Mr. REID. Yes.

Mr. ALLARD. On all three of them.

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

Mr. REID. Further, Mr. President, under the order, as I understand it, prior to voting on the judges, the Senator from Rhode Island has a right to offer an amendment to his amendment, if the Warner amendment is adopted. The order was he would have the right to offer an amendment; is that right?

The PRESIDING OFFICER. That is the previous order.

Mr. REID. So it is my understanding the Senator from Rhode Island will not offer that amendment now. I ask unanimous consent also, Mr. President—and I think this is in keeping with what Senator WARNER wanted—that following the disposition of these judges, we return to the Defense bill and that the Senator from Rhode Island be recognized to offer another amendment that has already been indicated—I do not know the number of it. It is his second missile defense amendment.

Mr. ALLARD. Missile defense is OK.

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

Mr. ALLARD. Mr. President, I understand we may need to ask for the yeas and nays.

Mr. REID. I ask for the yeas and nays on the Warner amendment.

The PRESIDING OFFICER. The yeas and nays have been ordered on the pending second-degree amendment.

Mr. ALLARD. We are ready to proceed to the vote, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the Warner amendment No. 3453. The clerk will call the roll.

The assistant legislative clerk call the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—55

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bayh	Enzi	Nickles
Bennett	Fitzgerald	Roberts
Bond	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Landrieu	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	
DeWine	McConnell	

NAYS—44

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Biden	Edwards	Lincoln
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Breaux	Graham (FL)	Nelson (FL)
Byrd	Harkin	Pryor
Cantwell	Hollings	Reed
Carper	Inouye	Reid
Clinton	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Schumer
Daschle	Kohl	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	

NOT VOTING—1

Kerry

The amendment (No. 3453) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3354

Mr. WARNER. Mr. President, I would like to have a clarification about the standing order with regard to the amendment of the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended.

Without objection, the amendment, as amended, is agreed to.

The amendment (No. 3354) was agreed to.

EXECUTIVE SESSION

NOMINATION OF JAMES L. ROBART TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

The PRESIDING OFFICER. The Senate will now go into executive session to consider nominations.

The clerk will report the first nomination.

The legislative clerk read the nomination of James L. Robart, of Washington, to be United States District Judge for the Western District of Washington.

Mr. WARNER. Mr. President, could I inquire of the Presiding Officer, are these three votes 10 minutes each?

The PRESIDING OFFICER. The Senator is correct.

There is 4 minutes of debate equally divided.

Who yields time?

Ms. CANTWELL. Mr. President, this afternoon it is my privilege to introduce you to the incredibly talented nominee for a vacancy on the District Court for the Western District of Washington, James Robart.

In one sense, today's confirmation vote is a homecoming for Mr. Robart. Early in his career, he served as an aide to Senator Scoop Jackson. I am sure that he would be proud of his accomplishments during a long and productive legal career, and would wholeheartedly endorse his confirmation.

Following his public service as a staff member in both Houses, Mr. Robart returned to Washington State, where he has worked as an attorney for the past three decades. During his considerable years of practice in Federal court, he has earned a reputation for fairness and integrity.

Mr. Robart's nomination is the result of a bipartisan selection process that has worked very well for Washington State. Members of Washington State's legal community, the White House, and my colleague Senator PATTY MURRAY and I worked together to review a group of applicants. This cooperative approach has produced a number of highly qualified judicial nominees, and

I believe it is a sound model for other States.

I am confident that James Robart will make an outstanding Federal judge, and that the people of the Western District of Washington will be well-served by his presence on the bench.

I am pleased to offer Mr. Robart my full support, and I urge my colleagues to approve his nomination.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of James Robart, to be a United States District Judge for the Western District of Washington. He is a graduate of Whitman College and the Georgetown University Law Center. Mr. Robart is currently managing partner at the law firm of Lane Powell Spears Lubersky, LLP, a firm he has worked at for over 30 years. He has handled complex commercial litigation matters including class actions, securities, and employment cases, and has also been involved in counseling clients in the areas of antitrust compliance, employment law, and intellectual property.

Mr. Robart's nomination is the product of a bipartisan judicial nominating commission maintained with the White House by Senators MURRAY and CANTWELL. The State of Washington is well-served by its bipartisan judicial nominating commission which recommends qualified, moderate nominees on whom members of both parties can agree. It is difficult to understand why President Bush has opposed similar bipartisan selections commissions and why this one was so hard to establish. They allow Republicans and Democrats to work together to staff an independent judiciary. I thank Senators MURRAY and CANTWELL for their steadfast efforts in maintaining the commission. The Senate just recently confirmed another well-qualified nominee to the District Court for the Western District of Washington, Judge Martinez, and, with today's vote, the Senate will have confirmed four nominees—all the product of the bipartisan commission—to the district courts in Washington. With this confirmation, there will be no further vacancies in the district courts in Washington.

I would note that, in proceeding to a vote on Mr. Robart, the Republican leadership has again decided to depart from the order of the Executive Calendar and to skip over the nomination of a non-controversial and well-qualified Hispanic nominee to the U.S. District Court for the Eastern District in Pennsylvania, Juan Ramon Sanchez. That is their choice. I do not want to see the Democrats blamed for any delay in confirmation votes for Hispanics when Republicans have controlled the agenda.

With this confirmation we will have confirmed more judges this year than in all of the 1996 session, the last time a President was seeking reelection.

With this confirmation and two more today, the Senate will have confirmed a total of 89 judges this Congress and 189 of this President's judicial nominees overall. With 89 judicial confirmations in just a little more than 17 months, the Senate has confirmed more Federal judges than were confirmed during the two full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total at the end of the Clinton administration, when Republicans held the Senate majority in 1999 and 2000.

With 189 total confirmations for President Bush, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in President Clinton's entire second term, the most recent four-year presidential term and more than were confirmed in President Reagan's term from 1981 through 1984. Of course President Reagan is acknowledged as the all-time champ for having appointed more federal judges than any other President in history.

I congratulate Mr. Robart and his family on his confirmation.

Mr. HATCH. Mr. President, I am pleased today to speak in support of James Robart, who has been nominated to the U.S. District Court for the Western District of Washington.

Mr. Robart has exceptional qualifications for the Federal bench. After graduating from Georgetown University Law Center in 1973 where he was the administrative editor of the Georgetown University Law Review, he joined the law firm of Lane, Powell, Moss & Miller, which is now known as Lane Powell Spears Lubersky LLP.

Mr. Robart became a partner in that firm in 1980, and subsequently became the comanaging partner and later the sole managing partner—a position that he holds today. During his time at the firm, Mr. Robart has specialized in complex commercial litigation with an emphasis on class actions, securities, and employment law.

He brings a wealth of trial experience to the Federal bench after trying in excess of 50 cases to verdict or judgment as sole or lead counsel, and he has been active in the representation of the disadvantaged through his work with Evergreen Legal Services and the independent representation of Southeast Asian refugees.

Mr. Robart's impressive credentials are reflected in his unanimous American Bar Association rating of Well Qualified. I am confident that he will be a fine addition to the bench and urge my colleagues to join me in supporting his confirmation.

Mr. HATCH. Mr. President, this side is willing to yield all remaining time on all three judges.

The PRESIDING OFFICER. All time is yielded.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the confirmation of the nomination of James L. Robart, of Washington, to be United States District Judge for the Western District of Washington?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 126 Ex.]

YEAS—99

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

NOT VOTING—1

Kerry

The nomination was confirmed.

NOMINATION OF ROGER T. BENITEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. The clerk will report the next nomination.

The assistant legislative clerk read the nomination of Roger T. Benitez, of California, to be United States District Judge for the Southern District of California.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of Roger Benitez to the Southern District of California. Judge Benitez is being considered for the last of 5 new seats in the Southern District of California that were created by statute on November 2, 2002, as part of a package of judgeships created for border districts that have a massive caseload and that needed more Federal judges. I worked hard with Senator FEINSTEIN to help create these new positions under Democratic Senate leadership. By doing so, we did what the Republican majority refused to do in the years 1995 through 2000 when there was a Democratic President. We did so under Senate Democratic leadership knowing

that the appointments would be made by a Republican.

Unlike many other nominees who have come before this Committee, Roger Benitez comes before us with judicial qualifications, having had experience serving as a judge both in State and Federal courts. He served for 4 years as a California Superior Court Judge for Imperial County and 3 years as a U.S. Magistrate Judge for the Southern District for California.

However, like many nominees of this President, concerns have been raised about this nominee's fitness to serve. Judge Benitez is one of 28 of President Bush's nominees who have received a partial or majority rating of ''Not Qualified'' from the ABA Committee that conducts a peer evaluation of judicial nominees. Of those, 18 have already been confirmed and another has been recess appointed.

Before President Bush ejected the ABA from the process of providing an informal rating prior to a nomination, temperament or ethics concerns would have been raised at the early stage of a nominee's consideration and in time for the White House to make a decision whether to proceed with that nominee, with knowledge of such determinations and the opportunity to conduct follow-up inquiry. The change in the role of the ABA has led to ABA ratings being less helpful. In Judge Benitez's case, based on interviews with 23 judges and 44 attorneys, more than 10 members of the ABA committee concluded that, based on his temperament, he is not qualified to serve a lifetime appointment on the Federal bench.

Despite these concerns, Judge Benitez is supported by both of his home-State Senators and is the product of the bipartisan commission that Senators FEINSTEIN and BOXER have worked so hard to maintain. I will honor their support of this nominee and support him, as well. With this confirmation, the Senate will have confirmed 14 nominees to the district courts in California.

Judge Benitez is the 17th Latino confirmed to the Federal courts in the past three years. With the exception of Mr. Estrada, who failed to answer many questions and provide the Senate with his writings and views, we have pressed forward to confirm all of the other Latinos whose nominations have been reported to the floor. Democrats will now have supported the swift confirmation of 17 of President Bush's 21 Latino nominees. Unfortunately, Republicans have been delaying Senate consideration of a number of Hispanic nominees and passed over several of the numbers would be even better.

While President Clinton nominated 11 Latino nominees to Circuit Court positions, 3 of those 11 were blocked by the Republican Senate and never given a vote. President Bush has only nominated 4 Latino nominees to Circuit Court positions, three of whom have been confirmed with Democratic support. President Bush's 21 Latino nominees constitute less than 10 percent of his nominees, even though Latinos make up a larger percentage of the U.S. population. It is revealing that this President has nominated more people associated with the Federalist Society than Hispanics, African Americans and Asian Pacific Americans, combined. While President Clinton cared deeply about diversity on the Federal bench, this President is more interested in narrow and slanted judicial ideology.

I congratulate Judge Benitez and his family on his confirmation.

Mr. HATCH. Mr. President, I rise today to express my unqualified support for the nomination of Robert Benitez to the District Court for the Southern District of California and to urge my colleagues to confirm this fine nominee.

Born in Havana, Cuba, Judge Benitez's life embodies the spirit and strength of this Nation. After coming to this country, he obtained a law degree from the Western State University College of Law in 1978, and then distinguished himself in a diverse and successful law practice. The people of California recognized his obvious ability and appointed him to the Superior Court in 1997. He was re-elected to that court in 1998, and served with distinction until 2001. Since that time, Judge Benitez has served as a Federal magistrate judge in the Southern District of California.

Mr. Benitez is an exceptional nominee. I fully expect him to serve with distinction on the Federal bench in California.

Mr. DURBIN. Mr. President, I oppose the nomination of Roger T. Benitez to be a United States District Judge for the Southern District of California because this nominee received a rating by the American Bar Association of ''substantial majority Not Qualified.'' More than 10 members of the 15-member ABA evaluation committee agreed that Magistrate Judge Benitez is unqualified for this position. The ABA conducts thorough background investigations of all of the President's Article III judicial nominees.

At the February 25, 2004 nomination hearing of Judge Benitez, ABA officials made the following statements on the record:

Judge Benitez is ''arrogant, pompous, condescending, impatient, short-tempered, rude, insulting, bullying, unnecessarily mean, and altogether lacking in people skills.''

Judge Benitez ''would often become irrationally upset and outraged if an attorney who had been appointed to represent a defendant had a scheduling conflict and asked another equally competent and prepared attorney to appear before the nominee.''

Interviewees had ''grave doubts about Judge Benitez' ability to competently handle the more demanding docket caseload of a Federal district judge and efficiently manage a district courtroom, based on their perception of his very slow and rigid manner of handling his current court calendar.''

''Based on their exposure to the nominee's mode of relating professionally to others in his official capacity as a judge, interviewees expressed doubt over Judge Benitez's ability to become an accommodating and collegial member of the Federal district court.''

''[T]he nominee's temperament problems are compounded by the fact that Judge Benitez fails to appreciate the depth of concern by the bench and bar regarding his temperament and has not demonstrated that he is willing or able to address those concerns.''

''Our committee members, after reviewing my report on the nominee, were particularly concerned about the clear, consistent pattern to the criticisms that emerged from the interview.''

These statements are highly troubling, and they strongly suggest that Judge Benitez is not prepared for this important lifetime position.

I am also concerned about the ABA's discovery that Judge Benitez has a practice of limiting the number of guilty pleas that he accepts on a given day. The ABA said that this practice was ''highly unusual compared to most other Federal judges, who will typically hear several matters in a day of the kind Judge Benitez has on his docket.''

The ABA did not make these allegations or reach the rating of Not Qualified lightly. The ABA investigator, Richard M. Macias, conducted interviews with 23 judges and 44 attorneys, and two-thirds of those interviewed raised concerns, including a majority of both judges and lawyers. The comments were based on first-hand knowledge or observation. The ABA reports that ''[t]he negative comments about Judge Benitez' temperament reflected a consistent pattern over the years up to the present time.''

Mr. Macias, a respected member of the legal profession and an experienced ABA investigator, said that he has never received so many negative comments about a judicial nominee in the 10 years he has been conducting background investigations. Mr. Macias was supported in his testimony by Thomas Z. Hayward, Jr., a respected Chicago attorney and chair of the ABA's Standing Committee on Federal Judiciary.

When he took office, President George W. Bush abolished the historic practice—dating back to President Eisenhower—of seeking the views of the ABA, the Nation's largest association of attorneys, before making an Article III judicial nomination. One of the main reasons that presidents waited for the ABA evaluation was to avoid nominating unqualified nominees and prevent situations like the one we face today with Judge Benitez. Past Presidents often decided not to nominate individuals who received ABA ratings of Not Qualified. President Bush would be wise to reinstate the ABA's traditional role in the judicial nomination process.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Roger T. Benitez, of California, to be United States District Judge for the Southern District of California?

Mr. REID. I ask for the yeas and nays?

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 127 Ex.]

YEAS—98

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

NAYS—1

Durbin

NOT VOTING—1

Kerry

The nomination was confirmed.

NOMINATION OF JANE J. BOYLE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if Senator REID and Senator WARNER are here. I want to clarify the length of time which the next amendment will take. My understanding is that Senator REED's amendment might take as little as 10 minutes; in which case, it would make sense to stack his vote with the vote on the Biden amendment which would then be 2 hours later. However, if there is objection to that, I think people should be informed there could be another vote after this final vote on judges in about 10 or 15 minutes.

I am wondering if Senator WARNER is here.

Mr. WARNER. He is right here.

Mr. LEVIN. Is Senator REID here?

Mr. REED. I am here.

Mr. LEVIN. Senator Harry Reid, too.

Mr. WARNER. Mr. President, for the convenience of the Senate, stacking the two votes is quite acceptable.

Mr. LEVIN. Should I make a unanimous consent request? I think Senator HATCH——

Mr. WARNER. I discussed it with him, and it is fine.

Mr. LEVIN. Mr. President, I ask unanimous consent that after this vote, there then be a period of time to debate the Senator Jack Reed amendment, which we expect would be short. We would immediately go to the Biden amendment.

Mr. WARNER. Mr. President, we were going to intersperse a Sessions amendment for 30 minutes.

Mr. LEVIN. I will amend that to ask that immediately after Jack Reed's amendment, there be a Sessions amendment for 30 minutes equally divided, and that we then go to a Biden amendment for perhaps as much as 2 hours, and there be three votes stacked at that point.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Excuse me. Do we have a copy of the Sessions amendment? Is Senator SESSIONS here?

Mr. WARNER. He is not here.

Mr. LEVIN. So there will be no time agreement on the Sessions amendment until we know which amendment it is.

Mr. WARNER. We must check with our Finance Committee regarding the time on the Biden amendment. We are trying to work toward putting the votes in one batch.

Mr. LEVIN. Mr. President, I revise that unanimous consent request to ask that immediately after the debate on Senator REED's amendment, it be laid aside and we proceed to a debate on the Sessions amendment; that it then be laid aside and we then go to the Biden amendment, and we will hopefully have three votes at that time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Texas is recognized.

Ms. HUTCHISON. Mr. President, the nominee we are going to vote on, Jane Boyle, has served our country in so many positions: U.S. magistrate, where she had an outstanding record, as our U.S. Attorney, where she had an equally outstanding record. She has shown fairness, a judicial temperament, and great leadership in every position she has held.

Mr. President, I am proud to have recommended her nomination along with my colleague, Senator CORNYN, and before that, Senator Gramm. We have never been disappointed in Jane Boyle's performance, and know she will be an outstanding judge.

I urge a vote for her nomination.

Mr. LEAHY. Mr. President, I also support the nomination of Jane J. Boyle.

Mr. President, Ms. Boyle is currently the United States Attorney for this district. She comes to the Senate with extensive litigation and judicial experience. Before serving as the Northern District's U.S. Attorney, Ms. Boyle served for over a decade as a United States Magistrate and she served for years as a Federal and city prosecutor. I support Ms. Boyle's nomination.

With the three judicial confirmation votes today, the Senate will now have confirmed 20 judicial nominees this year alone. Only 17 judges were confirmed under Republican leadership in the entire 1996 session and no circuit court nominees were confirmed that entire time. That was the last year in which a President was seeking reelection. The Senate has now exceeded the number of total judges confirmed and the number of circuit court judges confirmed.

With these three confirmations today, the Senate will have confirmed a total of 89 judges this Congress and 189 of this President's judicial nominees overall. With 89 judicial confirmations in just a little more than 17 months, the Senate has confirmed more Federal judges than were confirmed during the two full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the two-year total at the end of the Clinton administration, when Republicans held the Senate majority in 1999 and 2000. It is not quite as many as the 100 judges nominated by President Bush that a Democratic-led Senate confirmed in our 17 months in the majority in 2001 and 2002.

With 189 total confirmations for President Bush, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in the most recent four-year presidential term that of President Clinton from 1997 through 2000. It is more than a Republican majority confirmed in President Reagan's entire term from 1981 through 1984. Of course, President Reagan is recognized as the all-time champ in terms of judicial appointments having appointed more than any other President in our history.

I congratulate Ms. Boyle on her confirmation.

Mr. HATCH. Mr. President, I rise in support of the confirmation of Jane J. Boyle to the U.S. District Court for the Northern District of Texas. I have had the pleasure to review Ms. Boyle's distinguished career and I am confident that she will make a fine Federal judge.

Jane J. Boyle is an extremely experienced attorney who has tried over 180 cases to a verdict during her impressive career as an assistant district attorney, an assistant U.S. attorney, and as the U.S. attorney for the Northern District of Texas. She has also served with distinction as a magistrate judge in the same district. Ms. Boyle brings a wealth of experience to the Federal

bench and she will make an excellent addition to the Northern District of Texas.

I am not alone in believing that Ms. Boyle will make an outstanding Federal district judge. The Texas Employment Lawyers Association, TELA, calls Ms. Boyle ''considerate, concerned, and well-read,'' in addition to possessing ''a great deal of knowledge about employment law'' and an excellent judicial demeanor that is reflected in her ''even-handed and fair'' approach to adjudication. Ms. Boyle also has strong bipartisan support. The current chair of the Dallas County Democratic Party has written a letter expressing her ''enthusiastic support of the nomination of Jane J. Boyle,'' and a former chair of the same organization wrote a letter stating that ''in the case of this nominee, partisan considerations are unwise and should evaporate.''

Ms. Boyle's experience both as a U.S. attorney and as a Federal magistrate judge will serve her well on the Federal district court. I urge my colleagues to join me in strong support of Ms. Boyle's nomination.

Mr. CORNYN. Mr. President, I am proud today to cast my vote in the affirmative for Jane J. Boyle who has been nominated to the U.S. District Court for the Northern District of Texas. She presently serves as United States Attorney for the Northern District of Texas. Judge Boyle has a long and distinguished career of public service and is well qualified to return to the bench having served as United States Magistrate Judge for the Northern District of Texas from 1990 to 2002.

In addition, she served a previous term as United States Attorney, Northern District of Texas from 1987 to 1990, and was an Assistant District Attorney in the Dallas County District Attorney's Office from 1981 to 1987.

Judge Boyle is imminently well qualified, as the ABA has rated her. More importantly, there is bipartisan consensus of those who know her and work with her. Moreover, she has garnered the respect of her colleagues and those who work for her. Most notably, she has gained the respect of the Dallas community, including folks from the entire political spectrum.

I ask unanimous consent to have a related article printed in the RECORD.

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

(For immediate release, June 17, 2004)

SENATE CONFIRMS JANE BOYLE FOR JUDGESHIP

WILL FILL VACANT SEAT IN NORTHERN DISTRICT, BASED IN DALLAS

WASHINGTON.—The U.S. Senate on Thursday unanimously approved the federal judicial nomination of current U.S. Attorney Jane Boyle to be the U.S. District Judge for the Northern District of Texas. Boyle, 49, will be based in Dallas, and replaces retired Judge Jerry L. Buchmeyer. The Northern District's jurisdiction includes 100 counties.

''Jane Boyle has remarkable experience and knowledge of the law. She has done an outstanding job as U.S. Attorney in Dallas, and I'm confident that she will continue to serve Texas and the nation with excellence,'' Cornyn said. ''She has garnered the respect of her colleagues, those who work for her, and most notably, she has gained the respect of folks from across the political spectrum.''

U.S. Sen. John Cornyn, a member of the Judiciary Committee, along with Sen. Kay Bailey Hutchison, recommended Boyle to President Bush on September 9, 2003. The President nominated Boyle on November 24, 2003, and she was confirmed by the Judiciary Committee on April 1, 2004.

Boyle was appointed by President George W. Bush in 2002 to be U.S. Attorney for the Northern District after a long and distinguished legal career in Texas. Prior to that selection, she served as U.S. Magistrate Judge for the Northern District for twelve years, earning significant judicial experience in the region.

Boyle also worked for a number of years as an Assistant U.S. Attorney and an Assistant District Attorney for Dallas County. She earned a J.D. degree from Southern Methodist University School of Law in 1981 and graduated with honors from The University of Texas at Austin in 1977. She has been published in numerous legal periodicals, including the Texas Bar Journal.

Sen. Cornyn chairs the subcommittee on the Constitution, Civil Rights & Property Rights, and is the only former judge on the committee. He also serves on the Armed Services, Environment and Public Works, and Budget Committees. He served previously as Texas Attorney General, Texas Supreme Court Justice, and Bexar County District Judge.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Texas, Mr. CORNYN, is recognized.

Mr. CORNYN. Mr. President, in the interest of time, I will not belabor the point. I wanted to add my voice to that of Senator HUTCHISON commending this fine nominee, Jane Boyle, to the U.S. Senate.

The PRESIDING OFFICER. The question is, Shall the Senate advise and consent to the nomination of Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 128 Ex.]

YEAS—99

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

NOT VOTING—1

Kerry

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action on this nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that Senator WARNER and Senator REED have worked out an arrangement whereby the missile defense amendment will not be offered, but the end strength amendment will be offered at this time.

The chairman has arrived. What I have said is that the chairman and Senator REED have agreed that his missile defense amendment will be offered at a subsequent time and that now the end strength amendment that has been around for several days would be debated at this time and voted upon.

Mr. WARNER. Mr. President, that was a suggestion I made to the Senator from Rhode Island. I think he will perhaps reflect on the need to go forward with his second missile defense amendment, and he had asked for that need to be reconsidered. Therefore, in its place we can put the end strength amendment, which would be a matter of convenience and great interest to our membership on this side, given it is a bipartisan amendment.

Mr. REID. Following that, the amendment of Senator SESSIONS will be offered, and following that the amendment of Senator BIDEN will be offered.

Mr. WARNER. Could we put time agreements on this now?

Mr. REID. We certainly should be able to.

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. WARNER. 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. WARNER. Mr. President, the distinguished leadership on the other side and myself and the leadership on this side have worked out the following time agreements: On the amendment from the Senator from Rhode Island, which has a second degree from the Senator from Virginia, Mr. WARNER—

Mr. REID. No. 3352.

Mr. WARNER. Correct—we would need 40 minutes equally divided on those amendments.

Mr. REID. A total of 40 minutes?

Mr. WARNER. A total of 40 minutes equally divided. We would then proceed to lay that aside and proceed to an amendment by the Senator from Alabama.

Mr. REID. No. 3371.

Mr. WARNER. Correct. That will take 20 minutes.

Mr. REID. Twenty minutes equally divided?

Mr. WARNER. Fifteen on this side, and I think the other side only needed 5 on that amendment.

Mr. REID. We will take the 15 and probably would not use it.

Mr. WARNER. Then 30 minutes equally divided. That amendment will not require other than a voice vote which we will do. We will then immediately proceed to the Biden amendment.

Mr. REID. No. 3379.

Mr. WARNER. Correct. At the moment, that would require 2 hours equally divided, with the expectation that can be reduced in time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent, as the chairman has indicated, that on amendment No. 3352 there be 40 minutes equally divided, with no second-degree amendments in order except for the one that Senator WARNER has indicated that he will offer, and Senator REED knows about that; No. 3371, there be no second-degree amendments in order; and No. 3379, there be no second-degree amendments in order, with the time as stated previously. There would be no second-degree amendments then prior to the vote.

Mr. WARNER. That is correct.

Mr. REID. As indicated, 40 minutes, 30 minutes, and 2 hours.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. I concur in the request.

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

The Senator from Rhode Island.

AMENDMENT NO. 3450 TO AMENDMENT NO. 3352

Mr. REED. Mr. President, I ask for regular order for No. 3352.

The PRESIDING OFFICER. That amendment is now pending.

Mr. REED. Mr. President, I understand that Senator WARNER has a second-degree amendment which I will accept.

Mr. WARNER. That is correct, and I seek now to modify it, and I will send a modification to the desk and add to the modified amendment.

It is a very minor modification. I simply strike one word, and it is the word ''the.'' I send the modification to the desk and ask for its immediate consideration.

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

The amendment (No. 3450), as modified, is as follows:

(Purpose: To provide for funding the increased number of Army active-duty personnel out of fiscal year 2005 supplemental funding)

Strike line 2 and insert the following:

''502,400, subject to the condition that costs of active duty personnel of the Army in excess of 482,400 shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation''.

Mr. WARNER. I am ready to indicate to my colleague we have worked on this amendment in the second degree. It is my understanding that the Senator from Rhode Island is prepared to take the Warner amendment as modified.

Mr. REED. That is correct.

Mr. WARNER. Fine.

Mr. REED. I want to thank the chairman for his instructive work on this amendment. He recognizes, as I recognize, along with my colleagues and principal cosponsors Senators HAGEL, MCCAIN, CORZINE, AKAKA, and BIDEN, that our Army is stretched very thin across the globe with numerous missions, and in order to fulfill these missions we have to raise the end strength of the Army.

The amendment before us today would put within the authorized end strength a 20,000 increase in the number of soldiers in the U.S. Army. These are the number of troops the Army has indicated that they can absorb this year, and that they can train and utilize this year. It represents the recognition that we cannot simply depend upon emergency powers through supplementals to increase the end strength of the Army. We have to, as we do in this amendment, put in the actual end strength number to reflect a larger Army and also to reflect the fact that this is not a temporary occurrence.

Our commitments in Iraq, Afghanistan, and around the globe are going to require a substantially larger Army for an indefinite period of time.

As a result, working together with the chairman, we have placed in the Defense authorization bill the precise number of soldiers, this precise increase of 20,000 troops.

What the chairman has added, though, is the fact that these troops have to be paid for. There is a strong argument that we should pay for them in terms of regular budget authority, but he has suggested that we again go the emergency supplemental route to pay for these troops, which are now fully authorized in law. What I wanted to accomplish in the amendment first is to make sure we do incorporate a suitable end strength number. That has been accomplished.

Second, I wanted to avoid a situation where the Army had to go within its existing programs to search high and low for dollars to pay for these extra troops. That has been accomplished by the chairman's suggestion that we move some funds already identified in the emergency supplemental and designate those to pay for these additional troops.

So we have avoided a situation where the Army this year is going to be forced to come up with funds by going through and ransacking their existing programs, and we have set it in the authorization bill, the appropriate forum for such a decision. We have set in the precise number of end strength that is appropriate this year for the U.S. Army.

The question still arises, What happens in succeeding years? The argument myself, Senator MCCAIN, Senator HAGEL, and others have made is we cannot continue to depend upon supplemental and emergency funding. This is not an emergency. This is a fact of life in the world today. We need a larger Army.

We are accomplishing our objectives today for this fiscal year in this authorization, but I think the chairman and we all recognize we will eventually confront a situation where we have to raise the bottom line of the Army in terms of the funds they have. We do not want to see a situation a year from now or 2 years from now when the supplementals are inadequate but the needs of these troops are still persistent.

Senator LEVIN has language in this authorization bill that indicates in succeeding years, after this fiscal year and after this authorization bill, any increase in end strength will have to be put in the Army budget. I think that is an appropriate response. I think the Reed amendment as modified by Senator WARNER will, in effect, accomplish that.

This is the thrust of the amendment. I have had an opportunity to explain it. At this point I reserve the remainder of my time to allow the Senator from Virginia to comment.

Mr. WARNER. I thank my colleague. This is one of those situations. Senator REED is a very valued member of the committee and the amendment has strong cosponsorship; namely, Senators MCCAIN and HAGEL and others on our side. I think all along the committee has recognized the need to work with the Department of Defense, most specifically the Department of Army, to resolve this situation. I thought it necessary to second degree the amendment which would authorize the Department of Defense to pay the cost of the additional Active-Duty soldiers for fiscal year 2005 from supplemental or

contingent emergency reserve funds because the sponsors of the amendment had not identified the considerable sum, some $2 billion plus, that their amendment would generate in the need for the Army budget.

The Army needs this Active-Duty strength. I think we are in agreement on this point.

Senator, I indicate now I am going to urge my colleagues to accept the amendment.

I note that in the bill we are considering there is a specific authorization which the committee worked out in section 402 for temporary increases of up to 30,000 active duty soldiers above the currently authorized level. This goes 10,000 active-duty soldiers beyond the end strength level proposed in Senators REED and HAGEL's amendment.

My second degree amendment, however, addresses the real issue stemming from these increases—how to pay for them. The Reed/Hagel amendment provides no offsets for the $2.4 billion cost of these extra troops. I submit that this is not a cost for the Department to take ''out of hide,'' or that the Department of the Army should absorb out of the FY 2005 budget.

The approach in my second degree amendment reflects the recommendation of the Army Chief of Staff, General Schoomaker, who testified that using supplemental appropriations gives necessary flexibility and is, in fact, essential to preserve the Army's ability to plan for operational readiness in the present and modernization for the future.

The Reed/Hagel amendment would have the effect of directing the Army to increase its end strength by 20,000 in FY 2005 at a cost of $2.4 billion. The amendment identifies no offset, it identifies no means to pay for these additional troops. Consider the potential effect of that proposal on the Army. The $2.4 billion represents a 15 percent reduction of funding for direct costs of operating forces for home station training, exercises and operations; in other words—fuel, spare parts, maintenance, food, and other consumables. Alternatively, this reduction would eliminate almost all funding for Army individual and unit training—such as basic training, flight training, and combat training center rotations. The $2.4 billion represents a 42 percent reduction of funding for Army command and control, logistics, weapons and ammunition transportation and storage. It could reduce resources to key readiness and modernization accounts, as indicated above, and divert money needed to train and retain more experienced personnel because of the imperative to satisfy an end strength number.

My amendment would afford the Army the opportunity to flexibly execute its budget while increasing its manpower. I would ask you to keep this in mind and also keep in mind that the conferees will have the task of finding $2.4 billion in offsets if this amendment becomes a law.

Mr. HAGEL. Mr. President, I rise today to join my colleague Senator JACK REED in introducing an amendment to the fiscal year 2005 Defense authorization bill to increase the size of the United States Army by 20,000 additional troops.

Over the last year the Congress has expressed grave concern that our Armed Forces are too small to meet the extraordinary demands being placed on them today. These demands will be with us well into the future.

Senator REED and I are proposing this amendment to formally increase the size of the United States Army by 20,000 troops in the coming year.

The additional troops are urgently required to give the Chief of Staff of the U.S. Army the tools he needs to fight the war on terrorism, stabilize Iraq and Afghanistan, and meet the global demands being placed on the total force today.

Under emergency authority, the U.S. Army has already exceeded its authorized end strength by around 15,000 soldiers. This amendment provides straightforward congressional approval for these additional troops. It also puts the future funding of these troops on the record, not masked in the emergency supplemental appropriations process.

The size and cost of the Army must be transparent to the American people, our allies, and to those that would oppose us in the war on terrorism.

This amendment gives General Schoomaker, the Chief of Staff of the United States Army, the additional manpower he has told us he needs to transform the total force . . . the active duty Army, the Army Reserve, and the Army National Guard.

The amendment recognizes the fact that the Army needs 20,000 more troops now. In the future the Army must also be authorized to add 10,000 more soldiers.

The amendment increases the approved Army end strength personnel floor from 482,400 to 502,400 troops. It tells the soldiers in the Army that we strongly support increasing the size of the Army to meet the increased demands being placed on the service.

I commend Chairman WARNER and ranking member LEVIN for their outstanding work on this Defense authorization bill. Members of our Armed Forces are currently engaged in combat operations in Iraq and Afghanistan.

Hundreds of thousands of American men and women in uniform are serving around the world defending the freedoms we hold dear.

Chairman WARNER and ranking member LEVIN are tireless supporters of our men and women in these dangerous times. Our Nation owes them both, and their staffs, a debt of gratitude for their service.

I also appreciate the Chairman's contribution to this effort with his second degree amendment.

And finally, I wish the U.S. Army a happy 229th birthday.

Mr. BIDEN. Mr. President, I am very pleased to be a cosponsor of this amendment with Senators REED, MCCAIN, HAGEL, CORZINE, and AKAKA.

I understand that we have accepted the Senator from Virginia's amendment paying for these additional 20,000 soldiers in the supplemental.

While I think the Army would be better served by an end strength increase that is not subject to repeated supplementals, I am pleased that we are all in agreement that we need more troops today.

I think it is very simple. Soldiers provide stability. Without adequate numbers of boots on the ground, you can't get security and stability.

That is true in Iraq, Afghanistan, Korea, and the Balkans.

As Senator MCCAIN and I have both said repeatedly, we need more troops in Iraq to achieve stability. If we had put more troops into Iraq after major combat operations, the situation might be very different. I don't believe it is too late. I still think that additional troops are needed.

I also believe that it is my obligation to back that up with some relief for those soldiers serving today. We shouldn't have to keep issuing ''stop-loss'' orders, forcing soldiers to stay in the Army.

Let's give the Army what it needs.

What my colleagues and I hoped to accomplish was to reassure today's soldiers and their families that they will not have to keep looking at extended deployments and stop-loss orders. Instead, we want them to know that we are committed to making the Army large enough to do the missions America is asking it to do.

Some of our colleagues believe that the need for additional soldiers is temporary. I disagree.

It is true that the Army is planning a major restructuring. This may mean future efficiencies, but we don't know that yet. Like any other major change, more resources are needed during the change. In this case, more soldiers are needed as the Army moves to a more capable brigade structure.

I would rather plan for the clear needs of the next decade in the regular budget. I don't think we should be relying on supplementals to provide the right sized Army.

If I and my colleagues are wrong, then we can revisit these numbers and cut end strength like we did in the beginning of the last decade. I would rather take the cautious approach and err on the side of our soldiers and their families.

I urge my colleagues to adopt this amendment which takes us closer to that goal.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, with the series of votes that we have, first on REED and then on BIDEN—we have received word there may be a couple of other Senators who may want to speak on this amendment. I ask unanimous

consent of the Chair, in the form of a unanimous consent request, that prior to the Reed amendment being voted on, as amended by WARNER, there be 10 minutes set aside to talk about that prior to this vote.

Mr. WARNER. I think that is an accommodating gesture. In fact, the amount of time I reserved on this side, portions of it perhaps could be yielded back, and then absorbed by the proposal of the distinguished leader.

Mr. REID. The time may not be necessary.

Mr. WARNER. It may not be necessary. But so many of our colleagues are doing a lot of work all over the system right now. They didn't recognize that this would be brought up at this time. We want to accommodate them.

Mr. REID. Mr. President, I ask unanimous consent that prior to the vote on the Reed amendment, Senator REED control 10 minutes, Senator REED of Rhode Island.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Rhode Island.

Mr. REED. Mr. President, I yield such time as remained.

Mr. WARNER. Mr. President, would the distinguished Democratic leader allow the time to be managed on this side by either Senators HAGEL or MCCAIN, the time we have on this side? That would sort of divide it between yourself and the two colleagues on this side?

Mr. REID. That would be appropriate because those were the two Senators we were worried about.

Mr. WARNER. I thank the Senator.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I thank the chairman for his constructive participation in this process and also to emphasize what he has emphasized and that is the extraordinary stress our Army is withstanding at this point. They are doing it magnificently, performing with great skill and professionalism.

We have 126,000 soldiers in Iraq; we have 13,000 soldiers in Afghanistan; we have soldiers still in the Balkans, 2,500; we have forces in Kuwait, about 17,000; we still have our mission in the Sinai; we have 1,700 soldiers in Guantanamo maintaining the detention facilities there; we have 16,000 soldiers, Noble Eagle, which is the heart of our defense of our homeland; we have soldiers in the Philippines; 31,600 soldiers in South Korea. We have them all over the world doing an extraordinary task and job for our company. Frankly, they need more help and that is the heart of the Reed amendment.

In addition to that, we have seen troubling signs that this operational tempo is putting great stress and duress on our soldiers. Recently, there was a stop-loss order announced by the G–1 of the U.S. Army that said essentially any soldier who is scheduled to depart within 90 days for deployment cannot leave the service, even if that soldier's time in service has expired. Essentially what they have said is: You can't get out of the service. The Volunteer Army is no longer completely volunteer. That is just one example.

We are withdrawing troops from Korea at a time when there is a huge crisis on the peninsula. The North Koreans indicated they have plutonium; they are intending to process it. They may have already constructed eight nuclear devices. We don't know for sure. Yet at this time when we need maximum military force to complement our diplomacy, we are withdrawing troops, which is perhaps sending a signal to the North Koreans that they can wait us out or that we are not able or ready to match our diplomacy appropriately with military force.

That is another prime example, I believe. In fact, frankly, I think that if North Korea 2 or 3 years ago brazenly declared they had nuclear weapons, our response would not have been to withdraw troops. The calls in this Chamber would have been for more troops in Korea. But now because of Iraq that is difficult; we are pulling them out to send them to Iraq.

Then we have a situation in our training centers, the infrastructure of the Army. This is one of the major reasons why we have such extraordinarily skilled soldiers.

First, they are men and women of courage and character, but second they received the greatest, most realistic training in the world. They are individuals who can and will do any job, but they do that so well because they are the best trained.

We are taking soldiers from our training centers—those trainers who are preparing the troops to go overseas—and we are deploying them.

As a result, these are indications that we have a military force which is significantly stretched. That is why it is so important to raise the number of troops that we have entering the Army.

Today, the Army has 495,374 soldiers serving on active duty. The end strength has to increase. The Reed amendment increases it by 20,000 troops.

There are those who have predicted we would get in this predicament. General Shalikashvili's predictions and other predictions are coming true. Our responsibility is now to give the military, particularly the Army, sufficient resources and sufficient personnel to do the job which we are asking them to do.

Last December, in 2003, the Army's Strategic Studies Institute published a report which stated that the ground force requirements in Iraq have forced the U.S. Army to the breaking point.

We have to prevent that breaking point from being reached, and that means putting more troops into the force structure.

Last year, during the appropriations debate, Senator HAGEL and I sponsored an amendment that would have raised the end strength by 10,000 in the supplemental appropriations. It passed the Senate. I thank my colleagues on both sides who were very supportive of that. But, unfortunately, at that point the administration thought it was unnecessary and they were able to successfully defeat that proposal in conference. At least now they recognize the need for additional troops. But what they are still adhering to is this notion that the emergency is temporary.

I hope by putting the actual number of the end strength increase in this bill we are sending a signal to everyone that we will, in fact, stay the course—not just rhetorically but with actual resources and actual troops.

Senator WARNER explained the funding mechanism was one where some of us would have preferred, frankly, if we could have, to increase just the bottom line of the Army. But given these other demands on resources and this authorization bill, it was his suggestion that we, once again, use emergency funding to fund this now authorized end strength. That gets us through this year. But the concern I have and the concern others have is that we will reach a point within a year or two where the Army is going to have these troops in uniform but their baseline is not going to be sufficient if a supplemental or emergency funding is not made readily available. That is a real crisis and we have to start thinking about that now.

Senator LEVIN has been very thoughtful on this topic. He has language in the bill that says any increases in the next fiscal year of the end strength have to be budgeted through regular budget processes. Again, I hope that takes place. But that means giving more resources to our Army, and we will work—I think I can speak for Senator WARNER—to make sure the Army has those resources.

I am very pleased we are able to make this adjustment—overdue adjustment—in the end strength of the U.S. Army.

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

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged equally to both sides.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, in regard to the Reed amendment—and that discussion has been had so far—I am pleased that the chairman and Senator REED have worked out an agreement. I hope that will be satisfactory.

I haven't had time to fully study the details of it, but I expect to be supportive of the agreement which they have reached. We know the Army is stretched today. We definitely need to consider what we can do to alleviate that.

I would like to add a few thoughts in general on the subject of the Army, its restructuring which is ongoing, and how we best can deal with it and what our policy about it should be.

We are in the process of a major restructuring within all of the Department of Defense, but particularly the Army. In dealing with that, they are in the middle of it right now.

General Schoomaker, who spent his career as a combat officer and a special forces officer, is a man of decisive leadership skills. He is working very hard to determine how to get the Army in the posture we want it to be.

With Guard and Reserve, we have over 2 million personnel in uniform, but we are finding it extremely difficult to maintain 150,000 or less soldiers in Iraq.

General Schoomaker has a story which he tells. It is about a rain barrel. He says the way he sees the military, the Army's rain barrel has a spigot and the spigot is about two-thirds of the way up. Whenever we have a demand, we draw down the water, but we are only drawing the top third of the barrel. In large part, the barrel is not accessible and readily deployable for purposes that we are likely to face in the future. He believes we can work on that.

He knows something we all know—that we have a finite defense budget. I am as strong a person as there is in this Senate on expanding spending for defense and making our defense capabilities second to none. We are that today. We have the greatest army the world has ever known. The professional soldiers who serve us so well are doing incredible things. We are proud of them. People just say that. I say to you that every military in the world knows the American military is unsurpassed. They respect us. That is why they want to train with us. They want to learn our tactics. They want to see what equipment we are using. It is something in which we should take pride. He is working with that and how to better utilize our resources.

There was an article recently which a radio reporter in Alabama asked me about. People are transferring from the Air Force to the Army. I said I didn't know that. I did some checking on it.

The Air Force has concluded they are 17,000 above their needs, that these 17,000 soldiers are excess for the mission they have. So they are giving an opportunity to change their MOS, or transfer to the Army, which needs more.

The Navy has discovered it has 7,000 excess.

I chaired an Armed Services Committee, the Sea Powers Subcommittee, and all the new ships that we are building today are using half—maybe less than half—the number of sailors to operate them as we used to use because of technology, better equipment, and science. We can operate a combat warship with half the people he used to have.

So the Navy is downsizing. They do not want to spend any more money than they have to for personnel who aren't critical for their mission because they have technological advances they would like, and new ships they need to bring on. The Air Force is thinking the same way.

The Army, of course, is more personnel driven. Although it is quite technologically advanced today, all of our soldiers have to be highly trained to be able to utilize the technology they have.

We are already at an increased end strength posture for the Army. The numbers I have are around 19,000 above the authorized end strength, but that is flexible.

General Schoomaker says he is not asking for legislation that mandates a permanent increase in his end strength. He stated in committee, in answers to questions as part of his formal testimony, he would prefer not to be mandated to have this end strength increase, but because we are in combat today he has done it and can maintain it. He would like to be able to utilize funding from the supplemental to maintain that strength. He has said he would prefer we allow him to continue to work on his restructuring and see if we cannot create more combat brigades that are ready to be deployed, fully equipped, and highly trained.

Frankly, in years past, we have had more soldiers than we have had equipment and training. The Europeans are being criticized by the United States, and in their own self-evaluations, for bringing on large numbers of draftees and others who stay just for a short period of time. They are not highly trained and not highly equipped and are spending a lot of money, but the soldiers are not deployable to serious combat situations. Their ability to deploy and actively participate in combat is far less than it should be.

If we think about the rain barrel analogy of General Schoomaker, we think about the ability to move personnel numbers from the other services, which can be an important part of our restructuring and improvement in our defense forces, we may find that we can make more progress than we think. That is certainly my goal.

Our Guard and Reserve are performing exceedingly well. I visited them in Iraq. I know some military police and the Guard unit have been criticized for unacceptable behavior in the Abu Ghraib prison. I visited an Alabama National Guard MP unit in Baghdad. Every day our soldiers were going to a local MP unit. They were working with the local Iraqis. They told me they bonded with them. They walked out on patrol with them. They taught them how to investigate crimes. They taught them all they knew about law enforcement. Forty percent of those guardsmen—many of them 40 years of age—were State troopers and police officers in Alabama. They are well trained in how to handle people, how to deal with crowds, how to maintain order, how to handle traffic tickets, and investigate crimes.

Our Guard and Reserve are important. They can absolutely supplement our Active-Duty forces, and should. We should not create a system or expect we have to do all our work with only Active-Duty soldiers. They certainly can do that. I don't think anyone is suggesting to the contrary.

So we have one national defense system. We have one Army, Guard, and Reserve today. We need to continue to transform and restructure that entity so we have a structure that is sufficient to meet the demands. But we also are lean and well paid and well trained. It does no good to add a bunch of soldiers to the military if we are not going to add training capability, if we are not going to add equipment, if they are not trained on the best helicopters, if they are not trained with the best missiles, or trained with the best computer systems and do not know how to access our global hawk and other satellite systems that provide intelligence. If we do not do that, we are not as successful as we should be.

At a NATO conference not long ago, a year or so ago after the Iraq war, a French rapporteur reported on it. He said the conclusion that one would draw from the war in Iraq is that a smaller, technologically advanced, well-trained military can defeat a much larger military not well-trained and not technologically advanced.

As we work to make sure we do everything possible for our Army, everything possible for our Guard and Reserve, we must make sure they have the best pay possible, make sure they have the best benefits possible. I will offer an amendment in a few minutes on that. We must make sure they are trained with the best equipment possible, so when they are on the battlefield, they have the ability to inflict the greatest military force on the enemy and be as protected as is possible.

That is where we are. Hopefully, on this amendment, we have reached an accord we can all live with. Many people want to do something for our Army because they are so proud of them and they know how tough the duty is in Iraq. They have seen their neighbors go off in the Guard and Reserve to serve in Iraq or Afghanistan. They want to do something for them. It does sound like maybe one of the best things we could do is increase the numbers. I am not sure we ought to rush too fast. We need to be thoughtful and cautious as we go that way. We need to listen to General Schoomaker. He has not asked for permanent increases in end strength, although he is up now pushing 20,000, as I understand it, above the authorized end strength.

If we do all that is necessary to bring efficiency to bear and we reward our soldiers for their terrific performance, we will have met our challenge.

I see Senator REED, a West Point graduate. He understands the military. It is a pleasure to serve with him on the Armed Services Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I thank the Senator from Alabama for his kind words also.

We are all in agreement that there is tremendous stress on our Army. Let me suggest this chart shows the deployments in Operations Iraqi Freedom and Enduring Freedom projected not just over the next several months but actually into 2007. The dark green demonstrates the actual planned deployment today, the projection of February 2004. On July 19, 2003, last year, these are the force projected, brigades equivalents.

It was projected for July of 2004 we would be roughly at about 8 brigade equivalents. Today in Iraq and Afghanistan there are 18 brigades, more than twice as many soldiers, or about 130,000-plus soldiers in these two operations.

This is not just a spike. This is, as you can see on the chart, a plateau. We are expected, under the projections today, to have 17 brigades all the way out to the end of 2005, the beginning of January of 2006. They come down a little bit if things stabilize a bit in March of 2006, to around 13 or 14 brigades.

This is a long way out to project. So far, if we look at the projections, we have ended up with more troops needed than what we thought we could entertain.

My point is that this is not a temporary spike in requirements for soldiers in the U.S. Army. This stretches out to 2007, 3 years from now. It is entirely appropriate we put this number into the Defense bill, that we do not simply give some emergency powers to the Secretary of Defense.

The challenge we have going forward—we have met the challenge this year by tapping into that emergency fund, but the challenge going forward is giving the Army the resources in succeeding budgets in their own bottom line so they can continue to field these forces. That is what we are projecting today. It is not as if in 6 months we will be fine, Iraq will be resolved, Afghanistan will be resolved, we will be back to a low level of participation.

Our planners' best thoughts today are for 17 brigades for a long time. So that is what is at the heart of the amendment I have proposed, along with Senator MCCAIN, Senator HAGEL, Senator CORZINE, Senator AKAKA, and Senator BIDEN. I believe we are taking a very important step by putting the end strength number in our authorization bill, not as an emergency but as a reality, as a near- and medium-term reality. That is what this chart says. Three years from now we are going to have to still find troops to put in about 14 or 15 brigades in these 2 operations.

But the issue that is still outstanding—not this year because we have bridged it with the emergency funding—is, how do we build up the resources within the Army budget to carry these soldiers forward 2 and 3 years hence? We will be working on that, obviously, over the next few weeks into conference and beyond.

I know there are other colleagues—Senator MCCAIN, Senator HAGEL, and others—who might want to talk. We have made arrangements prior to the vote for 10 minutes, which I would gladly offer to them for their comments.

Mr. President, may I inquire how much time I have?

The PRESIDING OFFICER. The Senator has 4 minutes 38 seconds.

Mr. REED. Thank you, Mr. President. I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 3 minutes 40 seconds.

Mr. SESSIONS. Three minutes.

Mr. President, I would just share for our colleagues some other things that are happening. There is a serious effort to restructure our forces that also includes looking at our troop strength deployed abroad in a number of different areas. I think we have 37,000 soldiers in South Korea. I believe that number is larger than it needs to be. The military is looking at what they can do to reorganize those forces there and bring some of them home.

I believe, having visited 12 military installations in Europe just within the last 2 months, we can bring home substantial numbers of our troops from there. In fact, I think it would be a mistake if we do not bring home two divisions. Probably 40,000 Army soldiers and their dependents could be brought home from Europe. It is not necessary to maintain that kind of strength abroad.

So there are a lot of things we can do to make life easier for our soldiers. General Schoomaker would like to see a soldier be able to go to a military base with his family and stay there 7 years, and be promoted and stay with a unit and improve his technical skills and his unit cohesion before being moved again. Those are goals we need to seek so we will be even better in capability, and it will also be good for the soldiers and their families.

I reserve the remainder of the time and yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I rise in strong support of the Reed amendment. Yesterday, in USA Today: ''Army division sees its war tour extended and its casualties rise,'' a very interesting front-page story in USA Today, entitled: ''13 months on the ground in Iraq.'' It says: ''After more than a year of combat, soldiers of the 1st Armored Division wonder when they'll go home.''

There are some interesting comments in this article from individuals:

''The option left to the nation, the Army, was to keep 1st Armored here or pretty much concede defeat,'' says Lt. Col. T.C. Williams, the battalion commander. Soldiers were disappointed, he says, but they also knew that after a year in Iraq, they were prepared for anything. ''Nobody does this better than we do,'' he says.

I am sure he is correct.

There are other quotes:

''We still have a mission we have to accomplish, for the good of the Iraqi people and the future,'' says Staff Sgt. Brad Watson. . . .

But these soldiers don't hide their concern that their extension has been violent, hard on their families, and left them wondering how things could have been.

''Gosh, we could have got out of here in 12 months with little or no casualties, and all of a sudden 17 people in your platoon become a casualty?'' Watson says, ''It's something I never dreamed could happen.''

The point of the story is there are some very brave young Americans who have had to remain in Iraq. There are also stories about the so-called stop-loss rule, which has been imposed, which prohibits people from leaving the military at the time when they are supposed to, which I think some could argue is some form of conscription, of a draft.

What we are doing is we are stopping men and women in the Army and in the Marine Corps from leaving the service at the time of the expiration of their contract. So we are involuntarily keeping people in the military. And instead of the draft applying to all Americans—conscription—we are basically penalizing those people who volunteered to serve, which, in my view, is the worst of all worlds.

The reason why we are in trouble in Iraq and in as much trouble as we are in today and having the difficulties we are having today is because after the conclusion of the combat phase of the war we had too few boots on the ground in Iraq. Anyone outside of the Pentagon, with rare exception—any retired general will tell you that we did not have enough people on the ground to pacify the situation, stop the looting, stop the resurrection of the Baathists, stop the beginning of an insurgency. We had a window of opportunity to do so. We did not have enough people on the ground. And now we are paying a very heavy price for that incredible mistake on the part of the civilian leadership in the Pentagon.

And why were they so reluctant to send additional troops? The dirty little secret is, they did not have them. Do you think we are taking troops out of Korea to deploy to Iraq because the situation has gotten better in Korea? The last time I checked, the North Koreans posed an even greater threat and are acting in a more intransigent fashion than ever before. But we are having to take thousands of people out of deployment in Korea and move them to Iraq.

Meanwhile, we see people who are guardsmen and reservists who are going back and back and back. Now, I have had the opportunity of meeting and talking to many. In fact, 40 percent or 55,000 of the soldiers currently serving in Iraq and Afghanistan are guardsmen and reservists. They are wonderful. They are magnificent people. But they did not join the Guard

and Reserves to be deployed every other year to Afghanistan or Iraq.

When we look at the training of the soldiers who were assigned to the prison in Abu Ghraib, they were people who were involuntarily extended and had no real training in carrying out the functions they were supposed to at that prison—again, a very heavy price, a very heavy price.

Mistakes happen in conflicts. That is why we try to avoid them. But a fundamental error that is still not corrected—still not corrected—is the shortage of the military on the ground with the kinds of specialties and skills that are so badly needed: special forces, military police, linguists, civil affairs, and others who simply are not there today. And we see in some cases a chaotic situation in some parts around Baghdad and in the Sunni Triangle.

So I regret that we are here on the floor of the Senate having to force an increase in the size of the Army on the Department of Defense. As I say, literally every retired military officer I have talked to has said—and every military expert says—you do not have a large enough Army. I recently talked to one retired general who said: I have a fear of not enough people in Iraq and that we are not able to do the job.

But my far greater fear and nightmare is that we have something in Korea, something between China and Taiwan, something in our own hemisphere like significant unrest in Venezuela or a significant commitment we might have to make on the continent of Africa. We don't have the people to do it.

I hope we will support the Reed amendment. I hope the Pentagon and the civilian leadership there will come to their senses and recognize that there are not enough men and women in the military today. They are magnificent, but there are not enough of them. They are stretched too thin. They are badly overworked, and we have paid a very heavy price for these failings from the beginning of the Iraqi conflict.

I still believe we can win and must win, but long ago we should have repaired this deficiency in the size of the Army and the Marine Corps.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). All time has expired.

Mr. WARNER. Have we pretty well resolved this? The Senator from Arizona and the Senator from Alabama, have we taken adequate time over here for our colleagues who have been in strong support? I think we have reached a conclusion on this matter. We will not need that extra tranche of time.

Mr. REED. If the Senator will yield, I believe we were waiting for Senator HAGEL, another cosponsor.

Mr. WARNER. I think we should allow some time for Senator HAGEL. We will make that time available.

Mr. REED. I thank the Senator.

The PRESIDING OFFICER. There are 10 minutes available prior to the vote.

Mr. WARNER. Then let's hope Mr. HAGEL can make it.

Mr. REID. Under the order, the Sessions amendment is now in order.

The PRESIDING OFFICER. That is correct.

Mr. BIDEN. May I have 10 seconds on the Reed amendment?

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I can't think of a more important amendment we are going to vote on than the Reed amendment. I am a principal cosponsor. I believe it is overdue. I hope to the Lord we go ahead and do the right thing here and support this amendment.

The PRESIDING OFFICER. Under the previous order the Senator from Alabama is recognized.

Mr. REID. Mr. President, after the amendment is reported, I wonder if I could speak first. I am going to use 15 minutes on another subject. It will take a few minutes. I would like to go do something else.

Mr. WARNER. Absolutely, Mr. President.

Mr. REID. Is that OK with Senator SESSIONS?

Mr. SESSIONS. It is all right with me. I know Senator CHAMBLISS wanted to speak also.

Mr. WARNER. Mr. President, I think this might be an appropriate time that I would like to urge adoption of my amendment in the second degree to the Reed amendment.

Mr. REID. I think that is totally appropriate.

Mr. WARNER. Let's have that.

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment No. 3450, as modified.

The amendment (No. 3450) was agreed to.

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

The motion to lay on the table was agreed to.

Mr. WARNER. This amendment has the strong support of the Senator from Virginia.

I thank the Chair.

AMENDMENT NO. 3371

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, does the Senator from Nevada want 15 minutes right now?

Mr. REID. I am going to use 15 minutes. It has nothing to do with your amendment. We have 15 minutes, but we weren't going to oppose your amendment anyway. I would like to take my few minutes now.

Mr. SESSIONS. All right. So you want the full 15 minutes?

Mr. REID. I don't know how much time I will use. I don't think I will use near that amount.

Mr. WARNER. If the Senator will yield, I am advised by the parliamentarians that we may need to put in on the Reed amendment now that there are no further amendments, second degree or otherwise, in order on that amendment. The desk asked me to check that.

Mr. REID. That was part of the original order. Would the Chair ask that the Sessions amendment be called up now.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes an amendment numbered 3371.

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

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

The amendment is as follows:

(Purpose: To provide for increased support of survivors of deceased members of the uniformed services)

On page 130, between lines 9 and 10, insert the following:

SEC. 642. DEATH BENEFITS ENHANCEMENT.

(a) FINAL ACTIONS ON FISCAL YEAR 2004 DEATH BENEFITS STUDY.—(1) Congress finds that the study of the Federal death benefits for survivors of deceased members of the Armed Forces under section 647 of the National Defense Authorization Act for Fiscal Year 2004 has given Congress sufficient insight to initiate action to provide for the enhancement of the current set of death benefits that are provided under law for the survivors.

(2) The Secretary of Defense shall expedite the completion and submission of the final report, which was due on March 1, 2004, under section 647 of the National Defense Authorization Act for Fiscal Year 2004.

(3) It is the sense of Congress that the President should promptly submit to Congress any recommendation for legislation, together with a request for appropriations, that the President determines necessary to implement the death benefits enhancements that are recommended in the final report under section 647 of the National Defense Authorization Act for Fiscal Year 2004.

(b) FISCAL YEAR 2005 ACTIONS.—At the same time that the President submits to Congress the budget for fiscal year 2006 under section 1105(a) of title 31, United States Code, the President, in consultation with the Secretary of Defense, shall submit to Congress a draft of legislation to provide enhanced death benefits for survivors of deceased members of the uniformed services. The draft legislation shall include provisions for the following:

(1) Revision of the Servicemembers' Group Life Insurance program to provide for—

(A) an increase of the maximum benefit provided under Servicemembers' Group Life Insurance to $350,000, together with an increase, each fiscal year, by the same overall average percentage increase that takes effect during such fiscal year in the rates of basic pay under section 204 of title 37, United States Code; and

(B) a minimum benefit of $100,000 at no cost to the insured members of the uniformed services who elect the maximum coverage, together with an increase in such minimum benefit each fiscal year by the same percentage increase as is described in subparagraph (A).

(2) An increase, each fiscal year, of the amount of the death gratuity provided under section 1478 of title 10, United States Code, by the same overall average percentage increase that takes effect during such fiscal year in the rates of basic pay under section 204 of title 37, United States Code.

(3) An additional set of death benefits for each member of the uniformed services who dies in the line of duty while on active duty that includes, at a minimum, an additional death gratuity in the amount that—

(A) in the case of a member not described in subparagraph (B), is equal to the sum of—

(i) the total amount of the basic pay to which the deceased member would have been entitled under section 204 of title 37, United States Code, if the member had not died and had continued to serve on active duty for an additional year; and

(ii) the total amount of all allowances and special pays that the member would have been entitled to receive under title 37, United States Code, over the one-year period beginning on the member's date of death if the member had not died and had continued to serve on active duty for an additional year with the unit to which the member was assigned or detailed on such date; and

(B) in the case of a member who dies as a result of an injury caused by or incurred while exposed to hostile action (including any hostile fire or explosion and any hostile action from a terrorist source), is equal to twice the amount calculated under subparagraph (A).

(4) Any other new death benefits or enhancement of existing death benefits that the President recommends.

(5) Retroactive applicability of the benefits referred to in paragraphs (1) through (4) so as to provide the benefits—

(A) for members of the uniformed services who die in line of duty on or after October 7, 2001, of a cause incurred or aggravated while deployed in support of Operation Enduring Freedom; and

(B) for members of the uniformed services who die in line of duty on or after March 19, 2003, of a cause incurred or aggravated while deployed in support of Operation Iraqi Freedom.

(c) FISCAL YEAR 2006 BUDGET SUBMISSION.—The budget for fiscal year 2006 that is submitted to Congress under section 1105(a) of title 31, United States Code, shall include the following:

(1) The amounts that would be necessary for funding the benefits covered by the draft legislation required to be submitted under subsection (b).

(2) The amounts that would be necessary for funding the organizational and administrative enhancements, including increased personnel, that are necessary to ensure efficient and effective administration and timely payment of the benefits provided for in the draft legislation.

(d) EARLY SUBMISSION OF PROPOSAL FOR ADDITIONAL DEATH BENEFITS.—Congress urges the President to submit the draft of legislation for the additional set of death benefits under paragraph (3) of subsection (b) before the time for submission required under that subsection and as soon as is practicable after the date of the enactment of this Act.

ENRON DEJA VU

Mr. REID. Mr. President, I appreciate the courtesy of my two friends. I have been here all day, and I have to leave the floor for a few minutes.

''You have seen that before.'' That is what deja vu means, so I am told. We have seen it before. We in Nevada have the second highest gas prices in the whole country. They have soared to record levels. The oil companies say these price increases are a matter of supply and demand. I have heard that before. I remember now that is the same excuse we heard 4 years ago during the western electricity crisis when Nevada consumers were being ripped off by one of the most ravenous corporate swindlers in history—Enron.

While Enron reaped windfall profits, it told consumers the record high prices were the result of supply and demand. But it turned out Enron was rigging the market to rob consumers. Over the last few weeks, bit by bit, audiotape recordings of Enron traders have come to light in various ways, chiefly through CBS News.

I am reminded of Senator Jesse Helms. I was a new Senator, and Jesse Helms sat back here. He stood and said: I don't want to be here. It was the pornography issue. He said: I hate to talk about this kind of stuff, but I have to. And the stuff he proceeded to talk about was pretty gross, to be honest with you.

Well, I hate to point to this chart, this audiotape today that CBS played last night on the news, but I am going to because it fully outlines what Enron did to the people of the State of Nevada and people in other parts of the Western United States.

Here is a direct quote from one of the Enron traders, one of the people who caused these prices to go up. He worked for Enron:

I want to see what pain and heartache this is going to cause Nevada Power Company.

This Enron trader goes on to say:

I want to . . .

Everyone can see as well as I can the next word. I am not going to repeat it. It starts with ''f'' and ends with a ''k.''

I want to . . . with Nevada for a while.

Second trader says:

What do you mean?

And the first trader says:

I just, I'm still in the mood to screw with people, OK?

Enron traders had all kinds of ways to cheat customers. They shipped power from California to Oregon, masked the original source of the power, and then sold it back to California at inflated rates. This little scheme, this one right here, made Enron a profit of $222,678 in 3 hours. Enron traders also boast on the tapes that Enron CEO Ken Lay will wield a lot of influence in the Bush administration. They were right about that.

A few weeks ago the Washington Post reported on the influence of the people who raised large amounts of money for the President's campaign. One of those big fundraisers was Ken Lay—the President gave him a nickname of Kenny Boy—who served on the administration's Energy Department transition team, if you can believe that, and recommended two of the members of the Federal Energy Regulatory Commission, known as FERC.

After Enron gouged western consumers, utilities in Nevada and other States turned to FERC for help. Remember, two of them came from Kenny Boy. But FERC ruled in favor of Enron and against providing relief to Nevada utilities and taxpayers.

Adding injury to insult, last fall the bankruptcy court ruled that Nevada taxpayers owe Enron an additional $330 million for power Enron never even delivered. Our utilities have asked FERC to hear the case. Senator ENSIGN and I have submitted a brief in support of their complaint. Now I am also joining with western Senators and requesting that FERC vacate the exorbitant contracts that were signed during the manipulated energy crisis.

The parallel between the western electricity crisis and today's gasoline market is troubling, to say the least. The big oil companies are making record profits of up to 75 cents a gallon for a fill-up of a car in Nevada. For 10 gallons, that is a profit of $7.50. The big oil companies are making these record profits, which come out of the pockets of working families in Nevada.

I am afraid I am not the only one feeling, as we stated earlier, that I have seen this before, deja vu. Nevada consumers know they are getting gouged again and it is not a good feeling.

I appreciate the courtesy of the Senator from Georgia and the Senator from Alabama.

The PRESIDING OFFICER. Who yields time?

The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I yield time to the Senator from Georgia, who chairs the Subcommittee on Personnel of the Armed Services Committee, on which the Presiding Officer also serves. I value his judgment on this issue and appreciate his support for this amendment.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I thank my colleague from our neighboring State of Alabama for his terrific interest in our brave men and women who serve in every branch of our military. At this time, when we have so many men and women in harm's way, it is very appropriate that leadership come from this body. Senator SESSIONS has provided the kind of leadership that our men and women have come to expect.

Today, I rise in support of the amendment Senator SESSIONS has proposed. This amendment will provide a much needed revision of the Department of Defense's current policies related to providing benefits to the families of service members who make the ultimate sacrifice for their country.

The DOD's current death benefit policies have been in place, without any substantial revision, for some time now. These benefits have not kept pace with the times and, in particular, the needs of military families in the event the primary provider dies in the line of duty.

Obviously, these events are extremely difficult for any family. They are painful times for military families. I agree that we need to expand the benefits these families receive under those circumstances.

Specifically, this amendment directs the administration to expedite the

final death benefits study that is currently working its way through the DOD. This study was due to Congress on March 1 of this year but has still not been delivered.

The amendment also indexes increases in the current death gratuity benefit of $12,000 to the same rate as the basic pay increase, which is 3.5 percent, beginning in fiscal year 2005. Beginning in fiscal year 2006, the amendment increases the maximum coverage under the Serviceman's Group Life Insurance program by $100,000, from $250,000 to $350,000, and indexing future indexes in the SGLI at the same rate as the basic pay increase; and it provides that the Government shall pay the premium on the first $100,000 of this life insurance.

The amendment creates two new benefits, which I believe are much deserved. First, it allows for the payment of one year's salary and benefits to soldiers who die while on active duty, 2 year's pay in salary and benefits to soldiers killed in action or in a hostile or terrorist event.

The amendment, as drafted, does not violate any budget points of order and allows the Department of Defense necessary time to incorporate the costs and implementation of this program in the fiscal year 2006 budget.

We have just had a thorough discussion by Senator REED and Senator SESSIONS regarding the increase of troop strength. I am so respectful to folks such as Senator REED, Senator MCCAIN, as well as Senator SESSIONS on that particular issue. I agree with them on that issue. We do need to increase the size of the force structure. We need to be able to continue to do that under the current all-volunteer system that we have. If we are going to have that all-volunteer system compete with forces in the outside world, we are going to have to continue to look at the benefits we provide to our brave men and women. This amendment does that.

It adds an additional benefit to our men and women that they don't have today, and it certainly will be of help to our recruiters from the standpoint of continuing to allow them to recruit our finest men and women in America into the military.

Secondly, we will be able to retain the men and women that we invest so much money in, from the standpoint of making sure they have the equipment and training necessary to continue to defend freedom and democracy around the world.

So I commend very highly my friend from Alabama, and I thank him for his great leadership. I am pleased to join in this amendment. I ask my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Georgia and also my cosponsors, Senators JOE LIEBERMAN and JIM INHOFE.

When we ask American soldiers to leave our shores to go abroad in a combat environment to execute the policies of the people of the United States of America, we need them to know, and Americans want them to know, that if their life is lost in that effort, their families are going to be well taken care of. We have a lot of private groups that work at this, but it is most important that the Federal Government have in place policies that would allow their loved ones to be fully and adequately compensated.

Last year we increased the basic death gratuity from $6,000 to $12,000. That was an improvement. It doubled. It is important that we have indexed that to inflation, and it is still not nearly enough for a family today. So we looked at the Serviceman's Group Life Insurance policy, which is somewhat subsidized by the Government, but it is paid for by the soldiers. They take out up to $250,000 in life insurance. Many young soldiers don't like that $16 a month or so that comes out of their paycheck. They sometimes don't choose to take it out. We want to encourage more people to take on that benefit—take out the maximum life insurance so the military will now, under this amendment, if approved, have an additional $100,000 in life insurance fully paid for by the Government, if the soldier takes out his life insurance part. I think that will encourage more people to sign up and provide a much larger benefit package for them. Those are some of the issues that we were concerned about.

Years ago, soldiers got a year's salary if they lost their life. That was changed as part of the life insurance package a number of years ago. I think the Senate believed that we needed to guarantee a person's salary for the year they worked if they are hurt during an Active-Duty accident—not in combat. For 1 year, they will get their salary and benefits paid. Those killed in combat, because they were serving their country in a hostile environment, would have 2 years of salary paid for them.

Those are the kinds of things that can make a real difference in the life of a family. Families will not need to worry about where their next meal is going to come from if they have enough money to take on new housing and move, and maybe for expenses in putting children in school, and all those things that go with the tragic loss of a loved one. We need to make sure they are fully taken care of in that regard, and this amendment would do that.

I cannot say again how strongly I believe we should do the right thing by those soldiers who give their lives for their country. In my State of Alabama, I have talked to over 20 families who have lost a loved one since the war on terrorism began. I have talked to husbands, wives, fathers, and mothers. We have talked to them about the loved ones they have lost—their children. I have been to funerals. Those are things that are very meaningful to anybody who has had that experience.

I feel a special responsibility, as I think every Senator does, to those soldiers who went because we voted to send them there; we asked them to go for us.

I think this is a good first step toward achieving the compensation that families need. There are other compensation benefits they receive, such as benefits for children, income for spouses that are in law, but this is a lump sum that can help a family adjust and establish a life under new and different circumstances and help them get through the tragic period of pain and loss they inevitably will have to go through.

We asked that the Defense Department do a study for us on their ideas and evaluate the current system for fairness and workability. They did not complete that report. We have seen a draft of that report. It was supposed to have come in March. It has not officially been completed.

I will say this: I think it is quite likely that after we evaluate that report, we may want to come back again next year to do some other things to bring more fairness and more support to the families who lost a loved one in the service of their country. There is no higher service that one can render than to give their life for their country.

We have lost a good number of soldiers. We have lost them in the past, and we are losing them in this war on terrorism. I feel strongly that our obligation includes making sure those families left behind are well taken care of.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged equally to both sides.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, there is one point I want to make clear. The act provides for retroactivity of the salary benefits. With regard to soldiers who lost their life in combat since the beginning of the Afghan war or in terrorist acts, their families will receive 2-year's salary and benefits retroactive to the loss, as well as being a part of future benefits for those soldiers who lose their lives in the future.

To reiterate, I ask my colleagues in the Senate to consider that we have before us an opportunity to correct what has been for many a longstanding inequity for our military, the paucity of our death benefits programs for our soldiers killed in combat.

We began to make a difference when in the fiscal year 2004 Defense Authorization Act, this Senate offered and the Congress passed the provision to improve the death gratuity from $6,000 to $12,000. This was an important improvement, but more can be and needs to be done. To that end, I offer this amendment that begins the process of enhancing our death benefits program

to bring it more in line with the significance I believe we all attach to the sacrifices made by our military and their families.

This amendment asks the President and the Secretary of Defense, working with the Secretary of Veterans Affairs, to submit enhanced death benefits for our military and their families as part of the fiscal year 2006 budget request. We expect the next budget in just 8 months. This will give the Department time to deliver the final report on the death benefits from the study we directed in the fiscal year 2004 Authorization Act.

There are specific areas where the death benefits provisions are in need of improvement. The Veterans Administration reached similar conclusions in a 2001 study, and I am confident that the compensation teams working on these issues in the Defense Department are equally convinced that we need changes.

Among the changes is an increase to the Servicemen's Group Life Insurance maximum benefit to $350,000. The Department of Defense would also provide a minimum floor of Servicemen's Group Life Insurance of $100,000 for every servicemember at no cost provided that members selected the maximum amount of $350,000.

I felt great anguish that some of our troops were not selecting the insurance due to the cost or perhaps a lack of understanding about the risks of serving in our military and or the benefits of this program. It may seem hard to believe, but saving $16.25 per month, the current fee to receive the current maximum $250,000 benefit, may appear to be an important financial decision for some, especially our more junior troops. This change makes the insurance a more attractive option.

The amendment will direct in fiscal year 2005 indexing the current death gratuity to the same rate as the basic pay increase. It further asks the Defense Department, beginning in fiscal year 2006, to index Servicemen's Group Life Insurance to the same percentages to which basic pay increases. This is important to ensuring that the benefit does not erode over time like the death gratuity benefit clearly did.

Further, this amendment makes possible for the first time a benefit to ease the transition as well as to clearly recognize the sacrifice of military members killed due to hostile or terrorist actions. For the family left behind, there is no greater tragedy than loved ones lost in combat.

It is clear that service aboard our ships, in our aircraft and around our mechanized equipment is a hazardous vocation. Our troops work with live ammunition and in environments so very different and inherently dangerous when compared to many other occupations. When troops are lost in training accidents or in service-connected events, we should recognize that risk and provide benefits accordingly. The amendment would authorize one full year of salary and benefits to those lost in the service of their country to recognize the hazardous nature of the work performed by the military.

Similar in intent to procedures in other militaries, such as Canada and the UK, and in many U.S. States and cities, this amendment provides an increased benefit for members killed in hostile acts. I have recommended 2 years salary and allowances for those lost in hostile situations. The Defense Department, by a DoD instruction, already makes a determination if a casualty resulted from hostile actions for every member of the military who is lost on active duty.

By comparison, the surviving dependents of a police officer or firefighter killed in the line of duty receive $267,494 under the Public Safety Officers Benefits Act. This benefit has been indexed to correct for inflation and sends a clear signal to our Nation about the value of these leaders of our citizenry. The military is no less valued and this benefit, along with the other provisions in existence and the enhancements in this amendment reflect our Nation's appreciation.

These provisions are similar in intent to the Public Safety Officers Benefits Act of 1976 which acknowledges the risks faced by our police officers and firemen. This amendment acknowledges the risks of military service and helps those left behind with transition assistance.

Anyone who witnessed the bravery of our police and fire personnel on 9/11 and who saw the memorable pictures from that day was profoundly struck by how wonderful these heroes were and how willing they were to go into harm's way. Our soldiers are no less brave. I have visited our wounded heroes at Walter Reed Hospital recently and, like our police and fire personnel, our military is extraordinary for their bravery. This is especially the case for those who pay the ultimate price and die in the service of their country.

I would add that in 1908, the 60th Congress saw fit to authorize 6 months of pay as a death gratuity, and in 1917, the 65th Congress repealed this law in favor of a Government life insurance program. In retrospect, I think the 60th Congress had it correct.

A key feature of this amendment is that the recognition benefits—the one year or two year salary compensation—are to be retroactive for those who were lost in Operation Iraqi Freedom, and Operation Enduring Freedom. We owe this recognition to those troops who went abroad to defend our freedoms.

This amendment also provides an opportunity for the President to recommend any other benefits he deems appropriate. The amendment does not impact the plan for fiscal year 2005, except for beginning to index the $12,000 death gratuity. This will, I believe, give the Defense Department some time to finalize its approach to these changes. The intent of this legislation is to ensure that as part of the fiscal year 2006 budget request, which is due to us in 8 months, that the budget request we receive will incorporate these measures. This gives the administration time to expedite the final report, gather the appropriate accounts together, and to provide to the Congress the legislative initiatives and supporting regulations to substantially improve our death benefits programs. We owe our brave men and women no less.

I yield the floor. Mr. President, I believe no one else is seeking to speak on this subject, so I yield back all the time.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to amendment No. 3371.

The amendment (No. 3371) was agreed to.

Mr. SESSIONS. 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. BIDEN. 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. BIDEN. Parliamentary inquiry, Mr. President. Is the Biden amendment in order at this moment?

The PRESIDING OFFICER. It is.

Mr. BIDEN. Further parliamentary inquiry: Is there a copy of the amendment at the desk?

The PRESIDING OFFICER. There is.

AMENDMENT NO. 3379

Mr. BIDEN. Mr. President, I ask that we proceed to amendment No. 3379.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] for himself, Mrs. CLINTON, Mr. CARPER, Mr. CORZINE, and Mrs. FEINSTEIN, proposes an amendment numbered 3379.

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

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

The amendment is as follows:

(Purpose: To provide funds for the security and stabilization of Iraq by suspending a portion of the reduction in the highest income tax rate for individual taxpayers)

At the end of subtitle A of title X, add the following:

SEC. ____. (a) PROVISION OF FUNDS FOR SECURITY AND STABILIZATION OF IRAQ THROUGH PARTIAL SUSPENSION OF REDUCTION IN HIGHEST INCOME TAX RATE FOR INDIVIDUAL TAXPAYERS.—The table contained in paragraph (2) of section 1(i) of the Internal Revenue Code of 1986 (relating to (relating to reductions in rates after June 30, 2001) is amended to read as follows:

"In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%
2002	27.0%	30.0%	35.0%	38.6%
2003 and 2004	25.0%	28.0%	33.0%	35.0%
2005 and thereafter	25.0%	28.0%	33.0%	36.0%''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

(c) APPLICATION OF EGTRRA SUNSET TO THIS SECTION.—The amendment made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

Mr. BIDEN. Mr. President, with regard to amendment No. 3379, I ask unanimous consent that Senators CARPER, CLINTON, CORZINE, and FEINSTEIN be listed as cosponsors.

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

Mr. BIDEN. Mr. President, my amendment is quite simple and straightforward. It is no different in its intent than the amendment I offered when the President some months ago requested $87 billion for the reconstruction of Iraq, as well as the support of American forces.

The bottom line is it says we should stop borrowing to cover the cost of our mission in Iraq and Afghanistan. If this mission is as important as the President says it is—and I believe it is—then we should pay for it. We should not make my kids pay for it. We should not make my grandchildren pay for it. We should pay for it.

Before I get into the details of the amendment, because it relates to my finding the money to pay for the $25 billion asked for in this authorization by the President, let me remind people what the state of the Tax Code is now relative to the highest bracket.

In the year 2001, the highest bracket of individual taxpayers was 39.6 percent.

With President Bush's tax cut that was passed, that bracket, along with others, was reduced from 39.6 percent to what it will be and what it is in 2004, 35 percent. So it has come down from 39.6 percent to 35 percent.

The way the Bush tax cut proposal works, when it became law—and I see the chairman of the Finance Committee here who, as the old joke goes, has forgotten more about the Tax Code than I am going to know—is that top bracket will stay at 35 percent in 2005, 2006, 2007, 2008, 2009, and 2010. In the taxable year of 2011, under the present status of the Tax Code, it will go back to 39.6 percent.

I realize there is a move in the House and among many here to ''make the tax cut permanent'' so the 35-percent tax bracket would remain in 2011, 2012, 2015, 2018, and so on, but right now, unless it is made permanent in the taxable year 2011, it will go back to what it was in 2001, 39.6 percent.

One other statistic, to be in this top tax bracket, the people in the 35-percent tax bracket, which used to be 39.6, have on average a taxable income of a million dollars a year. Now, obviously, there are people in there making a billion dollars a year, but no one is in that bracket unless their taxable income is $319,000.

That means after all of the deductions are taken, after all of the things one is able under the law to deduct, so one is likely to have an income of closer to $450,000 or $500,000, they end up with a taxable income of $319,000. OK? So it is taxable income.

That is after one deducts for medical costs they are able to deduct, deduct for their children, for all the things one is entitled to deduct, and people in that category can deduct for a lot of things that average folks do not get to deduct.

So what does my amendment do? How do we have $25 billion so that these bright young pages—and I am not being solicitous; I am not joking—sitting down at the base of the podium there, whose average age is probably 16 or 17 years old, how do we act responsibly enough to say that they should not be paying for this war, that those of us who voted for it, my generation, those who are paying taxes now, should pay for it?

What happens with this $25 billion? It is essentially paid for by the deficit. This all goes to the deficit. This is going to be paid for. It is going to be added. I predict before the year is over—and I do not claim to be an expert on our budget, but I have been around long enough that I think I am pretty knowledgeable—this year's deficit will end up being closer to $600 billion than $500 billion. Everybody knows it is going to be over $500 billion. So why are we going to ask them, why are we going to ask my granddaughters, who range from age 3 to 10, to pay for this war, when we are fully capable of doing it?

One might say: OK, BIDEN, how are you going to pay for this war? Are you going to take money away from education? Are you going to take money away from things that affect these kids? No.

I am going to ask my colleagues shortly to do what I think every patriotic American is fully prepared to do. At the United Way they talk about, this guy gave at the office, but what do we give at the office in this war? What are any of you people, and what am I, giving at the office?

None of us are in Iraq. We are not in the military. We are not getting shot at. We are not away from our families. We are not that National Guardsman or Guardswoman who is taking a pay cut of 30, 40, sometimes 50 percent to serve their country right now.

I mean, this is never a healthy thing for a nation. We are in the midst of a war when the bulk of America is not asked to do anything about it. There are very few people sacrificing for this war. Like our grandparents or our parents, no one has asked us to put tape over our headlights when we drive at night or use ration cards or have to pay higher taxes to support the war. There is no draft.

So what happens? Well, there are a lot of patriotic, young women and men—and some not so young, meaning in their thirties and forties—who are over in Iraq right now. What are we doing?

The idea that if we ask the wealthiest Americans among us to contribute to the war effort, that they are unwilling to do that is preposterous.

I sometimes get mad at some in my party—not those on the Senate floor but some in my party—and some liberal commentators. What frustrates me sometimes is they assume that only poor, middle-class people are patriotic; that they are the only ones willing to make sacrifices for their country. I am here to say that wealthy Americans, the wealthiest among us, the wealthiest 1 percent, are as patriotic as the lowest 1 percent.

In the last time out, when I tried to do this—and I will get to the detail in a minute—to pay for the $87 million, I happened to be with a group at an exclusive country club in Wilmington, DE. We are a wealthy little State. We have some very wealthy people in our State. All States do, but as a percentage we have some very wealthy people. I happened to be with a group of them for an outing. We got to the time that we had the buffet, and it was outside. A couple started asking me about the war. The next thing I know, as every Senator knows and as every staffer has observed their Senators being engaged, all of a sudden it was like a roving press conference. It went from 1 press person to 2, to 5 to 10 to 15, and all of a sudden there was a group of people standing around. Before I knew it, literally, standing outside on this beautiful evening, on this patio of this magnificent club, there were no fewer than 40, mostly men, who are among the wealthiest—not literally the wealthiest, but some were probably in the top 20 or so in my State—some of the wealthiest people in my State, and they are asking about the war.

I said: Let me ask you all a question—and in fairness I want to acknowledge, maybe they were intimidated because no one wanted to be the one to say, no, do not count me in, but I said I am going to go down to the Senate, and I am going to offer an amendment that would require you people right here on this outside patio to give up 1 year of the 10 years of your tax cut to pay for this war. Does anybody here think that is unfair?

I give my word, my honor as Biden, not one person raised their hand. Then people started to chime in. They said, no, it is fair. They started talking about what other people are doing.

When have we ever gone to war when we simultaneously have suggested, as we have gone, to say this is going to be a long, tortuous undertaking to fight terror, and at the same time any President in the past, some 200-plus years, has said: And by the way, as we go, I am going to give you the biggest tax cut in the history of the United States of America?

Now, again, try to be objective about this. Let's assume—I do not, but let us assume for the sake of argument that we badly needed this tax cut in order to spur on the economy. Let me accept that as a given for the sake of this debate.

I asked these people: Does anyone here think if the top 1 percent of the people paying taxes in America were to forego 1 year of the tax cut that, in fact, that would slow the economy? The economy would stall? Sputter? Assuming they were the reason it was growing. I didn't hear anybody tell me that. I have not heard any reputable economists tell me that.

So here I am, back on the floor again, finding it fascinating, absolutely fascinating—and I expect this will be voted on party lines again—why the overwhelming number of my colleagues, for whom most of these wealthy people likely vote, are unwilling to do what the wealthiest among us are fully willing to do.

This time around what I am suggesting is even less ''painful.'' In order to come up with $25 billion to pay for this piece of the war in Iraq and in Afghanistan, you know the only thing you have to do? You have to say: In the year 2005, the tax cut for the wealthiest 1 percent of Americans, who in fact cannot have a taxable income less than $319,000, will go back up from 35 percent to 36 percent. The 1-percent solution.

I can't fathom any wealthy person in America, even at the low end—and, by the way, the average income of this top 1 percent is over $1 million. I can't fathom a single one of these people not having enough patriotic instinct to say: No, no, no, no, I am unwilling. I am unwilling to pay, in the year 2005, 2006, 2007, 2008, 2009, and 2010, 1 percent more than I would otherwise have to pay.

What does that mean? Does it mean 1 percent less investment in their portfolio? Does it mean they buy a Lexus instead of a Mercedes? What does it mean? What does it mean?

While we are now saying, as I think the President probably has no choice, to the people who signed up volunteering in the military: No, no, you are staying another year because your patriotic responsibility is we need you. The President is probably right about that.

Or he is saying to what will be approaching 40 percent of the forces on the ground being shot at or subjected to car bombs in Iraq and Afghanistan who are reservists and National Guard: You have to go twice.

He is saying to the physician who is in the Guard, whose income may have been $150,000 or $200,000 whose pay as a colonel may be $80,000 but he still has the same mortgage payment, the same tuition payment, the same ''nut'' to pay, as they say: It's your patriotic responsibility.

How can we in this country at this moment say we can ask that of those people and we can't say to people whose average income is $1 million: Do us a favor, pay 1 percent more to pay for this installment on the war?

What have we become? Can you imagine that being said in 1943? No, no, no, no, don't ask it of them.

Can you imagine that being said if the income tax had been in place in 1915 or 1916?

Can you imagine that being the case in the Korean war? Can you imagine that?

What is the second logical argument as to why this is a bad idea? If you all agree with me that these Americans are as patriotic as anyone else and that it could not possibly hurt them in any material way, then you have to say: Here is the deal. This will slow economic recovery. This is bad for the economy.

I got a letter from the Chamber of Commerce saying this is going to hurt small business.

My friend from Iowa is here, the chairman of the committee. As the old thing goes—in this case, it is true—he is my friend.

The Chamber of Commerce says it is going to hurt small business. What they mean by that is there are some small businesses that pay their taxes as if they were individual taxpayers. Do you know how many of them pay at the top 1 percent? Of all the small businesses in America? For every 100 small businesspersons in America who claim and pay as individuals, 2 percent—t-w-o percent—of them are in this category where they would be affected.

I am sure the Senator will be able to tell me—I suspect he is here to engage in debate—how taking 1 percent of the American individual taxpayers and asking them to pay 1 percent more in the next 5 years, and taking 2 percent of the small businesspersons in America and asking them to pay 1 percent more for the next 5 years, when each of them fall in a category where they have a taxable income of at least $319,000 a year—how this is going to slow the economy.

I have said this to the President and I have said it publicly—Senator MCCAIN was on the floor earlier—what I am about to say. Senator MCCAIN was on the floor earlier talking about the end strength amendment of Senator REED. He said we need this. He said mistakes happen in war. That is why—and he went on from there.

I believe, and I am confident, this President has made some very serious mistakes in the conduct of this war. I am also confident were I President I would have made mistakes. I am confident, had it been President Gore, he would have made mistakes. I am confident that Senator KERRY will make some mistakes if he is President. I don't think this President will be judged harshly for the mistakes he has made.

But I do think history will judge him fairly harshly for the opportunities he has squandered. One of the opportunities squandered here is the ability to have united this Nation in common purpose after 9/11.

Let me ask a rhetorical question. Can you imagine if immediately after 9/11, when the President had that big economic summit down in Crawford, TX, or near Crawford, with some of the most prominent, significant, and patriotic businessmen in America, and some of the most wealthy men and women in America—what do you think would have happened, as that broke up, if he said: By the way, I want to ask the following of all of you. I would ask each one of you in the spirit of unity and harmony in this country, when you leave this room after hearing me speak, I strongly urge you—I ask you to take out your cell phone and call your accountant at home and ask him to go out and find four of the most worthy young women and men, eligible for college, who are unable to pay for college for 4 years, and commit to pay their tuitions.

Would any of my colleagues on the Senate floor think there would have been a single solitary man or woman in that room who would not have walked out, dialed up their cell phone, and said to their accountants, find those people? I mean it sincerely. I am not joking about this. I can't fathom that group of women and men not responding to the call for unity—not just to deal with the war on terror but to deal with healing and uniting this country. Nothing has been asked of these people, not because they have refused, not because they are unwilling, but because of an ideological disposition that somehow in any way to alter the tax structure beyond what we have just done is ipso facto wrong, bad, counterproductive. We are a slave to ideology on this floor.

There is not a single person in here who can say this $25 billion because it is all fungible is not going to be added to the deficit. Why don't we pay for it

fairly, honestly, and straightforwardly? When have we ever succeeded in the great noble causes of this country without engaging all segments of society?

I would make the rhetorical point—I suspect you will not do this, but I will make you a bet. If you were to call your State's 10 wealthy people who fall into this category and ask them whether they would support having to pay at a 36-percent rate rather than a 35-percent rate to pay for the war, I am willing to bet you that 8 out of 10 or more of them will say, I am willing. I am betting—and I trust all of my colleagues would—if you do that, you will come and tell me you found in your State more than 2 out of 10 said they wouldn't do that, I will buy you dinner anywhere you want to go to dinner. It is on me. My financial disclosure statement shows, unfortunately, that I am one of the least well positioned in this body to pay for dinner.

There is something wrong, there is something not sensible about failing to be more responsible. How can it be called responsible to say we are going to make these pages, these kids, pay the $25 billion? I don't get this. Every one of us, Democrats and Republicans, comes to the floor of the Senate and talks about the need for a culture of responsibility. I truly don't get it, other than ideology.

I respectfully suggest that if, in fact, we do this to set a precedent that engages more people in the outcome of this war on terror—I am not making a populist argument—the group that is in the top 1 percent will get, out of the total tax cut of $1.8 trillion, $88.9 billion.

Again, I am not making a populist argument. That may be arguably justified on the merits. But it is the idea that 1 percent can't give up 1 percent of $688.19 billion. It is not even 1 percent; it is actually $688.19 billion over 10 years—that they will not give up 1 percent for 5 of those years. It is the equivalent of asking them to give up one-half of 1 percent of that number when 99 percent of the American people pay—not all 99 percent; some don't pay taxes—but 99 percent of the American people get a tax cut of about $1.1 billion dollars.

A couple of my Republican colleagues have said it is unfair to pick on the wealthy. It is not picking on anybody. I am trying to find the most equitable way to do this. What I am trying to do is make sure we are in a position to act responsibly, and it is not responsible to pile the debt upon our children for an endeavor we chose to undertake when it is fully within our power to pay for it without in any way being unfair to any single group of taxpayers and without having any rational argument that it will, in fact, negatively impact on the economy.

Were I in my 27-year-old populist mode, I would say it is greed. But I have learned a lot in my 32 years here. It is that we have not asked. For every wealthy group of businessmen and businesswomen in my State that I have approached, I have yet to have one tell me there is something unfair or unequitable about this.

I urge my colleagues. I will conclude this portion by saying I urge my colleagues to let us be responsible, what I define as responsible. It doesn't mean if you disagree you are irresponsible, but let us be responsible here. Let us pay for something we can easily pay for and not pile more debt for an elective judgment we made in this body—and I made it as well—to take on the dictatorship and the maniacal leadership of Saddam Hussein, to take down the Taliban, and to seek al-Qaida in its hovel.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent to set this amendment aside temporarily. I further ask unanimous consent that the time not be charged against either side on this amendment for the purpose of resolving an amendment discussed earlier today.

The PRESIDING OFFICER. Is there objection?

Mr. BIDEN. Reserving the right to object, Mr. President, I am told by leadership staff that we have not been able to clear that at this moment on the Senate floor. So I would suggest the Senator withhold briefly until I find out why there is some doubt. I object, and I say to my friend from Missouri that I will find out why in a moment.

The PRESIDING OFFICER. Objection is heard.

Mr. BOND. Mr. President, I guess that is objection to the unanimous consent request.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, do I have 20 minutes?

The PRESIDING OFFICER. There is 60 minutes allotted to the Senator. Out of fairness, I yield myself 20 minutes because there are other Members who want to speak.

The PRESIDING OFFICER. The Senator has 20 minutes.

Mr. GRASSLEY. There is a big problem with Senator BIDEN's amendment. Before I go into the problem with Senator BIDEN's amendment, let me say I agree with his concerns about the size of future Iraq funding packages. I am concerned about the Federal deficit we are facing on the horizon.

But we also have to realize we are in war. You do not go to war unless you go to war to win. If you go to war, you go to war to win. You put all the resources behind the men and women that it takes to win that war. You do not put their life in danger on the battlefield. It may sound like we do not care about future generations, but you don't worry about deficits.

If we worried about deficits in World War II, Hitler would have been in New York City. The Japanese would have been in California. They would not have stopped at Pearl Harbor. We decided we were going to win that war, and we put all the resources behind it.

For only the first time since Pearl Harbor, we have been attacked. On September 11, 3,000 Americans died. We decided we were going to defend America. We decided we were going to fight not on American soil, we were going to fight on the soil of the people who harbor the terrorists who attacked America on September 11. We are going to go to war to win. We are going to put the resources behind our men and women. We are not going to take any chances.

I don't find any fault with anyone who talks about deficits. Only if they are so concerned about deficits that they do not care if we win the war and protect Americans, and the Constitution gives our Government that responsibility.

We also found, as a result of the war, being attacked in America, that the economy went into the tank. Out of 2.5 million jobs supposedly lost in this recession, 1 million of those jobs were lost 3 months after September 11, 2001; not because of the economy but because of war and the public not being certain what would happen in the future.

So we had tax cuts to revive the economy. We have a strong economy. A strong economy produces more resources so we can fight the war and win the war. The economy is growing. Federal revenues, as a result of these tax cuts, returned to their average levels, where they have been for 50 years, 18 to 19 percent of gross domestic product. We fought the Vietnam war and the Persian Gulf war during that period of time. So 18 to 19 percent of GDP for Federal taxes seems to be a level that does not hurt the economy.

In fact, the economy grows, and it is a level of taxation that people have accepted. It is producing the results we need to bring in more revenue to close the gap so that we do not have big budget deficits in the future.

On the point of taxes and the point of the budget gap, I note that Senator BIDEN's amendment contains no dedication of the revenue from raising taxes to any kind of fund that is oriented toward the war. In other words, the amendment simply raises taxes for more spending. The implication is on a Defense bill it will go to defense efforts.

When we hear about sacrifice, I am not sure I hear sacrifice. Let's spend less for domestic programs so we can give more to support our men and women in uniform. In World War II there were efforts to curtail domestic expenditures. We put all of our efforts behind our men and women but not, raise taxes, more spending, bread and butter at the same time.

I also point out there are two sides to the Federal ledger. One is the revenue side. That is what we take in from the people who work in our factories, our

offices, and our farms across America. The other side of the ledger is the spending side.

My friends on the other side focus exclusively, as my good friend from Delaware has, on the tax side. They look only to taxpayers to put our fiscal house in order.

I agree with the goals of reducing the deficit, but I don't intend to hurt the economy through higher taxes and put a damper on the economy. I want the economy to grow. The economy is growing. What sort of a signal would raising taxes send? Lower taxes one year, raise them the next year. How do you get investment that way?

I disagree that it is all right to look only at the tax side of the ledger. Indeed, the Senate approved a bill a little over a month ago that included $170 billion in revenue offsets. Republicans, working with like-minded Democrats, have been willing to exercise fiscal discipline, especially when it comes to closing corporate loopholes and curtailing tax shelters.

I digress for a moment on the subject of offsets. I notice with some amusement a story in Congress Daily A.M. dated last month, May 18. The story noted the special alchemy in the Finance Committee work in formulating offsets. The article went on to quote anonymous lobbyists who were frustrated with the Finance Committee production of offsets.

As a matter of fact, the tax staff at the Finance Committee happens to be the only committee personnel putting in work to generate offsets to raise revenues, and doing it in a fair way for corporations taking the advice of big tax firms, big investment bankers, big accounting firms, working together, to think of some miraculous tax loophole that is not legal to avoid taxation. That is cheating.

We are going after the cheaters and bringing in that revenue.

The record is clear. We found plenty of revenue raisers. I ask the full Senate, who was the last Democrat to propose any savings on this spending side? All we have to do is look at Senator SANTORUM's ''spendometer,'' that thermometer he has of red ink that adds up every Democrat amendment being offered on budgets and otherwise. We know where the pressure to spend is.

How can we in good conscience propose those billions and billions of dollars of expenditures—mostly for domestic programs, not to win the war in Iraq—and then complain about budget deficits?

Not a single spending cut is being proposed by those on the other side. Maybe back in the mid-1990s, but we have to go back many years. All I see is spending increases.

So if those on the other side want to claim to be fiscal disciplinarians, let's see entries on the spending side of the ledger. To have credibility, you cannot just go to the American people and ask for more money. You know, if I could ever get a reasonable tax increase, and have people on the other side of the aisle tell me how high taxes had to go to satisfy their appetite to spend money, I might just scratch my head and say: Well, maybe we ought to do it if we could get a consensus that is as high as taxes are going to go, and we don't have to worry about them going any higher. But I have never seen that you could raise taxes high enough to satisfy some people in this body who want to spend money.

I am also concerned about the degree to which taxpayers finance reconstruction in Iraq on a blank-check basis. I first raised this concern almost a year ago. We ought to be very careful about the structure of future aid packages.

Now I will speak specifically about Senator BIDEN's amendment. He says he is seeking to offset the President's war-funding request with a tax increase. As I noted above, the text of the amendment simply raises taxes for more spending. There is no connection between taxes raised and Iraq funding.

Let's take a look at the tax increase. For 2001, the top rate was reduced to 38.6 percent. In the 2003 tax bill, we reduced the top rate to 35 percent. Senator BIDEN's amendment would raise that top rate back to 36 percent. The premise of the Biden amendment seems to be that taxpayers in the top bracket are solely Park Avenue millionaires. They clip coupons, bring in the money, get out their cigars, lean back in their chairs, and enjoy life. Well, the facts are somewhat different.

According to the Treasury Department, about 80 percent of the benefits of the top rate go to taxpayers with small business ownership. Now, we have had some debates about the definition of ''small business.'' Some on the other side define ''small business'' as only those businesses with taxable income below, say, $320,000.

To those folks, a local chain of shoestores, if it makes over $320,000—no matter how many folks it employs—is the same, in their category, as the Nordstroms or the J.C. Penneys.

Those of us from the heartland know that the definition of ''small business'' does not cut off at, say, $320,000. It depends upon whether the business is locally owned. It depends on whether the business finances its growth from its own earnings.

Conversely, to folks from small towns, like me, big businesses are generally the companies that finance themselves through big, massive bond borrowing or through the stock market.

The reason the distinction is important for public policy issues, such as the level of taxation, is that we value local or regionally based businesses. The folks who own those businesses are from that community. They go to the local church. They support the local Little League. Small business, as I see it, is a stabilizing yet very dynamic social force in these communities and makes America what it is today.

So when I talk about small business, I am not going to use any artificially low level of taxable income. I am going to use a commonsense definition of what small business is. There is too much at stake to demagog the definition.

When we are considering tax policy, and specifically the tax rate applicable to business, we have really two categories. The first category is the regular big corporation. Virtually all big businesses, that is, publicly traded companies, are taxed under the regular corporate rate schedule.

Small business income is generally taxed at the individual or personal level. In most cases, the owner of the small business puts the income of the small business on his or her personal tax return.

As a practical matter, then, the individual tax rate is the rate paid by that small business. The corporate tax rate, with some exceptions in the case of some older, smaller corporations, generally applies to big business. The relationship between the top individual rate and the top corporate rate has a bearing on our policy toward small business. If the top individual marginal rate is higher than the top corporate marginal rate, then we as a society are sending a very bad and negative signal about small business, and even to small businesses that exist.

Before 2001, the top marginal rate for small business was 39.6 percent. Guess what. If you were a big corporation, the top rate was 35 percent. We had a penalty against small business. When you look at the difference, it was a 15-percent penalty against small business—before we changed the tax law last year. So it was a 15-percent small business penalty. That was the law. That was our Federal tax policy bias against small business.

In 2001, a bipartisan majority of this Senate, including almost one-fourth of the Democrats voting with us, voted to gradually equalize the top marginal rate between small business and big business, recognizing that penalty as being unfair, being anti-entrepreneurial.

Starting last year, for the first time in many years, the top rate, 35 percent, is the same for Fortune 500s as it is for successful small businesses. Senator BIDEN's amendment would take the first step to restore and perhaps even enhance the 15-percent penalty on small business. With all the appetite for taxing and spending around here, rest assured, small business would be facing even higher taxes in the future because, as I said, you cannot raise taxes high enough on the other side of the aisle to satisfy the appetite to spend money.

I do not quarrel with the notion that taxpayers in the top bracket make incomes starting in the range that has been stated of $320,000. A lot of these successful small business owners make figures like that. But keep in mind, that figure represents the total net income of those small businesses. Successful small businesses are those that

purchase the equipment and hire the new workers.

I would ask my friends on the other side, those friends who are so eager to raise taxes—and not all are—why they are all so reluctant to cut spending and eager to increase spending, to focus on the effects of their policy on small business, the effects of their policy on entrepreneurship in America, because small business creates 80 percent of the jobs in this country. Why, at this time, with a recovering job market—1.2 million jobs created this year—would we want to put a damper on the economic recovery by raising taxes on the very people, the very businesses, the very small businesses, that create 80 percent of the new jobs?

Last month, the Senate, by a vote of 92 to 5, approved a bill designed to cut the top marginal tax rate for small business manufacturers yet again to 32 percent. Senator BIDEN's amendment would go the other way and hammer our small business manufacturers.

Anyone voting for Senator BIDEN's amendment is, in effect, saying they support raising taxes on small business manufacturers. A vote for the Biden amendment is a vote to raise the top marginal tax rate on small business manufacturing from the 32 percent in the JOBS bill that we just passed to 36 percent. That is a tax increase on small business of 13 percent—13 percent. Is that the direction we want to go in a recovering economy, in a job-creating economy? Is there something wrong with the economy that is growing now, with 1.2 million jobs in the last 6 months? Why would you want to dampen that?

Finally, I do not want you to take my word for this. I am just a public official. I would like to have you listen to what small business folks are saying.

I would like to have you take a look at this chart. The chart is a copy of a letter from the three principal small business grassroots organizations. The first organization is the National Federation of Independent Business or NFIB. The second one is the Small Business Legislative Council, and the third organization is the Small Business Survival Committee.

The PRESIDING OFFICER (Mr. SMITH). The Senator has used 20 minutes.

Mr. GRASSLEY. I ask unanimous consent for 3 more minutes.

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

Mr. GRASSLEY. I am going to read the second paragraph of this letter.

> Accelerating income tax relief: Approximately 85 percent of small businesses file their tax returns as individuals. An increase in tax refunds means small firms will have more resources and more capital to put back into growing their businesses. A series of studies by four top tax economists examined the effect of tax rate cuts on sole proprietors. Their results indicate that a 5 percent point cut in rates would increase capital investment by about 10 percent. And, they found that dropping the top tax rate from 39.6 percent——

Where it was up until the year 2001——

> to 33.2 percent would increase hiring by 12.1 percent.

What these small business groups said was their tax policy priorities included a reduction in the top marginal rate. It is right there in their letter.

Now let's think about this. As the small business folks say in their letter, there is a link between tax relief, economic growth, and jobs. We have seen the evidence of that linkage over the last year or so. Check out the economic statistics. The tax relief kicked in, the economy started growing, and jobs started coming back—1.2 million jobs in the last 5 or 6 months.

Why would we want to reverse the course? Some would speculate that for the minority party, it is good politics for the economy to go into the tank. Raise taxes as the economy is coming back, and you stifle economic growth. If economic growth is stifled, then jobs disappear. If jobs disappear, then voters will throw out the President and his party.

I am not that cynical. I don't believe some of the opposition would want to put short-term political advantages over the economic well-being of their constituents. But it does make you wonder.

To sum up, a vote for the Biden amendment is, clearly and simply, a tax increase. How high do taxes have to go to satisfy the appetite on the other side of the aisle to spend money? I don't know. But this is a start. It is a tax increase during an economic recovery. It is a tax increase on the folks who create the jobs in America, our hard-working small business owners.

For those reasons, I obviously ask Members to reject the Biden amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I compliment my friend and colleague, Senator GRASSLEY, for his remarks. I join in those remarks. I compliment him for his leadership as chairman of the Finance Committee. Under his leadership of the Finance Committee, we have passed two very significant tax cuts: The tax cut in 2001, and we accelerated or completed that tax cut in 2003. As a result of those tax cuts, the economy is growing. As a result of the tax cuts, the maximum tax rate is 35 percent. Again, this has made a difference. The economy is growing.

Senator GRASSLEY mentioned there have been over 1 million jobs created in the last few months. He is correct. The stock market has rebounded substantially—the stock market is up 25 percent, if you are looking at the Dow Jones; 40 percent, if you are looking at the NASDAQ—from the time we took up that bill last year.

Some people want to undo that. They say: We want to pay for the war; we don't want to add more debt to our children and grandchildren. I appreciate that, but what about other spending? This is $25 billion. They say: We will increase the rate 1 percent on the upper income people to pay for that.

Let me just look at a couple of other facts. As recently as May 12, 3 or 4 weeks ago, we had an amendment on the floor of the Senate that was voted on that would have increased spending $86 billion. It wasn't paid for. We made a budget point of order against it. We defeated it, I think, by one vote. But no one was saying: We want to increase taxes to pay for that. I guess on this one, you would have to increase the maximum rate by 3 or 4 points to pay for it. On the same day there was a motion to increase spending by $9 billion. We defeated that with a budget point of order; again, I believe, by one vote. That was $9 billion.

On May 4, there was another spending increase. This was trade adjustment assistance, $5 billion. We defeated that by a vote or two.

Many of the people who are saying they want to pay for this $25 billion, they want to pay for the war, they didn't want to pay for this additional spending or they didn't offer that. So I find it interesting, for the ones who are acting as if, in many cases, they want to balance the budget, I have a total of about 68 votes where budget points of order were made, and in most cases, mostly Democrats—with the exception of my very good friend, ZELL MILLER from Georgia—voted to waive the budget every time. In other words, they voted for more spending.

The three amendments I just alluded to in May of last year were over $100 billion of new spending. So there are lots of attempts to increase spending over and above what we are doing anyway, mostly by our colleagues on the other side of the aisle. That is one of the points I wanted to make.

Let me echo a couple of other things my friend from Iowa said. Why would you want to have an individual rate higher than corporations? I used to be in manufacturing. I used to have my own business. Why should an individual be taxed more than Exxon? The corporate rate is 35 percent. There is an effort to make manufacturers at 32 percent. Yet we are going to tell self-employed people, S corp people, that they should pay 36 percent. That doesn't make a lot of sense.

There is one other comment. This happens to be about the Constitution. Are people trying to kill this bill? You put this on this bill and the House is going to, what we call, blue-slip it. It is going to stop the bill. Why? Because there is something called the Constitution. The Constitution says in article I of the Constitution, section 7:

> All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

It says all revenue measures, all tax measures have to originate in the House of Representatives. This is the U.S. Senate. So if we do that, the tradition is, the House will say: Thank you

very much, but we are not going to let you preempt our constitutional prerogative. So they blue-slip it. In other words, they kill the bill.

This is a Department of Defense authorization bill. I have great respect for Senator WARNER and Senator LEVIN, but they are not supposed to rewrite the tax bill. That is for the Finance Committee. That is under the jurisdiction and leadership of Senators GRASSLEY and BAUCUS. Tax amendments don't belong on this bill. Maybe it sounds good rhetorically: We will just ask the upper 1 percent.

I think that is bad policy: We want the upper 1 percent to pay for the war. Nobody else has to pay for it, just the upper 1 percent.

That doesn't make sense. We don't do that for education. We don't do that for other spending. I don't think it makes sense. I happen to think the income-tax code is already so progressive, the upper 5 percent pay over half; the upper 1 percent pay over 20 percent. Yet some people want to make it more and more progressive.

It wasn't too long ago we were celebrating Ronald Reagan's legacy and his great contributions to this country and the free world during his term of office. At the conclusion of his term of office, the maximum tax rate was 28 percent. I know under President Clinton it went all the way up to 39.6. That is a pretty significant increase. Now we have it at 35 percent. Yet some people say: Let's make it more progressive.

I guess you could take this same amendment and put it on every one of these spending amendments. And I haven't totaled it. It is about $1.4 trillion worth of additional spending that most of our colleagues on the Democratic side of the aisle have proposed, and we have stopped using budget points of order. For those who ask, Do we need budget points of order? Yes, we do.

They have been effective in curtailing the growth of spending. I said $1.4 billion, but it is actually $1.2 trillion, not since the budget was adopted last year. Real money, a lot of money. I think the figure is well over $140 billion just in 2004 or 2005 alone.

Constitutionally, those of us who have the pleasure of serving this great body, the Senate, stand before the President of the Senate and put our hand—most of us—on the Bible and swear allegiance to the Constitution of the United States. The Constitution of the United States says all revenue measures shall originate in the House. If you don't like that, try to amend the Constitution. That is in the Constitution. We have over 200 years of history and tradition of the Senate of following the Constitution. All revenue measures shall originate in the House. So to try to circumvent that and say we are going to stick a little tax bill into a Defense authorization bill is not the way the Senate is supposed to work. It hasn't worked that way.

I have only been here 24 years, which is not quite as long as my colleague from Delaware. But the Senate doesn't originate tax bills. It hasn't for hundreds of years, and it should not today. I ask my colleagues to, at the appropriate time, vote against the amendment by our friend and colleague from Delaware.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I say to my friend from Oklahoma, he doth protest too loudly. I am not taking it out of the tax bill. This is good stuff on the Constitution, but I think my friend voted for the JOBS bill and just violated the Constitution, by his definition, because we had a revenue measure in there. It didn't get blue-slipped, and he apparently violated his oath, by his definition. I don't think he violated his oath at all.

But the truth is this: In the JOBS bill, what did we do? We changed the Tax Code. So this is great rhetoric, and my friend from Iowa went through this whole thing about—

Mr. NICKLES. Will the Senator yield for a clarification?

Mr. BIDEN. Yes.

Mr. NICKLES. For my colleague's information, we have not yet passed the JOBS bill. What we are going to do is take a House bill, strike that House bill, and insert that bill into an H.R. So it will be a House revenue measure before it goes to conference. We have not gone to conference. The bill before us is a Senate bill. There is a difference.

Mr. BIDEN. The Senator did vote for the Senate bill, correct?

Mr. NICKLES. Yes.

Mr. BIDEN. He would be able to do the same thing with this bill if he used his ingenuity, would he not?

Mr. NICKLES. To clarify, this is a Senate bill, and it will stay that when it goes to conference.

Mr. BIDEN. But it doesn't have to any more than the last Senate bill had to stay a Senate bill. I have been here 32 years. I may not be in the No. 2 position in my party, as my friend was, but I don't need an education on how we do this. This is malarkey, as they say—this argument being made about the Constitution. Let me move on, if I may.

My friend references President Reagan, and I might note that I voted for the Roth-Kemp tax cut. Then I watched President Reagan and voted with him when he raised taxes three times after that because he was a responsible fellow. He raised taxes three times after that out of necessity. I also was here—and we talked about World War II. The President says this is the equivalent of World War II. My friends talk about World War II. We raised taxes through the ceiling in World War II. I don't know whether they didn't teach the same history in Oklahoma and Iowa as they did in Delaware, but we raised taxes in World War II.

Also, this notion about all these other programs—the Senator, because he is so busy and has extensive responsibilities on his side of the aisle, did not have an opportunity—he didn't miss much—to hear my speech on the front end.

There are two purposes in my doing this: One is to unite this Nation, for everybody to get in on the deal. Many other people are being asked to sacrifice. You know, this is a war. People are dying. Some people are sacrificing. People are having their incomes radically changed—those in the National Guard and Reserves. They are contributing at the office.

The other part is—I will say this again, and I said it last time—would any wealthy American—and I hope every one of my kids becomes a wealthy American. By most people's standards, based on my salary, most people think I am wealthy. I don't have stocks, bonds, debentures, and savings accounts. I am not bragging about that, but that is a fact. Most Americans think I am wealthy based on the salary I get paid. But I say to the top 1 percent out there, call me, give me your name, and tell me you are not willing to pay 1 percent higher for the next 5 years in order to make sure these kids sitting here don't pay.

War is different than education. Part of the purpose of a leader, when you go to war, is to unite the Nation, share the responsibility, engage in the sacrifice.

The other point I will make is that my friend from Iowa talks about the fact that this tax cut generated economic growth. I don't disagree with that. But the real question is, is taking one-tenth of 1 percent of the total tax cut going to stop economic growth? Is the Senator making that argument? Well, if he is right, this is a bad idea. One-tenth of 1 percent is the total cost of the total tax cut of this amendment—$25 billion, one-tenth of 1 percent. That is going to bring this economic growth to a screeching halt? Give me a break.

Let's talk about the small business people. I didn't make the assertion that all small business people are sitting back clipping coupons. I am not saying that. I just tell you what the facts are. The facts are, as the Senator knows, that small business owners have to be in the top 1 percent of wage earners to fall into this bracket. Only 2 percent of all the small business owners in America fall into this bracket. That does include some people with passive incomes participating in investment and small businesses. This is not the hands-on, mom-and-pop business owners by any stretch of the imagination. If you look at only sole proprietor returns, those with hands-on owners, they are less than 2 percent. So I can understand my friend disagreeing with me. That is a logical position he takes. He may believe that it is unfair to have them pay 1 percent more and not ask people making $100,000 to pay 1 percent more. I can understand that. That is just an honest disagreement.

I can understand my friend from Oklahoma in his argument on why are we taxing corporations more. That makes sense, too. We can do that. If he wants to go that route, I will help him.

There are other ways to do this. I tried to pick the most painless, unifying mechanism I could find to do a responsible thing: make sure these kids in the blue suits don't pay for this war. They are still going to pay for the war, by the way. We have already spent over $200 billion on this war. I am not complaining about that. I am arguing that we need more troops.

My Lord, all these specious arguments: My God, the mom-and-pop grocery store owners are going to be put in jeopardy by this amendment; this is going to slow down economic growth; this is unfair.

Then the irony is that my friend from Iowa, who always says he is not a lawyer—as I pointed out to him, he is smarter than any lawyer on that committee. Be careful of this good old boy from Iowa, who says: Golly, gee whiz, I am not a lawyer. He knows more hard case law than anybody I know on the Senate floor. Yet he stands up there straight faced and says: You know what, this $25 billion tax increase—and it is—paid for by the top 1 percent is bad for the economy, but I, Chuck Grassley, am out there making sure corporations pay more. I am finding loopholes and closing them.

I congratulate him. Guess what it means. It means you are going to have more people pay more taxes. Is that going to slow down the economy? When my friend takes out of the tax stream or adds to the tax stream by shutting loopholes that do not belong in the law, guess what. More money is coming to the Government. More money than $25 billion I am talking about.

He is a very bright guy. So let's be logical. Let's set up a little syllogism here. If his thesis is my $25 billion is going to slow down the economy, $25 billion now is in the hands of people out there, or will be over the next 5 years out in the hands to be spent by Americans, what about the $25 billion, $35 billion, $100 billion he is looking to take out of the economy over the next 5 years that will be spent by corporations, being spent by, maybe unfairly, but being spent—that is not going to slow down the economy, but my $25 billion is?

Again, to use the expression of my granddaughter, give me a break. I may not be the brightest candle on the table, but I am a relatively logical guy. There is no logic in the argument.

So, look, there are three good reasons to be against Biden: One, you ideologically think this is a bad idea because somehow you think—and I am being a little facetious—that the top 1 percent of the American public pays too much of a burden and is put upon, and to add anything else on them is just unfair to the rest of the American public. OK. Got it. It is a straightforward argument, logical.

The second logical argument is, if there is any merit to it: You ought to spread this out, Biden. If, in fact, you are going to add to the deficit by paying for Medicare or the prescription drug bill—which I voted against and which a lot of you voted for; it cost a lot more than you promised it was going to cost, raising the deficit, spending that I did not vote for—it is better to say unless you are going to pay for this spending, you should not pay for it with revenues. OK. I got it. It is a straightforward argument.

Or lastly, one might argue: Psychologically this is dangerous because after cutting taxes, to now raise them for 5 years by 1 percent for 1 percent of the population, it is going to inject some uncertainty. I don't know what that means. That could be an argument one could make.

With all due respect, you cannot make the argument mom and pop are going under; mom and pop are slowing down; that the loss of revenue is going to stifle economic growth; that this portion of the population is put upon; that this is no different than education or health care or highways, because it is. It is war.

By the way, when I introduced this proposal on a larger measure—$87 billion—a while ago, according to the national polls, 56 percent of the Americans polled on the last version of this amendment said pay for the war from the tax cut.

This is all about values. This is about value differences. And the value that I am espousing—and I am not being so moralistic to suggest that I know it is superior to the value my friends are proposing, but it is a different value. I value the necessity of a greater sense of national unity and a greater contribution from all sectors of the economy in winning this war. I value the notion that when we are clearly able, without doing any harm to the economy or being unfair to any one segment, that we should pay, when we can, rather than make our children and grandchildren pay.

The difference between war and education is on education we made a judgment that we should have an educational system, and we do not control the population. So as children are born, the responsibility to keep a commitment we made exists. It is not elective. War, in this case, was elective. I elected to go to war. That is not a societal responsibility that rests with a generation that has not even come of age yet; it is a responsibility of ours, just as World War II was the responsibility of the greatest generation in the history of mankind, the World War II generation. They did not say: Make my son, Joe, make my daughter, Valerie, make my son, Jim or Frank, pay for this war. They valued responsibility. They stepped up to the ball. As to the idea that this even calls for any serious sacrifice, if that is the case, my Lord, we have lost our bearings.

I have seen not one scintilla of evidence that this will slow economic recovery; that this is a burden upon a group of people who strongly resist taking on the burden; that this is, per se, unfair. This is something I believe—and I cannot prove it because I have not conducted any national poll—that if the people who will be affected by this, again, whose average income is $1 million a year, who have to have a taxable income of $320,000 a year even to get in the game, and if they are small business, 98 percent of them will be not affected one single little way by this, my guess is, if they know it is really going to pay for the $25 billion needed next year for the war, they would pay it, proudly pay it, and rightfully should pay.

My dad, who passed away long ago, used to have an expression. My dad was, I guess, probably like the mom or dad of Senator GRASSLEY and Senator NICKLES and others, a generation that had a different view. My dad's table was a place where you had dinner, you sat down, and two things were demanded. One, you had to have good table manners, and the other was you had to engage in conversation. Our table was a table where you sat down and had conversation and incidentally ate, rather than sat down, ate, and had incidental conversation. It was the one place the family got together with certainty every night, and friends were always included.

I will never forget my father in a discussion with my uncle, Bill Scheen, talking about a particular tax. My dad looked at him and said: Bill, there is no price too high to pay to live in this great country.

I am not asking for a big price. I am just asking for people to do what in their heart they know is right.

I understand my friends, what they have not said—and I may be wrong, but I suspect part of their concern about this amendment, because at least four Members on that side have come up to me and said: I would like to vote for this, Joe, but here is my fear—I give my word this is true—this is my fear: My fear is this would be a foot in the door. If you make this argument and it has catches, I am paying for the war, then your guys are going to come back and say: Look, we ought to raise taxes on the wealthiest corporations to pay for health care, or to pay for whatever. I think that is a legitimate concern on the part of my Republican friends. I understand that. Maybe that is the reason why, not the people who have spoken but some of the people who have spoken to me, who share my concern about not passing this on to these kids are not going to vote with me. I think it is a shame. I just cannot think of how we are able to communicate to the American people that we are in mortal combat for what will be an extended period of time with an enemy that does not wear a uniform but has the capacity to do overwhelming harm to us but that there is no need to rally the entire Nation to contribute a little bit at the office in order to win that war.

Again, the example I gave of what if the President had said go out and pay the tuition of two or four people in your neighborhood, for those of you who can afford it, that is not going to help the war. If anyone thinks that is what I meant, they missed the whole point.

The point is, we should use this time of crisis to unite the country, to talk about the things where we can help one another, where it is not paid for, where it is not unfair. That is the point I am trying to make, and I guess I am not being articulate enough because I do not think a lot of my friends get it.

It is probably my fault because maybe I am not explaining it well enough, but just to make sure everybody understands, how does one convince people that this is as tough a deal as it is if, in fact, we have this incredibly large tax cut? How does that square? It is like my saying to my kids, when they ask me can they go to a summer camp, and my saying I cannot afford to do that, and I drive up the driveway the next day in a brand new Lexus; it is tough times, kids, I cannot afford to send you to that college, you are going to go to the State university, and we buy a summer house. I mean, how does one do that?

By the way, this war is going to cost us a couple hundred billion dollars more before this is over.

Well, I have said all I want to say. I wish I could have said it better but I think this is fair. I think it is equitable. I think it is necessary, and I hope my colleagues will see it that way. I understand if they do not.

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

Mrs. FEINSTEIN. Mr. President, I join Senator BIDEN in support of this amendment to pay for the President's request for an additional $25 billion to fund the war in Iraq.

This amendment will temporarily roll back the acceleration of the President's May 2003 tax cuts for those making more than $319,000 per year by raising the income tax rate from 35 percent to 36 percent for 5 years, 2005–2009.

Assuming passage of this supplemental funding request, the Iraq war will have cost the American people more than $175 billion. And without this amendment, every penny of this $25 billion supplemental request will be borrowed, becoming another debt we will leave to our children and grandchildren.

This amendment, however, offers a very reasonable way to pay for this stage of the war on terror.

By rolling back the acceleration of the May 2003 tax cut just enough to fund the $25 billion request before us, we will reduce the already serious debt burden on our Nation.

We are offering this amendment because it is essential that we begin paying for the programs that we propose.

It is important for the public to know that they—along with our soldiers—must also sacrifice during this war on terror.

Except to tell us that we should visit our shopping malls more frequently, the President has shown little leadership in asking citizens to give to this war effort.

This amendment sends a different message—one that says that it is important that those who have the capacity to pay for this war effort must step forward.

It is time for sacrifice. Deficits, interest costs and the debt are growing again.

Net interest payments on Federal debt are set to increase sharply from approximately $170 billion in 2003 to more than $300 billion by 2012.

And we are facing these daunting fiscal realities as we try to meet a host of new challenges: the war on terror, the war in Iraq, the threat of North Korea, and, of course, securing our homeland.

The Congressional Budget Office predicts that the Federal deficit for fiscal year 2004 will top $470 billion—the largest deficit in our history.

A portion of every dollar we spend from this day until the end of September 2004, will be borrowed money—money our children and grandchildren will have to repay.

After this year's deficit, it is estimated that we will accumulate almost $1.5 trillion in debt during the next 5 years and a total of $2 trillion during the next decade

To help us understand the fiscal track we are on, one must understand that this year's deficit is larger than the amount the President requested for defense in his Fiscal Year 2005 budget request, 447 billion, and larger than the combined non-defense discretionary budget for this year, 459 billion.

Further, the budget projections we are now using do not include the cost of military operations in Iraq and Afghanistan. So add another $25 billion to $80 billion to the deficit.

Nor do they include long-term costs associated with correcting a growing problem with the Alternative Minimum Tax, AMT. This will cost $660 billion over the next 10 years.

The current budget picture also hides the full impact of extending the President's tax cuts to just the next 5 years. Beyond this 5-year window, the costs escalate dramatically. The total 10-year cost of those cost: $1.6 trillion.

And the budget uses $1.1 trillion of revenue from the Social Security and Medicare trust funds over the next 5 years.

Overall, our Federal debt is expected to rise from $6.8 trillion today to $15.1 trillion in 2014.

Why do Deficits Matter? They matter, as the Brookings Institution points out, because they slow economic growth. By 2014, the average family's income will be an estimated $1,800 lower because of the slower income growth that results when government competes with the private sector for a limited pool of savings or borrows more from abroad.

They increase household borrowing costs by driving up interest rates: A family with a $250,000, 30-year-mortgage, for example, will pay an additional $2,500 in interest for a one-percent hike in interest rates.

They increase indebtedness to foreign creditors. Japan holds $526 billion of our debt. China holds $144 billion. The United Kingdom holds $112 billion. Caribbean Banking Centers hold $62 billion.

They require that a growing proportion of revenues be devoted to paying interest on the national debt: By 2014, this increased borrowing will cost the average household $3,000 in added interest on debt alone.

They impose enormous burdens on future generations. Today's young people will have to pay more because our generation has increased the debt so tremendously. And there will be added pressure to cut spending on health care, education, and other critical services.

Additionally, deficits will prevent us from addressing looming crises in both Social Security and Medicare when the baby boomers retire.

In 2003, we spent $1.2 trillion on these programs and other entitlements—54 percent of the Federal budget. This includes Social Security, Medicare, Medicaid, food stamps, unemployment compensation.

By 2009, we will be spending $1.6 trillion for these entitlements—57 percent of the Federal budget.

By 2014, we will be spending $2.1 trillion—59 percent of the budget.

These programs are in serious danger if we continue down this path of deficit spending.

In January of last year during his State of the Union Address, the President said the following:

> This country has many challenges. We will not deny, we will not ignore, we will not pass along our problems to other Congresses, to other Presidents, and to other generations. We will confront them with focus and clarity and courage.

Well, this is one challenge we are passing on to other Congresses and to other generations.

Today we have a chance to meet this challenge and demonstrate fiscal responsibility by temporarily rolling back a small portion of the accelerated tax cut for the wealthiest Americans.

Everyone who is affected by this amendment makes more than $319,000 a year in taxable income, which typically means that they are making more than $430,000 a year in gross income.

This amendment does not revoke the 2001 or 2003 reductions in the top income tax rate, nor would it affect any other element of the 2001 or 2003 tax packages. It would merely temporarily raise the marginal income tax rate on the richest in our society.

By scaling back a small portion of the accelerated cut in the May 2003 tax package, we will be taking a first step toward putting our fiscal house in order and asking citizens to sacrifice for the war on terror.

Passing this amendment is the responsible thing to do. I urge your support.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I assure my colleague from the State of Delaware, for whom I have a tremendous amount of respect, that his inability to persuade us has nothing to do with his lack of passion or eloquence. He has an abundance of both, and a lot of good faith and friendliness thrown in to boot. The problem is, he is wrong. That is the only problem.

I would like to try to explain why I think that is so, with all good faith, to my friend. He started out by saying that the purpose of his amendment is to unite the Nation and then proceeded to offer an amendment which chose a very small minority of taxpayers on whom to raise taxes, and that is supposed to unite the Nation.

With all due respect to my friend, I do not think that unites the Nation. That hearkens back to the old class warfare concept that there are some people who are so rich that we have to soak them a little bit more in order to be fair.

In fact, that is implicit in the argument. We have a lot of people overseas sacrificing. These rich people must not be sacrificing enough so let us extract more money from them in the form of income taxes. That is the implicit argument. That is not a uniting argument.

The interesting thing is that when it comes to the Tax Code of the United States, Americans are very egalitarian. Middle-income taxpayers support repeal of the death tax, for example, even though they know it would never help them. They support the retention of the tax cuts on the highest tax brackets, on the middle tax brackets. We all support it for the lower tax brackets. In fact, a lot of people would like to be in the next higher bracket. That may be one reason they do not want to soak the rich, because they would like to be in that next bracket maybe in a few years.

The reality is, most people are perfectly happy, even where they are, supporting fair taxes. Polls have been taken, and the question asked is, What do you think is the fair percentage of taxes to extract from Americans? The answer, uniformly, year after year, is about one-third, and that applies to all tax brackets. So most Americans believe that the fair tax would be about a third of what one makes, regardless of how rich they are.

What are the real facts about the sacrifice that Americans make financially, the sacrifice, that is to say in the amount of taxes that they pay to fund things such as the war effort? Let me give the exact statistics, because I think this makes the point that there is already a lot of sacrifice—and, by the way, it is a willing sacrifice.

When it comes to war, I think we are all willing to do more because we are asking some young men and women to sacrifice an awful lot, but let's get the exact facts.

How much do the top 1 percent—and that is the people we are talking about—pay in taxes in this country? The top 1 percent obviously pay more than 1 percent, maybe 5 percent or 10 percent, maybe 20 percent, 30 percent? Do my colleagues know how much the top 1 percent pay? They pay almost a third of the taxes of this country. So the folks we are talking about, the 1 percent pay, to be exact, 32.3 percent of the taxes. Almost exactly a third of the taxes are paid by the top 1 percent.

That is more than fair. That is a pretty progressive tax system.

How about the top 5 percent? They pay over half of all taxes. Just the top 5 percent pay 52.8 percent of the taxes.

How about the top 10 percent? We always like to talk about the top 10 percent of the class, and that is a pretty elite group. The top 10 percent pay almost two-thirds of all of the taxes—64.8 percent, to be exact. What do the bottom half percent of our taxpayers pay? There is the top half and the bottom half. How much do my colleagues think the bottom half pay? Less than 4 percent of the taxes are paid by the bottom half—36 percent, to be exact.

One could say the wealthier people in this country are paying their fair share. One could say they are making a sacrifice. I would not put it that way because, frankly, I think most of them can afford to do it. I do not think it is something they resent doing. So I think it is a sacrifice they are very willing to take on, but I do not think we should contend that we are uniting America by picking a very small minority of taxpayers, who are already paying a third of all of the taxes in the country, and saying now they are going to have to pay some more or else they are not sacrificing enough.

The interesting thing is that the tax cuts President Bush proposed and we passed into law actually increased the percentage of taxes paid by those in the higher brackets. It did not decrease it. So it added to the sacrifice, if one wants to put it that way.

In every one of these brackets, if we want to take the top 1 percent, the top 5 percent, the top 10 percent, the percentage of taxes paid by that group of people is higher today than it was before the tax cuts. And the percentage paid by the lower 50 percent is actually less. It used to be 4.1 percent. Now it is down to 3.6 percent.

So it is a specious argument to suggest that somehow these people are not paying their fair share, that the only way to be fair is to make them sacrifice some more. I don't think we should look at the war effort this way, let alone fund our Government this way. I don't think it is the way to unite the country. If anything, it further tends to divide the country.

I would like to move to the second point. I think most people now recognize that the tax reductions had a great deal to do with the stimulation of the economy. Why was that so? Primarily because there was more capital available. People were able to keep more of their own money, and they did one of three things with it: They either spent it, which helped some businesses because they now had more revenue; or they invested it, then there was more capital to be invested in businesses to create more jobs, for example; or they saved it, and savings amounts to investment because whatever institution you put it in then invests the money.

So in all three situations there was more money infused into the economy; more capital, which created more jobs; and those jobs, the jobs that have been created and the capital infused in the economy, have created an extraordinarily strong economy.

One of the results of that has been to begin to reduce the budget deficit by providing more income to the Federal Government because more money is being paid by people and by businesses. That wealth is what is going to be able to help us win the war as well as fund the other things we have to fund.

The argument of my colleague from Delaware is: But this is a very small amount of money. One-tenth of 1 percent, I believe, is the number. That may be. One-tenth of 1 percent of what we are talking about is a heck of a lot of money—$25 billion to be exact, as I understand it. So we are not talking peanuts. That is $25 billion that would not be helping to create new jobs, to stimulate the economy, to create additional wealth, which could be used to pay for the war as well as the other things on which we need to spend it.

It is an especially important part of the economy. Phil Gramm, our former colleague from Texas, used to talk about one of his constituents who said he had a lot of jobs in his life. He worked for a lot of employers, and he said, the funny thing was they all had more money than he did.

There are employers and there are employees. Thank God for both. But you have to have enough capital, enough wealth, to create jobs to pay people to do work for you in order for the rest of us to have a job. It is those people in these tax brackets who have that capital that they are able to invest in a business, so-called disposable income, money that they can invest in a stock or some other equity to help create a job in this country. That money has more effect in the economic recovery than a lot of the other money that is paid in taxes. Therefore, this is not an insignificant proposition that we are talking about, only talking about one-tenth of 1 percent, and therefore what difference and does it matter? It could make a great deal of difference in the economic health of our country.

It is wrong to raise taxes at this point when we know the reduction in taxes, especially the marginal rates, have produced such a strong effect on the economy.

We could get into an argument about small businesses. There is an entire report that I could get into that talks about the effect on small businesses. We know many of the people in this tax bracket are small business owners. These are where most of the jobs are created, 7 out of 10 jobs, if you want to get into the statistics, are created by small businesses. There are 8 million small businesses in America that employ over half the workers, and this tax rate is the rate many pay because they are a passthrough entity, like the subchapter S corporations and partnerships and so on. We don't need to get into all that.

The point is, this hurts small businesses just as much as it hurts big businesses. In any event, it hurts those who create jobs, and it doesn't unite America. It doesn't unite us as a nation, as my colleague would suggest. It tends to divide us and hurt us. That is one of the reasons we oppose it.

There are very few people on the other side of the aisle for whom I have greater respect than the Senator from Delaware. I understand the motivation behind his proposal. I simply think it is the wrong approach. It is in that spirit that I oppose his amendment and urge my colleagues to keep the tax cuts that we put in place. They have done a lot of good. Let's keep them. We do not need to hurt somebody in order to unite the country. We have enough revenue to pay for the increased needs of our country. Of course, the amendment doesn't even apply that money to the war in Iraq. There is an assumption that it would be used for that purpose, and I will grant that assumption. But the bottom line is we don't have to do this in order to win the war in Iraq, in order to supply our troops, and it would have very negative effects on the economy of the country, as well as being very unfair.

So I urge my colleagues to vote against the amendment of the Senator from Delaware.

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

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

When the author of this amendment finished, he spoke about my being inconsistent; that I want to close tax loopholes. He says that takes money out of the economy, so it is inconsistent when I say that it is wrong for him to take money out of the economy.

I think the thing for him to remember about closing these tax loopholes, we are taking in money from dishonest taxpayers, whereas he is taking money away from honest taxpayers by raising the marginal tax rate. He would say I am inconsistent in complaining about his taking money out of the economy and running it through Government, whereas I am taking money out of the economy by closing the tax loopholes of dishonest taxpayers.

When I close those loopholes, have dishonest taxpayers pay taxes they ought to be paying anyway—except for the fact that they buy tax shelters put together by big corporate lawyers, big accounting firms, and big investment bankers—I am getting money from dishonest taxpayers. But in the bill that I referred to, the JOBS bill, we reduce taxes in America so that companies that do manufacture in the United States will pay less corporate tax as an incentive to create jobs in America.

We are taking money from dishonest taxpayers, but we are putting it right back into the economy in the private sector by reduced taxes for people who do manufacturing in America to create jobs. So I think I am totally consistent. I think having dishonest taxpayers pay what they would otherwise pay if they hadn't been buying these tax shelters is the right policy.

I think the Biden amendment reducing marginal tax rates and hurting small business is the wrong policy. It is the right policy to have dishonest taxpayers who use tax shelters pay their taxes, and I think it is all right to give tax relief to companies that manufacture in America—not those that manufacture overseas but create jobs in America. That bill passed 92 to 5, and I presume with the support of the Senator from Delaware.

I believe we are doing the right thing. I believe he is doing the wrong thing. I believe we encourage job creation and entrepreneurship, particularly among small business. I believe his amendment will actually discourage it.

I believe his amendment is the first step towards what Senator KERRY is campaigning for in his campaign for the Presidency—that, if he is elected, he made it very clear he is going to raise the top marginal tax rate not just to 36 percent as the Senator from Delaware would, but raise it to 39.6 percent.

Do you think that is the end? There is not enough money there to do all the things Senator KERRY is campaigning on. Pretty soon it is not just 39.6. Pretty soon it is taking away deductions so that the top marginal tax rate might say 39.6, but it is effectively 42, or, in the case of subchapter S, 45 as it used to be. Pretty soon there is not enough money there. Pretty soon you are taxing middle-income people to a greater extent. Who knows where that all ends?

I think sometime there has to be a decision made that the Government will only take so much out of the economy; that 535 Members of Congress will only spend so much money. That amount of money is not satisfactory to people on the other side of the aisle, but I decided that where it has been for 50 years—17 to 19 percent of GNP—is where it ought to be, and the tax reductions we passed in 2001 and in 2003 to stimulate the economy, to get us out of the recession, out of the joblessness that came as a result of the September 11 attack on America by terrorism, and to revive the economy, is about right. These tax bills were at their highest level since World War II. We ought to bring it back to where it was for 50 years—17 to 19 percent—for two reasons.

No. 1: The economy has grown at that level of taxation very well over that 50 years. It hasn't done any harm to the economy.

No. 2: It is a level of taxation that is accepted by the people of this country.

There is a basic philosophical difference between that side of the aisle and this side of the aisle. They believe we should bring the money into Washington and let 535 Members of Congress decide how to divide up the goods and services of this country. There is a philosophy we have on this side of the aisle that it is better to leave the money in the pockets of the taxpayers because having 130 million people decide how the goods and services of this country ought to be expended or invested results in a more dynamic economy than if 535 Members elected to the Congress of the United States make that decision for 270 million Americans.

When we enacted the individual tax cuts in 2001, the Treasury Department estimated that roughly three out of four taxpayers affected by the 35 percent bracket filed returns with small business activity involving a sole proprietorship, S-corporation, partnership, or a farm.

Advocates of tax increases now claim that only 2 percent of small businesses are impacted by the top rates.

I would like to address their criticism that a very small percentage of all small businesses are affected by the top brackets.

This statistic merely states the obvious. Only about 2 percent of all taxpayers have incomes above $200,000 per year, so it is not surprising that the distribution of small business owners follows roughly the same pattern.

Let's consider the impact of this tax increase on small business.

A soon-to-be-released study by the Tax Foundation concludes that most high-income taxpayers are active business owners rather than ''passive'' investors.

The Tax Foundation study combines IRS data with demographic Census data, and finds that high-income taxpayers are mostly in ''active'' business occupations—such as construction, manufacturing, and retail trade—rather than in passive occupations such as banking, finance, and securities.

What is significant about the Tax Foundation report is that, overall, about 74 percent of those hit by the highest marginal rate have active business activity.

This business activity comes in three basic forms: Schedule C, for sole proprietorships; Schedule E, for S-corporations, royalties, and partnerships; and Schedule F, farm income. The most common of these are Schedule E.

Of those taxpayers hit by the 35 percent rate, nearly two-thirds—62.7 percent—have Schedule E income from an S-corporation, royalty, or partnership.

It is likely that most of these taxpayers are shareholders in S-corporations.

The Tax Foundation data shows that these high-income taxpayers receive about 37 percent of their overall income from salaries and wages which, when combined with their Schedule C, E, and F income, would bring their total amount of business income to 65 percent of their total adjusted gross income.

This figure does not include other ways in which a business owner may take profits out of the firm.

For example, an entrepreneur who capitalized his business with a loan, may receive regular interest in return.

Taxable interest and dividends account for roughly 9 percent of the overall income for high-income taxpayers.

While most of this interest and dividend income is likely from traditional investments, a portion could be ''business income'' taken as interest or dividends from their small business.

The Tax Foundation was able to isolate the occupations and industries that these high-income individuals are engaged in. They did this by combining IRS data with demographic Census data.

They found that high-income taxpayers are engaged in a wide variety of active business industries and occupations throughout the economy.

The largest single category of 31.5 percent is ''executive, administration & managerial''—the most likely category that the president or CEO of a firm would choose.

By contrast, physicians, lawyers, and judges comprise just 11.4 percent of these individuals.

Another analysis shows that high-income taxpayers are engaged across all industries.

The one category in which passive investors would most likely be found is within the ''securities, brokerage, and investment companies.'' But only about 4 percent of high-income taxpayers are found in this industry.

By contrast, 4.9 percent of these taxpayers are found in the construction industry, 8.1 percent are in manufacture durable goods, 5 percent are in retail trades, and 6 percent are in business services such as computers and data processing.

High-income taxpayers engaged in legal services comprise just 3.2 percent of these high-income taxpayers.

The data clearly shows that a very large proportion of high-income taxpayers are engaged in some form of active business operation—not clipping coupons and resting back in their rocking chairs smoking their cigars, the image of a lot of rich people.

The only conclusion from these findings is that raising taxes on these high-income taxpayers would ripple through every industry, not just passive investors.

And as the U.S. Chamber of Commerce says in their letter, it will kill job growth in small businesses.

The 1997 economic census—the most recent available—shows that S-corps, proprietorships, and partnerships employed over 30 million people that year.

It seems unlikely that 30 million jobs cold be created by ''shell'' companies owned by passive investors.

The stakes of this debate are high because there has been an explosion of individual-owned businesses over the past two decades.

Between 1980 and 2000, for example, the total number of sole proprietorships, partnerships, and S-corporations more than doubled, from 10.8 million in 1980 to 22.8 million in 2000.

S-corps alone grew 424 percent, from 545,389 in 1980, to 2.86 million in 2000, and now far exceed the number of conventional C-corporations.

This year, the IRS estimates that nearly 58 percent of all corporate tax returns will be S corporation returns. If you are prepared to vote for a tax increase on small business job growth, then Members should vote for the amendment before the Senate by the Senator from Delaware. If Members care about sustaining the job growth that we have experienced over the past several months, I urge Members not to vote against that growth by increasing taxes on the important small business sector.

There is also another problem with the bill. Senator BIDEN would have Members believe the world is filled with wealthy, passive investors. The truth is, however, that people continually move in and out of high tax rate categories, most likely because they have sold a business or a major asset.

The IRS recently released a study of 400 of the highest individual income tax returns for the years 1990 through 2000. That study shows less than 25 percent of those returns appeared in the top 400 more than once and less than 13 percent appeared more than twice, which shows high-income people are not high income through their livee.

I could add that low-income people are not always low income throughout their lives because we have a dynamic society, a dynamic economy. Some people improve their lot and some people do not improve their lot. Some people end up in a lower level.

What does this mean? The top taxpayers are not a fixed group of people. People move in and out of this group according to economic fluctuations or maybe because of major events. So we are probably looking at a large number of business owners who are selling their businesses or selling their farm. If members think they are voting for a tax increase on a class of idle rich, think again. These are not coupon-clipping people who get their money, smoke their cigars, and lean back in their rocking chairs. These are people that create jobs, probably never retire, keeping that small business going by reinvesting their earnings.

If Members vote for this amendment, I am not sure they will know whose taxes they are increasing.

How much time remains on this side?

The PRESIDING OFFICER. The time in opposition is expired.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. There are 6 minutes 18 seconds remaining.

Mr. REID. This is for Senator BIDEN's amendment.

Mr. BIDEN. If my colleagues are finished responding, I am prepared to yield back the remainder of my time and at whatever time appropriate, vote on the amendment.

Mr. GRASSLEY. My time has expired.

Mr. BIDEN. I yield back the time.

AMENDMENT NO. 3352, AS AMENDED

Mr. REID. Under the order, there will now be 10 minutes for Senator REED. We are going to yield back that time.

The PRESIDING OFFICER. Time is yielded back.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. 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. WARNER. The regular order is the vote on the Reed amendment?

The PRESIDING OFFICER. As amended.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I anounce that the Senator from Utah (Mr. BENNETT) and the Senator from Oklahoma (Mr. INHOFE) are necessarily absent.

Mr. REED. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

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

[Rollcall Vote No. 129 Leg.]

YEAS—93

Akaka	Coleman	Graham (SC)
Alexander	Collins	Grassley
Allard	Conrad	Gregg
Allen	Cornyn	Hagel
Baucus	Corzine	Harkin
Bayh	Crapo	Hatch
Biden	Daschle	Hollings
Bingaman	Dayton	Hutchison
Bond	DeWine	Inouye
Boxer	Dodd	Jeffords
Breaux	Dole	Johnson
Brownback	Domenici	Kennedy
Bunning	Dorgan	Kohl
Burns	Durbin	Kyl
Byrd	Edwards	Landrieu
Campbell	Ensign	Lautenberg
Cantwell	Enzi	Leahy
Carper	Feingold	Levin
Chafee	Feinstein	Lieberman
Chambliss	Fitzgerald	Lincoln
Clinton	Frist	Lott
Cochran	Graham (FL)	Lugar

McCain	Pryor	Snowe
McConnell	Reed	Specter
Mikulski	Reid	Stabenow
Miller	Roberts	Stevens
Murkowski	Rockefeller	Sununu
Murray	Sarbanes	Talent
Nelson (FL)	Schumer	Voinovich
Nelson (NE)	Sessions	Warner
Nickles	Shelby	Wyden

NAYS—4

Craig	Smith
Santorum	Thomas

NOT VOTING—3

Bennett	Inhofe	Kerry

The amendment (No. 3352), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, we have made good progress on the bill. I congratulate the managers for their tremendous progress. We have been in discussions with the Democratic leadership and the chairman and the ranking member as to how we can complete action on the bill. I think we are underway, although we have a number of amendments pending, a lot of amendments planned for tomorrow and Monday. After discussion with the Democratic leadership, we are prepared to vitiate cloture in large part because of the progress we made yesterday and today, and we will continue to make tomorrow and Monday.

Members have talked to the managers of the bill about amendments tomorrow as well as Monday. They have a good outline. We would, therefore, not vote tomorrow. We have one more vote tonight. So we would not vote tomorrow.

Monday has to be a very productive day and, in all likelihood, we would have a series of votes beginning late Monday afternoon, sometime after 5 o'clock. We can talk about the specific time. But there are likely to be four or five or even six rollcall votes on Monday, starting after 5 o'clock, probably 5:30 or so. The exact time will be announced tomorrow.

We will have a busy day Tuesday as well, as we consider the remaining amendments. It is my personal hope—as long as we continue working together very aggressively—to complete the bill on Tuesday, understanding we have a lot of work to do. Thus, the proposal would be to have one more rollcall vote, which will be shortly, no more rollcall votes tonight, no votes tomorrow, and starting at about 5 or 5:30 on Monday, a series of rollcall votes.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3379, offered by the Senator from Delaware, Mr. BIDEN.

Mr. REID. Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Utah (Mr. BENNETT) and the Senator from Oklahoma (Mr. INHOFE) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 44, nays 53, as follows:

[Rollcall Vote No. 130 Leg.]

YEAS—44

Akaka	Dorgan	Leahy
Biden	Durbin	Levin
Bingaman	Edwards	Lieberman
Boxer	Feingold	Lincoln
Breaux	Feinstein	Mikulski
Byrd	Graham (FL)	Murray
Cantwell	Harkin	Nelson (FL)
Carper	Hollings	Reed
Chafee	Inouye	Reid
Clinton	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Schumer
Daschle	Kohl	Stabenow
Dayton	Landrieu	Wyden
Dodd	Lautenberg	

NAYS—53

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (NE)
Allen	Ensign	Nickles
Baucus	Enzi	Pryor
Bayh	Fitzgerald	Roberts
Bond	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Kyl	Sununu
Collins	Lott	Talent
Cornyn	Lugar	Thomas
Craig	McCain	Voinovich
Crapo	McConnell	Warner
DeWine	Miller	

NOT VOTING—3

Bennett	Inhofe	Kerry

The amendment (No. 3379) was rejected.

Mr. WARNER. 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.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. The managers, together with our distinguished colleague from Nevada, would like to do the following to accommodate Senators on both sides: The Senator from Missouri would introduce an amendment, lay it down, and speak maybe 1 minute to it. We then would turn to the other side. The Senator from New York wishes to address the Senate for several minutes and then we will come back over to Senator TALENT, who wishes to speak with Senator CLINTON. They will each have a couple of minutes. Then Senator BROWNBACK will lay an amendment down and Senator DORGAN may or may not speak to it, but there will be no more votes, of course, tonight.

Mr. LEVIN. Then we will clear those amendments after all of that?

Mr. WARNER. No, we might stop midway and clear the amendments. As soon as the package is ready, the Senator from Michigan and I may clear an en bloc package of amendments.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I have a question for the manager of the bill. I will have a second-degree amendment to the Brownback amendment which I will also lay down after his.

Mr. WARNER. That is fine. I am not seeking unanimous consent. I am just trying, in a gentlemanly way, to organize this.

I see the distinguished Senator from Nevada wishes to speak?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, can we just do this one step at a time, before we agree to any amendment? If there is going to be a second-degree amendment as part of a unanimous consent, I think we better withhold that piece. We didn't realize there was going to be a second-degree amendment. Is it to the Brownback amendment? If this is in the form of a unanimous consent request, we can't at this moment agree to it.

Mr. WARNER. It is not in the form of a unanimous consent.

Mr. REID. Mr. President, if I could address remarks to the Chair? We have a number of Senators who have been waiting. The two managers have cleared 18 amendments, or something like that. It would take just a matter of a minute or two to do that, but they are not yet ready.

Mr. WARNER. I thank the leader. The package is being put together. At this point in time I yield the floor and I see the Senator from Missouri seeks recognition.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 3384

Mr. BOND. Mr. President, I thank my good friend, the chairman, and certainly I thank the ranking member, for their accommodation. I call up amendment No. 3384 which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. BOND), for himself, Mr. TALENT, and Mr. HARKIN, proposes an amendment numbered 3384.

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

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

The amendment is as follows:

(Purpose: To include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program and to provide for the disposal of certain excess Department of Defense stocks for funds for that purpose)

At the end of subtitle D of title XXXI, insert the following:

SEC. 3146. INCLUSION OF CERTAIN FORMER NUCLEAR WEAPONS PROGRAM WORKERS IN SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

(a) FINDINGS.—Congress makes the following findings:

(1) Energy workers at the former Mallinkrodt facilities (including the St. Louis downtown facility and the Weldon Springs facility) were exposed to levels of radionuclides and radioactive materials that were much greater than the current maximum allowable Federal standards.

(2) The Mallinkrodt workers at the St. Louis site were exposed to excessive levels of airborne uranium dust relative to the standards in effect during the time, and many workers were exposed to 200 times the preferred levels of exposure.

(3)(A) The chief safety officer for the Atomic Energy Commission during the Mallinkrodt-St. Louis operations described the facility as 1 of the 2 worst plants with respect to worker exposures.

(B) Workers were excreting in excess of a milligram of uranium per day causing kidney damage.

(C) A recent epidemiological study found excess levels of nephritis and kidney cancer from inhalation of uranium dusts.

(4) The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

(5) The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium, which are highly radioactive.

(6) The National Institute of Occupational Safety and Health admits that—

(A) the operations at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides; and

(B) the Institute has virtually no personal monitoring data for Mallinkrodt workers prior to 1948.

(7) The National Institute of Occupational Safety and Health has informed claimants and their survivors at those 3 Mallinkrodt sites that if they are not interviewed as a part of the dose reconstruction process, it—

(A) would hinder the ability of the Institute to conduct dose reconstruction for the claimant; and

(B) may result in a dose reconstruction that incompletely or inaccurately estimates the radiation dose to which the energy employee named in the claim had been exposed.

(8) Energy workers at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) between 1947 and 1975 were exposed to levels of radionuclides and radioactive material, including enriched uranium, plutonium, tritium, and depleted uranium, in addition to beryllium and photon radiation, that are greater than the current maximum Federal standards for exposure.

(9) According to the National Institute of Occupational Safety and Health—

(A) between 1947 and 1975, no records, including bioassays or air samples, have been located that indicate any monitoring occurred of internal doses of radiation to which workers described in paragraph (8) were exposed;

(B) between 1947 and 1955, no records, including dosimetry badges, have been located to indicate that any monitoring occurred of the external doses of radiation to which such workers were exposed;

(C) between 1955 and 1962, records indicate that only 8 to 23 workers in a workforce of over 1,000 were monitored for external radiation doses; and

(D) between 1970 and 1975, the high point of screening at the Iowa Army Ammunition Plant, only 25 percent of the workforce was screened for exposure to external radiation.

(10) The Department of Health and Human Services published the first notice of proposed rulemaking concerning the Special Exposure Cohort on June 25, 2002, and as of May 13, 2004, the rule has yet to be finalized.

(11) Many of those former workers have died while waiting for the proposed rule to be finalized, including some claimants who were waiting for dose reconstruction to be completed.

(12) Because of the aforementioned reasons, including the serious lack of records and the death of many potential claimants, it is not feasible to conduct valid dose reconstructions for the Iowa Army Ammunition Plant facility or the Mallinkrodt facilities.

(b) INCLUSION OF CERTAIN FORMER WORKERS IN COHORT.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384*l*(14)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

''(C) Subject to the provisions of section 3612A, the employee was so employed for a number of work days aggregating at least 45 workdays at a facility operated under contract to the Department of Energy by Mallinkrodt Incorporated or its successors (including the St. Louis downtown or 'Destrahan' facility during any of calendar years 1942 through 1958 and the Weldon Springs feed materials plant facility during any of calendar years 1958 through 1966), or at a facility operated by the Department of Energy or under contract by Mason & Hangar-Silas Mason Company at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) during any of the calendar years 1947 through 1975, and during the employment—

''(i)(I) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of an employee's body to radiation; or

''(II) was monitored through the use of bioassays, in vivo monitoring, or breath samples for exposure at the plant to internal radiation; or

''(ii) worked in a job that had exposures comparable to a job that is monitored, or should have been monitored, under standards of the Department of Energy in effect on the date of enactment of this subparagraph through the use of dosimetry badges for monitoring external radiation exposures, or bioassays, in vivo monitoring, or breath samples for internal radiation exposures, at a facility.''.

(c) FUNDING OF COMPENSATION AND BENEFITS.—(1) Such Act is further amended by inserting after section 3612 the following new section:

''SEC. 3612A. FUNDING FOR COMPENSATION AND BENEFITS FOR CERTAIN MEMBERS OF THE SPECIAL EXPOSURE COHORT.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Labor for each fiscal year after fiscal year 2004 such sums as may be necessary for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) in such fiscal year.

''(b) PROHIBITION ON USE FOR ADMINISTRATIVE COSTS.—(1) No amount authorized to be appropriated by subsection (a) may be utilized for purposes of carrying out the compensation program for the members of the Special Exposure Cohort referred to in that subsection or administering the amount authorized to be appropriated by subsection (a).

''(2) Amounts for purposes described in paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a).

''(c) PROVISION OF COMPENSATION AND BENEFITS SUBJECT TO APPROPRIATIONS ACTS.—The provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort referred to in subsection (a) in any fiscal year shall be subject to the availability of appropriations for that purpose for such fiscal year and to applicable provisions of appropriations Acts.''.

(2) Section 3612(d) of such Act (42 U.S.C. 7384e(d)) is amended—

(A) by inserting ''(1)'' before ''Subject''; and

(B) by adding at the end the following new paragraph:

''(2) Amounts for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) shall be derived from amounts authorized to be appropriated by section 3612A(a).''.

On page 373, line 18, strike ''$6,674,898,000 and insert ''$6,494,898,000''.

AMENDMENT NO. 3384, AS MODIFIED

Mr. BOND. I send to the desk a modification on behalf of myself, Senator HARKIN, Senator TALENT, and Senator GRASSLEY, and ask it be immediately considered as a modification.

The PRESIDING OFFICER. Is there objection to the modification? Hearing none, it is so ordered.

The amendment (No. 3384), as modified, is as follows:

(Purpose: To include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program and to provide for the disposal of certain excess Department of Defense stocks for funds for that purpose)

At the end of subtitle D of title XXXI, insert the following:

SEC. 3146. INCLUSION OF CERTAIN FORMER NUCLEAR WEAPONS PROGRAM WORKERS IN SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

(a) FINDINGS.—Congress makes the following findings:

(1) Energy workers at the former Mallinkrodt facilities (including the St. Louis downtown facility and the Weldon Springs facility) were exposed to levels of radionuclides and radioactive materials that were much greater than the current maximum allowable Federal standards.

(2) The Mallinkrodt workers at the St. Louis site were exposed to excessive levels of airborne uranium dust relative to the standards in effect during the time, and many workers were exposed to 200 times the preferred levels of exposure.

(3)(A) The chief safety officer for the Atomic Energy Commission during the Mallinkrodt-St. Louis operations described the facility as 1 of the 2 worst plants with respect to worker exposures.

(B) Workers were excreting in excess of a milligram of uranium per day causing kidney damage.

(C) A recent epidemiological study found excess levels of nephritis and kidney cancer from inhalation of uranium dusts.

(4) The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

(5) The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium, which are highly radioactive.

(6) The National Institute of Occupational Safety and Health admits that—

(A) the operations at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides; and

(B) the Institute has virtually no personal monitoring data for Mallinkrodt workers prior to 1948.

(7) The National Institute of Occupational Safety and Health has informed claimants and their survivors at those 3 Mallinkrodt sites that if they are not interviewed as a part of the dose reconstruction process, it—

(A) would hinder the ability of the Institute to conduct dose reconstruction for the claimant; and

(B) may result in a dose reconstruction that incompletely or inaccurately estimates the radiation dose to which the energy employee named in the claim had been exposed.

(8) Energy workers at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) between 1947 and 1975 were exposed to levels of radionuclides and radioactive material, including enriched uranium, plutonium, tritium, and depleted uranium, in addition to beryllium and photon radiation, that are greater than the current maximum Federal standards for exposure.

(9) According to the National Institute of Occupational Safety and Health—

(A) between 1947 and 1975, no records, including bioassays or air samples, have been located that indicate any monitoring occurred of internal doses of radiation to which workers described in paragraph (8) were exposed;

(B) between 1947 and 1955, no records, including dosimetry badges, have been located to indicate that any monitoring occurred of the external doses of radiation to which such workers were exposed;

(C) between 1955 and 1962, records indicate that only 8 to 23 workers in a workforce of over 1,000 were monitored for external radiation doses; and

(D) between 1970 and 1975, the high point of screening at the Iowa Army Ammunition Plant, only 25 percent of the workforce was screened for exposure to external radiation.

(10) The Department of Health and Human Services published the first notice of proposed rulemaking concerning the Special Exposure Cohort on June 25, 2002, and the final rule published on May 26, 2004.

(11) Many of those former workers have died while waiting for the proposed rule to be finalized, including some claimants who were waiting for dose reconstruction to be completed.

(12) Because of the aforementioned reasons, including the serious lack of records and the death of many potential claimants, it is not feasible to conduct valid dose reconstructions for the Iowa Army Ammunition Plant facility or the Mallinkrodt facilities.

(b) INCLUSION OF CERTAIN FORMER WORKERS IN COHORT.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384*l*(14)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

''(C) Subject to the provisions of section 3612A and section 3146(e) of the National Defense Authorization Act for Fiscal Year 2005, the employee was so employed for a number of work days aggregating at least 45 workdays at a facility operated under contract to the Department of Energy by Mallinkrodt Incorporated or its successors (including the St. Louis downtown or 'Destrehan' facility during any of calendar years 1942 through 1958 and the Weldon Springs feed materials plant facility during any of calendar years 1958 through 1966), or at a facility operated by the Department of Energy or under contract by Mason & Hangar-Silas Mason Company at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) during any of the calendar years 1947 through 1975, and during the employment—

''(i)(I) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of an employee's body to radiation; or

''(II) was monitored through the use of bioassays, in vivo monitoring, or breath samples for exposure at the plant to internal radiation; or

''(ii) worked in a job that had exposures comparable to a job that is monitored, or should have been monitored, under standards of the Department of Energy in effect on the date of enactment of this subparagraph through the use of dosimetry badges for monitoring external radiation exposures, or bioassays, in vivo monitoring, or breath samples for internal radiation exposures, at a facility.''.

(c) FUNDING OF COMPENSATION AND BENEFITS.—(1) Such Act is further amended by inserting after section 3612 the following new section:

''SEC. 3612A. FUNDING FOR COMPENSATION AND BENEFITS FOR CERTAIN MEMBERS OF THE SPECIAL EXPOSURE COHORT.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Labor for each fiscal year after fiscal year 2004 such sums as may be necessary for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) in such fiscal year.

''(b) PROHIBITION ON USE FOR ADMINISTRATIVE COSTS.—(1) No amount authorized to be appropriated by subsection (a) may be utilized for purposes of carrying out the compensation program for the members of the Special Exposure Cohort referred to in that subsection or administering the amount authorized to be appropriated by subsection (a).

''(2) Amounts for purposes described in paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a).

N O T I C E

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR FRIDAY, JUNE 18, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Friday, June 18. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill. I further ask consent that the cloture vote be vitiated. I further ask consent that the Brownback recognition request be vitiated.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will resume consideration of the Defense authorization bill. As I mentioned earlier, we intend to complete action on this bill early next week. The chairman and ranking member of the Armed Services Committee have done a superb job in moving this bill forward, and as I commented a couple of hours ago on the floor, we made real progress over the last 48 hours. We will maintain that momentum and that effort over the course of tomorrow's session.

As I stated, I vitiated the scheduled cloture vote in anticipation of further cooperation and with the view of finishing the bill on Tuesday. I also stated earlier that we would not have rollcall votes tomorrow, although a number of Senators have expressed an interest in offering their amendments, and a number have said they still want to offer an amendment. If that is the case, I ask that they contact the managers so that we can proceed in that fashion tomorrow.

The next votes will occur Monday at approximately 5:30, and there will likely be a number of votes after 5:30 on Monday night, given that we will be voting on some of the amendments considered tomorrow as well as Monday during the day.

Finally, as a reminder, the resolution we just adopted moments ago provides for the official photograph of the Senate to occur on Tuesday, June 22. Members are asked to be at their desk at 2:15 sharp that day for this photograph.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 9:24 p.m., adjourned until Friday, June 18, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 17, 2004:

DEPARTMENT OF COMMERCE

ALBERT A. FRINK, JR., OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE LINDA MYSLIWY CONLIN, RESIGNED.

DEPARTMENT OF STATE

JOHN RIPIN MILLER, OF WASHINGTON, TO BE DIRECTOR OF THE OFFICE TO MONITOR AND COMBAT TRAFFICKING, WITH THE RANK OF AMBASSADOR AT LARGE. (NEW POSITION)

DEPARTMENT OF VETERANS AFFAIRS

ROBERT ALLEN PITTMAN, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (HUMAN RESOURCES AND ADMINISTRATION), VICE JACOB LOZADA, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

NANCY H. FIELDING
TAMMY L. MIRACLE

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

BRIAN R. COPES
JUDITH M. ELLER
JEFFREY G. PHILLIPS
DENNIS P. SIMONS

CONFIRMATIONS

Executive Nominations Confirmed by the Senate June 17, 2004:

FEDERAL RESERVE SYSTEM

ALAN GREENSPAN, OF NEW YORK, TO BE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOUR YEARS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

JAMES L. ROBART, OF WASHINGTON, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON.

ROGER T. BENITEZ, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

JANE J. BOYLE, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS.