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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, October 4, 2004, at 12:30 p.m.

Senate

FRIDAY, OCTOBER 1, 2004

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

PRAYER

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

Let us pray.

O, God, who sends showers to soften the soil and cause plants to sprout, You are the source of all life. You have challenged us to number our days, not our weeks, months, or years. Give us wisdom to comprehend the brevity and uncertainty of our life's journey. Forgive us when we boast about tomorrow, forgetting that our times are in Your hands.

Today, bless our lawmakers and their staffs. Remind them that they belong to You and that You will order their steps. As they wrestle with complex issues, help them seek Your wisdom and guidance. Empower them as stewards of Your bounty, as You make them faithful in the vocation to which You have called them.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, good morning to everyone.

Today, we once again will return to the intelligence reform legislation sponsored by Senators COLLINS and LIEBERMAN. This week, we have made steady progress. As we set out, we will be completing this bill in the near future, but we have a number of amendments. I thank both of the managers for their patience and willingness to work through a maze of amendments.

We had all amendments submitted 2 days ago and all the language for the amendments as of yesterday. The managers and staff and Senators have been working hard over the course of the night to look at the amendments, to address them, and to establish an order to which they can be addressed over today and Monday.

As announced last night, there will be no rollcall votes today. We will have a full day of debate with a number of people speaking on their individual amendments. We will continue to move forward. A number of Senators have committed to being present today to offer their amendments. I thank them in advance for their participation. I encourage them to talk to the managers as to roughly when we will be discussing each of those amendments.

Monday, the plans are to stack the votes. We will have a series of votes, probably beginning around 3 o'clock Monday. There will be a series of rollcall votes beginning midafternoon. The specific time we will announce a little bit later today.

The Democratic leader and I have come to the Senate floor regularly over the course of the last week to comment on the progress being made on the bill. We will continue to monitor the progress. The bill itself is being discussed after full hearings in August and months and months of work, so the objective of completing this bill in the near future, both the internal organization, reorganization, and external by the time we depart, is the goal we hope to accomplish. We need to continue with the deliberative process, but we do need to bring the bill to a conclusion; therefore, there is a sense of urgency to have Members come to the Chamber and discuss their amendments.

We had, as of 4 o'clock yesterday, 233 filed amendments. The Senate has considered 34 amendments thus far, and 15 have been adopted, 5 tabled, and 14 are still pending.

Having said that, cloture may be a necessary tool. Again, the Democrat leader and I have been in consultation. We first mentioned cloture a couple days ago. It is a tool we might use. I point out that amendments that have been filed that are ready to be considered right now and even after cloture will remain, and we have 30 hours and could consider, of course, at that point all germane amendments.

I will be in consultation with the Democratic leader over the course of the day. We will have a full day today. I appreciate everyone's consideration.

We are also—not on the Senate floor but in a task force—considering the Senate's oversight of intelligence and homeland security. A number of people are asking: What is the appropriate vehicle? We are concentrating through

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

the Collins-Lieberman bill on the external relationships, but what about the internal relationships? The appropriate vehicle and the vehicle that has been set up by the Democratic leader and myself is through Senate resolution where specific changes to the Senate Select Committee on Intelligence would be entertained and where we would deal with the changes in the Senate results, especially as it applies to committee jurisdictions.

It is my hope we can come to final agreement on this package by next Friday. The Democratic leader and I await the specific recommendations from the task force we appointed about a month ago.

We have had a long week, a very productive week. We have accomplished a great deal. The task before the Senate is in reforming the intelligence community's responsibility and oversight. It is a huge but an essential task. We learned on 9/11 how our enemies are working day and night to visit terror on our soil. That is what we have learned since September 11. They dream of ever more catastrophic attacks. They plot and they plan in the false belief that they will elude capture. They are absolutely wrong.

The work we do this week and next week in the Senate will strengthen our defenses and it will improve our ability to gather data, to analyze data, and to defeat our enemies. It will help us find them and to stop them and bring them to justice. When we are done, America will be safer and more secure.

DARFUR

Mr. FRIST. Mr. President, I will comment briefly on a topic that we will not be addressing in the Senate, and therefore, before we dive into the bill, I will mention the issue of the Sudan.

Just to update my colleagues because on occasion it has been on the front page, but we have not heard as much about it over the last several weeks, yet what is occurring, what we have called genocide in this body and in the House of Representatives, indeed, continues to occur.

Two and a half weeks ago, the U.N. Security Council passed a second resolution on the Sudan. This resolution holds out the threat of sanctions on Sudan's leaders and its oil industry if the Government fails to act, fails to curb the ethnic violence in Darfur.

The Darfur region is in western Sudan. The Darfur region is about the size of France. Around 50,000 people have died in that region in the last several months, with hundreds of thousands more at risk.

I am very pleased by the action of the United Nations, even though, despite the best efforts of the United States, I believe the resolution should have been a lot tougher and it would have had a much greater impact. It is no surprise some countries do not share our outrage and determination to end those atrocities.

Even after making modifications, the vote on the Security Council was 11 to 0, with Algeria, China, Pakistan, and Russia abstaining.

The measure calls upon Secretary General Kofi Annan to create an international commission to determine if the campaign by marauding Arab militias—that Jinjaweed—against the villagers of Darfur in western Sudan has reached the level of genocide.

The resolution also reinforces the role of the 53-member African Union in taking the lead in calming the situation in Darfur and calls on other nations and the Government of Sudan to help it expand its presence there with thousands of additional troops.

As the international community knows, the Congress made this determination in late July. It was no secret then, nor is it now, that the Jinjaweed are supported and directed by Khartoum; that is, by the Government of Sudan, which has a sovereign responsibility to not do that but protect its people, not to kill them.

The Jinjaweed have killed or participated in the deaths of up to about 50,000 people in Darfur. They have engaged in mass rape of women and girls and destroyed crops and polluted water supplies. They have forced over 1.2 million people to leave their homes, leave their villages, once pillaged.

Last month, as I mentioned on the floor of the Senate, I had the opportunity to travel through a refugee camp called Tulum, which is right on the border, about 30 kilometers from the border in Chad, where many people have fled over the border. I had an opportunity to talk to women in little makeshift tents, women who had lost their husbands, killed by the Jinjaweed, who were separated from their children, lost as they had to flee their burning villages.

It is wrong. We have spoken on this floor. We need to continue to speak and to act and to encourage the United Nations to act.

The United States, under President Bush's leadership, has led the way globally on this issue from the beginning. It does, once again, show the importance of the United States acting even if the world community is slow to react, as we saw in the abstention of the resolution the other day by Algeria, China, Pakistan, and Russia.

The United States has supplied well over 70 percent of the humanitarian effort and other supplies going to survivors now in Darfur and in that eastern part of Chad, and we have been providing assistance there for years. So we need to be very proud as a nation. In parts of the Darfur region, we are providing 90 to 95 percent of all the world aid going in to assist the people in those regions.

We need to do a lot more. We need to work with and encourage the international community to do its share, especially the countries of the European Union and Arab League.

This month, Secretary of State Colin Powell came before the Senate Foreign Relations Committee and declared that the State Department's studied judgment is that genocide has indeed occurred. Last night, in the debates, we heard both Senator KERRY, from this floor, and the President of the United States call what is occurring in Darfur genocide. It is now time for the international community to act.

Multiple sources are reporting from the region that attacks by both the Jinjaweed and Government forces—again, it is the Government forces who are, through direct and indirect aid, supporting this militia called the Jinjaweed—are still occurring despite the U.N.'s passage of Resolution 1556 last month that, among other things, called for a halt to such actions.

I am pleased by the passage of this latest U.N. resolution, but I am not optimistic. I am pleased but not optimistic. Khartoum did not live up to the requirements set forth in the U.N.'s July 30 resolution, so why do we believe they will now?

Khartoum will not end its genocide until it has either completed it or until it faces stiff international actions that compel it to stop. We need the international community to stand up. The United States is standing up. We need the international community to stand up.

This body has unanimously passed, since that time, a second resolution urging the Secretary of State to take appropriate actions within the U.N. to ''suspend'' Sudan's membership on the U.N. Human Rights Commission. Such an action would be consistent with our obligations under the 1948 Genocide Convention and help preserve the integrity of this commission; that is, the United Nations Human Rights Commission. Failure to take this action, I believe, mocks the principles and purpose for which the commission was formed; that is, human rights. Yet in Sudan we have what we have called, and with the ravaging of villages we have seen, genocide.

Further, our resolution passed on this floor calls upon the Secretary of State to pursue Sudan's permanent removal from the U.N. Human Rights Commission if the U.N. determines, as it should, that genocide has been committed in the Darfur and that Khartoum is responsible.

The U.N. cannot continue to pass resolution after resolution nor can the international community stand idly by while thousands die monthly in these remote regions of Sudan and eastern Chad. Our failure to act is not just another failure of the U.N., it is a failure of our own humanity.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

NATIONAL INTELLIGENCE REFORM ACT OF 2004

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2845, which the clerk will report.

The legislative clerk read as follows:

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

Pending:

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

Lautenberg Amendment No. 3767, to specify that the National Intelligence Director shall serve for one or more terms of up to 5 years each.

Kyl Amendment No. 3801, to modify the privacy and civil liberties oversight.

McCain/Lieberman Amendment No. 3807, to develop a strategy for combining terrorist travel intelligence, operations, and law enforcement.

Feinstein Amendment No. 3718, to improve the intelligence functions of the Federal Bureau of Investigation.

Stevens Amendment No. 3839, to strike section 201, relating to public disclosure of intelligence funding.

Ensign Amendment No. 3819, to require the Secretary of State to increase the number of consular officers, clarify the responsibilities and functions of consular officers, and require the Secretary of Homeland Security to increase the number of border patrol agents and customs enforcement investigators.

Reid (for Schumer) Amendment No. 3887, to amend the Foreign Intelligence Surveillance Act of 1978 to cover individuals, other than United States persons, who engage in international terrorism without affiliation with an international terrorist group.

Reid (for Schumer) Amendment No. 3888, to establish the United States Homeland Security Signal Corps to ensure proper communications between law enforcement agencies.

Reid (for Schumer) Amendment No. 3889, to establish a National Commission on the United States-Saudi Arabia Relationship.

Reid (for Schumer) Amendment No. 3890, to improve the security of hazardous materials transported by truck.

Reid (for Schumer) Amendment No. 3891, to improve rail security.

Reid (for Schumer) Amendment No. 3892, to strengthen border security.

Reid (for Schumer) Amendment No. 3893, to require inspection of cargo at ports in the United States.

Reid (for Schumer) Amendment No. 3894, to amend the Homeland Security Act of 2002 to enhance cybersecurity.

The PRESIDENT pro tempore. The Senator from Maine.

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

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3765

Mr. ALLARD. Mr. President, my understanding is that there is a pending amendment before the Senate; is that correct?

The PRESIDENT pro tempore. The Senator is correct. There are several.

Mr. ALLARD. I ask unanimous consent that the pending amendments be set aside, and I call up amendment No. 3765.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD] proposes an amendment numbered 3765.

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

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

The amendment is as follows:

(Purpose: To provide for additional responsibilities for the Chief Information Officer of the Department of Homeland Security relating to geographic information)

At the appropriate place, insert the following:

SEC. ___. HOMELAND SECURITY GEOGRAPHIC INFORMATION.

(a) FINDINGS.—Congress finds that—

(1) geographic technologies and geographic data improve government capabilities to detect, plan, prepare, and respond to disasters in order to save lives and protect property;

(2) geographic data improves the ability of information technology applications and systems to enhance public security in a cost-effective manner; and

(3) geographic information preparedness in the United States, and specifically in the Department of Homeland Security, is insufficient because of—

(A) inadequate geographic data compatibility;

(B) insufficient geographic data sharing; and

(C) technology interoperability barriers.

(b) HOMELAND SECURITY GEOGRAPHIC INFORMATION.—Section 703 of the Homeland Security Act of 2002 (6 U.S.C. 343) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Chief Information''; and

(2) by adding at the end the following:

''(b) GEOGRAPHIC INFORMATION FUNCTIONS.—

''(1) DEFINITION.—In this subsection, the term 'geographic information' means the information systems that involve locational data, such as maps or other geospatial information resources.

''(2) OFFICE OF GEOSPATIAL MANAGEMENT.—

''(A) ESTABLISHMENT.—The Office of Geospatial Management is established within the Office of the Chief Information Officer.

''(B) GEOSPATIAL INFORMATION OFFICER.—

''(i) APPOINTMENT.—The Office of Geospatial Management shall be administered by the Geospatial Information Officer, who shall be appointed by the Secretary and serve under the direction of the Chief Information Officer.

''(ii) FUNCTIONS.—The Geospatial Information Officer shall assist the Chief Information Officer in carrying out all functions under this section and in coordinating the geographic information needs of the Department.

''(C) COORDINATION OF GEOGRAPHIC INFORMATION.—The Chief Information Officer shall establish and carry out a program to provide for the efficient use of geographic information, which shall include—

''(i) providing such geographic information as may be necessary to implement the critical infrastructure protection programs;

''(ii) providing leadership and coordination in meeting the geographic information requirements of those responsible for planning, prevention, mitigation, assessment and response to emergencies, critical infrastructure protection, and other functions of the Department; and

''(iii) coordinating with users of geographic information within the Department to assure interoperability and prevent unnecessary duplication.

''(D) RESPONSIBILITIES.—In carrying out this subsection, the responsibilities of the Chief Information Officer shall include—

''(i) coordinating the geographic information needs and activities of the Department;

''(ii) implementing standards, as adopted by the Director of the Office of Management and Budget under the processes established under section 216 of the E-Government Act of 2002 (44 U.S.C. 3501 note), to facilitate the interoperability of geographic information pertaining to homeland security among all users of such information within—

''(I) the Department;

''(II) State and local government; and

''(III) the private sector;

''(iii) coordinating with the Federal Geographic Data Committee and carrying out the responsibilities of the Department pursuant to Office of Management and Budget Circular A–16 and Executive Order 12906; and

''(iv) making recommendations to the Secretary and the Executive Director of the Office for State and Local Government Coordination and Preparedness on awarding grants to—

''(I) fund the creation of geographic data; and

''(II) execute information sharing agreements regarding geographic data with State, local, and tribal governments.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each fiscal year.''.

Mr. ALLARD. Mr. President, to briefly explain the amendment, it provides additional responsibilities for the Chief Information Officer, Department of Homeland Security, relating to geographic information. This amendment has been discussed by both managers, the Senator from Maine and the Senator from Connecticut. My understanding is the amendment has been agreed to.

The PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, I commend the Senator from Colorado for the work that he has done in coordinating the geospatial information needs of the Department of Homeland Security. He first introduced a bill on this issue last year. He has been a leader in pushing for improvements in how this information is handled. This legislation was recently reported as a separate bill by the Governmental Affairs Committee. It is acceptable and cleared on both sides. I urge adoption of the amendment.

The PRESIDENT pro tempore. Is there further debate? Without objection, the amendment is agreed to.

The amendment (No. 3765) was agreed to.

The PRESIDENT pro tempore. The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise today to discuss the Collins-Lieberman bill. Later I will have another amendment that I will offer.

First, I thank the managers of the bill, Senator COLLINS and Senator

LIEBERMAN, for their efforts in getting at least one of my amendments accepted. The other is pending. One involves the Department of Homeland Security and its ability to detect, plan, and prepare for disaster by better utilizing geospatial data throughout the U.S. Government. I thank both of them for that support.

The other amendment assures that the national intelligence director will take action to ensure that commercial satellite imagery is used to fulfill the imagery information requirements of the intelligence community. Both are important to the ongoing safety and security of the country. I am pleased to see the adoption of one, and further consideration of the other.

In a moment I would like to offer a third amendment to strengthen the bill regarding management of the intelligence community workforce. Before I offer my amendment, I would like to talk generally about the overall intelligence reform legislation.

September 11, 2001, was a day that none of us will forget in our lifetimes. Mr. President, 9/11 was a harsh wake-up call for our country. That catastrophic day forced us to recognize new threats and to energize our Government to rise up and eliminate terror threats and modernize our national security institutions. Our Government has moved quickly and comprehensively to implement a significant body of governmental reforms.

It is a fact that through hard work and strong leadership, President Bush's administration has already implemented planning of significant improvements to our Government's intelligence planning and operations. Of the 39 recommendations from the 9/11 Commission that the President could legally implement through Executive order, only three remain to be addressed. It is a good idea, as we consider reforms to our intelligence community, to review again what the 9/11 Commission concluded.

The 9/11 Commission primarily found that, first, we were slow to respond to a clear and emerging threat. For far too long we stood still while extremist radical Muslims hijacked religion to stir up hatred, hijacked a country to operate their base camps from, and hijacked our airliners to murder more than 3,000 of our fellow Americans.

Second, we had inadequate human intelligence assets around the world to observe such threats and effectively warn us of impending dangers.

Third, for the intelligence we did get, we lacked an effective bureaucracy to integrate disparate but related pieces of information, and we lacked a strong quarterback to coordinate intelligence programs against emerging threats, to plan long-term strategies, or to steer a change of course when the situation dictated.

Fourth, our military was not adequately prepared to deal with the threat that day. And last and maybe most importantly, we need new tools and strategies for our diplomatic corps to reach out and lead troubled regions of the world against terrorism's misguided principles and cowardly acts. We need transformational military improvements to engage where and when our diplomacy does not succeed.

The 9/11 Commission also fashioned more than three dozen recommendations to address these national security shortfalls. I applaud the effort of the chairman and ranking member of the Governmental Affairs Committee in developing the proposals before us today. I agree with the majority of the initiatives in the intelligence reform legislation. The Collins-Lieberman bill will improve our ability to develop actionable intelligence and increase our Government's coordination and responsiveness. Elevating the roles and responsibilities of today's Director of Central Intelligence to the level of a national intelligence director, including the robust planning and budgeting authority, is prudent and much needed.

Establishment of strategic intelligence planning and fusion centers such as the national counterterrorism center will also greatly strengthen our national security team's ability to connect the dots. We need to identify trends, anticipate threats, and develop coordinated plans to attack threats prior to their realization.

However, I am not convinced we are effectively matching solutions to identify problems in all cases. My concerns are heightened because today we are a nation at war. Our men and women of the Armed Forces and the intelligence community are in harm's way. I am just not certain that we have thought through adequately the management changes or the unintended consequences relative to Defense Department operations. I will follow closely the remainder of the debate to understand better the potential adverse effects prior to voting to support them.

I am pleased to see the attention focused by the 9/11 Commission Report and the Collins-Lieberman bill on the topic of personnel management policies and practices across the intelligence community. Both panels recognize that in order to effect such a magnitude of change in our Federal Government, uniform personnel standards and training are needed to align individual mindsets with the desired objectives.

Our national security requirements demand that we recruit and retain the best and the brightest defense and intelligence personnel our country has to offer.

We need to ensure the National Intelligence Director is armed with both authority and flexibility to enforce only the highest performance and ethical standards across the intelligence community. This requires modern personnel management policies and regulations that incorporate competitive compensation, incentives, and supervisory flexibility.

To keep pace with the dynamic work environment of the intelligence community, these same supervisors require streamlined dismissal or termination mechanisms for personnel failing to satisfy standards.

The bill before us today directs specific authorities and changes to performance compensation and incentives across the national intelligence program. Section 163 explicitly grants the National Intelligence Director authorities governing new National Intelligence Authority employees that mirror the authority held by the Director of Central Intelligence Agency relative to CIA employees.

In section 301, the bill goes on to amplify the CIA Director's authority to terminate employees ''. . . whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.''

This is clear, unequivocal, and prudent authority that will bolster our intelligence leaders' personnel management capabilities. But I believe we need to go further.

AMENDMENT NO. 3778

Mr. President, at this time, I ask unanimous consent that we lay aside the pending amendment and that the clerk report amendment No. 3778, which is at the desk.

The PRESIDENT pro tempore. Without objection, the pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD] proposes an amendment numbered 3778.

The amendment is as follows:

(Purpose: To improve the management of the personnel of the National Intelligence Authority)

On page 113, between lines 17 and 18, insert the following:

(b) TERMINATION OF EMPLOYEES.—(1) Notwithstanding any other provision of law, the National Intelligence Director may, in the discretion of the Director, terminate the employment of any officer or employee of the National Intelligence Authority whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

On page 113, line 18, strike ''(b) RIGHTS AND PROTECTIONS'' and insert ''(c) OTHER RIGHTS AND PROTECTIONS''.

On page 113, after line 24, add the following:

(d) EXCLUSION FROM CERTAIN PERSONNEL MANAGEMENT REQUIREMENTS.—

(1) PERFORMANCE APPRAISALS.—Section 4301(1)(ii) of title 5, United States Code, is amended by inserting ''the National Intelligence Authority,'' before ''the Central Intelligence Agency,''.

(2) LABOR-MANAGEMENT RELATIONS.—Section 7103(a)(3) of that title is amended—

(A) in subparagraph (G), by striking ''or'' at the end;

(B) in subparagraph (H), by striking the period at the end and inserting a semicolon; and

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

''(I) the National Intelligence Authority;

''(J) the Defense Intelligence Agency;

''(K) the National Geospatial-Intelligence Agency; or

''(L) any other Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities.''.

(e) REGULATIONS.—(1) In carrying out the responsibilities and authorities specified in sections 112 and 113 and this section (including the amendments made by this section), the National Intelligence Director shall prescribe regulations regarding the management of personnel of the National Intelligence Authority.

(2) The regulations shall include provisions relating to the following:

(A) The applicability to the personnel of the Authority of the authorities referred to in subsection (a).

(B) The exercise of the authority under subsection (b) to terminate officers and employees of the Authority.

Mr. ALLARD. Mr. President, my amendment will accomplish the following: first, expressly grant this termination authority to the National Intelligence Director in the statute; and second, direct the National Intelligence Director to prescribe regulations specifying the exercise of this termination authority.

Notwithstanding this broad authority already in place today, the Director of Central Intelligence maintains regulations that are inefficient, not appropriate for today's security environment, and are out of sync with his broad authority. For example, an intelligence supervisor who deems an officer or employee as unsuitable is often required to maintain that employee in sensitive positions while adverse personnel action is initiated.

After a final termination decision is rendered by the agency, the employee can engage in a lengthy appeals process, both internal and external to the agency, that could last at least a year. In my opinion, this practice is not in the best interest of the United States, and indeed presents a clear security risk.

With regulations requiring streamlined employee termination practices, I believe we can improve national security and fiscal responsibility across the National Intelligence Authority. My amendment would enhance this responsibility, and I urge my colleagues to support my amendment.

Mr. President, the Chair and Ranking Members, indeed all Members of the Government Affairs Committee, have served our country well. The Collins-Lieberman bill for intelligence reform brings forth bold and sweeping changes to our critical national security institutions. Accordingly, it is essential that we get this right. More is at stake than simply moving boxes around on an organization chart. The decisions we make over the next several days will be far-reaching and have significant consequences. Our Armed Forces are not only the largest provider of intelligence information, they are also the largest consumer. Our Nation's military, the most powerful and proficient ever assembled in the history of the world, hinges on a seamless and unbroken flow of intelligence information—regardless of whether that intelligence information is ''national'' or ''tactical.''

As we consider the Collins-Lieberman intelligence reform bill, let us redouble our efforts to ensure we're matching solutions to identified problems. As long as we keep this perspective, I am confident this body will do the right thing.

Mr. President, I yield floor.

The PRESIDENT pro tempore. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I thank the Senator from Colorado for his generous comments. I very much enjoy working with him on the Armed Services Committee. He brings a great deal of expertise to this debate.

The amendment he has proposed this morning is one that our staffs are starting to look at. I suggest that it be set aside so that we can do more analysis of it, but I appreciate the spirit in which it was offered.

The PRESIDENT pro tempore. Is there objection to setting aside this amendment? The amendment is set aside.

Who seeks recognition?

Mr. LIEBERMAN. Mr. President, I thank the Senator for his statements about the Collins-Lieberman legislation and also thank him for the amendment. This looks to be exactly like the legislation the Senator and Senator AKAKA introduced, which came out of our committee. This is the right moment, and it strengthens the bill. I thank him for his persistence in offering it. I am glad we added it.

I yield the floor.

Mr. ALLARD. I thank the managers for their kind comments.

The PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, this morning, I want to take a few minutes to talk about an amendment that was adopted yesterday. It was sponsored by the Senator from Ohio, Mr. VOINOVICH.

The amendment is about the 3,361 Presidential appointees and how they are confirmed. I am glad to see that as I am speaking the President pro tempore is here because he has been a Presidential appointee in an earlier administration. I am glad to see both the chairman and ranking member of the Governmental Affairs Committee here because their committee deals with this issue. This is the kind of issue that never makes the front page and is always on the back burner. But it has a major practical effect on how our Government works.

The 9/11 Commission has reminded us, once again, of the problem we have. What the 9/11 Commission recommended, and what Senator VOINOVICH's amendment would do—an amendment that I was glad to cosponsor—is to, in the words of the 9/11 Commission—''speed up the nomination, financial reporting, security clearances, and confirmation process for national security officials at the start of an administration.''

In other words, in plain English, to make it possible, if President Bush reorganizes his administration in a second term, or if Senator KERRY is the new President, they have 3,361 appointments to make. I think it would come as a great shock to many of the voters who are voting for one of them, and it will come as a shock, no doubt, to some of the people they nominate to know that if, for example, a President Bush or a President KERRY picks a new Secretary of HHS or Secretary of Education or Secretary of Defense, to begin with, that person is not allowed to go to the office of the Secretary of Defense or the Secretary of HHS or the Secretary of Education until he or she is confirmed by the Senate.

In other words, here we are in a war on terror. The President says he has a new appointment requiring Presidential confirmation, let's say for Secretary of State. That person is not allowed, out of courtesy to this body, to go into the office of the Secretary of State until we confirm them. One might say, well, there is nothing so wrong about that. That should not take more than a few days, with the kind of well-known person the President would probably pick—someone, for example, of the stature of Colin Powell.

I will give you an example of why it takes longer than a few days. The Presiding Officer, the Senator from Connecticut, the Senator from Maine, all of us remember and know well Senator Howard Baker, who was the majority leader of this body. Senator Baker, at one time, if memory serves me correctly, was selected as the most admired Senator in a poll participated in by both Democratic Senators and Republican Senators. He is known pretty well. He is today the Ambassador to Japan, nominated by President Bush. The Japanese consider that to be a great compliment to the country, to have someone of such stature.

However, Howard Baker reminded me this week when I called him that when he was nominated by the President to be Ambassador to Japan, it took him weeks to fill out the forms to be approved by the FBI, approved by the Government Ethics Office, nominated by the President, and confirmed by the Senate. He told me specifically that he spent more money hiring people to help him fill out his forms accurately so he would not go to jail by making a mistake than he made in his first year as Ambassador to Japan.

Let's think of that. Here is a highly respected individual, at the time 75 or 76 years old. He has been filling out forms for 18 years as a Member of this body. He has run for President. He has been White House Chief of Staff. He is the most admired Senator. Yet by our

requirements it takes several weeks of his time, and he spends more money hiring people to fill out his forms than he made in his first year in his Government job.

That is preposterous. That is a preposterous result.

He further told me he had another little issue with the Government Ethics Office. Senator Baker is now married to former Senator Nancy Kassebaum. It is the second marriage for both. When they became married, they wanted to keep their estates separate. They jointly owned 25 head of cattle. This tied up Senator Baker's nomination for some time in the Government Ethics Office because the question was jointly owning 25 head of cattle would require—just that single fact—Senator Kassebaum to have to go through this week-long, very expensive process of disclosing everything once more about herself and filling out all those forms.

Finally, in exasperation, Senator Baker simply gave his half interest in the 25 head of cattle to Senator Kassebaum, and that settled that problem.

This is not so unusual. Senator Baker and Senator Kassebaum are not the only Presidential nominees to go through the expense and delay of being appointed to a Presidential position.

I was nominated by the first President Bush as his Education Secretary. I was nominated in December of 1990. I was confirmed in I believe it was April of 1991. In the meantime, I was not allowed to go to the Office of the Secretary of Education.

During that time, 60 percent of American college students were going to colleges and universities followed by a Federal grant or a loan. That is supposed to be supervised by the Secretary of Education of a President who said he wanted to be the education President. Yet his nominee is not allowed to go to the office, out of courtesy to this body.

Then, of course, there is the matter of recruiting a team. I asked President Bush at that time: Mr. President, may I come up with a plan? May I then recruit a team, subject to your approval, of course? So I went to recruit David Kearns, the former head of Xerox, and Diane Ravage, one of the most distinguished historians in America, Carolyn Reed Wallace, the vice chancellor of the City University of New York.

All of them, of course, were not allowed to go to their office. Once the President nominates and before they are confirmed, they must fill out all these forms, maybe not spend as much money as Senator Baker did, but the same forms. They must go through this elaborate FBI check. They must go through the President's political process, and then they come over here. And if there is a divided body—for example, we have a Republican President and a Democratic Senate—it takes a little longer.

What is the point of all this? The point of all this is we cannot get our work done. The voters all tune in to a Presidential debate, such as we saw last night—two distinguished competitors, both doing pretty well, I thought—they take off in January and say: Let's go this way and what happens? There is nobody to work for them. They cannot even go to their offices. They are all down here filling out forms that are going to cost them more than they make in their first year.

This is a problem. Who is at fault? A lot of places are at fault. Partisan politics is sometimes at fault. When I was going through confirmation, I went around to see another former Member of this body, Senator Warren Rudman. He told me what happened in 1976. He was nominated by President Ford to the Federal Communications Commission, I believe, and a Senator from New Hampshire put a hold on his nomination.

It went along that way until the people of New Hampshire said: What is wrong with Warren Rudman? He must be a crook, he must have stolen something or else the Senate would be acting on his nomination. Out of embarrassment, Warren Rudman, a private citizen, asked President Ford to withdraw his name from consideration in the Senate. Then Senator Rudman ran against the Senator who put a hold on his name, defeated him, and served in this body.

I am not sure we can pass any law or change any rule that will prevent that kind of partisan politics, but we should be aware that is part of the problem.

Senator VOINOVICH's amendment does address some areas we can fix. One is there may be too many jobs subject to this kind of intensive review. Mr. President, 3,361 is a lot of Presidential appointments to have to go through that time-consuming, weeks-long process. It is too many jobs to leave vacant at the beginning of a new administration when we all expect a new President to come in and say: Let's go in this direction. It is too many jobs to leave vacant, the 9/11 Commission said, especially when we are dealing with the national security of the United States, and a great many of those men and women are people we are relying upon to protect us.

The FBI review takes a long time. Maybe that could be simplified. If they are doing 3,361 FBI reviews at one time and the FBI's major goal is supposed to be counterterrorism, maybe that is something we should be looking at as well.

Then we get busy. An example exists today, and this is in no way criticism, but it is an example of how we get busy. The President on May 20 nominated Edwin Williamson to be Director of the Office of Ethics for our Government. This is the very office that contributes to a lot of the questions and reviews that slow down the process. That was May 20. His hearing before the full committee is next week.

Everyone in the Senate can understand the Governmental Affairs Committee has been busy the last 8 weeks, but, nevertheless, we have a process that when we get busy, sometimes we contribute to the delay.

So the Voinovich amendment does not by itself solve the problem. It sets in motion a series of reviews and studies and discussions that might help solve the problem.

The reason for my coming to the floor today is to say to the distinguished Senator from Connecticut and to the distinguished Senator from Maine, and the President pro tempore, I hope we keep this high enough on our agenda that it does not slip to the back page again. Former Senator Fred Thompson prepared legislation on this issue. This is a lot like many of the issues that have come up with national intelligence reform. There have been about 30 or so reviews since World War II on national intelligence reform, and they often slip to the back pages, to the back burner, and we do not get it done.

This time we are getting it done. We have also taken steps on another so-called back-burner issue, as the 9/11 Commission put it and that is, speeding up the nomination—financial reporting, security clearances, and confirmation process for officials nominated by the President at the start of an administration. It is my hope that over the next year, the reviews mentioned in the Voinovich amendment will go forward, that we will simplify the process. Of course, for the national security officials, we can all see the urgent need for that.

Of course, we do not want them sitting outside their offices next February out of courtesy to us when there is some attack on the United States that they might have helped prevent, but at the same time we do not want students going to college with some Secretary of Education sitting outside his office not allowed to go in. We do not want Head Start dollars being spent with some Secretary of Health and Human Services sitting outside her offices not allowed to go in. We need to have firm deadlines and firm dates, simplified forms, out of respect to the people the President nominates, out of respect to the voters who expect a President to be able to act, and out of respect to ourselves.

There will occasionally be a nominee—we are not talking about judicial nominees—there will occasionally be one of the 3,361 executive nominations where this is a problem, that requires an extended debate—and we are fully capable of doing that in the Senate—but the rest of the nominations ought to speed through on a fairly automatic, simplified review, allowing the executive branch to be in a position to see urgent needs, develop a strategy, and try to persuade half of us that he is right, which is the job of the President.

I thank the managers of the bill for this time. I applaud them for their bipartisan action on this bill and their work on the committee. I am glad they adopted the amendment yesterday, and I look forward to working with them

over the next several months to see that it does not slide back to the back burner and get lost so that men of the stature of Howard Baker have to spend more than they earn in their first year in Government filling out the forms we require of them even though we have known them and known everything about them for 25 years.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise first to thank the Senator from Tennessee for taking the time to come to the Senate floor to express his thoughts, which he has talked to Senator COLLINS and me about earlier. I admire his focus on this area as well as the work and focus of the Senator from Ohio, Mr. VOINOVICH.

The fact is that this is one of those aspects of governmental process and procedure that never gets much public attention but has great consequences for the public, and in this case it is relevant to the underlying bill for national security. There is not much political plus in making this a matter one focuses on in the sense that it does not get headlines, but it is a critically important matter because, as the Senator says so well and eloquently, the delay caused in confirming the nominees has an effect on the quality of public service, in fact has an effect on the content of national security if people cannot be put into the positions where they are needed early enough.

So I thank the Senator. I encourage the Senator—although I probably do not have to—to stay aggressive, to make sure that not only the amendment the Senator from Tennessee and the Senator from Ohio sponsored yesterday that was adopted on the bill is put into place but, more generally, to make sure we fix this.

The Senator from Tennessee has some great anecdotes, too. It is pretty startling to have heard that Howard Baker, a great former Member of this body, spent more time filling out the forms, hiring people to help him fill out the forms, to be Ambassador to Japan than he was going to receive as a salary for the first year of his service. That ought not to happen. Obviously, one of the things that also does, which the Senator knows and has spoken to, is discourage people who may not have the resources to pay for that kind of consultation from going into public service where we need them.

I thank my friend from Tennessee.

I rise briefly to speak in support of the—Mr. President, I am going to hold this statement, which is of a timeless nature, so I can deliver it, I am sure, at any point in the day where there may be a lull. This time was devoted to Senator BYRD to offer an amendment. I did not realize he was here. I welcome him to the Chamber and look forward to hearing his statement.

The PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent to offer an amendment that affects the bill in more than one place. I have cleared this with the two managers.

The PRESIDENT pro tempore. Is there objection to the request?

Without objection, it is so ordered

AMENDMENT NO. 3845

Mr. BYRD. Mr. President, I call up amendment No. 3845.

The PRESIDENT pro tempore. Without objection, the pending amendment is set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for himself, Mr. STEVENS, Mr. INOUYE, Mr. WARNER, Mr. HARKIN and Mr. JOHNSON, proposes an amendment numbered 3845.

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

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

The amendment is as follows:

(Purpose: To enhance the role of Congress in the oversight of the intelligence and intelligence-related activities of the United States Government)

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

(d) REMOVAL.—The National Intelligence Director may be removed from office by the President. The President shall communicate to each House of Congress the reasons for the removal of a National Intelligence Director from office.

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

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

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

On page 22, line 11, strike ''(f) and (g)'' and insert ''(e), (f), and (g)''.

On page 24, beginning on line 1, strike '', pursuant to subsection (e),''.

On page 24, strike line 8 and all that follows through age 25, line 20.

On page 25, line 21, strike ''(f)'' and insert ''(e)''.

On page 27, strike line 1 and all that follows through page 30, line 22, and insert the following:

(f) ROLE OF NATIONAL INTELLIGENCE DIRECTOR IN REPROGRAMMING.—(1) No funds made available under the National Intelligence Program may be transferred or reprogrammed without the prior approval of the National Intelligence Director, except in accordance with procedures prescribed by the National Intelligence Director.

(2) The Secretary of Defense shall consult with the National Intelligence Director before transferring or reprogramming funds made available under the Joint Military Intelligence Program.

(g) TRANSFER OF FUNDS OR PERSONNEL WITHIN NATIONAL INTELLIGENCE PROGRAM.—(1) In addition to any other authorities available under law for such purposes, the National Intelligence Director, with the approval of the Director of the Office of Management and Budget—

(A) may transfer funds appropriated for a program within the National Intelligence Program to another such program; and

(B) in accordance with procedures to be developed by the National Intelligence Director, the heads of the departments and agencies concerned may transfer personnel authorized for an element of the intelligence community to another such element for periods up to one year.

(2) The amounts available for transfer in the National Intelligence Program in any given fiscal year, and the terms and conditions governing such transfers, are subject to the provisions of annual appropriations Acts and this subsection.

(3)(A) A transfer of funds or personnel may be made under this subsection only if—

(i) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

(ii) the need for funds or personnel for such activity is based on unforeseen requirements;

(iii) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the National Intelligence Director;

(iv) in the case of a transfer of funds, the transfer results in a cumulative transfer of funds out of any department, agency, or element, as appropriate, funded in the National Intelligence Program in a single fiscal year—

(I) that is less than $100,000,000; and

(II) that is less than 5 percent of amounts available to such department, agency, or element; and

(v) the transfer does not terminate a program.

(B) A transfer may be made without regard to a limitation set forth in clause (iv) or (v) of subparagraph (A) if the transfer has the concurrence of the head of the department, agency, or element concerned. The authority to provide such concurrence may only be delegated by the head of the department, agency, or element concerned to the deputy of such officer.

(4) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

(5) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this subsection.

(6)(A) The National Intelligence Director shall promptly submit a report on any transfer of personnel under this subsection to—

(i) the congressional intelligence committees;

(ii) the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives;

(iii) in the case of the transfer of personnel to or from the Department of Defense, the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(iv) in the case of the transfer of personnel to or from the Department of Justice, to the Committees on the Judiciary of the Senate and the House of Representatives.

(B) The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

On page 47, line 19, insert before the period the following '', by and with the advice and consent of the Senate''.

On page 53, line 2, insert before the period the following '', by and with the advice and consent of the Senate''.

On page 55, beginning on line 5, strike ''the National Intelligence Director'' and insert

''the President, by and with the advice and consent of the Senate''.

On page 60, beginning on line 14, strike ''appropriately''.

On page 61, line 11, insert ''and Congress'' after ''Director''.

On page 61, line 21, strike ''significant''.

On page 63, line 16, insert ''and the congressional intelligence committees'' after ''National Intelligence Director''.

On page 138, beginning on line 21, strike ''and to Congress'' and insert '', to the Select Committee on Intelligence and the Committees on Appropriations and Governmental Affairs of the Senate, and to the Permanent Select Committee on Intelligence and the Committees on Appropriations and Government Reform of the House of Representatives''.

On page 140, strike lines 5 through 14 and insert the following:

(2) DEPUTY DIRECTOR OF MANAGEMENT AND BUDGET FOR INFORMATION SHARING.—There is within the Office of Management and Budget a Deputy Director of Management and Budget for Information Sharing who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall carry out the day-to-day duties of the Director specified in this section. The Deputy Director shall report directly to the Director of the Office of Management and Budget. The Deputy Director shall be paid at

On page 174, strike lines 14 through 22.

Mr. BYRD. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors of my amendment: Senators STEVENS, INOUYE, WARNER, HARKIN, and JOHNSON.

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

Mr. BYRD. Mr. President, first, I express my appreciation to the two managers for their courtesies that they never fail to extend. I also want to express my appreciation to the distinguished President pro tempore who is in the chair this morning, Senator STEVENS, my soulmate on the Appropriations Committee.

In 2001, we witnessed the failure of our Government to utilize its intelligence capabilities to protect our Nation against a terrorist attack. For too long, the Congress has deferred to the executive branch on intelligence matters. Congress has failed to vigorously discharge its constitutional oversight responsibilities. I do not say that by way of finding fault with any Senator.

The 9/11 Commission illustrated the dangers of this practice. The consequence has been foreign policy failures, prison scandals, politicized intelligence that has led not only to a desperate state of affairs in Iraq but has also left our Nation vulnerable to further terrorist attacks. It is painfully clear that there are dire consequences when the Congress abdicates its constitutional duties to oversee the intelligence agencies within the executive branch.

Senators need to be reminded—I need to be reminded as well—that the Congress is a consumer of intelligence. Senators must have access to good intelligence to make informed decisions about our military, about our foreign policy, about the solemn charge to authorize war, and that remains a constitutional function, authorization of war.

I am sorry to say I did not hear anybody in last night's debate on either side mention the Constitution of the United States, not once. The Constitution gives Congress alone the power to declare war or authorize war. The Congress must ensure that it is fully and currently informed of all matters that may bear on the exercise of that constitutional authority. Senators ought to be cautious about intelligence reforms and ensure that the role of the Congress in intelligence matters is not undermined. Reform means fixing what has gone wrong, not giving the executive branch more authority to conduct end runs around the Congress.

When I speak of the executive branch, I speak generically, both when it is under Democratic control and Republican control. We must ensure that the top national security officials specified in this bill are subject to Senate confirmation so that they are held accountable to the elected representatives of the people.

The first three words in the preamble of the Constitution are, ''We the people. . . .'' ''We the people. . . .'' And yet, I say, that Constitution was not mentioned once last night.

We must ensure that Senators have access to information necessary to fulfill their Constitutional duties. We must ensure that the Congress does not codify loopholes through which the executive can deny the Congress relevant information. Perhaps most importantly, we must ensure that funds appropriated by the Congress cannot be rerouted without the consent of the people's representatives in Congress.

The Governmental Affairs Committee has ensured accountability to the Congress in many of these areas, but I believe more can be done.

This is an amendment which I have proposed, along with Senators STEVENS, INOUYE, WARNER, HARKIN, and JOHNSON to remove the qualifiers on Congressional access to information, to ensure that the Congress's role in intelligence matters is preserved, and to ensure that the American people are protected.

This amendment requires Senate confirmation of the following positions within the National Intelligence Authority and the Office of Management and Budget: four deputy national intelligence directors, the Officer for Civil Rights and Liberties, the Privacy Officer, and the Deputy Director of OMB for Information Sharing. It is vital that the Congress have access to these officials and be able to hold them accountable for their decisions, particularly in the area of civil liberties.

To further that goal, my amendment requires that the Inspector General of the National Intelligence Authority keep the congressional intelligence committees fully and currently informed of violations of law and civil liberties.

However, the greatest protection against abuse within the intelligence agencies is to monitor closely their budgets. The Congress should jealously guard its power of the purse, and, to do that, I have worked with Senators STEVENS and INOUYE to ensure that the authorities granted to the national intelligence director to transfer personnel and funding within the National Intelligence Program closely reflect current law.

Our amendment strikes language authorizing the Treasury Secretary to establish new budget accounts for the use of the national intelligence director. This is a function of the Congress, which has the authority to determine how accounts should be constructed to fund our national intelligence.

My amendment allows the national intelligence director, with the approval of the OMB Director, to transfer appropriated funds within the National Intelligence Program, and the heads of the departments and agencies to transfer personnel within the intelligence community for periods up to 1 year, under the following conditions:

A transfer of funds or personnel may be made only to an activity that is a higher priority; and unforeseen requirement; but not to the Reserve for Contingencies of the national intelligence director. The cumulative transfer in a single fiscal year must be less than $100 million and less than 5 percent of amounts available to such department, agency, or element; and the transfer of funds cannot terminate a program.

A transfer may be made without regard to the $100 million and 5 percent limitation if the transfer has the concurrence of the head of the department, agency, or entity concerned—provided, always, that the transfer conforms with the strict limitations set by the Congress each year in its annual appropriations acts.

Funds transferred shall remain available for the same period as the appropriations account to which transferred; and any transfer of funds or personnel shall be reported to the appropriate congressional committees, such as Appropriations, Judiciary, Armed Services, and Intelligence.

I am confident that if these qualifications are adhered to, the power of the purse will continue to rest safely in the hands of the people's elected representatives.

In addition, Senators should take note of Section 224(b)(3) of the pending bill, which would permit the national intelligence director, the Director of the National Counterterrorism Center, or the Director of a national intelligence center to withhold information requested by the Congress if the President certifies that such information will not be provided because the President is asserting a privilege pursuant to the United States Constitution.

It is unclear exactly which privilege the President would invoke, but, given the vague language contained in this provision, a bold and impulsive administration, much like the one currently

inhabiting the White House, could concoct nearly any excuse to invoke a so-called ''privilege'' to withhold documents requested by the Congress. Giving any administration an unrestrained green light to trump any and all forthcoming Congressional requests for information, based on some undefined and nefarious assertion of executive privilege as described in this provision, would be an unmitigated disaster. My amendment strikes that egregious language.

It is my hope, as well as the hope of my colleagues who cosponsored this measure with me, that this amendment will ensure that the Congress's Constitutional role in intelligence and foreign policy matters is safeguarded.

However, Senators should understand that the statutory authority to oversee our intelligence community means very little if it is not utilized. We must be vigilant in our oversight. We must be aggressive in our inquiries. We must not abdicate our Constitutional duties.

I urge the adoption of my amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, needless to say, I thank the Senator from West Virginia, whom, as does everyone in the Chamber, I greatly admire. He is a real authority on this matter, so I speak both with respect and a certain sense of humility.

This recommendation that Senator COLLINS and I and our committee brought before the Senate rose out of reality. And the reality is that we have an intelligence community with a lot of extraordinary people and technological assets but, as the 9/11 Commission said, there is no one in charge. I repeat, it is like a football team with great players but no quarterback. In fact, some of the players, as great as they are, are playing in a different stadium than the one where the game is.

The 9/11 Commission has said to us that its foremost goal, the most urgent recommendation it makes to the Congress for what to do if we want to believe that we have done everything we can to prevent a terrorist attack of the scope of 9/11 from happening in this country again, is to create—establish a strong national intelligence director, a leader where there is no leader, a quarterback where there is no quarterback. That is what Senator COLLINS and I have done in our proposal.

A strong national director—but what is the element of strength? It is budget authority. It is the power to bring together the agencies under the director for a unity of effort, like the joint commands in our military which grew out of Goldwater-Nichols, after a period of time and a lot of opposition when they were first considered on the floor, not dissimilar to some of the opposition and anxiety that has been expressed about the national intelligence director in our time. They worked extremely well.

So we have created a strong director with budget authority to formulate budgets, to receive funds, to allocate them—with justification, not wantonly; to transfer budget, transfer funds to meet an emergency; to transfer personnel to achieve a national purpose.

In our deliberations in the Governmental Affairs Committee we see warning after warning that if you are going to do this right, you have to give this national intelligence director real power.

In this morning's paper, the Washington Post, Friday, October 1, an article by Charles Babington quotes from a press conference I presume by the Chair and Cochair of the 9/11 Commission, Governor Kean, former Republican Governor of New Jersey, and Congressman Hamilton, former Democratic Congressman from Indiana. Governor Kean says at one point, the story says:

> Governor Kean meanwhile spoke sharply against House provisions and proposed Senate amendments that would limit the national intelligence director's authority over spending and personnel decisions in agencies under them.

It goes on to say:

> The House bill will keep more of that power in the Pentagon.

Then Governor Kean says:

> On behalf of the nonpartisan commission, this is not an area where one can compromise. If you are not going to create a strong national intelligence director with powers both appointive and over the budget, don't do it.

I repeat:

> If you are not going to create a strong national intelligence director with powers both appointive and over the budget, don't do it.

That is the advice we heard over and over again from former Directors of Central Intelligence, from experts in the field, from members of the Commission.

I say respectfully that the amendment which Senator BYRD and the distinguished list of cosponsors put before us this morning would have the effect of weakening the authority of the national intelligence director and, therefore, bring us back to the place where we were, where there wasn't a strong quarterback, where there wasn't a strong general, if you will, of our intelligence forces in the war against terrorism.

As I read it, it strikes the section that establishes accounts for the national intelligence program funds under the jurisdiction of the national intelligence director, and the national intelligence director would control the management, including the allotment of appropriated funds to the elements of the intelligence community.

I would like to have some discussion on this. But as I read one of the two parts of this which strike me as most troubling, it is the part that seems to say that our attempt in this bill—our clear intention stated in the bill—is to make sure that strange situation we have where 80 percent of the funding for intelligence, billions and billions of dollars, goes not to the intelligence community first but to the Department of Defense. The Department of Defense is a critical—in some sense, the largest—customer of intelligence, but it is not the only customer. The President of the United States is the No. 1 customer. The Department of State, the Department of Homeland Security, FBI—one could go on and on—they are also important users of intelligence.

We have said that the funds of the national intelligence program budget should go to the national intelligence director and give that person the authority that comes with the money to allocate those funds throughout the agencies underneath him, and give him thereby some clout to create unity of effort, to bring people together, to overcome the weaknesses.

As the 9/11 Commission Report describes it—and Senator COLLINS and I keep telling the story—George Tenet, former Director of Central Intelligence, in 1998, after a series of al-Qaida attacks on Americans and American targets abroad, declares war on terrorism. It was a classified document within the intelligence community and it is now public. It states the case very strongly. It says we have to devote all of our resources to it, and nothing happened.

Senator BYRD is a great student of the Bible. I so appreciate it. He brought it with him to the Senate floor yesterday. I take this opportunity to quote from the Bible. Perhaps it was from Corinthians. ''If the sound of the trumpet be uncertain, who will follow into battle?''

My worry here is that in this case, the trumpet is money. If the authority of the national intelligence director over the funds is uncertain, then I worry that the troops are not going to follow them into battle just as they didn't follow George Tenet when they declared war or terrorists and terrorism in 1998. We might have even been better off and maybe even have avoided 9/11 if something had happened in response to that.

This amendment seems to say that the money we want to go to the national intelligence director can't be because in our attempt to establish accounts, we now, in this act of Congress—Senator BYRD is absolutely right, this is a congressional decision, but we are offering our colleagues that decision, which is to set up those accounts in the Treasury Department for the national intelligence director so that director can receive the funds and then allocate them.

Second, the two elements of authority for the national intelligence director as the general of our intelligence forces are to transfer personnel and funds. I appreciate the fact that this amendment does not take away that authority, and when Senator COLLINS and I started out, we worried people

would resist that authority altogether in the national intelligence director. So I appreciate that. But it does limit the authority of the director to transfer personnel and money in a way that I think weakens the director and undercuts the purpose we want and the reasons we want them to be powerful, to give this intelligence force the flexibility to focus, the agility to respond to realities in the world.

These terrorists are not only brutal, not only inhumane, not only don't value human life, not only convince themselves zealously that they are doing God's work by killing God's children wantonly, but they are agile. They will look for weaknesses in the system and move to attack. That is why the national intelligence director has to have the ability to move money quickly. It may be that there is a crisis area somewhere or a new kind of threat to the United States and the director decides he has to move funds to meet that threat.

This is not an authority that is unlimited or even beyond the control of the law today. Our bill makes sure that there is congressional oversight on the transfer of the funds. The amendment would limit the transfer of funds. It would have to be less than $100 million and less than 5 percent of the budget of the entity from which the money is being transferred unless the relevant department head concurs in the transfer.

I want to assure the Chamber and Senator BYRD that our amendment, though it does not put those limits on the transfer because we don't know what kind of threat may emerge and where the national intelligence director may feel in the national interest he wants to move those funds, makes sure there is congressional oversight. It provides that any transfer of funds by the national intelligence director must be carried out in accordance with the existing congressional notification procedures. Congress still has the right to approve.

Moreover, the national intelligence director is required to submit a report to the appropriate committees of Congress explaining the nature of the transfer and how it meets the relevant statutory requirements.

Finally, our bill also requires that any transfer of funds or personnel not exceed applicable ceilings established in law for such.

This means that while we are setting the standard for the national intelligence director, Congress each year as it adopts the budget reserves the right to put instructions in that. I might oppose it, but it includes the possibility of limiting the transfers, as has happened in the past. We wanted to make sure—in some sense to reassure ourselves and our appropriators—that this bill says that any transfer of funds or personnel would not exceed applicable ceilings established in law for such transfers.

We want to provide the national intelligence director with the necessary flexibility and force to respond with speed to a crisis, and not establish, therefore, permanent caps on this legislation that might hinder the director's ability to make those changes that are necessary.

Under the current system, the DCI lacks budget power. DOD controls 80 percent of the intelligence budget, whereas the director of central intelligence effectively only controls a budget of one agency, the CIA.

Secretary Powell commented on this current reality at our hearing on September 13, 2004, by saying:

> The DCI was there before but the DCI did not have that kind of authority, and in this town it's budget authority that counts.

Chairman Kean and Vice Chairman Hamilton said in their testimony at our first hearing on July 30:

> The national intelligence director would not be like other czars who get the title but have no meaningful authority. He will control national intelligence program purse strings.

For those reasons, respectfully, this amendment would seriously weaken the authority of the national intelligence director, and therefore, I believe, the director's ability to protect our national security in an age of terrorism.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, before I comment on the specifics of the amendment of the Senator from West Virginia, let me join Senator LIEBERMAN in expressing the utmost respect that I have for the Senator from West Virginia. His devotion to the Constitution, to the Senate, to the country, and to his family is truly legendary. I have learned so much just from watching the Senator from West Virginia. In fact, he inspired me to get a copy of the Constitution, and while I don't carry it with me as he does, I have it in my briefcase. It was his example that inspired me to do that.

Like Senator LIEBERMAN, I have, nevertheless, many concerns about the pending amendment. In drafting our bill, we made very clear the authority that the new national intelligence director would have. We did not want to simply create another layer of bureaucracy. What we wanted to do is to empower the NID with significant budget personnel, standard-setting authority, so that this individual could make a difference.

I remember in the testimony before our committee the consensus among the witnesses was that in order for the NID to be effective, strong authority was absolutely critical. Indeed, the assistant DCI for community management said it very forthrightly. He testified as follows:

> We must be flexible in shifting people and money to respond to emerging priorities. Today's intelligence budget system does not meet this criteria.

Senator BYRD's amendment imposes significant restrictions on the ability of NID to transfer personnel and to transfer funds. That concerns me greatly.

Under the Collins-Lieberman bill, with OMB approval, the NID may transfer or reprogram funds appropriated for a program within the national intelligence budget to another program. The NID is required to consult with the heads of the affected agencies prior to implementing such a reprogramming or transfer, but our bill does not require their approval. We make very clear that the reprogramming and transferring approvals and restrictions as far as congressional authority are included in our bill, as well.

If we require the concurrence of the agency heads before personnel or money can be moved around, we essentially have made no improvement in the current system. That is not progress. In fact, it is exactly the problem the 9/11 Commission identified over and over again as a major flaw in the current system.

The NID needs to be able to marshal the people, the funds, and the resources necessary to counter the threats we face. That is the bottom line.

The current authorities for the DCI are insufficient because they permit agencies to prevent the DCI from transferring funds or people simply by objective. That is what we need to change.

I am also concerned about making additional positions created by this bill subject to Senate confirmation. The privacy and civil rights officers at the Department of Homeland Security are not Senate-confirmed positions. I see no reason for treating the privacy and civil rights officers that would be created by this bill any differently.

There is another point that I make about the restrictions in the Senator's amendments on reprogramming and transfer authority. That is, if we are going to impose these kinds of restrictions, we are not improving the system in any significant way, and we are allowing the long delays that plague the current system to continue.

Acting CIA Director John McLaughlin told me it can take as long as 5 months for him to reprogram funds. In the threat environment we face today, we cannot afford a 5-month delay in transferring urgently needed funds to counter the threat we face.

The amendment of the Senator from West Virginia would represent a significant weakening of the authority in this bill, and I urge my colleagues to oppose it.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from West Virginia.

Mr. BYRD. Walt Whitman said:

> A man is a great thing upon the Earth, and through eternity—but every jot of greatness of man is unfolded out of woman.

So let me pay tribute to our Presiding Officer at this moment.

Madam President, I have the utmost respect for the two managers of this bill. I have the utmost respect for their

dedication and for the knowledge which they bring to bear upon this subject. I am not a member of the committee that has jurisdiction over the legislation before the Senate. So I salute them and tip my hat to them and bow to them.

So what I say is certainly in no fashion, in no way or form any criticism of them. They are doing the best they can do.

But the Constitution of the United States still lives. It still governs. Let's read this paragraph from section 9 of the U.S. Constitution:

No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Let these words sink in:

. . . and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

We have to keep that provision in mind.

The amendment I have offered today simply ensures that the national intelligence director spends money in accordance with the annual appropriations bills. It provides the flexibility that the director may require but limits that flexibility to the laws passed by Congress and to the knowledge that there is this provision:

. . . a regular Statement and Account of the Receipts and Expenditures of all public money—

''All public money.''

. . . all public money shall be published from time to time.

We cannot allow this national intelligence director to spend the people's tax dollars without restraint, without some limitation, without some restraint. A $40 billion blank check? We cannot allow the national intelligence director to spend money without regard to Congress. There must be some limitations on his spending authority.

Without this amendment, the intelligence director, and not the Congress, will determine how certain appropriated moneys are spent. We must not remove all limitations on this new intelligence director. If we yield the power of the purse to this new intelligence director, then we have only limited means to rein him in if there are abuses of power.

My amendment limits the transfer of appropriations to $100 million and even allows the Department heads to waive that limitation as long as it is consistent with appropriations law. That, it seems to me, should be more than enough flexibility. We must retain some limitation. The intelligence director must not be allowed to write his own appropriations bill. That would elevate him above the Congress. That will elevate him, an intelligence director, above the people's elected representatives in Congress.

We talk about the trumpet that gives an uncertain sound. Yes. How can we be certain as to what we are doing when we are rushed and pressured into passing legislation as major as this legislation in such a limited time, which is hours? We are being pressured to pass this legislation before we adjourn sine die. This is massive legislation. It is far-reaching legislation. The Congress should not have to operate under a hammer, as we are being driven here.

Henry Kissinger came before the Appropriations Committee when Senator STEVENS held those hearings. I compliment my chairman, Mr. STEVENS, on having those hearings. Henry Kissinger, a man with vast experience, vast knowledge, advised us not to pass this gargantuan measure in such a hurry and under such pressure and during a Presidential campaign.

I say to my colleagues, we ought not bend to the lash of the whip on the part of the leadership, on the part of the administration, on the part of anyone else. We should take more time. We do not know what we are doing here. I am seeking to protect the people's representatives and the Congress from making what could be a major mistake.

We were rushed into passing legislation creating a Department of Homeland Security, were we not? I tried to get more time. I tried to get the leadership on both sides to listen. They would not listen. Now we find that there are major problems with that Department.

On that fateful occasion on October 11, when the Senate voted to shift the constitutional power to declare war from the Congress—not just one body of Congress, but both bodies of Congress—to one man, oh, what a terrible mistake that was, what a terrible error. We were told: Let's get it behind us. Let's get it behind us. Let's get it behind us. The idea was to get that legislation passed before that election. So the Senate passed that legislation in a hurry, on October 11 of that year.

Oh, we will always rue that day that the Senate bent to the urgings of the leadership, which said: Let's get it behind us. We have not gotten it behind us. We did not get it behind us. I said at the time we would not get it behind us. I said at the time that the President, Mr. Bush, would not let us get it behind us. That was what he wanted. He wanted the Senate to bend in that critical hour before an election so that the Senators who voted on that measure would be somehow conscious that there was an election down the road, and particularly those who were running would be under the whiplash of an election.

Oh, what a terrible mistake. I felt so ashamed. For the first time in my 46 years in this Senate, I felt ashamed that the Senate was knuckling under to the executive branch and making a mistake which is rued to this day and will be rued to the end of time. That blotch upon the escutcheon of this great body, the first time in my 46 years that I was ashamed, this Senate stood mute. It stood bowed. It was intimidated.

And we can make another mistake if we go and rush in too big a hurry. We are doing a big thing here. I do not set myself up as anyone who has the vast knowledge that Mr. LIEBERMAN has or that Ms. COLLINS has over this subject matter. I am not on that committee. But I do know when we are being pressured to act in too big a hurry. This is a big bill. Why can't we wait until after the first of the year? Why can't we wait until a new Congress, perhaps with a new President—who knows?—a new Chief Executive? Why can't we wait and do the job right? This is a job that we ought to do right and not do it under the gun.

I do not know what is in this bill. I am not on the committee. I do not know what is in this bill. I do not claim to know what is in the bill. But I tell you, we must not remove all limitations on this new intelligence director. Why, this man is going to be God when it comes to appropriations and legislation and matters affecting the people.

This is the perfect example of how we are rushing through this intelligence bill without fully understanding what we are doing. I do not understand what we are doing, and I need to understand what we are doing. To properly represent the people from West Virginia, I need to understand what we are doing.

Now, fortunately, I have a good colleague on the Intelligence Committee, Senator ROCKEFELLER. But I tell you, we are dealing with matters that go to the heart—the heart—of a free government.

Englishmen spilled their blood for centuries to wield the power of the purse away from monarchs in England. They shed their blood, yes, going all the way back to the Magna Carta, the great charter, in 1215. It was signed on the banks of the Thames River.

I think we ought to go a little slower. This is a perfect example of how we are rushing through this intelligence bill. I say it with all due respect to Senator LIEBERMAN and Senator COLLINS. I admire them, but I admire the Constitution also. I think we ought to stop, look, and listen, and slow down a little bit here.

Without this amendment, the Congress will cede its power of the purse just as it ceded the authority to declare war 2 years ago. We owe it to the 9/11 families to get this right. I say to my staff all the time: If you don't do the job right, how are you going to find time to do it over? That applies in this instance, too. I say that with all due respect.

There is nothing to keep my colleague—my cherished friend, for whom I have great admiration—from coming back next year, from sitting in the driver's seat and doing this thing and doing it perhaps better than he has done it in the first instance. I have no doubt that he would go at it with a will.

In the long run, the victims of 9/11 will not forgive us if we give away the

power of the purse. And don't forget, it is not just that first sentence. There is more to it than the first sentence:

No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all—

Not just some, all—

public Money shall be published from time to time.

Better ponder that bit of verbiage before we get in too big a hurry here.

We will have some opportunities to talk further about this amendment. In sitting down, let me again pay homage to my friend, a public servant whom I long have admired, and this fine lady. I tell you, she is a stalwart. But God save the Constitution. God save it. Let's don't be in too big a hurry. Take a little more time and do it right.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, let me first thank the Senator from West Virginia for his kind words. The truth is, these are critically important matters we are debating. I feel a sense of responsibility and honor in having the opportunity to speak to them. But I must say, to be involved in a debate such as this with the Senator from West Virginia is in itself an honor.

We disagree on this particular amendment, but I so respect the core of his values that motivate him and guide him every day. I know he only wishes the best for our country and for our Congress. I don't say it lightly. I hope he understands these are not reflexive words and praise. It is an honor to be involved in this kind of debate with the Senator from West Virginia, who is a very vital Member of the Senate today but a part of Senate and American history. I thank him very much for caring enough about what we are doing to come here this morning and offer this amendment.

Of course, he is the man who carries the Constitution right by his heart and reminds us of what it requires of us. It is a founding document. It is in many ways a sacred document to all of us Americans. I assure him, with regard to the sections of the Constitution he read about the appropriate allocation of responsibility of the Congress and the executive branch regarding fiscal decisions, there is nothing in this bill Senator COLLINS and I bring to the Senate that would alter that balance in any way. I will speak to that in a bit.

There is an alteration of authority and power in this proposal Senator COLLINS and I have made, but it is not altering the existing, constitutionally based power relationship between Congress and the executive. It does alter the allocation of authority and money and, therefore, power between various agencies of the executive branch. But there is no change in the congressional-executive relationship.

Yes, there are some necessary changes in the relationship between the Department of Defense, CIA, FBI, and a new national intelligence director who gains power here. So some may have to give up a little bit, but that is in the national interest. That is the first point I want to assure the Senator on.

Senator COLLINS and I are not only devoted to the Constitution, we are devoted to the critical role the Constitution gives Congress in these matters. I want to assure the Senator, again, that we have done nothing to alter the authority of Congress.

I will read from page 28 of our bill, section (4). This is the section that goes to the transfer authority of the national intelligence director. On line 23, it reads:

Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees.

Then it goes on:

The National Intelligence Director shall promptly submit to the appropriate committees of Congress a report on any transfer of personnel made pursuant to this subsection.

Of course, there is a section in here that ''requires any transfer of funds or personnel not exceed applicable ceilings established in law for such transfers.'' So any succeeding Congress reserves the right to establish such limits in law, and they will not be altered by the Collins-Lieberman proposal.

The second thing to say is the authority we give the national intelligence director—that we believe so strongly that director needs—is not without control. No one is going to confuse this director with a god, even a god of intelligence. He will be a director of intelligence but he will be limited.

For instance, transfers of personnel and budget will be subject to the approval of the Office of Management and Budget.

So ultimately what does that mean? It means the Commander in Chief has to approve. If there is a fear that this national intelligence director may do some things that, let's say, the Secretary of Defense doesn't like, the Secretary of Defense can go right to the President and say I don't like this and please get the OMB director not to approve these transfers. The final responsibility for the decision goes to where it should be ultimately in our system, which is to the President.

We also require consultation with department heads before transfers of budget or money or personnel are made. We require that the transfers only be made for what we call a higher priority intelligence activity. We don't expect this to be done wantonly. We are not allowing it to be done wantonly, to override the appropriations of Congress. We are saying we want that director, though, to have the ability, if there is a crisis, to move money like a general moving troops to the point where the Army is being attacked. As I said earlier, the transfers have to occur within applicable ceilings established by law.

So I say this, finally, to my dear friend and respected colleague from West Virginia. There is an urgency here, which is the urgency of the terrorist threat that we face. The 9/11 Commission has been clear about this. They believe we are in a situation where still, today, no one is in charge of our intelligence community. We had testimony before our committee in terms of Osama bin Laden, that evil person who concocted and directed, or conceived and directed the attack against America on 9/11/01, killing almost 3,000 innocent civilians. Obviously, he is the No. 1 target for us today. In the hunt for Osama bin Laden, there is no one in charge. We have two or three agencies of our Government going at this, but there is no one in charge. The national intelligence director will put somebody in charge. That is the urgency, that we remain at war and we are not organized as well as we should be. The urgency is the urgency that a general in combat would feel is clear if the enemy is taking advantage of a particular vulnerability in his forces. He would move quickly to shore up that vulnerability. That is what we are doing as well.

In closing, families of the victims of September 11 have formed a group to advocate, in some ways, in the memory of their husbands, wives, fathers, mothers, and children who were lost on September 11, to make sure we do what they think we ought to do to protect other families from suffering. They sent a letter to Members of Congress a week or two ago in which they said:

Sufficient information necessary to make a decision as to a new, improved structure for the Nation's intelligence community is currently available to all Members of Congress. Opinions may differ as to how improvements are best accomplished, but those differences can be addressed within the framework of the legislation being proposed. There is no excuse for deferring decisionmaking, given the wealth of information available.

Again, that is from families of the victims of September 11. I promised that would be the last word, but this will be the last word. I say to the Senator from West Virginia that the very introduction of this amendment and the discussion it engenders today between yourself, Senator COLLINS, and me, and hopefully other Members listening and involved is part of the process, similar to what we went through in our Committee. I think a lot of Members came to the Committee hearings and deliberations, and we went on for two days of markup. We had almost 50 amendments. We conducted a very open discussion. We listened and, in some cases, we altered language in the mark we laid down because we thought Members made good points. In other cases, we said it hurts the purpose of what is required. In the end, because everybody felt we worked together and learned a lot, we were very pleased to say the bill was reported out unanimously. I must say that one of the

members, when the roll was called, gave an answer that I had never heard before. Instead of saying yea or nay, he said ''barely yea.'' We got him just over the threshold.

My hope is that as a result of the discussion on this amendment, we get to a point at the end of the day, or next week, that we can have a similarly strong vote that will reflect a confidence that we have all together learned, that we have protected our values, constitutionally speaking, and our security, and done the best we could and will adopt this with a real sense of confidence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, as we have indicated, the legislation before the Senate is the product of a concerted effort by the Governmental Affairs Committee to reflect the testimony of more than two dozen witnesses at eight hearings. It reflects the recommendations of other committees who gave us input into the legislation, and it builds upon the work of the 9/11 Commission. But it is important to know that the 9/11 Commission did not start from scratch, either. Its work takes into account nearly a half century of studies on intelligence reform, dating back to the Eisenhower administration. Indeed, the calls for reform go back 50 years. For nearly 2 years, the 9/11 Commission conducted an investigation of unprecedented depth. They interviewed more than 1,200 witnesses in 10 countries, yet we hear again those who counsel: Not yet; we are going too fast; we should wait; we need more information; under the current threat of terrorism, the time isn't right; the highly charged political atmosphere of a Presidential campaign creates an environment that is not right for such an important decision.

I ask, what more information do we need? If you look at the list of witnesses who testified before the 9/11 Commission, before the Governmental Affairs Committee, before the Armed Services and Intelligence Appropriations Committee, I would say, what point of view has not been heard? What area of expertise was not explored? What more compelling evidence do we need? I ask, if the time isn't right to act now, when will the right time ever come? When will there be no threats? When will we be at peace?

The war against terrorism is likely to have to continue for many years. I believe we will have failed the American people if we do not act on an issue that is so important to the security of our country.

I think the chairman of the 9/11 Commission, Thomas Kean, said it best when he spoke at our very first committee hearing on July 30 of the urgent need to move forward with these reforms. This is what he said:

These people are planning to attack us again, and trying to attack us sooner rather than later. Every delay that we have in changing structures to make that less likely is a delay that the American people can't tolerate.

I think he said it well. The stakes are too high. The matter before us is too compelling. Even as we debate this legislation, we know that terrorists are planning to attack our country. We know that we are at an increased risk of terrorist attack. We see it all around this Capitol at the intersections and with the increased security. How can we not act? What more do we need to know?

If we do not act, I think we will have failed to respond to an urgent threat, and we will have failed in our responsibility to do everything we can to make our citizens safer.

Now is not the time to delay. Now is the time to move forward, and to move forward with a bill that makes a difference, not a bill that tinkers around the edges or makes a few cosmetic changes but, rather, with a bill that makes fundamental reforms to respond to deficiencies, inadequacies, and flaws that have been identified time and time again over 50 years.

I thank the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I have no intention of belaboring this today. I understand we are going to vote next week, on Monday at 3. I hope we will have an opportunity to debate this further on Monday.

The distinguished Senator, Ms. COLLINS, has said: What more do we need? What other witnesses do we need to hear? Let me name some witnesses who are represented by the distinguished Henry Kissinger when he appeared before the Appropriations Committee. What an impressive bipartisan array of national security experts pleading with Congress not to rush these reforms. The list is a list of stars from both sides of the aisle, as it were: David Boren, Bill Bradley, Frank Carlucci, William Cohen, Robert Gates, John Hamre, Gary Hart, Sam Nunn, Warren Rudman, George Shultz, as I have already mentioned, Henry Kissinger.

These men from both sides, both political parties, men who have held preeminent positions in this Government, Republicans and Democrats, appeared before the Appropriations Committee and said: Wait, don't act in too great a hurry. They have decades of knowledge and experience, and yet we stand ready to dismiss their concerns out of hand.

Let us not be rushed into this. I am not opposed to a national intelligence director. I am not opposed to that. Elections are a perfect time for a debate but a terrible time for decisionmaking. When it comes to intelligence reform, Americans should not settle for adjustments that are driven by the calendar instead of by common sense. They deserve a thoughtful, comprehensive approach to these critical issues.

I am not saying the distinguished members of that committee were not thoughtful. They were. But if, as seems likely, Congress considers it is essential to act now on certain structural reforms, we believe it has an obligation—I do—to return to this issue early next year in the 109th Congress to address these issues more comprehensively. It would seem to me that—let me say again—such a list, a list of stars, as former members of the Government are concerned: David Boren, Bill Bradley, Frank Carlucci, William Cohen—so you see, we have former Secretaries of Defense here—Roberts Gates, John Hamre, Gary Hart, Henry Kissinger, Sam Nunn, Warren Rudman, and George Shultz. These luminaries are asking for more time. These witnesses testified before the Appropriations Committee, and all of them said: Go slow; go slow.

Let me tell you who these people are.

Dr. John Hamre is the CEO at the Center for Strategic and International Studies. The others have services and titles that speak for themselves. I will not go into these. But I am simply saying we need to talk some more about this next week. I hope we will ponder carefully. I am not opposed to a national intelligence director, but I simply say we should have more time.

We saw, Madam President, the unwisdom of being in a hurry when it came to the invasion of Iraq. Our Government invaded. It won a short war, but it had not given proper thought to what would come after, had not given proper thought, it had not planned properly and carefully for a postwar Iraq. And now look at what is happening. Look at the terrible cost, the terrible price this Government is paying—paying with the blood of the sons and daughters of our country. Think of it.

Let's don't be in such a big hurry. Let's take more time.

Madam President, I shall have more to say at a later time. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I thank the Senator from West Virginia.

I note the distinguished chairman of the Senate Armed Services Committee is now on the floor, and I would like him to proceed whenever he wishes.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank the managers of the bill. Before I commence, I wonder if I might comment on the presentation of the distinguished Senator from West Virginia, which I was privileged, as many others were, to listen to very carefully. It was prepared in his usual very thorough style, magnificently delivered. I am going to take a close look at it. I thank the Senator for his contribution to this effort.

Mr. BYRD. Madam President, will the distinguished Senator yield?

Mr. WARNER. Yes.

Mr. BYRD. Plato thanked the gods for having been born a man. He thanked the gods for having been born

a Greek. He thanked the gods for having let him live in the same age as Sophocles. And so I thank the benign hand of destiny for allowing me to live at a time and to serve at a time when the great Appropriations Committee of the Senate was chaired by the very distinguished Senator from the great State that is the mother of Presidents, the State of Virginia, a state from which comes the first President of this country, the first Commander in Chief of the Nation, George Washington.

I have always admired Senator WARNER. He is a gentleman, first of all, and that goes a long way in this body. I thank him for his comments. I thank him for his cosponsorship of this amendment, and I look forward to what he has to say.

Right now, I should go to the Hart Building, where a woman who has been my wife for 67 years, 4 months, and 2 days, is waiting to see me. We are going to have lunch together, thank the Good Lord. So if all Senators will allow me to leave the Chamber now, I shall go.

Mr. WARNER. Madam President, not until I make the following observation: First, I thank the Senator for his comments. They are undeserved but I appreciate them. I remember how many times on this floor the Senator has recounted the importance of his wife's role in his career, but the one I always remember—I have only been here a mere 26 years as compared to my senior colleague—was during my first couple of years, and we were going well into the night. The Senator paused to say how he used to go to night law school, and although he was a Member of Congress and burdened with the duties, she would come with a little lunch bag with a carton of milk and a sandwich to tide him over until he left the Chamber, whether it was the House or the Senate, and go to night law school to get his degree. I always remembered that.

Give her my warmest regards.

Mr. BYRD. If the Senator will yield, I thank him for his magnificent encomium to my better half, a woman who has guided me and who has served her country and her State so well. I thank the Senator for what he has just said.

AMENDMENT NO. 3877

Mr. WARNER. Madam President, I thank the distinguished managers of this bill. I rise now for the purpose of sending an amendment to the desk and ask for its immediate consideration. I note that Senator STEVENS and Senator INOUYE are cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself, Mr. STEVENS and Mr. INOUYE, proposes an amendment numbered 3877.

Mr. WARNER. 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 modify the requirements for the concurrence of the National Intelligence Director in certain appointments)

On page 40, strike line 18 and all that follows through page 41, line 4, and insert the following:

(b) CONCURRENCE OF NID IN CERTAIN APPOINTMENTS RECOMMENDED BY SECRETARY OF DEFENSE.—(1) In the event of a vacancy in a position referred to in paragraph (2), the Secretary of Defense shall obtain the concurrence of the National Intelligence Director before recommending to the President an individual for nomination to fill such vacancy. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the concurrence of the Director, but shall include in the recommendation a statement that the Director does not concur in the recommendation.

On page 41, line 12, strike ''CONCURRENCE OF'' and insert ''CONSULTATION WITH''.

On page 41, beginning on line 15, strike ''obtain the concurrence of'' and insert ''consult with''.

Mr. WARNER. Madam President, this amendment is for the purpose of bringing into realignment what I believe is the proper balance of the authorities of the new NID together with the respective Cabinet officers, each of whom has some portion of intelligence responsibilities remaining, as well as the Director of the FBI.

I will read the amendment briefly so that colleagues can follow exactly what I am trying to do. The amendment says:

Concurrence of NID in certain appointments recommended by Secretary of Defense. (1) In the event of a vacancy and a position referred to in paragraph (2), the Secretary of Defense shall obtain the concurrence of the National Intelligence Director before recommending to the President an individual for nomination to fill such vacancy. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the concurrence of the Director, but shall include in the recommendation a statement that the Director does not concur in the recommendation.

It is just to bring into balance the fact that according to my research, each of the other departments and agencies that have an intelligence role get to recommend, with the concurrence of the Cabinet officer or the head of the FBI. This is the one instance with regard to these combat agencies where it should be brought in alignment with the other methodology and procedures adopted for these important personnel selections.

I draw the attention of the managers to section 117(b) of the bill before us. It gives the national intelligence director responsibility and authority to recommend appointments for several agencies that hopefully will continue to be retained within the Department of Defense: The National Security Agency, the National Reconnaissance Office, the National Geospatial-Intelligence Agency.

I say hopefully because we have thus far withstood the very significant amendment by the distinguished colleague from Pennsylvania, coauthored by the distinguished colleague from Kansas, Mr. ROBERTS, and others. The Senate addressed that and by an overwhelming majority literally rejected the taking of these three combat agencies and putting them under the direct jurisdiction of the NID.

Now, that is a concept that was hard fought, decided, and as a consequence, hopefully it will remain as it is in the managers' bill.

The purpose of the amendment was to dislodge the managers' section with regard to that. That was rejected by the Senate very resoundingly. I believe, therefore, it is appropriate at this time to bring into alignment with the other departments and agencies the authority for the Secretary of Defense over these three entities which remain in his department to make the recommendation to the President with the concurrence of the NID, and in those instances where there is nonconcurrence the President then would have the benefit of that diversity of viewpoints. That is the purpose of this amendment.

We must remind ourselves that these are combat support agencies in the Department of Defense. Under the bill, as of this moment, the agencies remain under the authority of the Secretary of Defense.

Then the interesting aspect of this, which is important to my amendment is that in the case of the NSA, this is normally a military promotion from two stars to three stars to take on this important position of the Director of NSA, and that Director of NSA also serves in the position of Deputy Commander U.S. Strategic Command for Information, Operations, Planning and Integration, a very critical warfighting post. Consequently, these are matters that the Secretary of Defense, who is accountable to the President and who has direct line authority from the President to the SECDEF to the combat commanders, that are important to maintain.

In the case of the NRO, this is a civilian appointment, to direct the activities of the National Reconnaissance Office but is an appointment as the Under Secretary of the Air Force. He is dual hatted, again, an individual who serves not only in the important post of the intelligence NRO but as an Under Secretary of the Air Force in the Department of Defense. It is imperative that the Secretary of Defense have the authority to make the recommendation together with the concurrence of the NID.

In the case of the NGA, this can be a military appointment similar to the NSA. One primary function of the NGA is to meet the mapping needs of our military forces. I repeat, the military forces are highly dependent upon this agency for the tactical maps that are needed wherever they are in the world today facing the challenges and the threats to our country.

These three appointments, I say most respectfully to the managers, I feel ever so strongly should be initiated by the Secretary of Defense with a recommendation, and then the statute, if my amendment is adopted, will give the concurrence of the NID as an essential part of the process.

Current law provides for the Secretary of Defense to recommend appointment of these individuals with the concurrence of the DCI. We have clear evidence for many years this system has worked and worked well. There are examples where the DCI nonconcurred and the Secretary revised the nomination in a manner consistent with gaining the concurrence of the Director of the CIA.

The President has said he does not want anything we do in the area of intelligence reform to blur the lines of authority, responsibility, and accountability between him and the heads of the departments. I feel my amendment will meet that criterion as set forth by the President. I strongly urge my colleagues to examine the current provision, examine the practice with respect to other departments and agencies in the Government, and hopefully I will gain the support of the managers as well as of my colleagues and that this amendment will be adopted.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, for the national intelligence director to be truly accountable for the intelligence community, the director must have the authority to have a real say in the selection of the heads of the principal agencies of the intelligence community. The 9/11 Commission said that the ability to hire the senior managers is one of the key authorities, critical to the success of the national intelligence director. It is critical to the success of any leader, but particularly it is important for the head of the intelligence community. The 9/11 Commission cited the DCI's current lack of this power as one of the key flaws in the DCI's authorities.

Under the Collins-Lieberman bill, the NID will recommend to the President nominees to be the directors of the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency—the agencies known better as NSA, NGA, and NRO. The NID is required to obtain the concurrence of the Secretary of Defense before recommending the nominees to the President, and if the Secretary of Defense does not agree with the recommendations of the NID, the director must make that fact known to the President.

The distinguished chairman of the Armed Services Committee and the managers of this bill each agree that these three critical agencies should remain within the Department of Defense because of the dual role these agencies play. For that reason, we joined forces to oppose the amendment offered by the Senator from Pennsylvania that would have severed the link between these agencies and the Secretary of Defense, the reporting link.

In our bill, I believe we have taken the right approach. We have left these three agencies within the Department of Defense, but we have made it clear that there is an important reporting responsibility to the national intelligence director and that the national intelligence director will choose the individuals to lead these agencies with the concurrence of the Secretary of Defense. It is actually the President's nomination, but the recommendations would go from the NID with the concurrence of the Secretary of Defense.

Why did we do that? We struck that balance not only because it was recommended by the 9/11 Commission, and strongly recommended, but because we recognize that these three agencies do not just serve the Department of Defense; they are national intelligence assets. They provide vital intelligence information throughout the intelligence community. In fact, when Senator LIEBERMAN and I met with the head of the NSA, he told us he was on the phone far more often with the Director of the CIA than he is with the Secretary of Defense.

These agencies provide critical information to the CIA, to the Secretary of State, to the Secretary of Energy, to the Secretary of the Treasury—to all those 15 agencies across our Government that vitally need intelligence information. That is why we have the heads of these agencies recommended by the national intelligence director with the concurrence of the Secretary of Defense.

I point out that if we were to adopt the amendment offered by the Senator from Virginia, we are essentially making no change in current law. Under current law, the Secretary of Defense recommends the appointment of these individuals to the President, and it is the Director of Central Intelligence who concurs in the choice. So essentially the Senator from Virginia is simply restating current law. Current law is not adequate, and we know that that higher authority is a key authority. If we are going to hold the national intelligence director accountable for the intelligence community, we have to give him the authorities he needs to do his job.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank my friend from Virginia, the chairman of the Senate Armed Services Committee whom I so respect and for whom I have such a feeling of personal affection. I probably should not say this for the record, Senator WARNER, but my wife probably wouldn't be happy to hear that I was opposing you. She has all too much regard for your judgment and opinions. But nonetheless, I go forward.

Let me put this amendment in context. In response to the 9/11 Commission Report, Senator FRIST and Senator DASCHLE sent it to our Governmental Affairs Committee to consider and then recommend, on the basis of that report, action to the Senate—which we have done. Senator COLLINS and I and the members of the committee essentially built a structure, a national intelligence director, a leader for our intelligence community where there is none now—what I called a quarterback for our intelligence team—where there is no quarterback, a general for our intelligence service.

There have been two amendments put forward, in now this fifth day of debate on the bill, that went at the architecture of the structure we have recommended. One was by Senator SPECTER, which would have dramatically altered, gone well beyond, what we had. Senator WARNER knows, because he was good enough to come and speak against the amendment; it would have had the new NID in line control of all of these intelligence agencies, including those that are housed and will continue to be housed in the Defense Department. That was overwhelmingly rejected by the Senate.

Yesterday, there was a different kind of assault on the structure we are proposing from our committee in the amendment offered by the Senator from South Carolina which I believe and represent would have created in name a national intelligence coordinator but given that person no authority, no power. It would have been the status quo because it would have looked as if we had done something, but we would not have done anything.

That amendment was overwhelmingly defeated.

I am grateful for both of those votes.

The amendment which the Senator from Virginia proposes, as in some sense the amendment the Senator from West Virginia proposed earlier today, does not knock off the structure we have proposed but alters it in ways that I fear—certainly cumulatively—would weaken the structure and not allow the national intelligence director to play the role the 9/11 Commission and our committee wants it to play. Is it a big difference? No. But one element of strengthening this position of national intelligence director is to make the influence of the director over our national intelligence agencies—the National Security Agency, which deals with signal intelligence and communications that are heard in the interest of our national security, the National Reconnaissance Organization, which puts satellites up in the air, and the National Geospatial Agency, which has all of these remarkable capacities technologically to see ground imagery and help our military and other intelligence services to do what they have to do to protect us.

Here is the point: Those are national assets. Of course, they are used every

day by the military, by the Department of Defense. The DOD is a very important customer, maybe the most active customer, but not the only customer of these assets—of signal intelligence, image intelligence, and human intelligence.

The CIA, as Senator COLLINS indicated, depends on these satellites and the other systems for important intelligence. So does the State Department. So does now the Department of Homeland Security, even the FBI.

We are trying to say that these national assets ought to report to the national intelligence director, and part of that is to give the director the opportunity to start the process for nominating the heads of these agencies. That is a change. Now that is done. As Senator COLLINS indicated, with the Secretary of Defense, we want to make a slight change. The Secretary of Defense has the right to concur or oppose. In most cases this will be worked out between the national intelligence director and the Secretary of Defense. Lord knows, they and their deputies are working out 100 decisions every day right now. But if it is not worked out, the dissent will go to the President, and ultimately the President will decide.

It is a only a difference. The Secretary of Defense will begin the process of who is going to head the national agency or the NID. Ultimately, the President will decide. Why is that different under our bill for these three agencies as opposed to the head of a counterterrorism division in the FBI, or that information analysis, intelligence, and for infrastructure protection division of Homeland Security? Because these three are uniquely national assets. The NSA, NRO, and NGA serve all of the community and they ought to be under the director of the community, and he or she ought to have the first say in who fills that position.

That is why this is an important part of our structure, and why I respectfully oppose the amendment, because it would weaken the structure by pulling out a couple of the boards.

Mr. WARNER. Madam President, will the Senator yield?

Mr. LIEBERMAN. I certainly will.

Mr. WARNER. I want to pick up on the last point. I find there is no effort to change the authority of the Secretary of State in the selection of his people to do the work. But I feel strongly that the work done by the Department of State serves the whole community. It isn't exclusive to the Secretary of State.

I bring to the Senator's attention the fact that the Department of State had some thoughts at variance with the Central Intelligence Agency as related to the aspect of the critical issues relating to the weapons of mass destruction. Does the Senator recall that?

Mr. LIEBERMAN. Through the Chair, the Senator from Virginia is absolutely right. I do recall it.

Mr. WARNER. Therefore, they serve the whole community. And perhaps if a caveat on some of that had been brought to the forefront in a more strengthened fashion, who knows what the outcome might have been.

I do not believe the Senator can tell me that the person in the FBI who has responsibility isn't serving the entire community. I think the Senator ought to go back and reexamine that representation. I do not find it strengthened by making an exception for the Secretary of Defense as relates to these three individuals.

For example, I draw on my experience as Secretary of the Navy. There was quite a competition when vacancies of the NRO and NSA came up. The service Secretaries were invited to make nominations to the Secretary of Defense for the offices. In the capacity of a service Secretary, you get to know these individuals as they work their way up through the ranks and are promoted. You have a special knowledge of their capabilities and their strengths. You can advocate that to the Secretary of Defense, who then in turn makes the decision with regard to who should be selected to head the NRO based on the cumulative advice of the several service Secretaries. Those positions are often rotated between the Air Force, the Army, and the Navy, and they are extremely important assignments.

With all due respect to the NID, he has so much to be done that he cannot possibly have the knowledge about the achievements of all of the various individuals to make a recommendation. He can, of course, come in after study and concur or not. But you are holding the Secretary of Defense saying you have all the responsibility with regard to this agency. In many respects personnelwise, you are reducing the Secretary of Defense to a payroll clerk when you do not allow him to make the selections of the people he thinks are best qualified. In the case of the NRO, he serves as an under secretary of the Air Force with duties related to the NRO and duties related to the entire space program in the Department of the Air Force. The Secretary of Defense should make the appointment of the people who serve his Department.

I cannot accept the Senator's distinction about how you leave the State of Department alone, the FBI alone, the Energy Department alone, let those Secretaries make their recommendation and decisions with regard to personnel, and then in almost a demeaning way say to the Secretary of Defense, Oh, no, when it comes to your people, you have the right to concur or not.

Mr. LIEBERMAN. Mr. President, if I may briefly respond to the Senator from Virginia, the case cited of the INR, the intelligence division at the State Department, is an interesting one. They came to a different opinion than some other constituent agencies of the American intelligence community with regard to, for instance, prewar WMD in Iraq. But that was a matter of analysis primarily, not collection. They looked at the data. Incidentally, some of the data they looked at were data they got from these three agencies. These are the three largest collection agencies and they are unique in that they serve the whole community.

There is certainly no intention to diminish the Secretary of Defense. The Secretary of Defense has a very powerful position and Senator COLLINS and I want to have the Secretary remain that powerful. We had very interesting testimony before our committee by a witness who said—he had been in the Department of Defense and stepped out to work with a think tank where he watches all of this—over the years when there were conflicts or disagreements between the Secretary of Defense and the Director of Central Intelligence, the Secretary of Defense always wins because the Secretary of Defense has so much muscle. And that is the reality.

We are not trying to undercut the authority of the Secretary of Defense, and we are certainly not trying to alter the chain of command, but we are trying to give a little more authority to the national intelligence director so that director can really be in charge. One small piece of that is saying, Mr. Intelligence Director, you can, in consultation with the Secretary of Defense, make the suggestion for who ought to head these three agencies which, unlike any other intelligence agency within our Government, serve the entire community.

The Secretary of Defense, as I said before, is an important customer of what these three agencies produce—''user'' may be a better term than customer.

It was of great interest when General Hayden, head of the NSA, said he spends more time on the phone with the Director of the CIA than with the Secretary of Defense. We want to reflect that in this small movement of authority.

Mr. WARNER. Mr. President, it is obvious the managers at the moment are somewhat entrenched in their views. I hope we will have an opportunity to appeal to the broader and hopefully more open minds of the collective Senate as a whole.

Could the managers advise those Members who have deferred other plans, with the importance of being here today to advocate amendments, what will be the procedure when this will be laid aside? There will be a record when we return Monday. I presume it would be scheduled in some order, at the discretion of the managers, together with the leaders of the Senate, as to the vote.

Do I get 2 minutes, 3 minutes, 4 minutes at the time the amendment is brought up? I would like to weigh in a little bit now given that I have not thus far persuaded my two distinguished colleagues, both members of

the Armed Services Committee, who are interfering, in my judgment, with the direct chain of command between the President and his combatant commanders and principal civilian appointees.

Ms. COLLINS. Mr. President, to respond to the question raised by the Senator from Virginia, it is the leader's intention to convene perhaps at 10 or 11 o'clock on Monday morning, allow for some further debate, and then stack votes beginning at 3 p.m. There will be 2 minutes equally divided before each vote, but knowing of the Senator's desire to have further debate on Monday, we are going to convene early enough on Monday to allow that to occur. We expect a great many stacked votes to begin at approximately 3 o'clock Monday. Thus, we are not going to have time for extensive debate between those votes.

Mr. WARNER. I thank my distinguished colleague. I shall certainly be here. As a matter of fact, I will preside for a period of time. Maybe when I get in the chair and have the gavel, I can do something about this amendment.

In any event, I am appreciative of the courtesies that have been extended to Members of the Senate deliberating on this bill. This is an important matter.

Hopefully, in the interim, I can persuade not only the Senate but the White House to indicate its position on this amendment.

I thank the Chair. I thank my distinguished colleagues. I will be available for further amendments as the managers decide to have them scheduled during the course of the day.

This amendment will now be laid aside?

The PRESIDING OFFICER. Yes.

Ms. COLLINS. I ask that the amendment be laid aside. The Senator from Vermont is next. I wonder if the Senator could withhold for a couple of moments to allow consultation among the three of us before he sends up his amendment.

Mr. LEAHY. Of course. The distinguished chairman and ranking Member have always been very courteous. I know, having managed a lot of bills, how it is. It is a reasonable request.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3945

Mr. LEAHY. Mr. President, I ask it be in order for me to send to the desk an amendment on behalf of myself and Mr. GRASSLEY.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

Mr. LEAHY. I understand there may be a question regarding my amendment. While this is being worked on by counsel, let me proceed to discuss it and we can go back to the amendment if there is no objection.

Mr. President, three years after thousands of Americans were killed in the worst terrorist attack on U.S. soil, there have been some troubling doubts about the effectiveness of a major investigative tool in our antiterrorism arsenal.

On Monday, the Office of Inspector General of the Department of Justice released an unclassified version of its audit of the FBI's Foreign Language Program and the Translation of Counterterrorism and Counterintelligence Foreign Language Material. The results were unsettling. They deserve our immediate attention and action.

The report shows that despite concerns expressed for years by those in Congress and by former FBI contractors, among others, and despite an influx of tens of millions of dollars Congress has appropriated in a bipartisan effort to hire new linguists, the FBI foreign language translation unit is saddled with problems across the board, including growing backlogs, systemic difficulties, security problems, too few qualified staff, and an astounding lack of organization. It is almost as though the Department of Justice does not take this question of translation seriously.

The question the Department of Justice must be asked is: What is the use of taping thousands of hours of conversations of intelligence targets in foreign languages if, after we have taped it all, we cannot translate it promptly, securely, accurately, and efficiently? The translation mess at the Department of Justice is a chronic problem that has obvious and severe implications for our national security. We all want America to be secure, Republicans and Democrats alike. But the administration has shirked its responsibility to resolve these problems. It has dodged its own accountability to the public and to Congress for this enormous failure. I believe the administration owes Congress and the American public an explanation as to why it has repeatedly failed to take the necessary steps to fix these serious intelligence failings. We need to know, once and for all—and sooner rather than later—what steps will be taken to get this job done.

Now, to expedite this process, I will offer the Translator Reports Act of 2004. I am proud to be joined in this effort by Senator GRASSLEY, my friend from Iowa. He has been ever-vigilant on FBI oversight issues, whether it has been a Democratic administration or a Republican administration. Our act clarifies and expands upon an important reporting requirement currently in law that has yet to be implemented by the Department of Justice.

The Attorney General is required by law—by law—to report to the Senate and House Judiciary Committees about the number of translators employed by the FBI; the legal and practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and the needs of the FBI for specific translation services in certain languages and recommendations for meeting those needs. We saw this as such a high priority that we included this requirement in law. The President signed it into law.

You would think if anybody is going to follow the law, it would be the Attorney General. To date, he has not. He has not made the report required by this law. Now, maybe he needs another deadline. We thought it was pretty clear already. The President thought it was pretty clear. Republicans and Democrats thought it was pretty clear. But this amendment provides an ironclad deadline.

I believe we have to prod the Department of Justice to get this information on a timely basis. It is somewhat like pulling teeth. This amendment is the extraction tool for the teeth of the foreign translation program. It fills the gap in current law by legally requiring the Attorney General to report ''not later than 30 days after the date of enactment'' and ''annually thereafter.''

The bill also expands that reporting requirement in several critical ways and in direct response to the Office of Inspector General's Audit. This is in keeping with the 9/11 Commission's directive that Congress exercise greater oversight over the counterintelligence and counterterrorism needs of the executive branch. In its report, the 9/11 Commission noted that, ''Even as the FBI has increased its language services cadre, the demand for translation services has also greatly increased. Thus, the FBI must not only continue to bring on board more linguists, it must also continue to take advantage of technology and best practices to prioritize its workflow, enhance its capabilities and ensure compliance with its quality control program.''

Well, I could not agree more.

The FBI in the past has drawn a distinction between contract linguists and full-time employees when discussing hiring issues. But for the purpose of getting the job done, this is a distinction without a difference. We in Congress want to know the status of hiring overall because it is the entire picture that we are concerned with. The amendment makes clear that the Department of Justice must report on linguists employed by and contracted for by the FBI.

Our amendment adds further reporting requirements that will be crucial to understanding whether or not the FBI is capable of fixing, and has fixed, the problems outlined by the Inspector General.

If enacted into law, the Attorney General will have to provide Congress with current information regarding: (1) the status of any automated statistical reporting system so that we can ensure

the FBI is monitoring workflow properly; (2) the storage capabilities of the digital collection system or systems utilized so that important data is not lost for technological reasons; (3) a description of the FBI's establishment and compliance with audio retention policies that satisfy the investigative and intelligence goals of the FBI; (4) a description of the implementation of quality control procedures and mechanisms for monitoring compliance with quality control procedures; and (5) the current counterterrorism and counterintelligence audio backlog and recommendations for alleviating any such backlog.

These reporting requirements are in addition to what is currently required: hiring numbers and recommendations regarding the FBI's future needs and the viability of using translators from other agencies and sources. This more detailed information will give Congress a better view and ultimately greater insight into how the FBI is handling this critical investigative tool. With FISA wiretaps at an annual figure of more than 1,700, the FBI has a lot of catching up to do. And so does Congress in its oversight of this translation program. With this amendment, the information we will need to most effectively employ this important investigative tool will be at our fingertips.

We know our intelligence services have the ability to pick up conversations throughout the world. But you have to translate what you pick up. On September 10, according to press reports, the Administration picked up a very clear warning that we were going to be hit on September 11. They did not translate the warning until sometime after September 11. This is like being warned that a bomb is going off in 5 minutes, and responding that we will translate and look at that warning in 5 months.

For my security and the security of all of us, I want our law enforcement and intelligence services to know immediately. As a former prosecutor, I know that if you are using a wiretap or an intercept, it is valuable if you have the information immediately, especially if they are talking about a terrible act or a crime that is going to take place very soon. It does you very little good to finally look at it long after the fact. The only reason we do these intercepts, the only reason we do these wiretaps, the only reason we do this electronic information gathering is so we will know where we are.

Mr. President, I understand my amendment is at the desk and I request it be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself and Mr. GRASSLEY, proposes an amendment numbered 3945.

Mr. LEAHY. 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 Congressional oversight of translators employed and contracted for by the Federal Bureau of Investigation)

At the appropriate place insert the following:

SECTION 1. CONGRESSIONAL OVERSIGHT OF FBI USE OF TRANSLATORS.

Not later than 30 days after the date of enactment of this Act, and annually thereafter, the Attorney General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, that contains, with respect to each preceding 12-month period—

(1) the number of translators employed, or contracted for, by the Federal Bureau of Investigation or other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by the Federal, State, or local agencies on a full-time, part-time, or shared basis;

(3) the needs of the Federal Bureau of Investigation for the specific translation services in certain languages, and recommendations for meeting those needs;

(4) the status of any automated statistical reporting system, including implementation and future viability;

(5) the storage capabilities of the digital collection system or systems utilized;

(6) a description of the establishment and compliance with audio retention policies that satisfy the investigative and intelligence goals of the Federal Bureau of Investigation; and

(7) a description of the implementation of quality control procedures and mechanisms for monitoring compliance with quality control procedures.

Mr. LEAHY. Mr. President, I know the distinguished chairman of the committee and the distinguished ranking member of the committee want to look at this amendment. Because I am suppose to be at several places, I am not shackled to my desk on the floor as they are. I did want to get the amendment offered. I thank them for their courtesy in giving me time to do so. I urge the Senate to support this important oversight and reporting amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I appreciate the Senator from Vermont bringing his amendment forward. We are going to discuss it further with him.

Mr. President, I ask unanimous consent that the amendment be laid aside temporarily and that the Senator from Rhode Island be recognized to offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is laid aside.

The Senator from Rhode Island.

AMENDMENT NO. 3908

(Purpose: To authorize the Secretary of Homeland Security to award grants to public transportation agencies to improve security, and for other purposes)

Mr. REED. Mr. President, I call up amendment No. 3908.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, Mr. SARBANES, Mr. SCHUMER, Mrs. BOXER, and Mr. CORZINE, proposes an amendment numbered 3908.

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 printed in the RECORD of Thursday, September 30, 2004, under ''Text of Amendments.'')

Mr. REED. Mr. President, I offer this amendment along with Senators SARBANES, SCHUMER, BOXER, and CORZINE.

This amendment is, in essence, the text of S. 2453, which the Banking Committee reported out unanimously on May 6 and placed on the calendar on May 20.

Since that time, we have sought to pass the bill along with the Commerce Committee's similar rail security bill by unanimous consent, but an objection has, to date, blocked the Senate from passing this bipartisan transit security legislation. Therefore, I rise with my colleagues today to continue this effort to improve the security and safety of our transit systems in the United States which on a daily basis transport 14 million Americans.

Our amendment is straightforward and meets the 9/11 Commission's recommendation on page 391 for improved transportation security, which states in part:

The U.S. government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort. The plan should assign roles and missions to the relevant authorities (federal, state, regional, and local) and to private stakeholders. In measuring effectiveness, perfection is unattainable. But terrorists should perceive that potential targets are defended. They may be deterred by a significant chance of failure.

In essence, the 9/11 Commission has called for three steps: first, clear responsibility; second, risk-based policies; and third, resources to meet these threats. Our amendment corresponds to these recommendations by the Commission.

First, our amendment would require the Department of Homeland Security to clearly accept responsibility for transit security by signing a memorandum of understanding with the Federal Transit Administration. Unfortunately, this is something that the Department of Homeland Security has failed to do, even after numerous Senate inquiries and the passage of a Senate amendment requiring it to do so.

Second, our amendment embodies the kind of risk-based priorities that the Commission recommended by requiring the Department of Homeland Security to review the security assessments conducted by the Federal Transit Administration. DHS would then use these risk-based assessments as the basis for

allocating any funds. The Department would also have to annually update these assessments.

Third, our amendment would authorize real resources over 3 years that are still a fraction of our investment in aviation security for a wide variety of known capital and operating security needs, including surveillance technologies, tunnel protection, chemical, biological, radiological, and explosive detection systems, perimeter protection, training, and other security improvements approved by the Department.

In sum, our amendment is not overly prescriptive and relies on the wisdom of the Nation's intelligence systems and the Department of Homeland Security to identify the threats, develop solid plans, and invest in those initiatives which will do the most to make our transit systems more secure.

Fourteen million Americans each day rely on transit systems. We only have to recall the horrible and tragic incident in Spain a few months ago to understand that these individuals are the potential targets for terrorist acts. It is incumbent upon us to take these steps today to protect the transit systems for the people of America as we go forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I commend my colleague, the very able Senator from Rhode Island, Mr. REED, for offering this amendment. I am pleased to join with him as a cosponsor.

Senator REED has played a leading role in the Congress on the issue of transit security. In fact, in the last Congress he held a series of hearings on transit issues, and a good deal of the focus of those hearings was on the transit security challenges we face.

This is a vitally important amendment needed to better protect the American people. I observe to my colleagues that throughout the world, public transportation systems have been a target of terrorist attacks. A terrorist attack against a passenger train in Madrid, attacks against transit systems in both Moscow and South Korea demonstrate that transit and rail systems are a target of terrorists worldwide.

Despite the significant threat which obviously exists to transit and rail systems, security funding has been grossly inadequate. As a result, our Nation's transit and rail systems have been unable to implement necessary security improvements, in many instances even those that have been identified as necessary by the Department of Homeland Security.

To take one example, Washington Metro's greatest security need at the moment is a backup operations control center. This need was identified by the Federal Transit Administration in its initial security assessment, and then identified again by the Department of Homeland Security in its subsequent security assessment. Regrettably, this critical need remains unaddressed because of a lack of funding.

Last March, I, along with Senators MIKULSKI, WARNER, and ALLEN, wrote to Secretary Ridge urging funding for this and other critical needs such as chemical detection and decontamination systems, but the money is not there and the needs remain.

In May of this year, the Banking Committee undertook to address these issues on a national basis. My colleague from Rhode Island played an instrumental role in considering this issue in the committee. The committee, on a bipartisan basis, with a unanimous vote, passed the Public Transportation Terrorism Prevention Act. Regrettably, we have not yet been able to move that legislation forward on the Senate floor. This amendment tracks many of the provisions of that legislation. It addresses the need for increased transit security by providing for grants along the lines of the bill that was reported out of the committee.

I note in that regard that Banking Committee Chairman SHELBY took a keen interest in this issue and we appreciate his recognition of the need to increase transit security and his support for the legislation that was brought from the committee.

I might note that the House Transportation and Infrastructure Committee recently took action with respect to transit security that is similar to what is proposed in this amendment.

In the last Congress, Senator REED and I requested the GAO to conduct a study of the security needs of transit systems. In its report the GAO found that, in analyzing the needs of eight transit systems, that they required $711 million for security purposes just for those eight systems. There are 6,000 public transit agencies throughout our Nation. The need is very great. The challenge is very real.

We know that transit and rail systems are serious potential targets for terrorist attacks. We obviously know the vital role that these systems play in our Nation's economic and security infrastructure. We must address the vulnerabilities that have already been identified in security assessments which have already been conducted.

The funding to do this is just not there. We need to harden tunnels, to provide detection teams, to train frontline employees, to update infrastructure so that a transit system can continue to function even if attacked. The list of security needs goes on and on and on.

I strongly commend to my colleagues the amendment that my able colleague from Rhode Island has put forward. I am pleased to join with him as a cosponsor. I urge support of the amendment. This is a very real need, with very important implications for our national security and for the functioning of our economy. I urge my colleagues to support the amendment. I thank the Senator from Rhode Island for his leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, it is my understanding, based on the tentative schedule that we worked out last night, that Senator LEVIN is to be recognized next to offer amendments, followed by Senator ROBERTS, followed by Senator STEVENS, followed by Senator KYL. I see the Senator from North Dakota is here to make a comment. My concern is how that fits in with the amendment schedule worked out last night.

Mr. CONRAD. I would be happy to yield to Senators for their amendments.

Ms. COLLINS. I appreciate that.

Mr. President, the pending amendment raises several questions. It has very worthy goals. We have previously adopted a McCain-Lieberman amendment dealing with some of the same issues. We need to have a discussion with the sponsors of the amendment, Senators REED and SARBANES and others, to see how their amendment interacts with the legislation previously adopted, the McCain-Lieberman amendment.

I ask unanimous consent that the pending amendment be set aside.

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

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, if I may speak on the amendment briefly, I thank the Senators from Rhode Island and Maryland for coming forward with the amendment. It certainly speaks directly to a critical national homeland security need. I want to take a little time to look at it and see how it fits into the overall picture with regard to the bill. I know this was reported out unanimously from the relevant committee. It has been held up perhaps only by one Senator as a result of an objection.

I don't want to have the underlying bill, which is so urgently needed, get caught in that kind of situation. But I would like to work with the sponsors of the amendment and perhaps with whoever is objecting to see if we can't find a way to put these together. This speaks to a real national need. It is consistent with other amendments that have been adopted on the underlying bill or were part of the bill initially and, of course, consistent with vulnerabilities that the 9/11 Commission spoke to.

I thank the sponsors and I look forward to working with them to see if we can work it out.

I yield the floor.

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

JUSTIFYING THE WAR IN IRAQ

Mr. CONRAD. Mr. President, in watching the Presidential debate last night, again, I think President Bush confused who attacked the United

States on September 11. President Bush, last night, in justifying the war with Iraq, said they attacked us. Senator KERRY was quick to point out that Iraq did not attack us. It was al-Qaida, led by Osama bin Laden, that attacked us. This basic fact is absolutely essential to understanding what occurred and where we are headed.

I think it is helpful, perhaps, to review the record. Here is the report of the 9/11 Commission:

The intelligence reports describe friendly contacts and indicate some common themes in both side's hatred of the United States [referring to Iraq and al-Qaida], but to date we have seen no evidence that these or the earlier contacts ever developed into a collaborative operational relationship. Nor have we seen evidence indicating that Iraq cooperated with al-Qaida in developing or carrying out any attacks against the United States.

Mr. President, it is not just the 9/11 Commission that tells us these basic relationships; it is also our own Intelligence Committee. Their conclusions in their July 7 report included conclusion 96:

The Central Intelligence Agency's assessment that to date there was no evidence providing Iraqi complicity or assistance in an al-Qaida attack was reasonable and objective. No additional information has emerged to suggest otherwise.

Conclusion 93:

The Central Intelligence Agency reasonably assessed that there were likely several instances of contacts between Iraq and al-Qaida throughout the 1990s, but that these contacts did not add up to an established, formal relationship.

Mr. President, one month after the dreadful September 11 attack, the State Department had on their Web site a list of countries where al-Qaida has operated. This is a month after the September 11 attack. If you look down this list—Bahrain, Bangladesh, France, Germany, Iran, and others—there is no mention of Iraq.

The Secretary of State has said as recently as September 13, just last month, appearing on NBC's ''Meet the Press,'' that he had seen nothing that makes a direct connection between Saddam Hussein and his awful regime and what happened on 9/11.

The President himself has previously said, on September 18 of last year, that he saw no evidence of Hussein being tied to 9/11. Yet over and over, the Vice President and the President have left an impression with the American people that somehow Iraq was behind the attacks of September 11. It was not. Al-Qaida, led by Osama bin Laden, was behind the attacks of September 11. Those are the folks we need to hold to account. They are the ones we need to bring to justice. That is not for a moment to say that Saddam Hussein didn't run a dreadful regime. He did. I think the world is better off without Saddam Hussein in power. The question is, What were the priorities of the United States in responding to those horrific attacks on our country?

My belief at the time we were preparing to go to war with Iraq was that it was a diversion from our attention in going after al-Qaida, led by Osama bin Laden. My own strong belief at the time was that ought to have been our top priority and focus.

I graduated from an American Air Force base in Tripoli, Libya, in North Africa. I lived in the Arab world. I learned something about the Arab world in living there. It is very clear to me that we have to be very focused in going after those who attacked us. If we are going to be successful against the terrorists, we have to go after the people who attacked us. We have to go after those who are planning to attack us again. We cannot go off and go after every bad regime in the world. That will swamp our ability to respond.

There has been some suggestion that Saddam Hussein was going to arm terrorists. Go back to what the intelligence told us, November 16, 2003:

The CIA's search for weapons of mass destruction in Iraq has found no evidence that former President Saddam Hussein tried to transfer chemical or biological technology or weapons to terrorists, according to a military intelligence expert.

Mr. President, what happened was that our focus on getting those who attacked us was diverted by launching the attack on Iraq. This is from USA Today, March 29, this year:

In 2002, troops from the 5th special forces group, who specialize in the Middle East, were pulled out of the hunt for Osama bin Laden in Afghanistan to prepare for their next assignment: Iraq. Their replacements were troops with expertise in Spanish cultures.

Mr. President, what sense does this make? We took people who were experts in the culture of those who attacked us and we took them out of the hunt for Osama bin Laden and shifted them over to Iraq in the hunt for Saddam Hussein. And we replaced them with experts in Spanish culture. No wonder, over a thousand days after the attacks of September 11, we still have not held to account Osama bin Laden, his top assistant, and the rest of their criminal group.

This story says:

The CIA, meanwhile, was stretched badly in its capacity to collect, translate, and analyze information coming from Afghanistan. When the White House raised a new priority, it took specialists away from the Afghanistan effort to ensure Iraq was covered.

I believe history is going to prove that was a serious mistake. Again, Iraq did not attack us; al-Qaida, led by Osama bin Laden, attacked us. They are the ones we need to hunt down as our top priority.

Last year, in The Philadelphia Inquirer, this story ran, saying:

Some senior officials concede that the Iraq war also diverted resources from two problems that could prove to be even more pressing than Iraq was: rooting out the remnants of Osama bin Laden's al-Qaida terrorism network and confronting Iran. A senior intelligence official, who spoke on condition of anonymity, said the CIA reassigned to Iraq more than half the operatives tracking al-Qaida fugitives in Afghanistan and Pakistan. As a result, he said, U.S. forces were not able to pursue bin Laden and other al-Qaida leaders as aggressively.

This is a case of misplaced priorities by this administration. Our top priority should have been nailing Osama bin Laden and al-Qaida. Instead, this President and this administration diverted resources from that hunt and shifted them to Iraq. Again, as dreadful a regime as Iraq had, they were not the ones who attacked us. Al-Qaida did.

This goes on to say:

Al-Qaida's continuing threat was shown when the Department of Homeland Security raised its terrorism alert level Tuesday, after bombings in Saudi Arabia and Morocco.

This is what the President said right after the attacks of September 11, on September 15:

There is no question about it, this act will not stand; we will find those who did it. We will smoke them out of their holes; we will get them running and we will bring them to justice.

I agree, absolutely, with the President's statement. He had the priority right at the time. Then something happened. I don't know why. I have never been able to decipher why the President's focus shifted. Here is what he said on March 13, 2002:

You know, I just don't spend that much time on him [Osama bin Laden] . . . I don't know where he is . . . I truly am not that concerned about him.

How can he not be that concerned about the man who was the architect of these attacks on the United States? How can that be? How can our President not be that concerned about Osama bin Laden, who is out there plotting, even now, to launch even more attacks on the United States?

The former Secretary of the Navy in the Reagan administration, James Webb, made these comments this year in a USAToday op-ed piece:

Bush arguably has committed the greatest strategic blunder in modern memory. To put it bluntly, he attacked the wrong target. . . . Our military is being forced to trade away its maneuverability in the wider war against terrorism while being placed on the defensive in a single country that never will fully accept its presence.

That is the conclusion of the Secretary of the Navy in the Reagan administration, that this President attacked the wrong target. Instead of focusing on al-Qaida, he launched a preemptive attack on Iraq.

Mr. Webb, in that same opinion piece, said this:

There is no historical precedent for taking such action when our country was not being directly threatened. The reckless course that Bush and his advisers have set will affect the economic and military energy of our Nation for decades.

This is the man who ought to be our top priority. This is the man who organized the September 11 attacks against the United States. This is the man who is plotting even now to attack the United States again. This is Osama bin Laden. It is not Saddam Hussein. We cannot get confused about who the primary threat is to the United States of America. The top threat, the top priority for our military and intelligence

services has to be to bring Osama bin Laden and al-Qaida to justice. They are the ones who attacked us. They are the ones plotting to attack us again.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I certainly am happy to be here today and that I was—I do not know if happy is the right word—able to hear the Senator from North Dakota, who did such a good job. Not only is he articulate in his views, but he always has facts and figures to back them up.

We have come to know Senator CONRAD as someone in the Senate who knows the numbers better than anyone else. In addition to that, he obviously is aware of other issues going on, such as his presentation today, which is a presentation I heard developed previously. I want the Senator to know how much I appreciate his very clear and concise statement. I appreciate it.

AMENDMENT NO. 3849

(Purpose: To protect human health and the environment from the release of hazardous substances by acts of terrorism)

Mr. REID. Mr. President, on behalf of Senator CORZINE, I ask that the pending amendment be set aside, and I call up the Corzine amendment No. 3849.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. CORZINE, for himself and Mr. LAUTENBERG, proposes an amendment numbered 3849.

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

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

(The amendment is printed in the RECORD of Thursday, September 30, 2004, under ''Text of Amendments.'')

AMENDMENTS NOS. 3782 AND 3905

Mr. REID. Mr. President, on behalf of Senator LAUTENBERG, I call up amendment Nos. 3782 and 3905 to be considered at this time.

The PRESIDING OFFICER. The clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LAUTENBERG, proposes amendments numbered 3782 and 3905, en bloc.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendment (No. 3782) is as follows:

(Purpose: To require that any Federal funds appropriated to the Department of Homeland Security for grants or other assistance be allocated based strictly on an assessment of risks and vulnerabilities)

At the appropriate place, insert the following:

SEC. ___. ALLOCATION OF FEDERAL HOMELAND SECURITY ASSISTANCE.

Any Federal funds appropriated to the Department of Homeland Security for grants or other assistance shall be allocated based strictly on an assessment of risks and vulnerabilities.

(The amendment (No. 3905) is printed in the RECORD of Thursday, September 30, 2004, under ''Text of Amendments.'')

AMENDMENT NO. 3821

Mr. REID. Mr. President, I ask that the pending amendments be set aside, and I call to the Senate's attention amendment No. 3821 offered on behalf of Senator HARKIN.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. HARKIN, proposes an amendment numbered 3821.

Mr. REID. 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 modify the functions of the Privacy and Civil Liberties Oversight Board, and for other purposes)

On page 158, line 9, strike the period and insert '', including information regarding privacy and civil liberties violations, which are made by departments, agencies, or elements of the executive branch, of regulations, policies, or guidelines concerning information sharing and information collection; and''.

On page 158, between lines 9 and 10 insert the following:

(C) the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d).

On page 160, line 6, insert ''and the National Intelligence Director and committees of Congress described under subsection (e)(1)(B)(i)(I),'' after ''concerned''.

Mr. REID. Mr. President, on behalf of Senator HARKIN, I recognize his amendment would do three things. It first requires the privacy and civil liberties board established by this bill to include as part of its findings any privacy or civil liberties violations made by the intelligence community or other elements of the executive branch in its semiannual reports to Congress.

Second, it allows minority conclusions or recommendations to be sent to Congress.

Finally, the amendment would require the board to report an agency's failure to cooperate with its requests for information or assistance to the national intelligence director and appropriate committees of Congress.

This amendment strengthens the credibility of the board and improves the board's ability to get the information it needs in the conduct of its duties.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I do want to indicate that we have several other Senators who told us they would be coming over to the floor today to offer amendments: Senator LEVIN, Senator ROBERTS, Senator KYL, and Senator STEVENS. I urge them to come over as soon as is possible. We are open for business, and there is time available. The sooner the debates occur, the sooner we will be able to set these matters for votes on Monday.

AMENDMENT NO. 3807

Mr. LIEBERMAN. In the meantime, Mr. President, I would like to take this opportunity to say a word about amendment No. 3807 which Senator MCCAIN and I offered yesterday. This is another of the elements of the 9/11 Commission report that was part of legislation Senator MCCAIN and I introduced the day after Labor Day as a way to guarantee that all elements of the 9/11 report would be before the Senate.

This one has to do with effective screening to keep terrorists out of America and away from vital infrastructure in America. It is a comment on the age in which we live, something we have taken for granted in America but has been a great asset of ours, and that is the size of our country, the size of our borders, and the welcome mat we generally have put out for people visiting our country.

That openness has been exploited—it certainly was prior to the attacks of September 11—exploited by those who, as someone else has said, hate us more than they love their own lives. They come in here and are prepared to blow themselves up to kill Americans. That demands that we not try to put a wall around America—we can never do that—but that we be aggressive and smart about raising our guard and requiring some standards of personal identification from people coming into America, something we have not required before.

We can do that without compromising unduly, unnecessarily, the openness of our country and the welcome we put out to both those who want to emigrate here and those who just plain want to visit.

The amendment Senator MCCAIN and I offered has several parts to it. One is to simply help us obtain better information about the way in which terrorists move around, the way in which they intend to exploit our transportation systems, our existing laws, to do damage to us and our people. We want to better screen for terrorists in foreign countries long before they can reach our borders. We want to better train border personnel. We want to use the most sophisticated computer imaging equipment to detect fraudulent travel documents. We want to better screen at the borders and at points of access, as I say, to critical infrastructure, transportation particularly, and we want to do more to protect against

identity fraud and identity theft because so often these terrorists will assume new identities as a way to gain access to the country and access to places where they can inflict damage on us.

What it means to defend America has changed. In a different age, the age of serious conflict, it meant having the strongest military we could, having the most sophisticated weapons we could, to deter enemy attack, to be prepared to go to the battlefield, to deploy our forces to meet the enemy and defeat the enemy. Today, it involves homeland security in a way it never has before in our history, and this amendment would enable us to raise our homeland security in the best way possible.

In its analysis of the events leading up to September 11, 2001, the 9/11 Commission concluded that the terrorists are as reliant on travel documents as they ultimately are on weapons. To succeed, they have to travel clandestinely to meet, train, plan, case targets, look at targets, and gain access to sites they want to attack. They rely on networks of people to facilitate their travel, people they place within this country. Commonly, their travel documents have been tampered with.

The 9/11 Commission found that as many as 15 of the 19 9/11 hijackers could have been intercepted at the borders. Two of them actually entered the United States even though they were known as terrorists by at least one agency in the intelligence community of the United States. They were on a terrorist watch list. They had been heard at a meeting in Kuala Lumpur, kind of a world conference of terrorists, al-Qaida largely, where we now believe the attacks of 9/11 were planned. Two of them met that standard.

The point is we have to address the multiple opportunities to identify and stop the terrorists at every point along their travel routes long before they reach our entry points, at our border crossings. Once inside the country, we have to find ways to detect them.

The first thing this amendment does is seek to improve our intelligence about how terrorists travel. Before 9/11 and even today, there is no agency within the Federal Government that has the responsibility to consider this question. The Department of Homeland Security, therefore, would be directed by the amendment to work with the appropriate intelligence and law enforcement agencies in a coordinated effort to detect methods and patterns of travel, such as the use of specific routes. They would look for those who assist terrorists, be they human smugglers or corrupt government officials.

There is information—and I can describe it because it was mentioned in a newspaper; I saw it in the Washington Times earlier this week—about terrorist elements, al-Qaida working with certain gangs, drug groups, who customarily smuggle people across our southern border to work with them to smuggle in terrorists. We cannot sit back and let that happen.

This amendment would also expand screening for terrorists long before they reach our borders. Federal agencies would be required to develop a plan for working with foreign countries to share information on terrorists and increase inspection at foreign airports, not just U.S. airports. The amendment would increase investment in new technologies that can detect false travel documents or those with certain indicators that are consistent with terrorist use based on patterns of what we know now, and would require both the Department of Homeland Security and the State Department to provide training about terrorist travel to our frontline border officials so they may better spot forged passports or other subtle clues that warrant further scrutiny.

The best available technology should also be provided to our embassies and consulates to detect doctored passports or other forms of false identification before the applicant is issued a visa, set up a kind of technological wall of identification, most specifically at visa-granting points around the world for visas to come to the United States. To improve screening at our borders, the 9/11 Commission recognized the need for a robust entry and exit system based on the use of biometric information. A system of this sort has been under development for over a year now, but it needs to be improved and accelerated. Our amendment requires the Department of Homeland Security to do just that.

The 9/11 Commission also recommended that we close the gaping hole in our border security created by policies allowing easy passage into the United States from Canada, Mexico, and the Caribbean; logical enough in years past, the natural neighborly tendency of the United States of America and Americans generally, but unfortunately it is a policy of openness that has been exploited and continues to be exploited by the terrorists.

Our lenient border policies with our neighbors to the north and south today constitute a vulnerability. Travelers may now cross these borders with no other proof of U.S. citizenship than a verbal statement. Individuals claiming to be Canadians enter our country from Canada without showing a passport. The policies are evidence of our good relations with our neighbors, but in the age of terrorism, that friendship must allow for better security for the benefit of both.

Our amendment would require biometric passports, or an identification document just as secure, for everyone crossing into the United States, even U.S. citizens and our closest neighbors.

As we make our borders more secure, we must not forsake the principles of openness and freedom that define us as a nation. This amendment therefore requires that the Department of Homeland Security consolidate and improve a registered travel program that allows previously screened and trusted travelers to go quickly across our borders so that officials may focus on those who might do us harm.

Finally, this amendment improves the way we issue key identification documents, such as driver's licenses, birth certificates, or personal identification cards that may be required before boarding a commercial airliner or requested by a law enforcement officer who has grounds to be suspicious. It would require minimum security standards for these documents and directs the Federal Government to work with the States to establish minimum standards for both the security features embedded in these documents and for the way in which the documents are issued.

By the way, a similar program is already in effect for issuing commercial driver's licenses. In this regard, I want to thank my cosponsor on this amendment, Senator MCCAIN, and the Senator from Illinois, Mr. DURBIN, for their long work together in the interest of establishing not a national identity card but minimum uniform standards for personal identification documents in the United States of America. We have no intention of usurping the State's role here, their capacity to design their own identification documents. The amendment specifies that the States retain the full authority to decide who qualifies, for example, for a driver's license. We would, in addition, provide grants to the States to help them implement these new standards.

For several decades, study after study has told us how easy it is to obtain a false identity in this country. As recently as 2002, GAO investigators used fraudulent identification made by commercially available computer software to obtain driver's licenses in several States. Of course, the driver's license is an entry card to a personal identification and clearance throughout the system.

We have known about this problem for decades, but after September 11 we can't wait any longer—and we are still waiting, since September 11, to do anything about it. This bill will push us forward.

The 9/11 Commission described a variety of loopholes and flaws and inadequacies in our current border security personal identity system. We must close and repair those; close those loopholes, repair those flaws, and put to an end, as best we can, to the terrorists' ability to continually reinvent themselves and escape detection. We are up to this. We are technologically up to this. The question is whether we have the will and the common sense to do so.

This amendment would help our border and law enforcement officials accomplish exactly that. For the sake of the safety of all Americans, I ask my colleagues to support this amendment.

I note with gratitude the presence on the floor of Senator LEVIN. I yield the floor to him at this time for the purpose of offering an amendment.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 3808

Mr. LEVIN. I thank my good friend from Connecticut. I thank him and Senator COLLINS, again, for their leadership on this very critically important bill, one that is surely needed, one that surely must be done right. I think we are all determined to do both—to get this bill passed, but to get it passed in a form which not just improves our intelligence capability but also addresses an issue which I have been very much concerned about, which is the shaping of intelligence, the exaggeration of intelligence, the distortion of intelligence to support particular policy purposes.

Unhappily, this is not new. We saw the same problem in the Gulf of Tonkin resolution, with a distortion of the intelligence that was used in order to obtain passage of a resolution which would support the expansion of a war in Vietnam.

We saw the same problem with the Iran-contra matter, where intelligence was distorted, shaped, and misused in order to support a particular policy position.

We recently saw, before Iraq, that intelligence was shaped and exaggerated and distorted inside the intelligence community, in my judgment, after it was received by the policymakers. But even before they got it, it was shaped in a way that pointed, in every single instance where there is an error in omission, toward a more imminent threat, a stronger threat, which thereby supported the position of the policymakers.

I believe in a stronger national intelligence director. We need a stronger national intelligence director, but we also want a director who is going to exercise that power in a way which will not produce intelligence aimed at supporting policy. We need intelligence which is aimed at providing facts—unvarnished, objective, independently arrived at.

While supporting a more powerful director, I do not want to support a stronger ''yes'' man or simply to support a stronger political arm of the White House. Here, when I say that, I am referring to any administration, not just this administration. I don't want national intelligence directors to be shaping intelligence to support the policy of any administration. I want them to be providing information which is critically important to policymakers but information which must be right, must be accurate, must be objective, must be independently arrived at. That is what my goal has been.

The Senator from Connecticut and the Senator from Maine, who are leading this effort, and the Governmental Affairs Committee have willingly added a number of provisions which have furthered that goal. There are a number of other provisions which I believe should be added here on the floor.

I will be offering one today. I have not personally been able to talk to the Senator from Connecticut, but I understand that this first amendment of mine may have been cleared now. I want to describe it, in any event.

I ask unanimous consent we set aside the pending amendment and that amendment No. 3808 be called up.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN) proposes an amendment numbered 3808.

Mr. LEVIN. 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 enhance customer focus on intelligence and to ensure independent intelligence analyses)

On page 14, line 2, strike ''community,'' and insert ''community following receipt of intelligence needs and requirements from the consumers of national intelligence,''.

On page 14, line 8, insert before the semicolon the following: '', while ensuring that the elements of the intelligence community are able to conduct independent analyses so as to achieve, to the maximum extent practicable, competitive analyses''.

Mr. LEVIN. Mr. President, the 9/11 Commission, in addition to recommending a number of ways in which we could strengthen the national intelligence director and that office and produce more coordinated and helpful intelligence reports where we have all the information necessary to connect the dots and where agencies share information with each other, also reminded us on page 414 of their report that:

In managing the whole community, the National Intelligence Director is still providing a service function. With the partial exception of his or her responsibilities for overseeing the NCTC [the National Counterterrorism Center] the National Intelligence Director should support the consumers of national intelligence—the president and policymaking advisers, such as secretaries of state, defense and homeland security, and the Attorney General.

The consumers of intelligence are the ones who need to set forth and lay out their needs. What do they need by way of collection? What is it that they and their agencies—whether it is the State Department or Homeland Security Department or the Treasury Department or any other department—what kind of satellite capabilities do they need? Where do they need the electronics to be used? They need to tell that new national intelligence director and the NCTC what it is they need for their purposes. They are in the best position to know what are the requirements of their agency.

When all these requirements and needs are put together, we are then in a situation where the needs and the requirements of the agencies will probably exceed the resources that we have available to meet those needs. At that point, you need somebody to arbitrate. You need somebody to decide: We have this many needs, but we have only this many resources. How do we allocate limited resources—or at least not unlimited resources—among a very finite package of needs which frequently will exceed the resources we have?

Who is going to arbitrate that problem? If the State Department says we have to have satellite coverage here, and another department says, no, we have to have that coverage here, who is going to make that decision?

The answer which this bill provides, and I think rightly so, is that the national intelligence director needs to make the decision as to what needs are going to be met if we can't meet all of them. But in terms of what those needs are, in terms of setting forth the requirements of the agency, that has to be something which the agency head sets up. There is no way that the NID can decide what the State Department needs and what the Defense Department needs and what the Treasury Department needs. Those agencies and others have to lay out what their requirements are, what their needs are.

Where the NID comes in is deciding among those needs which ones have the top priority. That is why the language in the bill which says that the NID will establish the collection and analysis priorities and manage collection tasking is, in my judgment, correct.

I want to make it clear that this amendment is truly intended to clarify what I believe is the intent of the sponsors of this bill. There are other amendments I will be offering which differ on the substance, where there is something I would do differently from the sponsors of the bill. But this amendment is intended to clarify what I believe not only is but should be and must be the intent of the sponsors of this legislation in two ways.

First, as I have just described, and as the 9/11 Commission described, one of the purposes of the national intelligence director is to support the consumers of national intelligence. It is the consumers who must set forth and lay out their needs. When those needs exceed the resources or can't be met for whatever reason, you need an arbiter. That is where the NID should come in. Sorry, we can't meet that department's need; or, Sorry we can't meet the Treasury Department needs because this Homeland Security need has to take priority. You need someone who will make that decision and who can make it quickly. That, I believe, is the intent.

No one is in a position to determine the needs of 15 intelligence agencies with intelligence operations except those agencies themselves. But when you aggregate those needs and they exceed the resources, at that point you have to have a national intelligence director who says, That has priority and we are tasking that particular satellite; we are tasking an agency that has satellite capability to accomplish that particular goal and meet that need rather than their other needs which cannot be met.

That is one part of the amendment.

The other clarification has to do with the analyses, the so-called competitive analyses, which are welcome.

Everybody who testified in front of us—Secretary Powell, Secretary Ridge, the chairman of our committee and the ranking member said this at hearings—''We don't want group-think.'' We want independent analyses. We want analyses which are competitive. We want to encourage that. We don't want to discourage it.

We want to make it clear in the bill that by giving power to the national intelligence director to direct that a competitive analysis be achieved, it is not exclusive. We are still urging all of the intelligence agencies on their own initiative to provide independently arrived at and competitive analysis. We want agencies to tell us those aluminum tubes have two purposes, not just one. We want agencies on their own initiative—not waiting for a direction by the NID but on their own initiative, should they determine that is what they wish to do—to tell us, No, those unmanned aerial vehicles do not have a purpose of delivering biological weapons; they are more suited for a legitimate purpose.

We want agencies, in other words, to give us those competitive analyses which is what is the great antidote to group-think and which the chairman, the ranking member, and every single witness, I think, who came in front of us said should be encouraged. We have language in the bill now which gives the power to the NID to direct a competitive analysis, which is fine. He or she ought to have that power.

We want to encourage independent or competitive analysis, and that means we don't want any agency to think they have to wait for a direction, but they on their own will be encouraged by the NID to engage in those kinds of independent analyses.

I want to assure my dear friend from Connecticut, the ranking member, that this particular amendment does have that purpose. I believe it is a very commonsense amendment which is complimentary to everything that is in the bill.

I will be offering amendments perhaps on Monday which I think are very modest amendments which do, though, make substantive changes to the bill. This would carry out what I hope the intention is of the sponsors of the bill and which has been stated by the sponsors of the bill to be something they deeply believe in.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from Michigan, the distinguished member of our Governmental Affairs Committee, who has played a characteristically active, thoughtful, and constructive part in the markup of and consideration of the committee through the hearings, drafting, and markup of the bill last week, and he continues to with this amendment, an amendment somewhat like the one which the committee didn't agree on. We have worked together. This whole bill has had so many moments where I felt we were legislating, we were reasoning together and coming to agreements that will make the system we want established better. This is one of them. It is totally consistent with the intention Senator COLLINS and I have had in putting the bill together with the intention, in my opinion, of the September 11 Commission, which is to put somebody in charge of the intelligence community where there is not someone in charge now; to not simply encourage but to the best of their ability mandate collaboration among the component agencies of the intelligence community and make sure that one result of collaboration is not so-called group-think; that there is independent, competitive analysis going on.

The amendment of the Senator from Michigan, which is focused, does exactly that. It adds language to make clear that the national intelligence director shall establish collection and analysis requirements for the intelligence community based on input from consumers of that national intelligence which reflect their estimate of their need and requirements. That is plain common sense.

The director would also establish collection analysis requirements based on the needs of intelligence consumers in order to produce timely and relevant products, which is what this is all about.

Senator LEVIN's amendment also makes clear the director has the responsibility in setting analysis priorities to ensure that the elements of the intelligence community are able to conduct, as he has said, ''independent analyses so as to achieve to the maximum extent practicable competitive analysis.''

That, too, is not only sensible, but it is in the interest of our national security.

I thank the Senator from Michigan. I certainly support the amendment. I believe it has been cleared on both sides. But the Senator from Maine is not able to be on the floor right now. As soon as she can, I guess she will want to speak on this and we should adopt this by consent.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first let me thank my dear friend from Connecticut.

I ask unanimous consent that Senator INOUYE be added as a cosponsor to this amendment.

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

Mr. LEVIN. Mr. President, I don't know whether the Senator from Connecticut at this point wants to have a voice vote or wait for the Senator from Maine.

Mr. LIEBERMAN. Mr. President, the Senator from Maine is on her way to the floor to speak about the amendment. I wonder if we might go into a quorum call for a moment until she does.

I note the presence of the very distinguished chairman of the Intelligence Committee. He will go next after we agree to this amendment.

In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I support the amendment proposed by Senator LEVIN. I thank him for offering it and for all of his hard work. It reflects not only the Senator's unique experience as a member of the Intelligence Committee, the Armed Services Committee, and the Governmental Affairs Committee, but also it reflects his usual care and attention to detail, which is unparalleled in this body.

The Levin amendment makes clear that the NID will establish collection and analysis requirements for the intelligence community following input from the consumers of intelligence. With these authorities, the NID will be able to manage collection activities across the intelligence community to ensure that defense, homeland security, and diplomatic needs are prioritized and satisfied. Similarly, a strong NID will ensure robust and competitive analysis of intelligence, prioritized to meet our most pressing needs.

Senator LEVIN's amendment will clarify that the consumers of national intelligence should set the requirements for collection and analysis. It would also emphasize that independent and comparative analyses are critical to an effective intelligence community.

I thank the Senator from Michigan for his contribution. I urge agreement of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the Levin amendment.

The amendment (No. 3808) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Kansas.

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

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

AMENDMENT NO. 3748

Mr. ROBERTS. Mr. President, I ask unanimous consent to call up amendment No. 3748 entitled ''The Analytic

Review Unit,'' which probably should be entitled ''The Accountability Amendment.''

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 3748.

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

The amendment is as follows:

(Purpose: To clarify the duties and responsibilities of the Ombudsman of the National Intelligence Authority and of the Analytic Review Unit within the Office of the Ombudsman)

On page 78, line 19, insert ''regular and detailed'' before ''reviews''.

On page 79, strike lines 1 and 2 and insert the following:

political considerations, based upon all sources available to the intelligence community, and performed in a manner consistent with sound analytic methods and tradecraft, including reviews for purposes of determining whether or not—

(A) such product or products state separately, and distinguish between, the intelligence underlying such product or products and the assumptions and judgments of analysts with respect to the intelligence and such product or products;

(B) such product or products describe the quality and reliability of the intelligence underlying such product or products;

(C) such product or products present and explain alternative conclusions, if any, with respect to the intelligence underlying such product or products;

(D) such product or products characterizes the uncertainties, if any, and the confidence in such product or products; and

(E) the analyst or analysts responsible for such product or products had appropriate access to intelligence information from all sources, regardless of the source of the information, the method of collection of the information, the elements of the intelligence community that collected the information, or the location of such collection.

On page 80, line 1, insert ''(A)'' after ''(5)''.

On page 80, line 3, strike '', upon request,''.

On page 80, between lines 5 and 6, insert the following:

(B) The results of the evaluations under paragraph (4) shall also be distributed as appropriate throughout the intelligence community as a method for training intelligence community analysts and promoting the development of sound analytic methods and tradecraft. To ensure the widest possible distribution of the evaluations, the Analytic Review Unit shall, when appropriate, produce evaluations at multiple classification levels.

(6) Upon completion of the evaluations under paragraph (4), the Ombudsman may make recommendations to the National Intelligence Director, and to the heads of the elements of the intelligence community, for such personnel actions as the Ombudsman considers appropriate in light of the evaluations, including awards, commendations, reprimands, additional training, or disciplinary action.

On page 80, line 6, strike ''INFORMATION.—'' and insert ''INFORMATION AND PERSONNEL.—(1)''.

On page 80, line 8, insert '', the Analytic Review Unit, and other staff of the Office of the Ombudsman of the National Intelligence Authority'' after ''Authority''.

On page 80, line 10, insert ''operational and'' before ''field reports''.

On page 80, between lines 13 and 14, insert the following:

(2) The Ombudsman, the Analytic Review Unit, and other staff of the Office shall have access to any employee, or any employee of a contractor, of the intelligence community whose testimony is needed for the performance of the duties of the Ombudsman.

Mr. ROBERTS. This amendment clarifies the role of the analytical review unit that the Collins and Lieberman bill creates within the Office of the Ombudsman of the National Intelligence Authority. The amendment specifies that the unit will evaluate the quality of the analysis of our national intelligence agency and, where appropriate, issue nonbinding—and I underline ''nonbinding''—recommendations for present personnel actions to include additional training, commendations, and also any action that would be disciplinary.

This quality control mechanism will help instill accountability—we have heard that word over and over again in regard to intelligence reform, independence, leadership, and accountability—in the intelligence community's analytical effort in an effort to guard against analytical failures such as prewar intelligence assessment concerning Iraq's weapons of mass destruction programs by providing regular quality control audits of the intelligence community's analysis.

I am extremely hopeful the managers can find a way to include this important amendment in the bill.

I ask unanimous consent to set aside the amendment at this time.

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

AMENDMENTS NOS. 3739 AND 3750, EN BLOC

Mr. ROBERTS. Mr. President, I ask unanimous consent to call up en bloc amendments 3739 and 3750 and ask that they be considered separately.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes amendments numbered 3739 and 3750, en bloc.

Mr. ROBERTS. I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 3739

(Purpose: To ensure the sharing of intelligence information in a manner that promotes all-sources analysis and to assign responsibility for competitive analysis)

On page 17, between lines 19 and 20, insert the following:

(11) direct an element or elements of the intelligence community to conduct competitive analysis of analytic productions, particularly products having national importance;

(12) implement policies and procedures to encourage sound analytic methods and tradecraft throughout the elements of the intelligence community and to ensure that the elements of the intelligence community regularly conduct competitive analysis of analytic products, whether such products are produced by or disseminated to such elements;

On page 17, line 20, strike ''(11)'' and insert ''(13)''.

On page 17, line 22, strike ''(12)'' and insert ''(14)''.

On page 18, line 1, strike ''(13)'' and insert ''(15)''.

On page 18, between lines 3 and 4, insert the following:

(16) ensure that intelligence (including unevaluated intelligence), the source of such intelligence, and the method used to collect such intelligence is disseminated in a timely and efficient manner that promotes comprehensive all-source analysis by appropriately cleared officers and employees of the United States Government, notwithstanding the element of the intelligence community that collected such intelligence or the location of such collection;

On page 18, line 4, strike ''(14)'' and insert ''(17)''.

On page 18, line 7, strike ''(15)'' and insert ''(18)''.

On page 18, line 14, strike ''(16)'' and insert ''(19)''.

On page 18, line 17, strike ''(17)'' and insert ''(20)''.

On page 18, line 20, strike ''(18)'' and insert ''(21)''.

On page 19, line 5, strike ''(19)'' and insert ''(22)''.

On page 19, line 7, strike ''(20)'' and insert ''(23)''.

On page 20, strike lines 12 through 14 and insert the following:

shall have access to all intelligence and, consistent with subsection (k), any other information which is collected by, possessed by, or under the control of any department, agency, or other element of the United States Government when necessary to carry out the duties and responsibilities of the Director under this Act or any other provision of law.

On page 31, line 1, strike ''112(a)(16)'' and insert ''112(a)(19)''.

On page 31, strike line 22 and insert the following:

ensures information-sharing, including direct, continuous, and automated access to unevaluated intelligence data in its earliest understandable form.

On page 32, beginning on line 3, strike ''information-sharing'' and all that follows through line 4 and insert ''information-sharing, including direct, continuous, and automated access to unevaluated intelligence data in its earliest understandable form.''.

On page 32, line 16, insert ''AND ANALYSIS'' after ''COLLECTION''.

On page 32, line 19, insert ''and analysis'' after ''collection''.

On page 32, beginning on line 21, strike ''the head of each element of the intelligence community'' and insert ''the head of any department, agency, or element of the United States Government, and the components and programs thereof,''.

On page 56, line 20, strike ''(15) and (16)'' and insert ''(18) and (19)''.

On page 194, line 9, strike ''112(a)(11)'' and insert ''112(a)(13)''.

On page 195, line 16, strike ''112(a)(11)'' and insert ''112(a)(13)''.

On page 195, line 23, strike ''112(a)(11)'' and insert ''112(a)(13)''.

On page 196, line 7, strike ''112(a)(11)'' and insert ''112(a)(13)''.

AMENDMENT NO. 3750

(Purpose: To clarify the responsibilities of the Directorate of Intelligence of the National Counterterrorism Center for information-sharing and intelligence analysis)

On page 87, line 16, strike ''and'' at the end.

On page 87 between lines 16 and 17, insert the following:

(D) ensure that intelligence (including unevaluated intelligence) concerning suspected terrorists, their organizations, and their capabilities, plans, and intentions, the source of such intelligence, and the method used to collect such intelligence is disseminated in a timely and efficient manner that promotes comprehensive all-source analysis with the Directorate and by appropriately cleared officers and employees of the United States Government, notwithstanding the element of the intelligence community that collected such intelligence or the location of such collection;

(E) conduct, or direct through the National Intelligence Director an element or elements of the intelligence community to conduct, competitive analyses of intelligence products relating to suspected terrorists, their organizations, and their capabilities, plans, and intentions, particularly products having national importance;

(F) implement policies and procedures to encourage coordination by all elements of the intelligence community that conduct analysis of intelligence regarding terrorism of all Directorate products of national importance and, as appropriate, other products, before their final dissemination;

(G) ensure the dissemination of Directorate intelligence products to the President, to Congress, to the heads of other departments and agencies of the executive branch, to the Chairman of the Joint Chiefs of Staff and senior military commanders, and to such other persons or entities as the President shall direct; and

On page 87, line 17, strike ''(D)'' and insert ''(H)''.

On page 96, line 16, strike ''foreign''.

Mr. ROBERTS. This amendment clarifies that a primary mission of National Intelligence Authority is the elimination of barriers that impede any coordination of all intelligence activities, not merely counterterrorism activities.

Three years after 9/11, information sharing still remains, unfortunately, a serious problem. As recently as last week—as recently as last week—the Senate Intelligence Committee received a disturbing briefing in closed session that clearly demonstrated that even on matters related to the current terrorist threat to our homeland, the intelligence agencies still stubbornly refuse to adequately share information.

The National Security Act of 1947 clearly stipulates that a primary mission of the head of the intelligence community is to protect sources and methods. The current language of the Collins-Lieberman bill wisely balances this with the need to also ensure that intelligence concerning terrorism is certainly shared with those who need it.

This amendment seeks to broaden that responsibility to include all intelligence threats, such as the proliferation of weapons of mass destruction, North Korea, and other intelligence threats, not just terrorism. Terrorism is a serious threat, but it is not the last threat that we will face.

This amendment, which would build on the Collins-Lieberman bill and their already strong provisions for a ''trusted information network,'' also stipulates that the national intelligence director is responsible for ensuring that the information-sharing process be automated to allow intelligence analysts to ''pull'' information from databases rather than waiting for somebody to push it to them. Currently, much of the information sharing that does occur in the intelligence community happens only through phones and fax machines, which is very inefficient, and also it is unreliable.

I am hopeful the managers can find a way to include this important amendment in the bill. I ask unanimous consent that the amendment be set aside.

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

AMENDMENT NO. 3747

Mr. ROBERTS. Mr. President, I ask unanimous consent to call up amendment No. 3747.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 3747.

Mr. ROBERTS. 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 provide the National Intelligence Director with flexible administrative authority with respect to the National Intelligence Authority)

On page 43, after line 20, add the following:

SEC. 119. ADMINISTRATIVE AUTHORITIES.

(a) EXERCISE OF ADMINISTRATIVE AUTHORITIES.—Notwithstanding any other provision of law, the National Intelligence Director may exercise with respect to the National Intelligence Authority any authority of the Director of the Central Intelligence Agency with respect to the Central Intelligence Agency under a provision of the Central Intelligence Agency Act of 1949 specified in subsection (c).

(b) DELEGATION OF ADMINISTRATIVE AUTHORITIES.—Notwithstanding any other provision of law, the National Intelligence Director may delegate to the head of any other element of the intelligence community with a program, project, or activity within the National Intelligence Program for purposes of such program, project or activity any authority of the Director of the Central Intelligence Agency with respect to the Central Intelligence Agency under a provision of the Central Intelligence Agency Act of 1949 specified in subsection (c).

(c) SPECIFIED AUTHORITIES.—The authorities of the Director of the Central Intelligence Agency specified in this subsection are the authorities under the Central Intelligence Agency Act of 1949 as follows:

(1) Section 3 (50 U.S.C. 403c), relating to procurement.

(2) Section 4 (50 U.S.C. 403e), relating to travel allowances and related expenses.

(3) Section 5 (50 U.S.C. 403f), relating to administration of funds.

(4) Section 6 (50 U.S.C. 403g), relating to exemptions from certain information disclosure requirements.

(5) Section 8 (50 U.S.C. 403j), relating to availability of appropriations.

(6) Section 11 (50 U.S.C. 403k), relating to payment of death gratuities.

(7) Section 12 (50 U.S.C. 403l), relating to acceptance of gifts, devises, and bequests.

(8) Section 21 (50 U.S.C. 403u), relating to operation of a central services program.

(d) EXERCISE OF DELEGATED AUTHORITY.—Notwithstanding any other provision of law, the head of an element of the intelligence community delegated an authority under subsection (b) with respect to a program, project, or activity may exercise such authority with respect to such program, project, or activity to the same extent that the Director of the Central Intelligence Agency may exercise such authority with respect to the Central Intelligence Agency.

On page 108, line 12, strike ''(1)''.

On page 108, line 19, strike ''(2)'' and insert ''(b) DEPOSIT OF PROCEEDS.—''.

On page 108, strike line 23 and all that follows through page 109, line 3.

Mr. ROBERTS. Mr. President, this amendment would provide the national intelligence director with certain specified authorities already provided to the Central Intelligence Agency. These provisions include flexible acquisition, spending, personnel, and management authorities. As I have indicated, the national intelligence director already has these authorities. In addition, the amendment permits the national intelligence director to delegate any of the specified authorities to the head of an element of the intelligence community for use by that element.

Under the National Security Act of 1947, the CIA has a range of authorities in matters such as acquisition, spending, personnel, and management that do not exist anywhere else in Government. These sorts of authorities are often required to effectively conduct intelligence operations in a very timely way. This amendment seeks to empower the national intelligence director by allowing him to exercise these authorities anywhere in the intelligence community that he sees fit, not just at the CIA.

I am extremely hopeful that the managers can find a way to include this very important amendment in the bill.

Mr. President, I ask unanimous consent to set aside the amendment.

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

AMENDMENT NO. 3742

Mr. ROBERTS. Mr. President, I ask unanimous consent to call up amendment No. 3742.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 3742.

Mr. ROBERTS. 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 clarify the continuing applicability of section 504 of the National Security Act of 1947 to the obligation and expenditure of funds appropriated for the intelligence and intelligence-related activities of the United States)

On page 28, line 17, strike ''or'' and insert ''and''.

On page 33, between lines 2 and 3, insert the following:

SEC. 114. FUNDING OF INTELLIGENCE ACTIVITIES.

(a) FUNDING OF ACTIVITIES.—(1) Notwithstanding any other provision of law, appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(A) those funds were specifically authorized by the Congress for use for such activities;

(B) in the case of funds from the Reserve for Contingencies of the National Intelligence Director, and consistent with the provisions of section 503 of the National Security Act of 1947 (50 U.S.C. 413b) concerning any significant anticipated intelligence activity, the National Intelligence Director has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(C) in the case of funds specifically authorized by the Congress for a different activity—

(i) the activity to be funded is a higher priority intelligence or intelligence-related activity; and

(ii) the National Intelligence Director, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity.

(2) Nothing in this subsection prohibits the obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

(b) APPLICABILITY OF OTHER AUTHORITIES.—Notwithstanding any other provision of this Act, appropriated funds available to an intelligence agency may be obligated or expended for an intelligence, intelligence-related, or other activity only if such obligation or expenditure is consistent with subsections (b), (c), and (d) of section 504 of the National Security Act of 1947 (50 U.S.C. 414).

(c) DEFINITIONS.—In this section:

(1) The term ''intelligence agency'' means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities.

(2) The term ''appropriate congressional committees'' means—

(A) the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives; and

(B) the Select Committee on Intelligence and the Committee on Appropriations of the Senate.

(3) The term ''specifically authorized by the Congress'' means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

On page 33, line 3, strike ''**114.**'' and insert ''**115.**''.

On page 35, line 1, strike ''**115.**'' and insert ''**116.**''.

On page 38, line 21, strike ''**116.**'' and insert ''**117.**''.

On page 40, line 10, strike ''**117.**'' and insert ''**118.**''.

On page 43, line 1, strike ''**118.**'' and insert ''**119.**''.

On page 200, between line 18 and 19, insert the following:

SEC. 309. CONFORMING AMENDMENT ON FUNDING OF INTELLIGENCE ACTIVITIES.

Section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)) is amended—

(1) in subparagraph (A), by adding ''and'' at the end;

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

On page 200, line 19, strike ''**309.**'' and insert ''**310.**''.

On page 201, line 11, strike ''**310.**'' and insert ''**311.**''.

On page 203, line 9, strike ''**311.**'' and insert ''**312.**''.

On page 204, line 1, strike ''**312.**'' and insert ''**313.**''.

Mr. ROBERTS. Mr. President, this amendment would preserve the requirement in section 504 of the National Security Act that funds appropriated for an intelligence activity must also be specifically authorized.

I am hopeful I can work with the managers of the bill and that we will be able to include this important amendment in the bill. It is absolutely essential.

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

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

AMENDMENTS NOS. 3740, 3741, 3744, AND 3751

Mr. ROBERTS. Mr. President, I ask unanimous consent to call up en bloc amendments Nos. 3740, 3741, 3744, and 3751, and I ask they be considered separately.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes amendments numbered 3740, 3741, 3744, and 3751 en bloc.

Mr. ROBERTS. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments en bloc are as follows:

AMENDMENT NO. 3740

(Purpose: To include among the primary missions of the National Intelligence Director the elimination of barriers to the coordination of intelligence activities)

On page 9 line 13, insert ''and intelligence'' after ''counterterrorism''.

AMENDMENT NO. 3741

(Purpose: To permit the National Intelligence Director to modify National Intelligence Program budgets before their approval and submittal to the President)

On page 23, line 1, strike ''may require modifications'' and insert ''may modify, or may require modifications,''.

AMENDMENT NO. 3744

(Purpose: To clarify the limitation on the transfer of funds and personnel and to preserve and enhance congressional oversight of intelligence activities)

On page 28, line 17, strike ''or'' and insert ''and''.

On page 112, beginning on line 12, strike ''Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives'' and insert ''Select Committee on Intelligence and the Committee on Governmental Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Government Reform of the House of Representatives''.

On page 172, strike line 18 and all that follows through page 174, line 23, and insert the following

SEC. 224. COMMUNICATIONS WITH CONGRESS.

AMENDMENT NO. 3751

(Purpose: To clarify the responsibilities of the Secretary of Defense pertaining to the National Intelligence Program)

On page 200, strike lines 5 through 11 and insert the following:

SEC. 307. CONFORMING AMENDMENTS ON RESPONSIBILITIES OF SECRETARY OF DEFENSE PERTAINING TO NATIONAL INTELLIGENCE PROGRAM.

Section 105(a) of the National Security Act of 1947 (50 U.S.C. 403–5(a)) is amended—

(1) in paragraph (1), by striking ''ensure'' and inserting ''assist the Director in ensuring''; and

(2) in paragraph (2), by striking ''appropriate''.

Mr. ROBERTS. Mr. President, these amendments contain clarifications to the authorities of the national intelligence director. I am told that our staffs have been working very diligently on these matters. I believe that they strengthen the bill, and I am hopeful they will be accepted by the managers of the bill.

Mr. President, I ask unanimous consent that these amendments now be set aside.

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

Mr. ROBERTS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the Senator from Kansas, the distinguished chairman of the Senate Intelligence Committee, for his thoughtful amendments.

I have a great deal of admiration and respect for the Senator's knowledge in this area. I was very pleased that he participated in some of the committee's hearings, particularly the one where we had the former DCIs come in and give us their views. Both and he Senator ROCKEFELLER took the time out of their August recess to come to that hearing and fully participated in it. They have been providing us with their insight and guidance, which I very much appreciate.

The Senator from Kansas has offered a series of thoughtful amendments that are designed to clarify provisions in the bill with regard to information sharing, the primary mission of the National Intelligence Authority, the authorities of the NID, and several other matters. We agree largely with the goals of these amendments, and we are trying to work out agreement on specific language.

One of the problems we face, since we have adopted a lot of different amendments, including one cosponsored by the Senator last night having to do with an office of alternative analysis, is we need to make sure we are not duplicating changes that have been made by other amendments. It is a bit of a moving target here.

Another problem is, of course, we are trying to maintain that delicate balance struck by our bill. Any amendment that further strengthens the NID's authorities is a particular concern to one group; any amendment that weakens the NID's authorities is a particular concern to another. I know the Senator is very aware of the competing pressures in this regard.

In short, I want to assure the Senator and thank him for his contributions. We will try to work out these amendments consistent with the approach we have taken in the underlying bill. I very much appreciate the Senator's cooperation and good work and his leadership in this area.

Mr. ROBERTS. Mr. President, will the distinguished chairman yield?

Ms. COLLINS. I would be happy to yield.

Mr. ROBERTS. I say to the Senator, I would like to thank you for your very kind remarks. As the chairman knows, we have 22 professional staffers who were former analysts throughout the intelligence community. We would like to think we have expertise on this issue. As the chairman knows and the distinguished ranking member knows, we did produce a 511-page inquiry on WMD in regard to the inquiry on the prewar intelligence. I think it is the most thorough look at the intelligence community that has been conducted in the last 20 years. I am very proud of our staff. I think we have an outstanding staff.

I would just like to say this: This is not going to be the best possible bill. This is going to be the best bill possible to achieve that delicate balance that the distinguished chairman has talked about. And that is not being untoward. That is not bad. This is a very comprehensive bill. This touches our entire intelligence community. So we are bound to have to take a good look at this, and we are also going to be bound in terms of our responsibilities in terms of oversight.

I would imagine that with any bill you have what is called technical corrections. In this particular bill, we are going to have to take a hard look at not only technical corrections but monitor this bill as it evolves. But the important thing is that both Senators have been the primary movers of this bill in moving it forward in a comprehensive way. I credit them for their work. I can speak for all members of the Intelligence Committee: We are here, and we are here to help.

I thank the Senator for her kind comments.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I cannot thank the Senator from Kansas enough, chairman of the Intelligence Committee, for what he has said. It means everything to me and, I know, to Senator COLLINS. We were asked to take on this assignment in the Governmental Affairs Committee because we are the committee of jurisdiction over governmental reorganization. The Intelligence Committee clearly has the experience and expertise in matters of intelligence. Senator ROBERTS and Senator ROCKEFELLER have contributed to the product we have turned out. But it is critically important to the success of what we have started here that our committee be working together with Senator ROBERTS and his committee.

I appreciate the effort and thoughtfulness that went into the many amendments that the Senator from Kansas is offering. Our staffs are looking them over. As Senator COLLINS said, I hope we can accept a number of them. They share the goals that we have together, and they will strengthen the bill. Then I look forward to Senator ROBERTS being on the conference committee and helping us to come up with a good result when we meet our friends from the House.

Most of all, I thank him, my friend. Together we are going to get something good done, not just for the intelligence community but for the reason for which our intelligence agencies exist, and that is for our national security.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3801

Mr. CHAMBLISS. Mr. President, I call for regular order with respect to amendment No. 3801.

The PRESIDING OFFICER. The amendment is pending.

Mr. CHAMBLISS. Mr. President, I rise today, along with my colleague Senator KYL, in support of amendment No. 3801 which I will describe in a minute.

Before I get to that, let me thank the chairman and ranking member of the Governmental Affairs Committee for the great work they have done on this bill. There has been no more delicate situation this body has had to deal with in many years, certainly in the 10 years I have been privileged to be a part of the Congress. Certainly there is no more important issue before us today because this issue involves the safety and security of every American, not just this generation but future generations to come. No two people have the concern of the American people more at heart than do Chairman COLLINS and Ranking Member LIEBERMAN, both of whom I have tremendous respect for. I appreciate their leadership on this issue.

Today I rise along with Senator KYL in support of amendment No. 3801 to S. 2845. This amendment focuses on intelligence reform relative to the civil liberties provision in the underlying bill. Section 211 of the underlying bill establishes a civil liberties board and gives that board certain powers and authorities.

Let me be clear: There is no stronger advocate for civil liberties in the Senate than myself. As a lawyer and a legislator, my entire professional life has been intertwined with the preservation of the liberties we all enjoy as Americans and which are enshrined in our Constitution and our Bill of Rights. The issue we debate today is not whether we support our civil liberties; we all support them as contained in the Constitution and the Bill of Rights. The question is, how best to balance this issue with other rights that form the cornerstone of our Constitution: namely, that among our inalienable rights from our Creator are life, liberty, and the pursuit of happiness.

When Islamic terrorists threaten our life and our liberties, we must act to protect ourselves. That is why we are here today debating the reformation of our intelligence community. We know our enemies want to kill us, and we understand that good intelligence will protect us. In our country, we may differ on how to do this, but there is no disagreement on why we need to do it. Our challenge is to increase our intelligence capabilities without undue infringement on our individual liberties.

Today our struggle is against an enemy unique in our history. The enemy is not a nation state. Rather, it is a warped philosophy that distorts any rational notion of what a Supreme Being expects of mankind. There are no rules of warfare for our enemy. They feel free and unencumbered to fly civilian airplanes loaded with innocent passengers into buildings, killing thousands of ordinary, hard-working, good citizens of our country. They relish in cutting off the heads of people who have done no harm to them whatsoever, recording it on video and broadcasting their horrific, inhumane actions to the world.

One only has to look at one of those tapes or listen to the voices of helpless victims pleading for their lives to grasp how evil and dangerous these Islamic terrorists are and why this Nation must succeed in our fight against them.

To win against such an enemy, we need to keep our focus. We need clear, unambiguous, and non-duplicative orders and laws pertaining to our war on terrorism and the protection of our civil liberties.

S. 2845 is a bill to strengthen our intelligence capabilities. It is meant to put more teeth into our ability to track, find, and arrest or kill those who wish to murder our people and destroy our way of life. It is not a bill regarding our civil liberties.

As a member of the Senate Judiciary Committee on the Constitution, Civil Rights, and Property Rights, which has oversight responsibility in this area, I

am keenly aware of the safeguards that are already in place to protect our civil liberties from overreaching by the Government. Within the Department of Justice, there is an entire division devoted to protecting our civil rights. This division is responsible for coordinating the civil rights enforcement efforts of Federal agencies and assists in identifying and removing provisions, policies, and programs that violate our individual rights and liberties.

Last month, by Executive Order 13353, President Bush created the President's Board on Safeguarding Americans' Civil Liberties. This board is specifically designed to further strengthen the protection of the rights of Americans in the effective performance of national security and homeland security functions.

As the President said when he established the board and I quote, ''The United States Government has a solemn obligation, and shall continue fully, to protect the legal rights of all Americans, including freedoms, civil liberties, and information privacy guaranteed by Federal law, in the effective performance of national security and homeland security functions.''

Our amendment to S. 2845 clearly highlights the importance we all place on civil liberties, but it leaves the power to enforce our laws on this issue where it belongs—with the appropriate Federal agencies that are already equipped and designed for that function.

Whenever U.S. officials or U.S. military personnel violate any of our laws, they need to be fully prosecuted. Of course, we have good systems already in place to make sure that happens. For example, as bad as the abuse of some Iraqi prisoners was, our military justice system is handling those soldiers accused in exactly the right way.

Let me tell you a little bit about what this board is designed to do and the powers and authorities of this board. I am reading from page 155 of the underlying bill:

The Board shall continually review the information sharing practices of the department's agencies, and elements of the executive branch to determine whether they appropriately protect privacy and civil liberties . . .

And so on.

Now, further, on page 158, in order to accomplish the provisions set forth in the section I just read, this board has access to information as follows, and I am quoting from page 158, line 21:

If determined by the Board to be necessary to carry out its responsibilities under this section, the Board is authorized to . . .

Now I read on page 159, line 12:

. . . require, by subpoena issued at the direction of a majority of the members of the Board, persons (other than departments, agencies, and elements of the executive branch) to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

Now, this board has an obligation not to sit back and wait for any complaints to be raised, or any issues to be raised with the board, but an affirmative obligation to go out and review the policies and procedures of the civil organizations underneath the executive department. So what is going to happen, without question, is there will be problems in the intelligence community. We know and understand that. The No. 1 deficiency in the intelligence community is highlighted by every single board; every single committee within this body, or outside committee, that has looked at this issue has agreed that the lack of human intelligence is what the main deficiency has been and continues to be today.

The only way we are going to cure that problem is to encourage our spies in the field—and that is exactly what they are—and these spies are absolutely necessary to provide the kind of intelligence our military and civilian authorities need to ensure our national security.

This board is going to have the authority to aggressively go out and review any situation relative to a case that is ongoing by any officer of the CIA, wherever in the world that officer may be operating. This board is going to have the ability to take statements from individuals who are Government employees, or people outside the Government, who have information relative to any case they want to look at.

This bill goes even further. It says this board has authority by subpoena issued by just a majority of the members of this board, to require individuals or agencies to produce documents, including classified documents, that may be reviewed on any particular case.

What is that going to do to every single CIA agent who operates in the field, or to every DIA agent who operates in the field and who shares information with the CIA? I think, without question, what we are doing by the enactment of these particular sections is to create a morale problem at the Central Intelligence Agency and our other intelligence agencies throughout our intelligence community that we will never repair.

We are on the back side today, thank goodness, of having repealed the Deutch guidelines that were implemented in 1995. Those guidelines prohibited the expenditure of tax money being paid to individuals providing us intelligence if they had a criminal record or any kind of disparaging record in their past. Well, what that meant was that we could only hire Sunday school teachers to go out and spy on bad guys around the world. Thank goodness this body took affirmative action in the last couple of years to repeal those guidelines. But it was only after the events of September 11 that we were able to accomplish that.

In addition to the morale problem that will be created, which I don't think we will ever overcome, one might say this is a board that is going to be appointed by the President, confirmed by the Senate, and they are not to be a political board. Everybody in this body knows what that means. This is going to be a political board. In fact, the legislation itself says that members of the board shall be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, relevant experience, and without regard to political affiliation. But in no event shall more than three members of the board be members of the same political party. So what we are doing here, in effect, is creating a political board. It makes no difference to me which administration is in office. I think it is bad policy to have our CIA agents, DIA agents, and every other intelligence officer in the field that operates for the sole purpose of gathering intelligence to save and protect Americans from being killed or harmed, having this board look over their shoulder and have the ability not just to investigate the case they are operating on, but to look at any information they have shared with anybody else, or any information that they have received from anybody can also be reviewed and traced back. I think it is bad policy to create a board and give them that kind of power and authority and expect them to operate in any way other than a political manner.

Rather than set up another entity with broad powers, including subpoena power, to look over the activities of our intelligence personnel who are fully engaged in important and dangerous activities to protect all of us, I would rather give our support and confidence to those in the Department of Justice who are working on our behalf every day to protect our civil liberties. I want to allow the newly formed President's Board on Safeguarding Americans' Civil Liberties to begin their work. Let us not establish competing and duplicative bureaucracies.

Our amendment will strike from section 211 those provisions expanding the powers given to this board to the point of not allowing them to subpoena information, including classified information, from agents around the world and other folks involved in the intelligence community. We need to rapidly improve our intelligence capabilities, and that should be the focus of S. 2845. The protection of our civil liberties is already the focus of the President and the Department of Justice, and they have the resources to do just that.

With that, I yield to my friend from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I think the Senator from Georgia has covered this area very well. I spoke to it yesterday. I know Senator STEVENS is here to lay down some amendments. I will take a few minutes to add one primary thought to what the Senator from Georgia has said, and then quickly lay down three amendments, and then I will be done.

Let me make this one key point about what the Senator from Georgia is talking about. The 9/11 Commission did not recommend the board or the many different assistant directorships and other provisions, from an ombudsman to IGs and the like, that are included in the legislation that is before us today. I am going to tell you what the 9/11 Commission did recommend. What it recommended is what the President has done. What the committee did went far beyond that.

Our amendment does not eliminate all of that, but at least it cuts it back to some extent. That is what I want to explain. Senator DURBIN discussed this privacy amendment at length yesterday. His primary point was that the 9/11 Commission recommended this, and therefore the committee did it, and therefore we ought to not amend it out. In fact, one of the things he said was the 9/11 Commission recommended this board, and following their recommendation, the legislation included it.

What exactly did the 9/11 Commission recommend? There were three specific recommendations. They take one and a half pages out of the entire report. I will paraphrase the first two because they are not directly on point:

As the President determines the guidelines for information sharing among government agencies and by those agencies with the private sector, he should safeguard the privacy of individuals about whom information is shared.

Fine.

Two:

The burden of proof for retaining a particular governmental power should be on the executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the executive's use of the powers. . . .

And three, and this is the key:

At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.

That is it. As the Senator from Georgia said, that is exactly what the President did in his Executive Order 13353. The Senator from Georgia described what that Executive order does. I have a full copy of all the entities involved in it, the instructions to that board to bring any credible information of possible violations of law to appropriate end, to undertake other efforts to protect the legal rights of all Americans, including freedoms, civil liberties, and information privacy guaranteed by Federal law, and so on.

In other words, what the 9/11 Commission recommended the President did. What is in this bill goes far beyond that. What I said yesterday with respect to risk aversion makes it clear that what the committee did not only goes far beyond what the 9/11 Commission recommended but will virtually guarantee that the risk aversion, which is a problem today, is exacerbated tenfold so that instead of being able to collect more intelligence and analyze that intelligence better and have people who are not involved in group-think, who are actually willing to think outside the box and not be intimidated by risks aversion, instead of that, we are going to get more of that because of all the layers of bureaucracy that is going to be looking over people's shoulders.

What the bill does is require two officers within the national intelligence authority, two out of six, one responsible for privacy, the other for civil rights and civil liberties. In addition, there is an inspector general within the national intelligence authority who, among other things, is to monitor and inform the director of violations of civil liberties and privacy.

There is an ombudsman, which I mentioned a moment ago. There is an independent privacy and civil liberties oversight board with extensive investigative authorities, which the Senator from Georgia talked about, and privacy and civil liberties officers within a long list of executive branch departments and agencies.

So what does the amendment we have offered do? It deletes sections 126 and 127 which require officers for privacy and civil liberties within the national intelligence authority because those already exist; it would strike section 212 requiring privacy and civil liberties officers within a long list of executive branch departments and agencies; and it would modify the privacy and civil liberties oversight board described in section 211. It does not eliminate it, so it would be duplicative of the board the President created.

There will be an executive branch board and an outside board, but this board would not have the authority to subpoena private individuals or documents and reports, accounts, and other evidence of private individuals, nor would it have the power to compel through subpoena, for example, a department or agency to present documents.

I am not even sure, by the way, this board would have the authority to do that under the Constitution. I am not sure that authority could be granted. In any event, that would be a very pernicious power granted to it when that power already exists in the ombudsman, in the inspector general, and the other privacy officers that exist. It is duplicative and unnecessary.

The net result of all these different entities that have the same responsibility is to basically tell intelligence agencies: If you want to get to the end of your career and have a pension at the end of it, you better watch over your shoulder because there are a whole lot of other people doing that. That is not the way to enhance our security.

Those are the additional points I wanted to make in addition to those I made yesterday with respect to this amendment. I hope before we vote on this amendment we will have an opportunity to present these arguments in short form with all of the Members in attendance.

Mr. President, I indicated to the chairman of the committee what I intend to do next. Therefore, since our procedure is to lay down one amendment at a time, I ask unanimous consent to lay down three amendments, and I will explain what they are.

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

AMENDMENT NO. 3926

Mr. KYL. Mr. President, the first is amendment No. 3926, which is at the desk, and I ask that amendment be read.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 3926.

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

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

The amendment is as follows:

(Purpose: To amend the Immigration and Nationality Act to ensure that nonimmigrant visas are not issued to individuals with connections to terrorism or who intend to carry out terrorist activities in the United States)

At the end, add the following new title:

TITLE IV—VISA REQUIREMENTS

SEC. 401. FINDINGS.

Congress makes the following findings:

(1) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) governs the admission of nonimmigrants to the United States and sets forth the process for that admission.

(2) Section 214(b) of the Immigration and Nationality Act places the burden of proof on a visa applicant to establish ''to the satisfaction of the consular officer, at the time of the application for a visa . . . that he is entitled to a nonimmigrant status''.

(3) The report of the National Commission on Terrorist Attacks Upon the United States included a recommendation that the United States ''combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists . . . and constrain terrorist mobility''.

(4) Fifteen of the 19 individuals who participated in the aircraft hijackings on September 11, 2001, were nationals of Saudi Arabia who legally entered the United States after securing nonimmigrant visas despite the fact that they did not adequately meet the burden of proof required by section 214(b) of the Immigration and Nationality Act.

(5) Prior to September 11, 2001, the Department of State allowed consular officers to approve nonimmigrant visa applications that were incomplete, and without conducting face-to-face interviews of many applicants.

(6) Each of the 15 individuals from Saudi Arabia who participated in the aircraft hijackings on September 11, 2001, filed a visa application that contained inaccuracies and omissions that should have prevented such individual from obtaining a visa.

(7) Only one of the hijackers listed an actual address on his visa application. The other hijackers simply wrote answers such as ''California'', ''New York'', or ''Hotel'' when asked to provide a destination inside the United States on the visa application.

(8) Only 3 of the individuals from Saudi Arabia who participated in the aircraft hijackings on September 11, 2001, provided any information in the section of the visa application that requests the name and address of an employer or school in the United States.

(9) The 2002 General Accounting Office report entitled ''Border Security: Visa Process Should Be Strengthened as Antiterrorism Tool'' outlined the written guidelines and practices of the Department of State related to visa issuance and stated that the Department of State allowed for widespread discretion among consular officers in adhering to the burden of proof requirements under section 214(b) of the Immigration and Nationality Act.

(10) The General Accounting Office report further stated that the ''Consular Best Practices Handbook'' of the Department of State gave consular managers and staff the discretion to ''waive personal appearance and interviews for certain nonimmigrant visa applicants''.

(11) Only 2 of the 15 individuals from Saudi Arabia who participated in the aircraft hijackings on September 11, 2001, were interviewed by Department of State consular officers.

(12) If the Department of State had required all consular officers to implement section 214(b) of the Immigration and Nationality Act, conduct face-to-face interviews, and require that visa applications be completely and accurately filled out, those who participated in the aircraft hijackings on September 11, 2001, may have been denied nonimmigrant visas and the tragedy of September 11, 2001, could have been prevented.

SEC. 402. IN PERSON INTERVIEWS OF VISA APPLICANTS.

(a) REQUIREMENT FOR INTERVIEWS.—Section 222 of the Immigration and Nationality Act (8 U.S.C. 1202) is amended by adding at the end the following new subsection:

''(h) Notwithstanding any other provision of this Act, the Secretary of State shall require every alien applying for a nonimmigrant visa—

''(1) who is at least 12 years of age and not more than 65 years of age to submit to an in person interview with a consular officer unless the requirement for such interview is waived—

''(A) by a consular official and such alien is within that class of nonimmigrants enumerated in section 101(a)(15)(A) or 101(a)(15)(G) or is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof;

''(B) by a consular official and such alien is applying for a visa—

''(i) not more than 12 months after the date on which the alien's prior visa expired;

''(ii) for the classification under section 101(a)(15) for which such prior visa was issued;

''(iii) from the consular post located in the country in which the alien is a national; and

''(iv) the consular officer has no indication that the alien has not complied with the immigration laws and regulations of the United States; or

''(C) by the Secretary of State if the Secretary determines that such waiver is—

''(i) in the national interest of the United States; or

''(ii) necessary as a result of unusual circumstances; and

''(2) notwithstanding paragraph (1), to submit to an in person interview with a consular officer if such alien—

''(A) is not a national of the country in which the alien is applying for a visa;

''(B) was previously refused a visa, unless such refusal was overcome or a waiver of ineligibility has been obtained;

''(C) is listed in the Consular Lookout and Support System (or successor system at the Department of State);

''(D) may not obtain a visa until a security advisory opinion or other Department of State clearance is issued unless such alien is—

''(i) within that class of nonimmigrants enumerated in section 101(a)(15)(A) or 101(a)(15)(G); and

''(ii) not a national of a country that is officially designated by the Secretary of State as a state sponsor of terrorism; or

''(E) is identified as a member of a group or sector that the Secretary of State determines—

''(i) poses a substantial risk of submitting inaccurate information in order to obtain a visa;

''(ii) has historically had visa applications denied at a rate that is higher than the average rate of such denials; or

''(iii) poses a security threat to the United States.''.

(b) CONDUCT DURING INTERVIEWS.—Section 222 of the Immigration and Nationality Act (8 U.S.C. 1202), as amended by subsection (a), is further amended by adding at the end the following new subsection:

''(i) A consular officer who is conducting an in person interview with an alien applying for a visa or other documentation shall—

''(1) make every effort to conduct such interview fairly;

''(2) employ high professional standards during such interview;

''(3) use best interviewing techniques to elicit pertinent information to assess the alien's qualifications, including techniques to identify any potential security concerns posed by the alien;

''(4) provide the alien with an adequate opportunity to present evidence establishing the accuracy of the information in the alien's application; and

''(5) make a careful record of the interview to document the basis for the final action on the alien's application, if appropriate.''.

SEC. 403. VISA APPLICATION REQUIREMENTS.

Section 222(c) of the Immigration and Nationality Act (8 U.S.C. 1202(c)) is amended by inserting ''The alien shall provide complete and accurate information in response to any request for information contained in the application.'' after the second sentence.

SEC. 404. EFFECTIVE DATE.

Notwithstanding section 341 or any other provision of this Act, this title shall take effect 90 days after date of the enactment of this Act.

Mr. KYL. Mr. President, this amendment would codify and tighten the procedures for personal interviews of people seeking temporary visas. Mr. President, 15 of the 19 hijackers who came here received these kinds of visas. I think in every case but one they were not interviewed as the State Department guidelines call for, as the statute assumes but does not make explicit. This amendment will do that.

If there are any issues or questions about it, I would be happy to talk with both the majority and minority. I am hopeful we can work that out.

AMENDMENT NO. 3881

(Purpose: To protect crime victims' rights)

Mr. KYL. Mr. President, the second amendment that I ask be read is at the desk. It is amendment No. 3881.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 3881.

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

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

(The amendment is printed in the RECORD of Thursday, September 30, 2004, under ''Text of Amendments.'')

Mr. KYL. Mr. President, I recall in the Senate a vote of I think it was 97 to 1 or 90-something to 1, in any event, earlier this year that passed a proposed statute to guarantee crime victims certain rights. That bill is pending in the House.

What this does is take those exact rights and make them applicable to victims of terrorist attacks, terrorist crimes.

Again, I invite comments. I do not think it will be difficult. We will work that out.

AMENDMENT NO. 3724

(Purpose: To strengthen anti-terrorism investigative tools, promote information sharing, punish terrorist offenses, and for other purposes)

Mr. KYL. Mr. President, I am happy to go to my third amendment. This is amendment No. 3724.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL], for himself, Mr. CORNYN, Mr. CHAMBLISS, and Mr. NICKLES, proposes an amendment numbered 3724.

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

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

(The amendment is printed in the RECORD of Tuesday, September 28, 2004 under ''Text of Amendments.'')

Mr. KYL. Mr. President, I rise today to discuss an important amendment that I will offer to the 9/11 Commission bill. My amendment is substantially the same as S. 2679, the Tools to Fight Terrorism Act, a bill that I introduced earlier this year with several other members of the Judiciary Committee and the Senate leadership.

Since the terrorist attacks of September 11, congressional committees and executive agencies have conducted exhaustive reviews of our Nation's antiterrorism safety net. We have had scores of hearings in the House and Senate judiciary committees, a Joint Intelligence Committee Inquiry, the 9/11 Commission hearings and report, and the Justice Department has conducted extensive evaluations of its own antiterrorism capabilities. These hearings have uncovered numerous flaws and gaps in our antiterrorism system. We have found, for example, that in many cases antiterror investigators still have less authority to access information than do investigators of other crimes that, while serious, pale in comparison to the threat posed by international terrorism. We also have seen that some of the federal code's criminal offenses and penalties are far too light, or too narrow in their scope,

in light of the contemporary terrorist threat. Yet, despite all of these hearings and reports—and all of the gaps in our antiterror laws that have been identified—Congress has enacted no major antiterror legislation in almost three years.

This amendment addresses many of the problems that these hearings and reports have identified over the last few years. At the outset, I would like to emphasize 5 things about the amendment.

This amendment is not about the PATRIOT Act. This amendment does not reauthorize or extend the PATRIOT Act. Nor does it involve any of the supposedly ''controversial'' provisions of the PATRIOT Act.

Nothing in TFTA deals with Section 215 subpoenas, which some critics have complained can be used to access a terrorist's records of book withdrawals and computer use at a library.

Nothing in TFTA deals with delayed-notice searches, which some critics deride as ''sneak and peak'' searches, even though the PATRIOT Act only codified judicial standards that have been in place for decades.

Nothing in TFTA deals with roving wiretaps, which some critics mischaracterize as allowing taps of the telephones of anyone who fits a general description. This is not true. A roving wiretap can only be used for a particular person, though it applies to any phone that the person uses.

Nothing in TFTA deals with National Security Letters, which allow certain records to be subpoenaed and includes an automatic nondisclosure requirement.

I happen to support the PATRIOT and believe that it should not be allowed to expire. Nevertheless, with this amendment, I have deferred that debate. This amendment does not involve the PATRIOT Act or the debates about it. The only way that one can object to this amendment as ''controversial'' is if one is willing to define all antiterror legislation as ''controversial.'' In a post-9/11 world, with continuing threats to the U.S. homeland—and clear gaps in some of our antiterror laws—such a presumption against all antiterror legislation would be deeply irresponsible. Fixing obvious flaws in our laws, and giving antiterror investigators the tools that they need, should not be controversial.

Much of TFTA is also in the House of Representatives' 9/11 Commission bill. Approximately half of the provisions of TFTA already have been included by the House of Representatives in their bill implementing the recommendations of the 9/11 Commission. For example, the House bill already contains the ''Moussaoui fix,'' which allows FISA warrants for lone-wolf terrorists—Section 412 of TFTA and section 2001 of H.R. 10.; new offenses for hoaxes relating to terrorist crimes or the deaths of U.S. soldiers—Section 416 of TFTA and section 2021 of H.R. 10.; increased penalties for obstruction of justice in terrorism investigations—Section 417 of TFTA and section 2023 of H.R. 10.; authorization to share grand-jury information with state and local governments—Section 423(b) of TFTA and section 2191 of H.R. 10.; improvements to and expansion of the material-support statute—Section 424 of TFTA and section 2043 of H.R. 10.; a new offense targeted at those who receive military-type training in terrorist camps—Section 425 of TFTA and 2042 of H.R. 10.; expansion of the weapons-of-mass-destruction laws—Section 426 of TFTA and section 2052 of H.R. 10.; and new laws targeted at those who aid rogue states' nuclear proliferation—Section 427 of TFTA and section 2053 of H.R. 10.

In all these respects, my amendment is substantially identical to the House bill. The amendment thus helps to bring the Senate bill into line with the House bill, lessening the need for a protracted conference and avoiding delay in enacting this legislation.

TFTA directly implements a number of the key recommendations and addresses key concerns of the 9/11 Commission. The Report of the September 11 Commission recommends that Congress address a number of deficiencies in our nation's preparedness against a terrorist attack. The underlying bill that we are considering responds to many of those recommendations. This amendment addresses others.

The 9/11 Commission Report recommends action to address, among other things, the threat posed by weapons of mass destruction and their proliferation; the vulnerabilities of our seaports and mass-transit systems; the need for improved information sharing; the need to address terrorist finance; the threat posed by sanctuaries where terrorists operate training camps; and the need for improved information sharing. The report also discusses the problems created by terrorist hoaxes, and the legal barriers encountered in the pre-September 11 investigation of suspected hijacker Zacarias Moussaoui.

TFTA addresses every one of these 9/11 Commission recommendations.

TFTA's provisions and the matters that it address have been extensively reviewed in congressional hearings. Every provision of TFTA previously has either been introduced as a bill in the House or Senate or addresses a matter that has been the subject of a committee hearing. Collectively, the provisions of TFTA have been the subject of 9 separate hearings before House and Senate committees and have been the subject of 4 separate committee reports. In addition, the entire bill was reviewed at a September 13 hearing before the Senate Subcommittee on Terrorism. At that hearing, law professor Jonathan Turley testified that every one of TFTA's provisions would be upheld as constitutional by the U.S. Supreme Court.

TFTA primarily consists of all or part of 11 bills currently pending in the House and Senate. Collectively, as of July 19, 2004—the day that TFTA was introduced—the bills included in TFTA have been pending before Congress for 12 years, 10 months, and 28 days. No one can contend that TFTA and its provisions have been ''rushed through'' the Congress.

TFTA has the support of antiterrorism experts across the ideological spectrum. The Justice Department, in its September 13 testimony on TFTA before the Terrorism Subcommittee, expressed its strong support for the bill. Hearing witnesses Barry Sabin—the Chief of the Criminal Division's Counterterrorism Section—and Dan Bryant, the Assistant Attorney General for the Office of Legal Policy—made clear in their joint written testimony the Justice Department's view that the ''Tools to Fight Terrorism Act of 2004 makes well-considered, urgently needed changes to current law, and would greatly aid law enforcement and intelligence officials in their common mission to prevent terrorist attacks and prosecute those who would do us harm. The new tools provided by the TFTA will prevent—terrorist—attacks and will make America safer.''

At the Terrorism Subcommittee hearing on TFTA, support for the bill also was voiced by George Washington University law professor Jonathan Turley, a national-security expert who often has been critical of the Justice Department's conduct of the war on terror. In addition to a large number of academic works in the areas of national-security and constitutional law, Professor Turley has represented clients in a variety of high-profile national security cases in both criminal and civil courts, including espionage cases in both federal and military courts. In his testimony before my subcommittee, Professor Turley noted that he ''also [has] been a vocal critic of some of the measures taken after September 11th on constitutional and policy grounds.''

This is what Professor Turley had to say about the TFTA in his testimony:

> The Tools to Fight Terrorism Act of 2004 . . . contains many beneficial changes that will increase the ability of the government to pursue terrorists while preserving necessary guarantees for civil liberties.
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> * * * * *
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> While we must be cautious not to legislate out of a reflective impulse, September 11th exposed a number of vulnerabilities and gaps in our legal and intelligence systems that remain only partially addressed. This Act continues to work to close those gaps and to accommodate the interests of the Executive Branch in pursuing, prosecuting, and (hopefully) deterring terrorists.
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> The vast majority of the[] provisions [of TFTA] are matters that, in my view, should receive general support as balanced and necessary measures.
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> TFTA should be a matter for general consensus rather than division among civil libertarians and advocates of national security interests. . . . [W]e need to recognize the improvements in this Act and the good-faith

changes that have been made by members seeking a fair balance in the legislation.

In one part of his testimony before my subcommittee, Professor Turley also recommended a change to a part of the bill—in order to better protect civil liberties. He recommended that, if the FBI is given subpoena authority for terrorism investigations, it also be required to report on the use of that authority. The amendment that I offer today incorporates this recommendation—it would require the FBI to report to Congress on the number of subpoenas that it issues pursuant to this new authority, and the circumstances under which those subpoenas are issued.

I will next discuss the provisions of this amendment—and how they help to address the recommendations and concerns raised by the 9/11 Commission, and what others have said about these provisions.

The Moussaoui fix: The case of suspected 9/11 conspirator Zacarias Moussaoui is discussed extensively in the 9/11 Commission Report. Moussaoui, you will recall, is the Al Qaeda operative who was arrested by Minneapolis FBI agents several weeks before the September 11 attacks. That summer, instructors at a Minnesota flight school became suspicious when Moussaoui, with little apparent knowledge of flying, asked to be taught to pilot a 747. The instructors contacted the Minneapolis office of the FBI, which immediately suspected that Moussaoui might be a terrorist.

The hearings conducted by the 9/11 Commission raised some agonizing questions about the FBI's pursuit of Moussaoui. Commissioner Richard Ben-Veniste noted the possibility that the Moussaoui investigation could have allowed the United States to ''possibly disrupt the [9/11] plot.'' Commissioner Bob Kerrey even suggested that with better use of the information gleaned from Moussaoui, the ''conspiracy would have been rolled up.'' And Commissioner Jamie Gorelick followed up by asking whether more could have been done to allow FBI agents to ''break through the barriers'' to their investigation of Moussaoui.

After the September 11 attacks, when FBI agents finally were allowed to search Moussaoui, they discovered information in his belongings that linked him to two of the actual 9/11 hijackers, and to a high-level organizer of the attacks who later was arrested in Pakistan.

The 9/11 Commissioners are right to ask whether more could have been done to pursue this case. The problem is that, given the state of the law at the time, the answer to that question is probably no. In fact, given the state of the law today, the answer to the question still would be no.

FBI agents were blocked from searching Moussaoui because an outdated requirement of the 1978 FISA statute. FISA sets rules for searches conducted for intelligence investigations. As the 9/11 Commission Report notes, the FBI field office was unable to obtain a FISA warrant for Moussaoui because it lacked information linking him to a known terror group. As the Report states:

> Minneapolis agents ''sought a special warrant under the Foreign Intelligence Surveillance Act to [search Moussaoui]. To do so, however, the FBI needed to demonstrate probable cause that Moussaoui was an agent of a foreign power, a demonstration that [is] . . . a statutory requirement for a FISA warrant. The agent did not have sufficient information to connect Moussaoui to a foreign power.

Current law simply does not allow searches of apparent lone-wolf terrorists such as Zacarias Moussaoui—even if the FBI can show probable cause to believe that the person is involved in international terrorism.

My amendment would correct this problem. Section 412 gives the FBI clear authority to conduct a search or surveillance under FISA when it has probable cause to believe that the target is engaged in or preparing for international terrorism. This new authority would not require FBI to also link the suspect to a particular terrorist group.

It is inevitable that Islamist terrorists will try again to attack the United States. As agonizing as it is today to review why we did not prevent the September 11 attacks, imagine if it happened again. Imagine if another attack occurred—and another review commission found that critical FBI investigations again were undermined by the lack of FISA authority to monitor and search lone-wolf terrorists. We simply cannot let that happen. We must ensure that today's FBI agents are not hampered by the same unnecessary barriers that hurt the efforts of the Minneapolis agents in August of 2001.

Process: A bill that is substantially identical to section 412 first was introduced in the Senate by Senator SCHUMER and me on June 5, 2002. We reintroduced the same provision in the 108th Congress. That bill—S. 113—was unanimously reported by the Judiciary Committee in March 2003, and was approved by the full Senate by a vote of 90–4 in May 2003. A substantially identical provision also has been included in a House bill introduced by Chairmen SENSENBRENNER and Goss—and is included in the House 9/11 Commission bill as section 2001. The Moussaoui fix also has been the subject of two hearings—one in the Senate Intelligence Committee on July 31, 2002, and one in the House Crime Subcommittee on May 18, 2004.

Section 412 is substantially identical to section 2001 of the House of Representatives' 9/11 Commission bill.

Weapons of Mass Destruction and Shoulder-Fired Antiaircraft Rockets: The 9/11 Commission Report notes that ''al Qaeda has tried to acquire or make weapons of mass destruction for at least ten years. . . . Preventing the proliferation of these weapons warrants a maximum effort.'' The Report also discusses ''Pakistan's illicit trade and [the] nuclear smuggling networks of Pakistani nuclear scientist A.Q. Khan.'' The Report recommends that the U.S. work with other nations ''to develop laws and an international legal regime with universal jurisdiction to enable the capture, interdiction, and prosecution of such smugglers by any state in the world.''

Sections 426 and 427 and subtitle B of my amendment all are directed at preventing terrorists from gaining access to weapons of mass destruction. Section 427 makes it a crime to participate in or provide material support to a nuclear-weapons program, or other weapons-of-mass-destruction program, of a designated terrorist organization or state sponsor of terrorism. There would be extraterritorial jurisdiction for an offense under this provision. Section 426 would amend the federal weapons-of-mass-destruction statute to cover attacks on property and would broaden the bases for federal jurisdiction under that statute. Subtitle B is designed to deter the unlawful possession and use of atomic weapons, radiological dispersal devices, shoulder-fired rockets, and the variola virus (the causative agent of smallpox).

In his testimony about these provisions before the Terrorism Subcommittee, Professor Jonathan Turley had this to say:

> [Section 426, the WMD-statute provision] would close current loopholes in the interest of national security and does not materially affect civil liberty interests.
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> [Section 427] would criminalize the participation in programs involving special nuclear material, atomic weapons, or weapons of mass destruction outside of the United States. This new crime with extraterritorial jurisdiction is an obvious response to recent threats identified by this country and other allies like Pakistan. The obvious value of such a law would be hard to overstate. . . . It is important for the purposes of our extraterritorial enforcement efforts to have a specific crime on the books to address this form of misconduct.
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> [With regard to subtitle B—the new shoulder-fired rockets proscription], [g]iven the enormous threats to our country from such weapons, these increased penalties are manifestly reasonable. . . . While it is certainly possible that a defendant could be in possession of a MANPADS as part of arms trafficking or some other motive than terrorism, this is clearly one of the most likely forms of terrorist conduct.

Process: Sections 426 and 427 of my amendment are identical to sections 2052 and 2053 of the House 9/11 Commission bill. These—and the new penalties for possession of shoulder-fired rockets and other dangerous weapons—also are identical to legislation that Senator CORNYN introduced earlier this year.

Mass-Transportation and Seaport Security: The 9/11 Commission Report recommends that the U.S. government ''identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan . . . to implement the effort.'' While noting the continuing threat to aviation, the Report

also emphasizes that ''[o]pportunities to do harm are as great, or greater, in maritime or surface transportation''—and that ''railroads and mass transit'' are particularly difficult to protect against terrorism.

Subtitles C and D of my amendment address the unique challenges of providing security on mass-transportation systems and at seaports by updating current criminal offenses and creating new offenses that are tailored to these venues.

Here is what Professor Turley had to say about the seaport-security provision during the hearing on TFTA:

[Subtitle D] addresses a weakness in our domestic security system that has been repeatedly criticized as perhaps the country's single greatest threat: seaport security. While much remains to be done in terms of real security improvements at seaports, [subtitle D] represents one of the most significant legal reforms in this area.

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While many of [the acts of violence proscribed by TFTA] can be currently prosecuted under other laws, [subtitle D] would create a tailored series of offenses affecting seaports and seagoing vessels. For example, one important addition would be a crime for knowingly transporting dangerous material for a terrorist operation or a terrorist. This new crime in Section [455] will serve to increase the expected deterrent for transporters. Currently, a transporter can be prosecuted as a co-conspirator as well as charged with false statements in many cases. However, Section [455] would define a crime specifically with this type of opportunistic conduct in mind. For a prosecutor, such a tailored law makes a case more compelling for a jury.

* * * * *

These laws give the Executive Branch more flexibility and options in dealing with misconduct at our seaports. It could not be more timely or more justified given recent warnings from security experts.

Process: Subtitles C and D are identical to bills introduced this year by Senators SESSIONS and BIDEN, respectively. The Sessions bill was the subject of a hearing before the Senate Judiciary Committee on April 8, 2004. The Senate Subcommittee on Terrorism held a hearing on the need to improve security at U.S. seaports on January 27 of this year.

Information Sharing: The 9/11 Commission Report recommends that ''information procedures should provide incentives for sharing, to restore a better balance between security and shared knowledge.'' The Report also recommends that the President ''coordinate the resolution of the legal, policy, and technical issues across agencies to create a 'trusted information network' ''—and that this information-sharing network and the FBI ''build a reciprocal relationship, in which state and local governments understand what information they are looking for and, in return, receive some of the information being developed.''

Sections 422 and 423 of my amendment act on these recommendations by improving the FBI's ability to share intelligence information that has been obtained under existing authorities. Section 422 creates a uniform standard under which the FBI would disseminate intelligence information to other federal agencies. Under current law, several different statutes govern the circumstances under which the FBI may disseminate intelligence information to other federal agencies. Some of these statutes anomalously place restrictions on information sharing with other federal agencies that are greater than the restrictions applied to nonfederal agencies. This section allows dissemination of intelligence information under uniform guidelines developed by the Attorney General.

Section 423 amends current law to make clear that national-security-related information may be shared with relevant Federal, State, and local officials regardless of whether the investigation that produced the information is characterized as a ''criminal'' investigation or a ''national security'' investigation. This section also would authorize the sharing of grand-jury information with appropriate state and local authorities.

I do not think one can overstate the importance of information sharing—of tearing down the walls that prevent different parts of the government from exchanging intelligence and working together in the war on terror.

A graphic illustration of the importance of tearing down the legal walls between different terror investigators is provided by another pre-September 11 investigation. Like the Moussaoui case, this investigation also came tantalizing close to substantially disrupting or even stopping the 9/11 plot—and also ultimately was blocked by a flaw in our antiterror laws. The investigation that I am talking about involved Khalid Al Midhar, one of the suicide hijackers of American Airlines Flight 77, which was crashed into the Pentagon, killing 58 passengers and crew and 125 people on the ground.

An account of the investigation of Midhar is provided in the 9/11 Commission's Staff Statement No. 10. That statement notes as follows:

During the summer of 2001 [an FBI official] . . . found [a] cable reporting that Khalid Al Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar's visa application—what was later discovered to be his first application—listed New York as his destination. . . . The FBI official grasped the significance of this information.

The FBI official and an FBI analyst working the case promptly met with an INS representative at FBI Headquarters. On August 22 INS told them that Mihdhar had entered the United States on January 15, 2000, and again on July 4, 2001. . . . The FBI agents decided that if Mihdhar was in the United States, he should be found.

These alert agents immediately grasped the danger that Khalid Al Midhar posed to the United States—and immediately initiated an effort to track him down. Unfortunately, at the time, the law was not on their side. The Joint Inquiry Report of the House and Senate Intelligence Committees describes what happened next:

Even in late August 2001, when the CIA told the FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Hazmi, and two other ''Bin Laden-related individuals'' were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers. . . . FBI attorneys took the position that criminal investigators ''CAN NOT'' (emphasis original) be involved and that criminal information discovered in the intelligence case would be ''passed over the wall'' according to proper procedures. An agent in the FBI's New York field office responded by e-mail, saying: ''Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.''

The 9/11 Commission staff report assesses the ultimate impact of these legal barriers:

Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except follow him onto the planes. We believe this is incorrect. Both Hazmi and Mihdhar could have been held for immigration violations or as material witnesses in the Cole bombing case. Investigation or interrogation of these individuals, and their travel and financial activities, also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

Congress must do what it can now to make sure that something like this does not happen again—that arbitrary, seemingly minor bureaucratic barriers are not allowed to undermine our best leads toward uncovering an attack on the United States. Sections 422 and 423 of my amendment would do just that.

Process: Subsection (b) of section 423 is included in H.R. 10, the House of Representatives' 9/11 Commission bill. Sections 422 and 423 both are identical to a bill that has been introduced by Senator CHAMBLISS.

Subpoena Authority: The bill that the Senate is now considering already authorizes subpoena authority. Section 141(f)(5) of the bill authorizes the National Intelligence Authority's Inspector General to issue subpoenas for his investigations. It also authorizes the Inspector to go to federal court to enforce his subpoenas if a recipient refuses to comply with them. Section 211(g) of the bill also authorizes the new Privacy and Civil Liberties Board to issue administrative subpoenas and to seek their judicial enforcement.

I agree with the bill's judgment that subpoena authority can be an important investigative tool. For this reason, section 415 of my amendment authorizes the Attorney General to issue judicially enforceable subpoenas in an ''investigation of a Federal crime of terrorism.''

Rachel Brand, the Principal Deputy Assistant Attorney General for the Justice Department's Office of Legal Policy, described the need for subpoena authority in terrorism investigations

in a hearing before my subcommittee on June 22 of this year. Ms. Brand noted:

Although grand jury subpoenas are a sufficient tool in many investigations, there are circumstances in which an administrative subpoena would save precious minutes or hours in a terrorism investigation. For example, the ability to use an administrative subpoena will eliminate delays caused by factors such as the unavailability of an Assistant United States Attorney to immediately issue a grand-jury subpoena, especially in rural areas; the time it takes to contact an Assistant United States Attorney in the context of a time-sensitive investigation; the lack of a grand jury sitting at the moment the documents are needed (under federal law, the ''return date'' for a grand-jury subpoena must be on a day the grand jury is sitting); or the absence of an empaneled grand jury in the judicial district where the investigation is taking place, a rare circumstance that would prevent a grand-jury subpoena from being issued at all.

To appreciate the potential importance of an administrative subpoena in a terrorism case, consider the following hypothetical example. On Friday afternoon, counter-terrorism investigators learn that members of an al Qaeda cell have purchased bomb-making materials from a chemical company. They want to obtain records relating to the purchase that may reveal what chemicals the terrorists bought, as well as delivery records that might reveal the terrorists' location. Investigators reach a prosecutor, who issues a grand jury subpoena for those records. But because the grand jury is not scheduled to meet again until Monday morning and the recipient of a grand jury subpoena is not required to produce the records until the next time the grand jury meets, investigators may not be able to obtain the information for three days during which time the al Qaeda cell may have executed its plan. If investigators had the authority to issue an administrative subpoena, they could obtain the records immediately and neutralize the cell.

A recent paper issued by the Republican Policy Committee points out how anomalous it is that the FBI does not have subpoena authority for terrorism investigations. As that report notes, ''[c]urrent provisions of federal law grant [administrative-subpoena] authority to most government departments and agencies.'' Moreover, ''[t]hese authorities are not restricted to high-profile agencies conducting life-or-death investigations.'' As the paper notes, federal law currently authorizes postal inspectors to issue administrative subpoenas when investigating any ''criminal matters related to the Postal Service and the mails.'' Similarly, the Small Business Administration is empowered to use administrative subpoenas to investigate criminal activities under the Small Business Act, such as embezzlement and fraud. The Bureau of Immigration and Customs Enforcement has administrative-subpoena authority for investigations of violations of the immigration laws. And DEA agents have subpoena authority for criminal investigations under the Controlled Substances Act.

As the RPC Policy Paper concludes, ''One can hardly contend that federal investigators should be able to issue administrative subpoenas to investigate Mohammed Atta if they suspect that he broke into a mailbox—but should not have the same authority if they suspect he is plotting to fly airplanes into buildings.''

Professor Jonathan Turley also commented on TFTA's subpoenas provision in his testimony before the Terrorism Subcommittee. He stated:

There is little reason to believe that a [Judicially Enforceable Terrorism Subpoena] provision would be unconstitutional.

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Much is made [by some critics] of the shift from a grand-jury subpoena to a JETS system. However, the term grand-jury subpoena is misleading in that it is not issued by a grand jury but a federal prosecutor. ''[A] grand jury subpoena gets its name from the intended use of the . . . evidence, not from the source of its issuance.'' *Doe* v. *DiGenova*, 779 F.2d 74, 80 n.11 (D.C. Cir. 1985). Administrative subpoenas are currently used in dozens of areas and they have been upheld by the United States Supreme Court. It is extremely rare for a federal prosecutor to deny such a request from the FBI and the elimination of an Assistant United States Attorney from the process is not likely to produce a significant change in the level of review.

Professor Turley also added: ''I would strongly encourage the Senate to couple any JETS provision with a close oversight process to monitor the number and nature of subpoenas issued under the new law.'' As I previously noted, the amendment that I offer today implements this recommendation: it includes a requirement that the FBI report on the number of subpoenas that it employs under the new authority and the circumstances of their issue.

Terrorist Training Camps: The 9/11 Commission Report recommends that the U.S. government ''identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power.'' The Report explains that such sanctuaries pose a threat because they provide terrorist groups with the ''opportunity and space to recruit, train, and select operatives''—and that the hospitable environment in the United States also allowed this country to be used for terrorist training and exercises.

Section 425 of my amendment would make it a federal offense to knowingly receive military-type training from or on behalf of a designated foreign terrorist organization. This provision applies extraterritorially to U.S. nationals, permanent residents, stateless persons whose habitual residence is the United States, or a person who is brought into or found in the United States.

The Justice Department testified in favor of this provision at the Terrorism Subcommittee's hearing on the TFTA. The joint statement of Messrs. Sabin and Bryant notes that:

It is critical that the United States stem the flow of recruits to terrorist training camps. A danger is posed to the vital foreign policy interests and national security of the United States whenever a person knowingly receives military-type training from a designated terrorist organization or persons acting on its behalf. Such an individual stands ready to further the malicious intent of the terrorist organization through terrorist activity that threatens the security of United States nationals or the national security of the United States. Moreover, a trainee's mere participation in a terrorist organization's training camp benefits the organization as a whole. For example, a trainee's participation in group drills at a training camp helps to improve both the skills of his fellow trainees and the efficacy of his instructors' training methods. Additionally, by attending a terrorist training camp, an individual lends critical moral support to other trainees and the organization as a whole, support that is essential to the health and vitality of the organization.

Professor Turley had the following to say about this provision of TFTA in his testimony before the Terrorism Subcommittee:

This proposal would fill a gap in our laws revealed by recent cases, like that of Jose Padilla, where citizens have trained at terrorist camps. . . . The proposed crime has been narrowly tailored to require a clear knowledge element as well as a reasonable definition of military-type training. The United States has an obvious interest in criminalizing such conduct and to deter citizens who are contemplating such training. In my view, it raises no legitimate issue of free association or free speech given the criminal nature of the organization. Most importantly, given the use of these camps to recruit and indoctrinate such citizens as Padilla and John Walker Lindh, this new criminal offense is responsive to a clear and present danger for the country.

Section 425 of my amendment is identical to section 2042 of the House of Representatives' 9/11 Commission bill.

Terrorist Hoaxes: The 9/11 Commission Report notes at several places that false information about terrorist threats influenced key events on September 11, 2001: possibly ''a false report of a third plane approaching'' influenced fire crews' decisions on the ground in New York City on that day, and crisis managers were forced to sort out ''a number of unnerving false alarms'' immediately after the attacks.

The Justice Department also has commented on the harm caused by false information and terrorist hoaxes. In its testimony on the TFTA, the Department noted:

Since September 11, hoaxes have seriously disrupted people's lives and needlessly diverted law-enforcement and emergency-services resources. In the wake of the anthrax attacks in the fall of 2001, for example, a number of individuals mailed unidentified white powder, intending for the recipient to believe it was anthrax. Many people were inconvenienced, and emergency responders were forced to waste a great deal of time and effort. Similarly, in a time when those in uniform are making tremendous sacrifices for the country, several people have received hoax phone calls reporting the death of a loved one serving in Iraq or Afghanistan.

Section 416 of my amendment is intended to reduce the flow of false information about terrorist or national-security-related events by making it a criminal offense to knowingly convey false information about terrorist

crimes or the death or injury of a U.S. soldier during war—if such misinformation is conveyed under circumstances where it may reasonably be believed.

Professor Turley, at the Terrorism Subcommittee hearing on TFTA, commented that:

This new provision would create a serious deterrent to a type of misconduct that routinely places the lives of emergency personnel at risk and costs millions of dollars in unrecouped costs for the federal and state governments. Since a terrorist seeks first and foremost to terrorize, there is precious [little] difference between a hoaxster and a terrorist when the former seeks to shut down a business or a community with a fake threat. . . . This provision responds to the increase in this form of insidious misconduct and correctly defines it as criminal conduct.

Process: A bill that is substantially identical to section 416 first was introduced almost three years ago by Representative LAMAR SMITH on November 11, 2001. That proposal was the subject of a hearing before the House Crime Subcommittee on November 7, 2001. The bill was reported by the House Judiciary Committee on November 29, 2001, which issued Report No. 107–306 for the bill. The Smith bill was then unanimously approved by the House of Representatives on December 12, 2001. Representative SMITH reintroduced the bill in this Congress. The House Crime Subcommittee held another hearing on the proposal on July 10, 2003, and the Judiciary Committee issued Report No. 108–505 for the new Smith bill. Also, Senator HATCH has introduced a version of this proposal in the Senate.

Section 416 of my amendment is nearly identical to section 2022 of the House of Representatives' 9/11 Commission bill.

Financial and Material Support to Terrorists: The 9/11 Commission Report states in its recommendations that ''vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts.''

Subtitle E of my amendment, the ''Combating Money Laundering and Terrorist Financing Act,'' expands the list of predicate offenses for money laundering to include burglary and embezzlement, operation of an illegal money-transmitting business, and offenses related to alien smuggling, child exploitation, and obscenity that were enacted or amended by the Protect Act. It also amends current law to prohibit concealing having provided financing while knowing that it has been or will be provided to terrorists.

Section 424 of my amendment expands existing prohibitions on providing material support to terrorist groups. This provision makes it a crime to provide material support to any crime of international or domestic terrorism, and expands federal jurisdiction over such offenses.

The Justice Department emphasized the importance of the material-support statute in its joint statement on the TFTA before the Terrorism Subcommittee:

The TFTA . . . improves current law by clarifying several aspects of the material support statutes. This is another key tool in preventing terrorism. As the Department of Justice has previously indicated, ''a key element of the Department's strategy for winning the war against terrorism has been to use the material support statutes to prosecute aggressively those individuals who supply terrorists with the support and resources they need to survive . . . . The Department seeks to identify and apprehend terrorists before they can carry out their plans, and the material support statutes are a valuable tool for prosecutors seeking to bring charges against and incapacitate terrorists before they are able to cause death and destruction.''

The 9/11 Commission Report also emphasizes the need ''to ensure protection of civil liberties'' during the war on terrorism. In order to address concerns raised by some courts and litigants about the chilling effect of the current material-support statute, section 424 of the amendment clarifies what it means to provide ''training,'' ''personnel,'' and ''expert advice or assistance'' to a terrorist group.

Professor Turley, in his Terrorism Subcommittee testimony on TFTA, said of section 424 that ''[t]his proposal would actually improve the current federal law by correcting gaps and ambiguities that have led to recent judicial reversals. In that sense, the proposal can be viewed as a slight benefit to civil liberties by removing a dangerous level of ambiguity in the law.''

A provision identical to section 424 of my amendment appears in the House of Representatives 9/11 Commission bill as section 2043.

Presumption of No Bail for Terrorists: Section 413 of my amendment would add terrorists to the category of criminal defendants for whom there is a presumption of no bail. Under current law, a criminal suspect will be denied bail in federal court if the government shows that there is a serious risk that the suspect will flee, obstruct justice, or injure or threaten a witness or juror. The judge must presume this showing is present if the suspect is charged with a crime of violence, a drug crime carrying a potential sentence of ten years or more, any crime that carries a potential sentence of life or the death penalty, or the suspect previously has been convicted of two or more such offenses. Section 413 would add terrorist offenses to this list—judges would be required to presume that facts requiring a denial of bail are present. This is only a presumption—the terror suspect still could attempt to show that he is not a flight risk or potential threat to jurors or witnesses.

The Justice Department testified as to the importance of this provision at the Terrorism Subcommittee hearing on TFTA:

Current law provides that federal defendants who are accused of serious crimes, including many drug offenses and violent crimes, are presumptively denied pretrial release under 18 U.S.C. § 3142(e). But the law does not apply this presumption to those charged with many terrorism offenses. To presumptively detain suspected drug traffickers and violent criminals before trial, but not suspected terrorists, defies common sense.

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This omission has presented authorities real obstacles to prosecuting the war on terrorism, as Michael Battle, U.S. Attorney for the Western District of New York, testified before this subcommittee on June 22. In the recent ''Lackawanna Six'' terrorism case in his district, prosecutors moved for pre-trial detention of the defendants, most of whom were charged with (and ultimately pled guilty to) providing material support to al Qaeda. It was expected that the defendants would oppose the motion. What followed was not expected, however. Because the law does not allow presumptive pre-trial detention in terrorism cases, prosecutors had to participate and prevail in a nearly three-week hearing on the issue of detention, and were forced to disclose a substantial amount of their evidence against the defendants prematurely, at a time when the investigation was still ongoing. Moreover, the presiding magistrate judge did in fact authorize the release of one defendant, who, it was later learned, had lied to the FBI about the fact that he had met with Osama bin Laden in Afghanistan.

The Lackawanna Six case illustrates the real-life problems the absence of presumptive pre-trial detention has posed to law enforcement. But this shortcoming in the law has also enabled terrorists to flee from justice altogether. For example, a Hezbollah supporter was charged long ago with providing material support to that terrorist organization. Following his release on bail, he fled the country.

The suspect described above eventually was recaptured by the United States 6 years after his escape. During that time, he was not a participant in a terrorist attack against the United States—but he could have been.

Jonathan Turley also commented on section 413 in his testimony at the Terrorism Subcommittee hearing on TFTA. He stated:

[Section 413] would create a presumption against bail for accused terrorists. Under this amendment, such a presumption could be rebutted by the accused, but the court would begin with a presumption that the accused represents a risk of flight or danger to society. This has been opposed by various groups, who point to the various terrorist cases where charges were dismissed or rejected, including the recent Detroit scandal where prosecutorial abuse was strongly condemned by the Court. I do not share the opposition to this provision because I believe that, while there have been abuses in the investigation and prosecution of terrorism cases, the proposed change sought by the Justice Department is neither unconstitutional nor unreasonable.

* * * * *

This proposal would not impose a categorical denial of bail but a presumption against bail in terrorism cases. Congress has a clearly reasonable basis for distinguishing terrorism from other crimes in such a presumption. In my view, this would be clearly constitutional.

While I have been critical of the policies of Attorney General John Ashcroft, I do not share the view of some of my colleagues in the civil liberties community in opposition to this change. There is currently a presumption against pretrial release for a variety of crimes in 18 U.S.C. § 3142(e), including major drug crimes. It seems quite bizarre to have such a presumption in drug cases but not terrorism cases.

Use of FISA in immigration proceedings: The 9/11 Commission Report

recommends that the United States ''combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.'' The report also states that ''[t]he challenge for national security in an age of terrorism is to prevent the very few people who may pose overwhelming risks from entering or remaining in the United States undetected.''

Section 419 of my amendment is designed to allow the federal government to more readily employ intelligence information to keep suspected terrorists out of the United States. The Foreign Intelligence Surveillance Act requires the government to provide notice when information obtained through FISA is used in any federal proceeding. In 1996, Congress created an exception to this requirement for alien-terrorist removal proceedings. This section would extend this exception to all immigration proceedings—the government would be able to use FISA information to deny an alien a particular immigration benefit, to bar his reentry, or to detain him on immigration charges, all without revealing that the information was obtained through FISA. Such authority would be useful because in many instances, notice that information was obtained through FISA would disclose to the alien that he or his associates have been the target of a FISA investigation—a disclosure that effectively would compromise an ongoing investigation.

Professor Turley addressed this provision in his testimony before the Terrorism Subcommittee on the TFTA:

This provision would change the current system in which the government must notify parties in an immigration case that it is using information obtained through FISA. . . .

Section [419] was criticized recently by the American Immigration Lawyers Association (AILA) group as ''constitutionally dubious.'' Despite my respect for AILA and its work, I must disagree with the suggestion that this provision might be found unconstitutional. The government is allowed to use secret evidence in such proceedings and the only change here is the identification of the source of such secret information. . . . This provision would, in my view, pass constitutional muster.

. . . [T]he true legal change produced by Section [419] is marginal. There are good-faith reasons for the government's reluctance to acknowledge an on-going FISA investigation. While I oppose FISA generally, this does not appear an unreasonable request from the Justice Department.

Other provisions: lifetime post-release supervision, obstruction of justice, denial of benefits. In his testimony on TFTA before the Terrorism Subcommittee, Professor Turley also had the following to say about these provisions of TFTA:

[Section 414] This provision would make terrorists eligible for lifetime post-release supervision. Under the current law, certain individuals convicted of terrorist crimes are not eligible for lifetime post-release supervision because the underlying offense did not create a foreseeable risk of death or serious injury. The Justice Department has objected to the current language of 18 U.S.C. §3583 as too restrictive since there are many individuals who knowingly support terrorist activities, but do so through less overtly violent means, such as computer-related crimes. The purpose is only to make such individuals eligible for lifetime supervision. This proposal seems facially reasonable in light of the sophisticated web of supporting co-conspirators working with groups like Al-Qaeda.

[Section 417] This provision increases the penalties for obstruction of justice in terrorism cases. The Justice Department believes that the increase from 5 to 10 years in terrorism cases is needed to show the added severity of such misconduct in this context. For the purpose of full disclosure, I have represented defendants charged under false statement provisions like 18 U.S.C. §1001 and I have been a critic of the abusive use of false statement charges by the Justice Department in non-terrorist cases. However, seeking higher penalties for obstruction in the area of terrorism is not an unreasonable demand and certainly would not raise any immediate constitutional problems.

[Section 421] This provision would deny federal benefits to convicted terrorists. The denial of such benefits is currently allowed under the Controlled Substances Act and makes obvious sense given the nature of these crimes.

In conclusion, I would simply remind my colleagues that every provision of TFTA has been fully explored in congressional committee hearings—the individual provisions of the bill have been the subject of nine separate hearings—and every provision of TFTA has the full support of the Department of Justice. These provisions address obvious and in some cases glaring gaps in our nation's antiterrorism safety net. We cannot allow these problems to continue to go unaddressed.

I urge my colleagues to support the amendment.

Mr. President, this is a controversial amendment. It is sometimes called the Tools for Terrorism Act. There are 20 specific provisions of this amendment. Some of them are very uncontroversial, some have become controversial. What I am proposing to do by laying this amendment down is begin a dialog with members of both the majority and the minority to see which of them we can agree to be adopted.

This was the most efficient way to do that rather than independently offering each one seriatim. But it is my intention to work out a unanimous consent agreement with both sides that would result in as much of this amendment as possible, from my perspective, but in any event, as much as we can agree upon, being agreed to without any further debate or votes if they are not necessary.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I very much appreciate the cooperation of the Senator from Arizona. We would be happy to work with him on the three amendments that he has laid down.

I do want to debate further the other amendment, his first amendment on privacy and civil liberties oversight. That is a key amendment, and I do want to engage on that. However, I know that Senator STEVENS is under a tight timeframe for this afternoon. I would be willing to delay my response to the debate of the two Senators on my side of the aisle until after Senator STEVENS has had an opportunity to lay down his amendments.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. Mr. President, I join Senator COLLINS in thanking Senator KYL and Senator CHAMBLISS for offering the amendments. I thank Senator KYL particularly for the spirit in which he offered—and some of the amendments we will be able to reach agreement on—the last amendment—the so-called tools for terrorists?

Mr. KYL. Yes.

Mr. LIEBERMAN. Tools to fight terrorism, as I would call it. As you said, parts of it are very controversial. As an individual Senator, probably a lot of it I would support, but I particularly appreciate the Senator's conclusion here because neither the Senator from Arizona nor I want to come into a situation where we are getting this bill's fate swept up in controversial amendments.

I look forward to working with the Senator and members of both caucuses to pick out the parts that there is general agreement on, and I believe there will be a good number of those, and make the bill stronger and then get it moving to adoption. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska

Mr. STEVENS. Mr. President, I have a series of requests for cosponsors of amendments that I have introduced. I ask unanimous consent that they be printed in the RECORD.

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

AMENDMENTS NOS. 3826, 3827, 3829 AND 3840, EN BLOC

Mr. STEVENS. Mr. President, I call up the four amendments at the desk. I ask unanimous consent that each of them be read and then set aside so we can go through calling up the four of them, and then I will make some comments about them. They are amendments Nos. 3826, 3827, 3829 and 3840.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself, Mr. WARNER, and Mr. INOUYE, proposes an amendment numbered 3826.

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 3827.

The Senator from Alaska [Mr. STEVENS], for himself, Mr. WARNER, and Mr. INOUYE, proposes an amendment numbered 3829.

The Senator from Alaska [Mr. STEVENS], for himself, Mr. WARNER, Mr. INOUYE, and Mr. BURNS, proposes an amendment numbered 3840.

The amendments are as follows:

AMENDMENT NO. 3826

(Purpose: To modify the duties of the Director of the National Counterterrorism Center as the principal advisor to the President on counterterrorism matters)

On page 84, beginning on line 8, strike ''joint operations'' and insert ''strategic planning''.

AMENDMENT NO. 3827

(Purpose: To strike section 206, relating to information sharing)

On page 130, strike line 20 and all that follows through page 153, line 2.

AMENDMENT NO. 3829

(Purpose: To amend the effective date provision)

On page 212, strike lines 3 through 6, and insert the following:

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect one year after the date of the enactment of this Act, except that—

(1) subsections (a) and (b) of section 102 (relating to the establishment of the position of National Intelligence Director) shall take effect 90 days after the date of the enactment of this Act, and the President shall prescribe the duties of the position of National Intelligence Director that are to apply before subsections (d) and (e) of such section take effect;

(2) section 143 (relating to the establishment and operation of the National Counterterrorism Center) shall take effect 90 days after the date of the enactment of this Act, and the National Counterterrorism Center shall be operated without reference to its status under section 143(a) as an entity within the National Intelligence Authority until the National Intelligence Authority is established when section 101 takes effect;

(3) section 331 and the amendments made by such section shall take effect 90 days after the date of the enactment of this Act; and

(4) a provision of this Act shall take effect on any earlier date that the President specifies for such provision in an exercise of the authority provided in subsection (b).

AMENDMENT NO. 3840

(Purpose: To strike the fiscal and acquisition authorities of the National Intelligence Authority)

On page 109, strike line 4 and all that follows through page 113, line 3.

On page 113, line 4, strike ''**163.**'' and insert ''**162.**''.

On page 114, line 1, strike ''**164.**'' and insert ''**163.**''.

AMENDMENT NO. 3826

Mr. STEVENS. Mr. President, I will address the amendment first in order, amendment No. 3826. This is offered to clarify the duties and responsibilities of the Director of the National Counterterrorism Center. The bill currently states that the Director of the National Counterterrorism Center shall serve as the principal adviser to the President and the national intelligence director on joint operations related to counterterrorism.

This amendment strikes ''joint operations'' and inserts in lieu thereof ''strategic planning.'' The bill under consideration creates the National Counterterrorism Center to develop and unify strategy, to develop interagency terrorism plans, not to conduct joint operations.

I call attention to page 83, lines 3, 9, and 10, of the committee print.

In support of the bill under consideration, this amendment clarifies the role of the Director of the National Counterterrorism Center to support planning and not conduct operations.

It is the intent of this amendment to make it perfectly clear that the national counterterrorism director would have no control over the conduct of joint operations. Having the intelligence director to report directly to the President would be inappropriate. Furthermore, the Secretary of Defense is the principal adviser to the President on military operations. As currently drafted, the director of the National Counterterrorism Center shall serve as the principal adviser to the President on joint operations. This is very unclear. Does it include military operations? Our amendment eliminates that ambiguity by striking ''joint operation'' and inserting ''strategic planning,'' which would appear to be consistent with the amendment adopted by the committee in the markup to change the directorate of operations to directorate of planning within the National Counterterrorism Center. I would hope that the manager of the bill would give this amendment serious consideration because I think it clears up a defect in the bill as it is presently written.

AMENDMENT NO. 3829

Now I will address amendment No. 3829. This amendment would delay the implementation of the bill from 6 months to 1 year. I want to make it clear that this amendment would not delay the implementation of the office of the national intelligence director or the National Counterterrorism Center but gives the administration 6 more months to implement the many offices, councils, and changes in the intelligence community that the bill requires.

We are facing an election. We do not know what the outcome of the election is, but to put the burdens of this bill in the first 6 months on the administration, whether it is the existing one or a new one, is entirely inappropriate. The first 6 months of a new Congress and the new year of an administration go by very quickly, and I think there is just too much to do with regard to budget, presentation of State of the Union message, so many other things, to have this implementation done within 6 months.

I make this recommendation because many of the individuals I have spoken to in the intelligence community and those who appeared before our Appropriations Committee suggest that executing these changes should not be at an accelerated pace. Here are the important quotes from Dr. Kissinger.

What I say and what I have written should be read in conjunction with a joint statement that is being issued today by the following group of individuals: former Senator Boren, former Senator Bradley, former Secretary of Defense Carlucci, former Secretary of Defense William Cohen, former Director of the Central Intelligence Agency Robert Gates, former Under Secretary of Defense John Hamre, former Senator Gary Hart, myself, former Senator Sam Nunn, former Senator Warren Rudman, and former Secretary of State George Shultz.

It is obviously a bipartisan group, and we are concerned that the reforms of the magnitude that are being talked about and with the impact that they will have on the conduct of intelligence and on the national security machinery should not be rushed through in the last weeks of the congressional session in the middle of a Presidential election campaign. The consequences of this reform will inevitably produce months and maybe years of turmoil as the adjustments are made in the operating procedures of the national security apparatus and of the intelligence machinery. That is inherent to reform. But we should not have to explain in retrospect why it was so necessary to come to a conclusion in the middle of a Presidential election campaign. Whatever decisions are made this week, we will have to deal with the immediate terrorist challenge by the apparatus that now exists, as it has already been reformed in the light of the experience of September 11. So urgency should not trump substance.

From Dr. John Hamre, former Deputy Secretary of Defense:

Mr. Chairman, we are now very far along the road in this debate. Unfortunately, from my perspective, the shape of this debate has been driven more by political imperative than deep analysis of the challenges we face in this area. We do need intelligence reform, I believe. But I believe the debate to date, and the proposals before the Congress, are too narrowly constructed around one perceived failure of the intelligence community, and that is the failure to coordinate the activities of the components of the intelligence community.

Without this extra 6 months, I feel the administration would be hardpressed to meet the strict requirements, recommendations, and guidelines this bill imposes. It does not require a delay of 6 months; it just gives 6 more months. If they can do it in 2 months, fine, but why put a 6-month deadline when the study that is involved has a 6-month deadline? My amendment allows the President to move fast if he believes it is prudent but does not mandate a rush to finish.

I urge my colleagues to support this amendment which would only work to help the administration to execute this mission well.

AMENDMENT NO. 3827

The amendment strikes line 20 on page 130 of the bill and all text that follows to line 2 on page 153 which relates to creation of a huge information sharing network. The current occupant of the Chair will be very interested in this amendment.

I understand the need for this office to be created, and my amendment will create such an office. But, it would strike the specific requirements and guidelines that the national intelligence director would have to follow to establish a network for intelligence information sharing. My amendment would allow the intelligence community, and more importantly the national intelligence director, to be using the information to determine what type of network they need.

During our Committee hearings, Dr. Henry Kissinger made the following analysis:

Different components of the government have different missions and priorities that cause them to assign different levels of importance to protecting intelligence information. Good management requires that, when there are contradictions between using intelligence and protecting it, decisions are made by established procedure. Sharing should be optimized, not managed in detail. To attempt to prescribe all the circumstance in bureaucratic or legalistic language would involve so much detail and so many exceptions as to defeat its own purpose.

Also, sharing of this information will not be the ultimate panacea. ADM James Ellis, former Commander of U.S. Strategic Commander until a few months ago, made the following point:

We should be wary of homogenizing centralized processes that, albeit unintentionally, may suppress or filter differing views. Recent op-ed pieces have noted the inevitability of surprise in our past and offered as well that often a surprise is a result of deficient analysis, not collection or even sharing of data.

Also, from our intelligence reform hearings, Judge Richard Posner, from the 7th Circuit, Court of Appeals stated the following:

The Commission thinks the reason the bits of information that might have been assembled into a mosaic spelling 9/11 never came together in one place is that no one person was in charge of intelligence. That is not the reason. The reason, or rather, the reasons are, first, that the volume of information is so vast that even with the continued rapid advances in data processing it cannot be collected, stored, retrieved and analyzed in a single database or even network of linked databases. Second, legitimate security concerns limit the degree to which confidential information can safely be shared, especially given the ever-present threat of moles like the infamous Aldrich Ames. And third, the different intelligence services and the subunits of each service tend, because information is power, to hoard it. Efforts to centralize the intelligence function are likely to lengthen the time it takes for intelligence and analyses to reach the President, reduce diversity and competition in the gathering and analysis of intelligence data, limit the number of threats given serious consideration and deprive the president of a range of alternative interpretations of ambiguous and incomplete data—and intelligence data will usually be ambiguous and incomplete.

I point out that the administration's statement, so-called SAP which came from the administration, says:

the administration supports the strong information-sharing authorities granted to the NID in the bill. The administration is concerned that the extensive authorities and responsibilities granted the Office of Management and Budget to implement the information-sharing network are both outside of OMB's usual responsibilities and are inconsistent with the goal of ensuring an NID with effective authority to manage the intelligence community. These responsibilities should be granted to the NID in such a way as to remain consistent with section 892 of the Homeland Security Act of 2002.

The administration also believes that the detail in which the legislation prescribes the network is excessive. The network would be more likely to accomplish its beneficial goal if the bill simply provided the authority necessary for its establishment while leaving the details to be worked out and altered as the circumstances require.

I am also concerned with the very ambitious schedule that the bill delineates. In 90 days, just 3 months, the Director of OMB would be required to submit to the President and the Congress a description of the Network, establish a director of services and conduct a review of relevant current Federal agency capabilities; it would seem to me that we are setting the administration up to fail with such an unreasonable time frame.

I am also concerned about the cost. The bill estimates this could cost at least $50 million dollars. Where would the funds for this program come from? Also, how would they influence existing programs to coordinate these activities? Currently there are not any funds designated for these activities. Would they be requested from a supplemental or would they be taken from the intelligence community's very tight budget?

Also, I was hoping that the chairman and the ranking member could provide a clearer picture about the protection of civil liberties. I understand that the Privacy and Civil Liberties Boards will be included in discussions—but I worry about the extent to which—and I am quoting from the bill now:

private sector data, including information from owners and operators of critical infrastructure, is incorporated into the Network; and that the private sector is both providing and receiving information.

This is another czar. We already have an intelligence czar. Now this provision in this bill creates an information czar.

It ''requires that the national intelligence director is to set standards for information technology and communication.'' By the way, it does not say necessarily related to intelligence—across the entire executive branch, for every Cabinet Secretary and I presume for the FCC.

The NID would also develop an integrated information technology and communication network that ensures information sharing across the entire executive branch again for every Cabinet Secretary

and agency, as I understand it, in the Federal Government

and with the State and local governments and the private sector.

The scope of this is beyond comprehension. How can this group, now, created by the OMB, assure that privacy and civil liberties will be ensured when there is only one person at the helm, and that person is selected by the OMB?

Am I reading the bill wrong? I don't think so.

What purposes are to be gained from a governmentwide database that includes every part of the Government—Federal. State, local?

Are we dreaming up a new net? Is this a new Internet? Is this a government net? What is it and why should we give one person the authority to control communications in this manner in this bill?

It would create the largest technological surveillance system ever seen in the world. I repeat that: The largest technological surveillance system ever seen in the world. I think it should be given very thoughtful analysis.

We have to give NID time to establish what and how such information should be gathered, how it is to be analyzed, how it is to be stored, and how it is to be shared. That is to take place in 90 days. I hope the administration, the committee members and their staff take a look at this amendment. This provision is going to delay this bill, unless my amendment is adopted or some form of that. Again, I am ready to hear if we have misanalyzed this, but we have checked it with people who have been in the system a long time and they agree our reading is correct. I again refer the administration and the committee to amendment No. 2837. That is a significant amendment, in my opinion.

AMENDMENT NO. 3840

I turn my attention to amendment No. 3840. This is an amendment cosponsored by Senators WARNER, INOUYE, and the current occupant of the chair, Senator BURNS. It concerns the acquisition of major intelligence systems. The purpose of this amendment is to strike the provisions of the bill which transfer major decisionmaking authorities relating to acquisition of national security and defense systems to the national intelligence director.

My concern stems from a few items, based on the language in this bill. It is unclear to me and to us if the national intelligence director would be responsible for the creation of an entire new staff for the acquisition of major systems or if the Department of Defense shall have to transfer to the NID its personnel to provide the manpower, expertise, and staff for these acquisition functions. If that is the case, then how would the Department of Defense execute its own oversight of its own programs? And, if the national intelligence directorate were to have to use its own people until they can hire new people, the national director would have to fall back to utilizing the personnel of the existing agencies, the people Congress deemed in 2004 were the problem and not the solution.

Until it is clear to the Secretary of Defense whether the national intelligence director must create a bureaucracy or parallel structure, it is my recommendation that we continue the current structure which permits the Secretary of Defense the decision authority over these vital programs.

The NID should request what authority he needs. We should not give it all to him and then have the Secretary of Defense fight to get back some of the normal functions of the Department of Defense. The underlying bill leaves that determination now to NID to begin with.

The Secretary of Defense should continue to oversee the execution of acquisition programs within his Department, and the agencies related to defense, especially those combat support agencies such as the National Security Agency and the National Geospatial-Intelligence Agency.

The Congress recognized the fact that neither the National Security Agency nor the National Geospatial Agency currently possess capability to manage major acquisition programs by passing the fiscal year 2004 National Defense Authorization Act, Public Law 108–354, which transferred these very responsibilities to the Department of Defense. We, the Senate, just transferred these authorities and responsibilities to the Department of Defense. What led to this transfer of acquisition responsibility was a series of critical mistakes regarding the ability to obtain and manage the acquisition of major systems. Some of these mistakes wound up costing the taxpayers close to $1 billion. This is not something we should experiment with, especially with new, untested leadership or personnel.

I repeat, we just changed this this year. We moved it over to prevent the further loss of money and now the committee suggests it should be changed again and now put under a new director who has no experience and no background in acquisition at all.

The administration has taken a policy in that statement, indicating they believe the committee's provision relating to the NID's role in acquisition of major systems needs further study to ensure that the requirements of major consumers are met.

They understand this transfer is premature. It may be the Congress should reverse itself now and move this acquisition authority back to the NID. But let's let the NID get up and running. Let's find out whether we have confidence in that system before we take it away from the Department of Defense, when we just took it away from the Intelligence Committee because of the failures of the past.

Finally, the language currently in the bill would only cover the Department of Defense programs and not the programs in the National Intelligence Program, and that is where the problems lie.

I urge the Senate not to act in haste where such large amounts of funds are currently in play. They currently have a considerable amount of money we have already put up for these acquisitions. The Senate should not break a system that is now working well since this transfer earlier this year, nor put up obstacles to our obtaining major acquisition systems necessary for national security as quickly as possible.

Again, I urge members of the committee to take a look at that.

AMENDMENT NO. 3882

Mr. President, have I called up amendment No. 3882? If not, I do wish it to be called up at this time. I ask all other amendments be set aside and this be called up, amendment No. 3882.

The PRESIDING OFFICER. Without objection, the clerk will report amendment No. 3882.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 3882.

Mr. STEVENS. 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:

AMENDMENT NO. 3882

(Purpose: To propose an alternative section 141, relating to the Inspector General of the National Intelligence Authority)

On page 60, strike line 5 and all that follows through page 77, line 18, and insert the following:

SEC. 141. INSPECTOR GENERAL OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) OFFICE OF INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—There is within the National Intelligence Authority an Office of the Inspector General of the National Intelligence Authority.

(b) PURPOSE.—The purpose of the Office of the Inspector General of the National Intelligence Authority is to—

(1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independently investigations, inspections, and audits relating to—

(A) the programs and operations of the National Intelligence Authority;

(B) the relationships among the elements of the intelligence community within the National Intelligence Program; and

(C) the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community;

(2) recommend policies designed—

(A) to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and in such relationships; and

(B) to prevent and detect fraud and abuse in such programs, operations, and relationships;

(3) provide a means for keeping the National Intelligence Director fully and currently informed about—

(A) problems and deficiencies relating to the administration of such programs and operations, and to such relationships; and

(B) the necessity for, and the progress of, corrective actions; and

(4) in the manner prescribed by this section, ensure that the congressional intelligence committees are kept similarly informed of—

(A) significant problems and deficiencies relating to the administration of such programs and operations, and to such relationships; and

(B) the necessity for, and the progress of, corrective actions.

(c) INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—(1) There is an Inspector General of the National Intelligence Authority, who shall be the head of the Office of the Inspector General of the National Intelligence Authority, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Any individual nominated for appointment as Inspector General of the National Intelligence Authority shall have significant prior experience in the fields of intelligence and national security.

(d) DUTIES AND RESPONSIBILITIES.—(1) The Inspector General of the National Intelligence Authority shall have the duties and responsibilities set forth in applicable provisions of the Inspector General Act of 1978 (5 U.S.C. App.).

(2) In addition to the duties and responsibilities provided for in paragraph (1), the Inspector General shall—

(1) provide policy direction for, and plan, conduct, supervise, and coordinate independently, the investigations, inspections, and audits relating to the programs and operations of the National Intelligence Authority, the relationships among the elements of the intelligence community within the National Intelligence Program, and the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community to ensure they are conducted efficiently and in accordance with applicable law and regulations;

(2) keep the National Intelligence Director fully and currently informed concerning violations of law and regulations, violations of civil liberties and privacy, and fraud and other serious problems, abuses, and deficiencies that may occur in such programs and operations, and in such relationships, and to report the progress made in implementing corrective action;

(3) take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

(4) in the execution of the duties and responsibilities under this section, comply with generally accepted government auditing standards.

(e) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—(1) The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) by redesignating section 8J as section 8K; and

(B) by inserting after section 8I the following new section:

''SPECIAL PROVISIONS CONCERNING THE NATIONAL INTELLIGENCE AUTHORITY

''SEC. 8J. (a) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the National Intelligence Authority shall be under the authority, direction, and control of the National Intelligence Director with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning intelligence or counterintelligence matters the disclosure of which would constitute a serious threat to national security. With respect to such information, the Director may prohibit the Inspector General from initiating, carrying out, or completing any investigation, inspection, or audit if the Director determines that such prohibition is necessary to preserve the vital national security interests of the United States.

''(b) If the National Intelligence Director exercises the authority under subsection (a), the Director shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of such authority within seven days.

''(c) The National Intelligence Director shall advise the Inspector General of the National Intelligence Authority at the time a report under subsection (a) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such report.

''(d) The Inspector General of the National Intelligence Authority may submit to the congressional intelligence committees any comments on a report of which the Inspector General has notice under subsection (c) that the Inspector General considers appropriate.

''(e) In this section, the term 'congressional intelligence committees' means—

''(1) the Select Committee on Intelligence of the Senate; and

''(2) the Permanent Select Committee on Intelligence of the House of Representatives.''.

(2) Section 8H(a)(1)(A) of that Act is amended by inserting ''National Intelligence Authority,'' before ''Defense Intelligence Agency''.

(3) Section 11 of that Act is amended—

(1) in paragraph (1), by inserting ''the National Intelligence Director;'' after ''the Office of Personnel Management;''; and

(2) in paragraph (2), by inserting ''the National Intelligence Authority,'' after ''the Office of Personnel Management,''.

Mr. STEVENS. Mr. President, this is the final amendment I would call up now. Again, I apologize for the way it is brought forward. The time factors involved are very narrow, I know. I do want to say, parenthetically, again, one paper said I shouted at the chairman yesterday. I certainly hope I did not shout at the chairman of the committee. Having formerly been the chairman—and Senator LIEBERMAN also has been the chairman—I know the vast diversity of this committee and the difficulty we have had bringing this bill to the floor. I think they have done an extremely fine job under the circumstances we have. I don't know why we are being pressured as we are, but the decision has been made to get this bill out, and so we share the leadership position to accomplish that goal.

But I am worried, as I told the managers personally, that some of the in-depth study others of us have given to this bill is not being listened to. The problem will be not in having the bill passed; the problem will be in having the bill implemented if some of these amendments are not adopted. The timeframes in particular worry me greatly, the timeframes within this process. This is worse than establishing a new department, really. This is a control mechanism over a system that abhors control. It is hard to control. If we do it wrong, we are going to bust this system. We are going to destroy the morale. As I said the other day, it takes a minimum of 5 years to get an agent in the field, and it will take another 5 years before that agent can actively recruit people and deal with the nationals and really help control the national assets we need for our security. The people we have in the field right now really started out around 1994 or 1995. They are out there. If we disturb their morale so they decide to pursue other courses, positions, or other goals, this Government is going to be left literally exposed. All of these people are extremely capable people. I have never encountered the intelligence quotient in any other area in our Government that I have run into in the intelligence field. They are high-strung people. They are people whose morale is absolutely essential.

I urge the Senate to consider the morale of the people in the system now and those who will be coming into the system as we moved forward. Do not set timeframes such that it is designed for failure. Give them time. The system is working now. I have said that time and again. I don't think most people know how much change has occurred in the intelligence community since 9/11. It is working. The fact that we haven't had another 9/11 shows that it is working. I hope we will be careful.

I want to talk about this one amendment.

Mr. WARNER. Mr. President, will the Senator yield for 1 minute? I associate myself with his remarks about how we are going about this. We have made enormous progress since the 1991 operation in Iraq, as the Senator well knows, particularly in the tactical level and in military intelligence. I am hopeful that in this haste, we do not unintentionally go back from the progress we have made so far.

Mr. STEVENS. I thank the Senator. We made progress in a lot of areas outside of Iraq. I am in contact now with people in the Philippines. We have problems. We have problems in Indonesia. We have problems throughout the area. We have problems with all of these drugs from Afghanistan. This is a complex world. When we visited with the station chiefs throughout the world recently, they all said the same thing. Ours is a very difficult problem. It is hard to figure out our priorities right now. They are going to have to wait until NID gives them their priorities. How long must they wait?

My amendment suggests an alternative to the inspector general of the National Intelligence Authority as proposed in this bill.

This is amendment No. 3882.

Under the committee bill, the inspector general would have the authority to provide policy direction on interagency relationships without consulting with the department heads of the affected agencies.

I see you shaking your head. You had better read the bill if you disagree. I don't like to see that from staff, anyway. If you are going to shake your head, move.

I think this is a situation where we have been through the creation of inspectors general on the Governmental Affairs Committee. People ought to look at what is being done under this bill. This is the only inspector general I know that would have the authority and direction to provide policy direction on interagency relationships without consulting with the department heads of the affected agencies.

Here is an inspector general of the intelligence community from NID. He has the authority to interrogate people in other agencies to find out interagency relationships of his agency with these other agencies without consulting the heads of the other agencies. Nothing indicates they are even going to consult the inspectors general of those agencies.

There are inspectors general of every agency covered by this bill. That would give the inspector general of the NIA unprecedented authority over appointed officials of other independent agencies and departments. I don't know why the inspector general of the NIA should have unprecedented powers that no other inspector general has.

I raised this question before and I was told that was not the case. When I raised the question, I was told on the floor earlier that the inspector general has the same authority as the inspectors general. I challenged that. And this amendment would bring that bill back into the situation where I was told it was, and that is the inspectors general have the same authority as any other inspector general. They would still have the authority to audit programs and operations of the national intelligence authority. They shall have the authority to investigate interagency relationships if they wanted to among the elements of the intelligence community both within and outside the national intelligence program, but the inspector general of the National Intelligence Authority will not direct the policy of other independent agencies or any other agency. As a matter of fact, IGs should not direct anything. They should make findings and report their findings to the head of the agency.

My amendment is based on existing law that has proven successful in ensuring that the authority of inspectors general of the intelligence community does not infringe upon independent inspectors general of other agencies.

I urge the Senate to take a look at this. To have anyone authorized to investigate interagency relationships? How are you going to get along with your colleagues in the other group? Inspectors general should look for performance or for honesty and integrity, to examine the operations and report. But to report on interagency relationships involving other departments and agencies that are not under his control and are under the control of other inspectors general, that is really going too far. I will say this categorically: If that provision is not changed, I will vote against this bill. I have lived with inspectors general now too long, and that goes too far. I will not vote for this bill unless it is altered.

Ms. COLLINS. Mr. President, I know the Senator from Alaska is on a tight timeline this afternoon. I am not going to respond in depth to the amendments he put forward.

Let me say to the Senator from Alaska that on some of his amendments he has raised very valid concerns, and I would like the opportunity to work with him to try to resolve some of the issues. For example, some of the implementation date issues I believe we might be able to work through. The

clarifying language on the counterterrorism center parallels the changes we made in committee, and we may well be able to come up with something on that.

I appreciate the Senator's concerns and his desire to make sure that the language is clear and accurate throughout the bill. While obviously we have some fundamental disagreements on the underlying legislation, nevertheless I believe that some things in his amendments are beneficial in the bill, if we are able to resolve some language. I want to pledge to him my appreciation for his effort and my willingness to work with him on some of those issues.

Mr. STEVENS. Mr. President, I apologize, I do have to go. I want the RECORD to show my support for Senator BYRD's amendment No. 3845, which a few of us have endorsed. I hope we can negotiate some of that because that covers, as the distinguished senior Member of this body has said, the relationship that many of us have had with this process for a long time. I hope we will have a chance to work it out.

Mr. LIEBERMAN. I thank Senator from Alaska. I thank him for the promise he has made and for the suggestions he has offered. There are some matters on which we have big disagreements. There are others on which we clearly do not. We have made some suggestions today that we can work out over the weekend which will improve the bill.

Most of all, I want the Senator from Alaska to know that we always listen to him whether he shouts or not.

Mr. STEVENS. Shout doesn't count. Sometimes I am loud. I apologize.

Mr. LIEBERMAN. Have a good weekend.

Mr. STEVENS. Mr. President, if the Senator will yield, Senator BYRD and I have asked and urged all chairmen and ranking members of the appropriations subcommittees to start conferencing the substance of their bills with the House.

We need to resolve our differences now, before the recess next week, if possible. We have a short period of time when we come back. The continuing resolution will expire November 20.

I conferred with the chairman of the House Appropriations Committee, Chairman BILL YOUNG. He agrees that something needs to be done while we are gone. I don't know if it is possible, but I hope the Senate and House staff will do their best to work with the chairmen and ranking members of the subcommittees on their recommendations and make sure we have them available when we come back on November 16. There will be no time to do such preliminary conferencing when we get back.

At best, we will have 5 days to get something out of conference and resolve the issues and pass a conference report of some kind to deal with as many bills as we can handle. That is a tall order.

I thank my friend, Senator BYRD, ranking member, former chairman of our committee. We are working together with the objectives of trying to finish these bills this year. When the two chairmen retire from the House and the Senate Appropriations Committee, with us will go our staffs. If the next chairman of the House and Senate Appropriations Committee has to continue the work that we should accomplish this year, it is going to take months this time because the trained staff, the people who know the subject, will not be there. We move on to other subjects.

Congress must get these appropriations bills done this year.

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 3849

Ms. COLLINS. I call for the regular order with respect to the Corzine amendment numbered 3849.

The PRESIDING OFFICER. The amendment is pending.

AMENDMENT NO. 3946 TO AMENDMENT NO. 3849

(Purpose: To provide a complete substitute)

Ms. COLLINS. Mr. President, I send a second-degree amendment to the desk on behalf of Senator INHOFE.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine, [Ms. COLLINS], for Mr. INHOFE, proposes an amendment numbered 3946 to amendment No. 3849.

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

Ms. COLLINS. Mr. President, I ask unanimous consent that the pending amendments be set aside so that other amendments can be considered.

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

Ms. COLLINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I thank Senator COLLINS and Senator LIEBERMAN for their hard work on this bill.

I called one of my Democratic colleagues who has been around this body for a long time. I didn't know whether it was a good bill; he said he didn't either. It certainly has good intent. I certainly believe that improving our intelligence is of important national interest.

I want to be supportive of this bill, but I do think it is important that we keep an eye on it because we have learned in the past that bills with language that may sound good at the moment, may not be what is best for the country. We may find out that very language, that one sentence or what have you, can be the very language that undermines the ability of our intelligence community to be effective in protecting the interests of the United States.

I certainly believe we need to do everything we can to create an effective joint national intelligence effort. Unfortunately, I am afraid there are things in this bill that, indeed, may pervert the very purpose of the legislation; that will handicap the intelligence community rather than assist it.

The language would prevent the national intelligence director from having the very capabilities that allow unhindered and meaningful intelligence collection and analysis.

The bill establishes four new offices, additional new privacy and civil liberty officers within each agency, and it creates a new civil liberties board, all with management authority.

If this was the kind of language we could work with, I would be supportive, but I am afraid the way this language has been put together could create bottlenecks and could undermine our ability to be effective. If so, I have a problem with it. I certainly don't want to have a problem with a bill initiating such important reform, but I do.

September 11 did not happen because there was too little bureaucracy. It did not happen because the intelligence community needed more offices and boards, more monitoring personnel, more supervision and more second-guessing. In fact, the problems happened—many of them—because the intelligence community found it difficult to work through the maze of bureaucracies that already exist in what we have today.

Adding more to this bureaucracy only serves to exacerbate intelligence-gathering problems, not help them. Proliferation of government panels, boards, agencies, and ombudsman is not the answer.

There are six sections of the bill, including four offices, a board, and still more additional officers, all tasked with the same bureaucratic management responsibility: No, 1, section 126, officer for civil rights and civil liberties of the national intelligence authority; No. 2, section 127, privacy officer of the national intelligence authority; No. 3, under section 141, the inspector general of the national intelligence authority; No. 4, ombudsman of the national intelligence authority; No. 5, section 211, the privacy and civil liberties oversight board; and under section 212, the privacy and civil liberties officers.

That is quite a bit of bureaucracy, and I know the Presiding Officer is concerned.

We have four new offices added to the national intelligence authority, a board added to the Executive Office of the President, and additional officers added to the various offices within the intelligence agency, all virtually with

unrestrained management responsibilities.

I don't believe this is what the 9/11 Commission had in mind. In fact, the 9/11 Commission uses the words ''privacy'', ''civil rights'', and ''civil liberties'' 23 times in the 567-page document. We have marked with blue tabs the references to these terms. The Commission was concerned about it and wanted to make sure we had the right provisions to deal with it. They confronted that issue and dealt with it seriously, mentioning it 23 times.

How about the legislation before the Senate today? How about the legislation we now have under Collins-Lieberman? It has fewer pages, only 213. Yet it has 126 such references to the terms. Members can see the red marks I put on there. They are the marks that show references to these issues. The whole report is chock full of detail on this.

Of course, we know what our problems were with intelligence. We did not have enough linguists. We did not focus enough on human intelligence. We had too much bureaucracy because of the wall between CIA and FBI intelligence that was thought being shared around the world. Those are the real problems, not how much oversight we might create and make it even more difficult for our agents to function without fear that somebody will second-guess whatever they might do in areas of the world where their very lives could be at stake and, indeed, are at stake.

The legislation before the Senate mentions the terms six times as much as the 9/11 Commission. The 9/11 Commission recommended a single—one—civil liberties oversight board. It certainly did not recommend numerous layers of bureaucracy throughout the intelligence community. These, I am afraid, would undermine or distract our ability to protect our security in this country.

I think one of our fears with regard to intelligence and national security, as Senator KYL has so eloquently mentioned, is timidity, a concern that our agents around the world, who are working to find those people who want to do us harm before they actually do us harm, identify them, could make a mistake resulting in criticism and punishment. Timidity can be damaging to our work. That is the problem I am concerned about. We need to create a system that promotes courage, innovation, and creativity on the part of our agents.

When somebody does something new and creative, occasionally things do not turn out the way you would like. Certainly in the intelligence field, that is so. I used to be a Federal prosecutor. We would use undercover operatives, and we would do things, such as put recorders on them. All kinds of things could happen, and sometimes things went astray. But, you want to encourage agents to try to do the kinds of operations that work, not want them in fear that somebody is looking over their shoulder every time they do something that might blow up and then their career would be ruined. I feel strongly about this issue. I hope we can focus on it more clearly.

If you look through the offices that would be created in this bill, they are duplicative and have many problems with them. For example, the officer for civil rights and civil liberties, in section 126 of the bill, is tasked with assisting the national intelligence director in ensuring that the protection of civil rights and civil liberties is appropriately incorporated in the policies and procedures under the national intelligence authority.

This official is also given oversight authority and can ''review, investigate, and assess complaints and other information indicating possible abuses of civil rights and civil liberties'' in the administration of and relationships among the National Intelligence Authority, unless the NIA's Inspector General determines that the IG can better review the matter—basically, they have to take over the matter.

Here the officer is given powerful authority to conduct as many investigations into any area of the NIA as the officer chooses, all without having to get the agreement or approval of anyone. Only the IG, the Inspector General, could intervene, and then basically only to take over the investigation. So this section provides for a powerful officer who could prove to be disruptive to the goals of the NID.

While protecting and defending civil liberties is an important factor for our Nation, granting an officer free, unfettered, and unchecked authority to tie up intelligence operations and analysis through investigations is not the goal of intelligence reform, or the intention of the 9/11 Commission.

The Inspector General, is checked ''from initiating, carrying out, or completing any investigation, inspection, or audit if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.'' The Inspector General is constrained by the national security interests of the United States, but not this new officer for Civil Rights and Liberties. That officer should be subject to similar constraints.

Secondly, there is a privacy officer provided for in section 127. That officer is tasked with coordinating with the officer of civil rights and civil responsibilities to ensure that privacy policies are upheld. This person will conduct ''privacy impact assessments when appropriate or as required by law.'' Once again, the bill grants unrestrained access and power to a person to check up on the national intelligence director and the intelligence community. This superfluous management could be a handicap to our intelligence-gathering activities. It is something I am concerned about.

We also have in this bill an Inspector General for the NIA, an ombudsman, the board mentioned in section 211, and the officers mentioned in section 212. The Inspectors General of the CIA and the Defense Department are made duplicative officers to the IG in Section 141. And it can have the effect of not only creating excess officers and expense, but also creating competition and undermining the initiative of the agency in question.

We want to be sure that civil rights and civil liberties are protected. We want to be sure that American citizens are protected, not only their civil liberties, which we absolutely intend to protect, but we want to protect their lives, their health, and their families from people who do not share our values and have the goal to destroy us.

While I believe we can defend America with a high degree of fidelity to the liberties and freedoms we cherish, I also know one of the biggest problems we have had is the timidity and the restraint that people feel who work in our intelligence community.

For example, I see Senator KYL is the Presiding Officer. He, for years, recognized the terrible impact on the intelligence-gathering process that resulted from legislation—well intentioned—that constrained the ability of CIA agents and other agents of this United States from dealing with a person who had a criminal record. These agents were prohibited from dealing with these disreputable people. Well, many of the people who have the critical, life or death information may have a reputation or conviction in some country around the world of doing bad things. We know, after hearings, and after much debate on this floor, Senator KYL eventually got that reversed. But it was late. We lost a lot.

The real problem with that constraint on intelligence gathering was that agents themselves said: ''OK, they don't want me to do this. I am not going to do it. I am not going to take a chance. I am not going to deal with somebody who might have a criminal record because it may come back to haunt me, and they will haul me before the Church Committee or some other such committee and embarrass me and my family and undermine my career and record in this agency. I am not going to take a chance.''

That is what we know happened. It was not a good thing. We fixed that, just as we fixed the wall between the FBI and CIA. These laws sounded like a good idea at the time to those who passed them. And, I am not saying people were not sincere about it. But the net result was, we created timidity, pockets of information, and stovepipes, that did not share information between one another. As a result, there may have been a possibility, had that not been in existence, that we could have protected better the lives and fortunes of American citizens.

I thank Chairman COLLINS and Senator LIEBERMAN and the people who have worked on this. I believe we do need to strengthen our intelligence

community, but there are a number of things in this legislation that cause me great concern. We need to be realistic, to work in a way that protects the great traditions of freedom and liberty in this country, but also protects the lives and safety of our families and our communities.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I appreciate the Senators from Arizona and Alabama bringing forward their amendments today, but I have a number of concerns about them.

The proposed amendments strike an officer for civil rights and civil liberties and a privacy officer for the new national intelligence authority. The amendment also strikes provisions requiring that a senior official be designated in certain departments and agencies who would be responsible for privacy and civil liberties issues. And finally, the amendment changes the authority of the privacy and civil liberties oversight board by removing its subpoena authority. I particularly want to address that last point, because I think there is a misunderstanding on the extent of the subpoena authority and to whom it applies.

In the wake of the terrorist attacks on September 11, during his joint address to the Congress, the President called on all Americans to:

> . . . uphold the values of America and remember why so many have come here. We're in a fight for our principles and our first responsibility is to live by them.

Similarly, the 9/11 Commission concluded in its report that we must find ways of reconciling security with liberty since the success of one helps protect the other. The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home.

The Commission went on to state that while protecting our homeland, Americans should be mindful of the threats to vital personal and civil liberties. The shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life.

In response to these concerns, the Commission recommended that at this time of increased and consolidated Government authority, there should be a board within the executive branch to oversee adherence to the guidelines the Commission recommends and the commitment of our Government to protect civil liberties.

To respond to these recommendations and the concerns that we fight this war against terrorism without sacrificing the values that define us as Americans, S. 2845 establishes the two officers, one for civil rights and one for privacy, to assist the national intelligence director on issues that may affect civil liberties and privacy. These officials are modeled after those created by Congress for the Department of Homeland Security. There is both a civil liberties officer and a privacy officer. The creation of similar officers within the Department of Homeland Security is a good example of how these officers can assist the Department in considering relevant issues without compromising our efforts to protect the homeland.

The Department has found that having those two officials has helped them strike the right balance as they pursue new policies. The Department has found that the work of these officials at DHS has not hindered its implementation of programs and activities but, rather, has improved them. By providing advice and counsel as policies and programs are being developed, they help the Department address privacy and civil liberties concerns at the front end and minimize the possibility of having to respond to real problems after a policy or program that didn't take into account privacy implications or civil liberties implications has already been put into place.

I would have been more sympathetic to the amendment if the Senators had made the argument that perhaps in this much smaller unit those two officials could be combined into one position so that we could have one official for both privacy and civil liberties. That might be a possible compromise. It is one about which I would have to talk with the other sponsor of the bill. But that might be a way to respond to a concern that I know the Presiding Officer has about excessive positions or bureaucracies.

I want to speak particularly to the subpoena issue. The subpoena power provided in this bill to the civil liberties board applies only to persons other than departments, agencies, and elements of the executive branch. I want to repeat that. While the bill does authorize the board to have access to executive department and agency materials and personnel, where appropriate, there is no subpoena power. There is no enforcement mechanism in the bill. That leaves compliance in the hands of the relevant department or agency head. The subpoena power only applies to outside entities, not to Government agencies or officials.

So the provisions of this subpoena authority do not allow the scenario brought forth by some of the sponsors of this amendment in which they raise the specter of the civil liberties board being able to subpoena a CIA case officer. That is not allowed under this bill.

Moreover, the subpoena authority in this bill is narrower, much more circumscribed, than the authority that is given to inspectors general throughout the Federal Government who do have the ability to subpoena documents and individuals for information within the Federal Government. I wanted to correct that misunderstanding on the subpoena power.

We have a responsibility, as we continue to improve our capacity to fight terrorism—the all-important battle that our Nation faces—to uphold and protect the very liberties and freedom on which this Nation was founded and for which we are fighting today. We need to make sure that as we strengthen the power of Government, we do not infringe upon the civil liberties and the privacy of law-abiding Americans. I believe the provisions in this bill help to strike the right balance.

Let me complete my remarks on this issue by pointing out that the 9/11 Commission has endorsed the board created by this bill. I know the Senator from Alabama has suggested a different version of a civil liberties board.

In testimony before the House Government Reform Committee, two of our commissioners—and I would note it was bipartisan; it was a Republican commissioner and a Democratic commissioner—said:

> A civil liberties board of the kind we recommend can be found in the Collins-Lieberman bill in the Senate.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend, the Chair, and the Senator from Alabama for introducing these amendments.

I understand their concerns very well. They have raised some reasonable and direct questions. I want to attempt at this moment to try to reassure them, which is to say there is nothing in this underlying bill intended to, or that I can see, restrict the capacity or the mobility of people working in our intelligence community to operate to protect us. The board that is created is intended to, as I see it, do a broad review of policies before policies are ordered or issued, to consult with the policymakers, and afterward to do a review. I don't think there is any basis for feeling that if somebody felt their liberties were violated by a particular action of a particular agency or intelligence person or officer, they could appeal to this board. So the intent is not to second-guess or create a place where there can be second-guessing of individual cases, individual decisions. Therefore, to avoid what the Senator from Alabama and the Senator from Arizona, I think quite understandably, worry about, a climate of risk aversion—you don't want that to happen—you want these people to be aggressive, fearless, and not risk averse.

As a matter of fact, all of the discussion we have had in another context about the bill, which is about encouraging competitive analyses and the so-called red team concepts—and we set up an audit review section to do quality control—it is all about making sure people don't get in a group-think or that they get risk averse, but that they be bold and opinionated and they come up with the best result for us.

The other thing I want to say about the privacy and civil liberties offices is that, as Senator COLLINS said, we took this model—and I urge us to think

about this—from the Department of Homeland Security, which has both privacy and civil liberties advisers in it. I will give you a couple of quotes as to early reports. Asa Hutchinson, Under Secretary for Border and Transportation Security at the Department of Homeland Security, testified at the Judiciary Committee last month talking about the agency's existing privacy officer. He said:

Here in DHS, we can show the effectiveness of a strong privacy officer at the agency level and the success that is achievable only through direct integration of privacy protections in operational work. Privacy is an issue that stretches across the entire government and as we continue to look at government-wide approaches to privacy, it is also important to see how productive agency-level privacy protections are.

That sounds to me like a good, healthy dialog has been created in which privacy is being considered but not standing in the way of that Department protecting our security.

I will also quote from Secretary Ridge, who noted the important role of the same office in providing what he called ''proactive legal and policy advice to senior leadership in the Department and its components.'' He cited the office's success in working with the Border and Transportation Security Directorate ''to craft positive policy changes in response to the issues raised by the DOJ Inspector General's report on the 9/11 immigration detainees,'' and in ''develop[ing] policies to establish DHS as a model employer for people with disabilities . . . ''—it goes on about helping to implement President Bush's recent Executive order.

I have great respect for my colleagues and friends who introduced this amendment. I understand their concern and I hope in some small way through what I have said I can alleviate the concerns they have.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

AMENDMENTS NOS. 3928, 3873, 3871, AND 3870, EN BLOC

Mr. SESSIONS. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendments Nos. 3928, 3873, 3871, 3870, and ask for their immediate consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes amendments numbered 3928, 3873, 3871, and 3870, en bloc.

Mr. SESSIONS. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The amendments are as follows:

AMENDMENT NO. 3928

(Purpose: To require aliens to make an oath prior to receiving a nonimmigrant visa)

At the end add the following new title:

TITLE IV—OTHER MATTERS

SEC. 401. VISA REQUIREMENTS.

Section 222 of the Immigration and Nationality Act (22 U.S.C. 1202) is amended by adding at the end the following new subsection:

''(h) Every alien applying for a nonimmigrant visa shall, prior to obtaining such visa, swear or affirm an oath stating that—

''(1) while in the United States, the alien shall, adhere to the laws and to the Constitution of the United States;

''(2) while in the United States, the alien will not attempt to develop information for the purpose of threatening the national security of the United States or to bring harm to any citizen of the United States;

''(3) the alien is not associated with a terrorist organization;

''(4) the alien has not and will not receive any funds or other support to visit the United States from a terrorist organization;

''(5) all documents submitted to support the alien's application are valid and contain truthful information;

''(6) while in the United States, the alien will inform the appropriate authorities if the alien is approached or contacted by a member of a terrorist organization; and

''(7) the alien understands that the alien's visa shall be revoked and the alien shall be removed from the United States if the alien is found—

''(A) to have acted in a manner that is inconsistent with this oath; or

''(B) provided fraudulent information in order to obtain a visa.''.

AMENDMENT NO. 3873

(Purpose: To protect railroad carriers and mass transportation from terrorism)

At the end of the bill, insert the following:

SEC. ___. RAILROAD CARRIERS AND MASS TRANSPORTATION PROTECTION ACT OF 2004.

(a) SHORT TITLE.—This section may be cited as the ''Railroad Carriers and Mass Transportation Protection Act of 2004''.

(b) IN GENERAL.—Chapter 97 of title 18, United States Code, is amended by striking sections 1992 through 1993 and inserting the following:

''§ 1992. Terrorist attacks and other violence against railroad carriers, passenger vessels, and against mass transportation systems on land, on water, or through the air

''(a) GENERAL PROHIBITIONS.—Whoever, in a circumstance described in subsection (c), knowingly—

''(1) wrecks, derails, sets fire to, or disables railroad on-track equipment, a passenger vessel, or a mass transportation vehicle;

''(2) with intent to endanger the safety of any passenger or employee of a railroad carrier, passenger vessel, or mass transportation provider, or with a reckless disregard for the safety of human life, and without previously obtaining the permission of the railroad carrier, mass transportation provider, or owner of the passenger vessel—

''(A) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment, a passenger vessel, or a mass transportation vehicle; or

''(B) releases a hazardous material or a biological agent or toxin on or near the property of a railroad carrier, owner of a passenger vessel, or mass transportation provider;

''(3) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

''(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, without previously obtaining the permission of the railroad carrier, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck railroad on-track equipment;

''(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle, without previously obtaining the permission of the mass transportation provider, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider; or

''(C) structure, supply, or facility used in the operation of, or in the support of the operation of, a passenger vessel, without previously obtaining the permission of the owner of the passenger vessel, and with intent to, or knowing or having reason to know that such activity would likely disable or wreck a passenger vessel;

''(4) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, without authorization from the rail carrier or mass transportation provider;

''(5) with intent to endanger the safety of any passenger or employee of a railroad carrier, owner of a passenger vessel, or mass transportation provider or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, or maintaining railroad on-track equipment, a passenger vessel, or a mass transportation vehicle;

''(6) engages in conduct, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on the property of a railroad carrier, owner of a passenger vessel, or mass transportation provider that is used for railroad or mass transportation purposes;

''(7) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt that was made, is being made, or is to be made, to engage in a violation of this subsection; or

''(8) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (7);

shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) in a circumstance in which—

''(1) the railroad on-track equipment, passenger vessel, or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

''(2) the railroad on-track equipment, passenger vessel, or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense;

''(3) the railroad on-track equipment, passenger vessel, or mass transportation vehicle was carrying a hazardous material at the time of the offense that—

''(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations; and

''(B) is identified as class number 3, 4, 5, 6.1, or 8 and packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations; or

''(4) the offense results in the death of any person;
shall be fined under this title or imprisoned for any term of years or life, or both. In the case of a violation described in paragraph (2), the term of imprisonment shall be not less than 30 years; and, in the case of a violation described in paragraph (4), the offender shall be fined under this title and imprisoned for life and be subject to the death penalty.

''(c) CRIMES AGAINST PUBLIC SAFETY OFFICER.—Whoever commits an offense under subsection (a) that results in death or serious bodily injury to a public safety officer while the public safety officer was engaged in the performance of official duties, or on account of the public safety officer's performance of official duties, shall be imprisoned for a term of not less than 20 years and, if death results, shall be imprisoned for life and be subject to the death penalty.

''(d) CIRCUMSTANCES REQUIRED FOR OFFENSE.—A circumstance referred to in subsection (a) is any of the following:

''(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, owner of a passenger vessel, or railroad carrier engaged in or affecting interstate or foreign commerce.

''(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

''(e) NONAPPLICABILITY.—Subsection (a) does not apply to the conduct with respect to a destructive substance or destructive device that is also classified under chapter 51 of title 49 as a hazardous material in commerce if the conduct—

''(1) complies with chapter 51 of title 49 and regulations, exemptions, approvals, and orders issued under that chapter, or

''(2) constitutes a violation, other than a criminal violation, of chapter 51 of title 49 or a regulation or order issued under that chapter.

''(f) DEFINITIONS.—In this section—

''(1) the term 'biological agent' has the meaning given to that term in section 178(1);

''(2) the term 'dangerous weapon' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of less than 2½ inches in length and a box cutter;

''(3) the term 'destructive device' has the meaning given to that term in section 921(a)(4);

''(4) the term 'destructive substance' means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term 'radioactive device' does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

''(5) the term 'hazardous material' has the meaning given to that term in chapter 51 of title 49;

''(6) the term 'high-level radioactive waste' has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

''(7) the term 'mass transportation' has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes school bus, charter, and sightseeing transportation;

''(8) the term 'on-track equipment' means a carriage or other contrivance that runs on rails or electromagnetic guideways;

''(9) the term 'public safety officer' has the meaning given such term in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b);

''(10) the term 'railroad on-track equipment' means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

''(11) the term 'railroad' has the meaning given to that term in chapter 201 of title 49;

''(12) the term 'railroad carrier' has the meaning given to that term in chapter 201 of title 49;

''(13) the term 'serious bodily injury' has the meaning given to that term in section 1365;

''(14) the term 'spent nuclear fuel' has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

''(15) the term 'State' has the meaning given to that term in section 2266;

''(16) the term 'toxin' has the meaning given to that term in section 178(2);

''(17) the term 'vehicle' means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air; and

''(18) the term 'passenger vessel' has the meaning given that term in section 2101(22) of title 46, United States Code, and includes a small passenger vessel, as that term is defined under section 2101(35) of that title.''.

(c) CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 97 of title 18, United States Code, is amended—

(A) by striking ''**RAILROADS**'' in the chapter heading and inserting ''**RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR**'';

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

''1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.''.

(2) TABLE OF CHAPTERS.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

''97. Railroad carriers and mass transportation systems on land, on water, or through the air ..... 1991''.

(3) CONFORMING AMENDMENTS.—Title 18, United States Code, is amended—

(A) in section 2332b(g)(5)(B)(i), by striking ''1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems),'' and inserting ''1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),'';

(B) in section 2339A, by striking ''1993,''; and

(C) in section 2516(1)(c) by striking ''1992 (relating to wrecking trains),'' and inserting ''1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),''.

AMENDMENT NO. 3871

(Purpose: To provide for enhanced Federal, State, and local enforcement of the immigration laws)

On page 213, after line 12, add the following:

TITLE IV—IMMIGRATION ENFORCEMENT

SEC. 401. FEDERAL AFFIRMATION OF STATE AND LOCAL ASSISTANCE IN ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

(a) IN GENERAL.—Notwithstanding any other provision of law and reaffirming the existing inherent authority of States, law enforcement personnel of a State or a political subdivision of a State have the inherent authority of a sovereign entity to investigate, apprehend, arrest, detain, or transfer to Federal custody aliens in the United States (including the transportation of such aliens across State lines to detention centers), in the course of carrying out their routine duties for the purpose of assisting in the enforcement of the immigration laws of the United States.

(b) CONSTRUCTION.—Nothing in this section shall be construed to require law enforcement officers of a State or political subdivision of a State to—

(1) report the identity of victims of, or witnesses to, a criminal offense to the Secretary of Homeland Security; or

(2) arrest such victims or witnesses for immigration violations.

SEC. 402. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) PROVISION OF INFORMATION TO NCIC.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, and continually thereafter, the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall provide the National Crime Information Center of the Department of Justice with such information as the Under Secretary may have on—

(A) all aliens against whom a final order of removal has been issued;

(B) all aliens who have signed a voluntary departure agreement; and

(C) all aliens whose visas have been revoked.

(2) CIRCUMSTANCES.—The information described in paragraph (1) shall be provided to the National Crime Information Center regardless of whether—

(A) the alien received notice of a final order of removal; or

(B) the alien has already been removed.

(b) INCLUSION OF INFORMATION IN NCIC DATABASE.—Section 534(a) of title 28, United States Code, is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

''(4) acquire, collect, classify, and preserve records of violations of the immigration laws of the United States; and''.

(c) PERMISSION TO DEPART VOLUNTARILY.—Section 240B(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1229c(a)(2)(A)) is amended by striking ''120'' and inserting ''30''.

SEC. 403. FEDERAL CUSTODY OF ILLEGAL ALIENS APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

(a) IN GENERAL.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1231) is amended by adding at the end the following:

''(j) CUSTODY OF ILLEGAL ALIENS.—

''(1) IN GENERAL.—If the chief executive officer of a State or, if appropriate, a political subdivision of the State, exercising authority with respect to the apprehension of an illegal alien submits a request to the Secretary of Homeland Security that the alien be taken into Federal custody, the Secretary of Homeland Security—

''(A) shall—

''(i) not later than 48 hours after the conclusion of the State charging process or dismissal process, or if no State charging or dismissal process is required, not later than 48 hours after the illegal alien is apprehended, take the illegal alien into the custody of the Federal Government and incarcerate the alien; or

''(ii) request that the relevant State or local law enforcement agency temporarily incarcerate or transport the illegal alien for transfer to Federal custody; and

''(B) shall designate at least 1 Federal, State, or local prison or jail, or a private contracted prison or detention facility, within each State as the central facility for that State to transfer custody of the criminal or illegal alien to the Secretary of Homeland Security.

''(2) REIMBURSEMENT.—

''(A) IN GENERAL.—The Department of Homeland Security shall reimburse States and political subdivisions for all reasonable expenses, as determined by the Secretary of Homeland Security, incurred by a State or political subdivision in the incarceration and transportation of an illegal alien as described in subparagraphs (A) and (B) of paragraph (1).

''(B) COST COMPUTATION.—Compensation provided for costs incurred under subparagraphs (A) and (B) of paragraph (1) shall be the sum of—

''(i)(I) the average cost of incarceration of a prisoner per day in the relevant State, as determined by the chief executive officer of a State, or, as appropriate, a political subdivision of the State; multiplied by

''(II) the number of days that the alien was in the custody of the State or political subdivision; and

''(ii) the cost of transporting the criminal or illegal alien—

''(I) from the point of apprehension to the place of detention; and

''(II) if the place of detention and place of custody are different, to the custody transfer point.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (2).''.

AMENDMENT NO. 3870

(Purpose: To make information sharing permanent under the USA PATRIOT ACT)

At the appropriate place, insert the following:

SEC. ___. PERMANENT INFORMATION SHARING.

Section 224 of the USA PATRIOT ACT (Public Law 107–56) is amended by—

(1) striking ''203(a), 203(c)'' and inserting ''203''; and

(2) inserting ''218,'' after ''216,''.

Mr. SESSIONS. Mr. President, these amendments deal with important matters in a number of areas. I will provide more information at the appropriate time about them. I just note that one thing we certainly need to do—I believe there is uniform agreement on this—is that the provisions that deal with the wall between the FBI and CIA, basically, between domestic enforcement and foreign intelligence—that has been identified as one of the primary reasons we did not coordinate our intelligence effectively prior to 9/11—that that wall that we have temporarily removed be removed permanently. That is one of the provisions I suggested in these amendments that have been called up. We will go into more detail as time goes by.

I thank Senator LIEBERMAN for his thoughtful comments, as always. He is very astute in the history and development of intelligence and his interest in the security of the United States is not surpassed in this body. I would say that my concerns are numerous about the legislation in general. Sometimes it is like when you are getting ready to buy that new car or new house and you get the pen in your hand and angst arises because you are afraid to sign it. But when you do sign it, everything goes along fine and it wasn't nearly as bad as you thought. That could be what we are dealing with.

Also, maybe there are some reasons to be concerned about buying this house or this automobile; perhaps because it is a lemon. Maybe we don't have the money. Maybe this isn't the best way to do it. I am concerned about governmental bureaucracy and the real possibility that we will make it worse.

As a Federal prosecutor for 12 years, I worked to try to coordinate all the Federal agencies involved—for example, in drug law enforcement. In Mobile, AL, under the Treasury Department, you had the IRS and they would do financial investigations of drug dealers. The Customs officers were at the ports and they did investigations of drug dealers who shipped in through the ports. They had a lot of abilities—remarkable ability, really, to help in those instances. You had the Department of Alcohol, Tobacco, and Firearms, also part of Treasury. And ATF often got involved in drug cases, although it didn't have direct jurisdiction in such cases. On the other side, you had the Department of Justice, and you had the U.S. Marshal Service and, of course, the U.S. Attorney, FBI, DEA, and Immigration Service. Then, before it went into Homeland Security, the Coast Guard, a part of the Transportation Department, which patrolled the Gulf of Mexico and frequently stopped boats loaded with drugs. They were all independent agencies. I would try to get them to work together and at times it was very difficult, but we made great progress.

How did it happen that we made progress in cooperation during the years that I was an U.S. Attorney? I have thought about it. There was not any major reorganization. In fact, there was no real reorganization of the Government. Ronald Reagan declared a war on drugs, and, we had a war on drugs. It raised the attention level of every Government agency. He said that we will cooperate with one another. The Attorney General of the United States, William French Smith, hired a young, aggressive, talented prosecutor and made him third in command at the Department of Justice, the associate Attorney General, and he directed him to work with the U.S. attorneys and every agency in the Government to make sure they cooperated and worked together to deal with the war on drugs. That young prosecutor, Mr. President, is well known today. It was Rudy Giuliani. He made things happen. People knew he spoke for the President and we made tremendous progress.

If there was a discussion about how to investigate a major drug gang, and the FBI didn't cooperate with Customs or the DEA was unhappy with Customs or the FBI, the U.S. attorney could just call up somebody in Washington and say: Look, these guys are fighting over bureaucratic turf. We have a case we need to prosecute, and we need to work together. It worked. The turf battles would end. Things happened in an extraordinary way. There was no new bureaucracy established. That is all I am saying. No new entity was established to create coopertion.

A number of years later, in order to obtain more coordination, Congress, after much debating and ballyhoo, created a drug czar, and that was supposed to coordinate these activities.

The drug czar has some interesting powers, and the model of the drug czar might not be bad for this entity, for the challenge of improving our intelligence capabilities. The drug czar has the responsibility to get with every department and agency of the Government and to write, with their input, a plan to fight drugs in America. He does that. They all sign off on it.

Then the drug czar, before the budget request of each one of these agencies goes to the Office of Management and Budget, approves their budget, and if he concludes they are not funding or not asking for funds to carry out the agreement they signed, then he has the ability to object and block that budget. It eventually goes to the President if there is a dispute. But the drug czar has quite a bit of power. It is a small office compared to the other major departments and agencies in the Government. We have to be careful with this legislation that we are not creating another layer of Government.

Mr. McLaughlin, who was the Acting Director of the CIA before Mr. GOSS was confirmed, appeared before Senator WARNER's Armed Services Committee. Chairman WARNER asked him a number of questions. One of the things he said that was important to me as a person who has been involved in dealing with Government agencies and knows how people pass the buck and how they cover their own problems—all tendencies that are natural inclinations of governmental entities—I have been there; I know it—Mr. McLaughlin said: I think we need to ask ourselves a couple of questions. One is, who will brief the President of the United States on matters involving intelligence? Who is going to tell the President whether there are weapons of mass destruction in Iraq? Right now, it is clear the CIA Director does that.

The second question is, who will be responsible if it is wrong? Today that is clear still. It is the CIA Director.

We do not have the same CIA Director that we did. He told the President it was a slam dunk that WMD products were in Iraq, and apparently they were not, or at least we have not found them, which is more accurate. And he no longer holds the office.

If we come up with a new organization that organization leaves it less clear who is responsible for stating the intelligence situation of the United States to the President, and we make it even less clear who can be held responsible, then we have not made progress.

My colleagues say the national intelligence director can do it. He could. Where does he get his information? Is he going to interview the CIA and then repeat what the CIA told him to the President? And then if he is wrong, will he say: It wasn't my fault; the CIA told me that? We get into a little bit of a mess here.

The idea of having an enhanced unification of intelligence-gathering capability and dissemination of intelligence appeals to me very much. I remain somewhat confused how we should do it, however. I just do not know what is the best way to do it.

I so much appreciate the time Senator COLLINS and Senator LIEBERMAN have put into this legislation. I know it has many good things in it, but I am just not sure how much progress we will have made when we do this because we know what the real problems are: we did not have enough linguists; we had legal walls between intelligence agencies. We have taken those down. At the President's leadership and insistence, we are bringing in more human intelligence, a critical need, and we are bringing in more foreign language speakers at an incredible new rate. We are moving more aggressively than we ever have against al-Qaida. Three-fourths of them have been captured or killed. We have made progress all over the world. We have enhanced our partnerships with not only our agencies within the United States but around the world. It is not appropriate to mention or talk about all the cooperation we are getting from agencies of other nations, foreign intelligence agencies. They are sharing with us much better. A lot of things are going well.

I think it is fair to say the military feels the intensity of the leadership from the President on down has forced, such as Rudy Giuliani and President Reagan did on the war on drugs, a lot better cooperation between intelligence entities today. The DOD people know the people in the CIA. CIA and the FBI are meeting daily with Homeland Security. And those people know each other's names. They have had months of partnerships working together. The system is working, and I am afraid if we reorganize all this, it may look good on paper, but the personal relationships that have caused confidence to be built up may be undermined. If that were to happen, in the middle of a war, we would not be proud of ourselves.

I thank the Chair. Those are thoughts and concerns I have. I love this country. I know we are in a dangerous period. This struggle against terrorism will continue for decades—for decades it will continue—and the key to victory is intelligence and identifying these dangerous cells before they attack us.

I think we are discussing an important issue. I thank the people who have worked so hard on it. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to compliment our distinguished colleague. He has spent a lot of time on the Senate Armed Services Committee. He is very familiar with these processes and the people.

We can write the laws as best we can, but it comes down very often to those human relationships to which he referred and this particular framework in the NID. Because the NID cannot, as the distinguished chairman has said, create a whole new department, he has to rely on subordinates who have direct line of authority over a lot of troops, but he is not going to have troops in the sense the Senator from Alabama and I have used them for the departments and agencies of the Government as they function today. He is a step removed.

Those personal relationships with his immediate subordinates and advisers are going to be very important. I thank the Senator.

Mr. President, at this time, if it is convenient to the managers, I will proceed on an amendment.

AMENDMENT NO. 3876

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

The PRESIDING OFFICER. Without objection, the pending amendments are set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself, Mr. STEVENS, and Mr. INOUYE, proposes an amendment numbered 3876.

The amendment is as follows:

(Purpose: To preserve certain authorities and accountability in the implementation of intelligence reform)

On page 213, insert after line 8, the following:

SEC. 352. PRESERVATION OF AUTHORITY AND ACCOUNTABILITY.

Nothing in this Act, or the amendments made by this Act, shall be construed to impair and otherwise affect the authority of—

(1) the Director of the Office of Management and Budget; or

(2) the principal officers of the executive departments as heads of their respective departments, including, but not limited to—

(A) the authority of the Secretary of State under section 199 of the Revised Statutes (22 U.S.C. 2651) and the State Department Basic Authorities Act;

(B) the authority of the Secretary of Energy under title II of the Department of Energy Organization Act (42 U.S.C. 7131);

(C) the authority of the Secretary of Homeland Security under section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a));

(D) the authority of the Secretary of Defense under sections 113(b) and 162(b) of title 10, United States Code;

(E) the authority of the Secretary of the Treasury under section 301(b) of title 31, United States Code;

(F) the authority of the Attorney General under section 503 of title 28, United States Code; and

(G) the authority of the heads of executive departments under section 301 of title 5, United States Code.

On page 213, line 9, strike ''**352.**'' and insert ''**353.**''.

Mr. WARNER. Mr. President, I refer to the September 28, 2004 Statement of Administration Policy in which the administration expresses their support for the very able work of the distinguished chairman and ranking member on S. 2845.

However, equally important are a number of items that were referred to in this document called the SAP. I draw the attention of my colleagues to the last paragraph. I shall read the first sentence:

The Administration notes that the Committee bill did not include Section 6 (''Preservation of Authority and Accountability'') of the Administration's proposal.

I ask unanimous consent that the entire paragraph from the SAP be printed in its entirety in the RECORD.

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

The Administration notes that the Committee bill did not include Section 6 (''Preservation of Authority and Accountability'') of the Administration's proposal; the Administration supports inclusion of this provision in the Senate bill. The legislation should also recognize that its provisions would be executed to the extent consistent with the constitutional authority of the President: to conduct the foreign affairs of the United States; to withhold information the disclosure of which could impair the foreign relations, the national security, deliberative processes of the Executive, or the performance of the Executive's constitutional duties; to recommended for congressional consideration such measures as the President may judge necessary or expedient; and to supervise the unitary executive.

Mr. WARNER. Immediately following it, I ask unanimous consent that section 6 to which it refers, drawn from the policy statement forwarded by the administration in its efforts to give the very helpful advice and counsel to the Senate—and I presume the House, as we are working on this matter—be printed in the RECORD.

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

SEC. 6. PRESERVATION OF AUTHORITY AND ACCOUNTABILITY.

Nothing in this Act or amendments made by this Act shall be construed to impair or otherwise affect the authority of: (1) the Director of the Office of Management and Budget; or (2) the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under section 199 of the Revised Statutes (22 U.S.C. 2651), Title II of the Department of Energy Organization Act (42 U.S.C. 7131), the State Department Basic Authorities Act of 1956, as amended, section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)), and sections 301 of title 5, 113(b) and 162(b) of title 10, 503 of title 28, and 301(b) of title 31, United States Code.

Mr. WARNER. The amendment which the Senator has drawn here, myself,

Senator STEVENS, and Senator INOUYE as cosponsors, we have lifted essentially the language of that into the amendment such that the administration's request in that SAP document is met.

In support for the action I am taking, I refer as follows: The President made two basic decisions with respect to intelligence reform designed to implement the 9/11 Commission recommendations. First, he decided that the national intelligence director should have ''full budget authority'' with respect to the national foreign intelligence program. The bill before us contains a number of provisions intended to carry out that decision.

Second, the President made an equally important decision that the heads of the departments should continue to be in charge of and therefore continue to be accountable for the performance of their respective departments.

This amendment I have submitted would carry out the second Presidential goal.

The language of the amendment, as I said, is virtually identical to the language of the administration's proposal which I have now placed into the RECORD.

The amendment makes clear that the principal officers of the executive departments will remain as the organic statutes, for their departments currently provide the heads of their departments with authority over and responsibility for those departments.

The amendment also preserves the existing authority of the Director of Office of Management and Budget with respect to the budget administrative and legislative proposals.

With this amendment, the bill would provide for a strong national intelligence director and would also ensure that the heads of executive departments remain accountable for the performance of their departments, including the intelligence elements of those departments.

It seems to me that is essential. Again, we come back to the basic concept, we are not creating a new department of government. Consequently, the NID has to rely on the department agency heads to perform their services, and to do that they have to be put into a position of accountability. That accountability is essential to the smooth operation of the goals of this particular legislation.

A strong national intelligence director and accountable heads of departments are compatible concepts. As part of their responsibility, heads of the departments will be accountable for ensuring faithful implementation by their departments' intelligence elements of the guidance and tasking issued by the national intelligence director under such authority as may be granted by the final draft of this legislation.

The President gave a very clear example that illustrates the need for this amendment when he discussed the intelligence reform on August 2, 2004. He said: The national intelligence director will work with the respective agencies to set priorities, but let me make it also very clear that when it comes to operations, the chain of command will be intact. When the Defense Department is conducting operations to secure the homeland, there will be nothing between the Secretary of Defense and me.

Consequently, I would add one other thought. The chief of staff thereafter echoed on the quote: We do not want to do anything that would undermine the chain of command and the responsibilities that go with the Department of Defense, Director of the Central Intelligence Agency, the Secretary of the Homeland Security Department, and other intelligence agencies, the Attorney General, for example.

I am certain they meant to include the Department of State.

This amendment carries out that objective.

I would be interested in the comments of the chairman and the ranking member, and I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, taking a look at this amendment, I say to my friend from Virginia it may be that we can work this one out together because I believe we have a common interest, which is by the changes we are making in law, creating the national intelligence director, not to otherwise alter the authority of various department heads—State, Energy, Homeland Security, Defense, et cetera, that the Senator has enumerated—but clearly the underlying Collins-Lieberman bill does alter some of those authorities by creating authority in the national intelligence director.

Except for that, I do not think there is any intention to otherwise undercut. So the language is a bit worrisome on first look, which is that nothing in the act shall be construed to impair or otherwise affect the authority of these officers.

Well, we do want to affect the authority to the extent stated in the Collins-Lieberman proposal, but not otherwise.

Mr. WARNER. Mr. President, I would have to reflect on that because it seems to me the Senator is trying to have it both ways, and I am sure my distinguished colleague would not be seeking that goal.

Mr. LIEBERMAN. No, I am not. But if I might say briefly—

Mr. WARNER. Let me repeat that. I did not have the microphone on.

Mr. LIEBERMAN. That should be on the record.

Mr. WARNER. I say that the distinguished Senator is trying to have it both ways.

Mr. LIEBERMAN. I want my denial of that intention to also be in the RECORD.

Mr. WARNER. Fine.

So what is the proposal of the Senator?

Mr. LIEBERMAN. Well, I think we should reason together a little bit on this. In other words, I am concerned, in the broadest reading of this, this amendment could be read to undercut everything else the bill does. I do not believe the Senator would intend to do that.

Mr. WARNER. That is not my intention.

Mr. LIEBERMAN. Right. But only, if I understand it, to protect the authority of the departments except as we specifically alter them in the bill.

So, for instance, the national intelligence director will have certain budget authorities or transfer authorities under the bill, as it exists, which do alter the authority of some of those constituent departments—State, Energy, Homeland Security, Defense, et cetera. I would not want this language to obviate the impact of all of those changes.

Mr. WARNER. Yes, but let's work around it and be very mindful of the President's language. He said: Equally important that the heads of the departments should continue to be in charge of and therefore continue to be accountable for the performance of their respective departments.

Mr. LIEBERMAN. Right.

Mr. WARNER. Then I read his direct quotation, which seems to me we have translated into this amendment in good faith.

Mr. LIEBERMAN. If I might, I hear what the Senator is saying, and this goes back to the debate we have had off and on over the 5 days in which we have been on the bill. Let us take the Department of Defense, because that is a concern we have that has been expressed. This was something we argued with regard to the so-called Specter amendment which would have created line authority in the national intelligence director over all the constituent intelligence agencies, including those in the Department of Defense. Senator COLLINS and I argued we do not want to go that far. We want the Secretary of Defense to maintain line authority over NSA, NRA and NGA. On the other hand, we do want—and we may argue this on another amendment—the national intelligence director to be able to have the budget authority we give him and have the transfer authority, et cetera.

Maybe we are heading in the same direction. I think this is one we can try to work out.

Mr. WARNER. Obviously you tried to express the good intentions of trying to work this out. Certainly I desire to do so. But we must be very careful, under the extraordinary circumstances under which this very important piece of legislation is being put together. I am sure lots of work will take place over the weekend, but Monday and Tuesday are days in which certainly this bill, in its construction, is likely to be completed. We have to be careful that we do not create gaps in it, where a department head now can say: Look, the

bill took that authority away. If a problem occurred, that is the NID's problem. And then the NID says: Oh, no, that is your problem on your account. We just cannot have finger-pointing when it comes to issues as important as our Nation's intelligence.

Mr. LIEBERMAN. Just a final word: We have been quite focused and specific when we have granted authority to the national intelligence director. So, therefore, all the other authorities the law gives to the various department heads enumerated in the Senator's amendment would not be affected. I see that language—perhaps we should consult with the representatives of the White House, too, to find out what their particular concern was.

We have amended the authority, or even affected the authority of the existing departments, along the margins here.

Mr. WARNER. I think that consultation would be helpful. I have undertaken it in connection with this amendment. I believe my views are consistent with theirs. But an awful lot of work has gone on now. It may be that there is some refinement that would further strengthen this.

For the moment, if the distinguished chairman wishes to speak, I will be happy to hear it and we will just put the amendment to one side.

I would like to come back this afternoon to modify an amendment that is at the desk, again, to clarify that in hopes that it comes near to what your goals are.

I will be back. If the chairman could advise me, is there going to be further time?

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I believe we will be here for another hour, approximately—until 5 o'clock.

Mr. WARNER. That should be adequate time.

Ms. COLLINS. Before the Senator from Virginia leaves, I think we have the same goal in this amendment. But I think to make sure that this amendment is interpreted as I believe we would all have it interpreted, we need to add language at the beginning that says something like: Except as specifically set forth in this act, nothing herein or amendments made by this amendment shall be construed to impair or otherwise affect the authority of it.

That way it would be clear that in this provision we are not affecting the other authorities of these departments, but neither are we wiping out what this legislation has done.

Mr. WARNER. Mr. President, I fully understand the import of the language you are quoting. But that is almost putting a blessing on everything that is written into the bill. I am not sure I am prepared as yet to say that. That is going to require a little study on the part of both of us because I think the effect of your language is, don't touch the bill, but what the bill leaves they are accountable for. That has to be thought through.

Ms. COLLINS. Mr. President, obviously we do want to preserve what is in the bill. That is why we are doing the bill.

Mr. WARNER. I understand that.

Ms. COLLINS. If the intent of the Senator is to override the provisions of the bill, then that would be a problem.

Mr. WARNER. We are trying to make certain just that undefined but all important concept of accountability remains. As you possibly take portions of the responsibility of department heads away and give it to the NID, I want to make sure, if something goes wrong, who is accountable.

We will work. I understand your perspective, but I am not prepared, as yet, to accept that amendment. So we will lay this aside. I thank you.

Mr. President, I am prepared to go ahead with the other matter, if I might.

AMENDMENT NO. 3877, AS MODIFIED

Mr. President, I would like at this time to send to the desk a modification to amendment No. 3877 by the Senator from Virginia.

The PRESIDING OFFICER. The amendment is pending and is so modified.

The amendment (No. 3877), as modified, is as follows:

On page 40, strike line 13 and all that follows through page 42, line 25, and insert the following:

(a) NATIONAL INTELLIGENCE DIRECTOR RECOMMENDATION OR CONCURRENCE IN CERTAIN APPOINTMENTS.—With respect to any position as head of an agency or organization within the intelligence community—

(1) if the appointment to such position is made by the President, any recommendation to the President to nominate or appoint an individual to such position shall be accompanied by the recommendation of the National Intelligence Director with respect to the nomination or appointment of such individual to such position; and

(2) if the appointment to such position is made by the head of the department containing such agency or organization, the Director of the Central Intelligence Agency, or a subordinate official of such department or of the Central Intelligence Agency, no individual may be appointed to such position without the concurrence of the National Intelligence Director.

(b) PRESIDENTIAL AUTHORITY.—This section, and the amendments made by this section, shall apply to the fullest extent consistent with the authority of the President under the Constitution relating to nomination, appointment, and supervision of the unitary executive branch.

(c) CONFORMING AMENDMENTS.—(1) Section 201 of title 10, United States Code, is amended—

(A) by striking subsection (a);

(B) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively;

(C) by striking ''Director of Central Intelligence'' each place it appears and inserting ''National Intelligence Director'';

(D) in subsection (a), as so redesignated—

(i) in paragraph (1)—

(I) by striking ''seek'' and inserting ''obtain''; and

(II) by striking the second sentence; and

(ii) in paragraph (2)—

(I) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(II) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) The Director of the Defense Intelligence Agency.''; and

(E) in paragraph (2) of subsection (b), as so redesignated—

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(ii) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) The Director of the Defense Intelligence Agency.''.

(2)(A) The heading of such section is amended by striking ''**consultation and**''.

(B) The table of sections at the beginning of subchapter II of chapter 8 of such title is amended in the item relating to section 201 by striking ''consultation and''.

Mr. WARNER. Mr. President, earlier today I engaged in a colloquy and submitted the original form of this amendment. Subsequent thereto, I had the opportunity to consult with a number of individuals. It is my desire now, basically, to revise my amendment to comport with section 106 of the President's proposal, which he forwarded to the Senate. That is entitled:

Appointment of officials responsible for intelligence-related activities. Requirement for National Intelligence Director concurrence with respect to certain appointments, with respect to any positions that heads of agency or organization within the intelligence community. . . .

My concern, what I am trying to achieve by this succession of amendments, is to provide some uniformity in the process designating and selecting the heads of the various—for example, the combat commands, as I refer to them, that was the subject of my earlier amendment.

I find that the President's approach in the proposal that he forwarded to the Senate is preferable to my earlier attempt at this. It reads:

If the appointment to such position is made by the President, any recommendation to the President to nominate or appoint an individual to such position shall be accompanied by the recommendation of the National Intelligence Director with respect to the [proposed] nomination or appointment. . . .

(2) if the appointment to such position is made by the head of the department containing agency or organization [within the intelligence community or] the Director of the Central Intelligence Agency, or a subordinate official of such department or of the Central Intelligence Agency, no individual shall be appointed to such position without the concurrence of the National Intelligence Director.

I believe that, then, confirms there is a certain degree of uniformity and preservation of accountability for the people selected in the various heads of the departments and the agencies.

With that, I will yield the floor for such comment as may be forthcoming from the chairman and ranking member.

The PRESIDING OFFICER. The Senator from Maine.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I see the distinguished chairman of the Armed Services Committee. I know he was present when Mr. McLaughlin was Acting Director of the CIA and he testified, along with a number of distinguished Government officials, including the Secretary of Defense. He made clear one point. I mentioned it earlier. He said that in any reorganization, it needs to be clear where the responsibility and accountability lies.

He asked the question, who will brief the President, and, in fact, who will be held accountable if he briefs the President incorrectly?

I see Senator WARNER, and I would like to ask the bill managers, also, but my question to Senator WARNER is, from his study of the bill, which is more extensive than mine, does he think there is any clear answer in this legislation that is moving forward to the question asked by Mr. McLaughlin? Who briefs the President and who is responsible if he is in error?

Mr. WARNER. I thank my colleague for the question because earlier today I had a number of discussions related to this question. I talked to some of the White House people. I think I have spoken in the Chamber a number of times about my concern as to the future posture, standing, of this Director of Central Intelligence. He has this magnificent organization, albeit there was a problem on the weapons of mass destruction, but in terms of numbers it was a relatively minute number of people, although the problem is very serious. The organization is all over the world and they are taking risks, extraordinary in some instances, comparable to the men and women in uniform of the Armed Forces as they pursue their assignments.

It is my concern in this reorganization where the director of intelligence now becomes a subordinate, and a decision is to be made by the President, in this legislation it appears to be the case he will not be at the moment on the council—are you familiar with the council of the Secretaries of State and Defense, Attorney General, Homeland Security, and others, who will be sort of a close-knit group and NID will be chairman of the council, and from time to time they will be advising the President, presumably, through the NID? I have tried to work it out so if, say, the Secretary of Defense has views at variance with the NID at the time the NID briefs the President on the NID's position, he is obligated by law to brief the President on the divergent position of one or more members of his council. That is a pending amendment. It is a joint intelligence communities council.

Anyway, I felt that perhaps somehow the Director of the CIA should be involved. There is concern about protocol. It is all Cabinet. He, as such, does not have Cabinet rank. I am working on a proposition to see whether we can preserve the integrity that has been accumulated over many years of the Director of the CIA. It is not only in the United States; he is known all over the world as a person who holds that position. I don't want to see any loss in the eyes of the counterparts worldwide as this new structure, presumably, will be enacted into law.

The answer to the question is, of course, the President can have whomever he wishes to brief him, but I presume NID is specifically someone that the President asked the Congress to create by law. He would be the principal briefer. From time to time he would be accompanied perhaps by others and I think more often than not by the Director of the CIA.

Given that it is the President's absolute authority to decide who he wants to brief him, I don't think it should be written into law, but I am seeking some clarification to the very question the Senator has asked because it is of concern to me. As soon as I gain further information, I will be happy to share it with my colleague.

Mr. SESSIONS. I thank Senator WARNER for his comments. It does appear if we pass this new procedure, we ought to understand who Congress contemplates would be the person most likely to brief the President.

I think I understand what the Senator was saying. It is so important that if the main person is going to be the NID, the national intelligence director who does the briefing, it seems to me he or she would have to reach down and take about half of the CIA up to be on his staff to help him prepare the brief or else he will be regurgitating what came from some other agency and then we have created a weakened CIA, a muddled NID, and who is responsible. Is that a problem?

Mr. WARNER. Mr. President, the Senator is quite correct. We do not want to do that.

In good faith, the chairman of the committee has repeatedly said, in this Chamber, we are not creating a whole new department. I heard the ranking member today mention that. Therefore, we would not in any way be trying to create that number of persons.

Nevertheless, who knows them better—that is, the individual members of the CIA—than the Director who has daily hands-on authority, who travels and visits in posts all over the world, who is basically responsible for their promotion, demotion, and accountability.

Mr. SESSIONS. The chairman is correct.

For the people following this debate, they need to know that the CIA has operations in virtually every country in the world and it is from those agents that much of our intelligence comes. It comes through the CIA Director and he has always briefed the President as the Director of Central Intelligence.

Mr. WARNER. And that fact is known, if I can say to my colleague, that fact is known the world over, that the man who directs the CIA and who is visiting in Great Britain or Pakistan, that is the man who will go home and look the President of the United States straight in the eye. That carries a lot of weight as it results in the creation of personal relationships between the director of our intelligence and his counterparts worldwide.

I do not think it is a subject that can be legislated in law. It is something of legislative history being created in the Senate now and is a vital part of the future interpretation and implementation of this new law.

I thank the Senator.

Mr. SESSIONS. Would the distinguished managers of the bill, for whom I have so much respect, care to comment on the question that Acting Director McLaughlin posed at our hearing when he said one thing we had to be clear about was who would be responsible for stating the intelligence position of the United States to the President and who would be held accountable if they were wrong. It is a question we need to be clear about.

Mr. LIEBERMAN. It is a very important question and I am prepared to give a very short and direct answer which I believe is reflected in the bill, which is that the national intelligence director is explicitly intended to be the principal intelligence advisor to the President of the United States. There should be no doubt about that.

It will give him two roles: One as administrator of the intelligence community—but then, why? To be the principal intelligence adviser to the No. 1 user of intelligence, not the only one but the President of the United States as Commander in Chief.

Mr. SESSIONS. I say to Senator LIEBERMAN, I would share your view that the President is the No. 1 customer of the intelligence that comes forward. I think he may well need a No. 1 adviser to help assimilate all of it.

But let's go back now. Would it normally be that the person who walks in there and looks the President in the eye—should not that person have line, control, and supervision over the people who provided him with that intelligence? And isn't that the only way he can be held responsible for the brief and the opinions to the President, if he obtained the information from sources that are accountable to him or her?

Whereas, in this case, if the NID does it, and the information is coming up through the vast CIA network around the world, as it most often would be—not always but most often would be—then, isn't that a weakness in our concept here?

Mr. LIEBERMAN. Mr. President, through you, of course, I say to the Senator, I do not believe it is a weakness. Here is the judgment we had to make: The Director of Central Intelligence now is effectively the principal intelligence adviser to the President,

but as we have seen and stated over and over again in this debate, the record shows that the DCI has not had enough authority to coordinate the activities of the intelligence community to create the kind of unity of effort that we need to make sure we do not have a repeat, at worst, of September 11 and, in a very different way, of what everybody acknowledges was an imperfect functioning of the intelligence community prior to the Iraq war, as documented by the Senate Intelligence Committee.

So we want to give him some authority, but we specifically rejected what would effectively be a department of intelligence, taking NSA, NRO, and NGA out of Defense, taking the counterterrorism out of the FBI, Information Analysis out of the Department of Homeland Security, et cetera, et cetera, making it a department.

We are trying to strike a balance where you preserve the autonomy of those departments' line control, but you put them all together, particularly in that counterterrorism center, so that the director is hearing from all of them and is accountable, and then reports on these intelligence matters to the President.

Incidentally, the Collins-Lieberman proposal does make clear—I will just read from section 111:

The National Intelligence Director shall be responsible for providing national intelligence—

(1) to the President;

(2) to the heads of other departments and agencies of the executive branch;

Also consumers, the Defense Department the largest of the consumers.

(3) to the Chairman of the Joint Chiefs of Staff and senior military commanders;

(4) to the Senate and House of Representatives and the committees thereof;

(5) [and] to such other persons or entities as the President shall direct.

So there is no question there is a balance. But I think it is a balance that serves the Nation's interests well. We have power in the NID, but we have not broken the line of authority in other Departments.

As I believe I heard Senator WARNER say at one point, I presume the national intelligence director, in the exercise of his responsibilities, will, from time to time, bring with him to advise the President the head of the CIA, the head of the Homeland Security Department, whoever seems relevant on a given occasion, but to say that for intelligence there is one person ultimately accountable, and that is the national intelligence director.

Mr. SESSIONS. Well, I thank the Senator. I can see the concept there. I guess in my own mind I am having difficulty understanding why we should not raise up the CIA director and make sure that entity exercises the power that it is supposed to have now. It is supposed to be the central intelligence center for the country. And just to add another office above it has a number of problems. As Senator WARNER said, there are agents all over the world gathering intelligence who are responsible directly to the CIA Director, who then is supposed to directly advise the President.

So I hope we will think about this problem as we go forward. If we follow the model of the drug czar, I might feel a bit more comfortable. The drug czar, the Office of National Drug Control Policy Director, as I said earlier, requires that there be a written plan for combating illegal drugs in the United States. Every agency involved in that effort has to participate in drafting the plan and sign off on the plan when it is agreed to. And then that Director, the drug czar, reviews their budget request to make sure they are funding the effort in a coordinated way and has the ear of the President if an entity or agency refuses to cooperate.

But organizations have integrity. I do not think, in general, anyone would argue that it is healthy governmental philosophy or political science to have a person the head of an agency and then people under him and parts of his budget be decided directly by somebody else, and department heads have to be approved or appointed by other people. It classically undermines responsibility. In America we have one Government. And within the Government there are three parts. There are the executive, judicial, and legislative branches. But we have created so many fiefdoms in the executive branch it is hard to hold the President accountable. The FBI Director has—what?—a 12-year term? So it is hard to hold the President responsible for these entities. And then you have Secretaries who do not even have control over the people within their agencies.

So those are some of my concerns. As I said, it may be that nervousness before you sign the deed on the new house. But, again, it could be that some of these things may not work as well as we project them to at this time.

Mr. LIEBERMAN. President, I, obviously, respect and appreciate the concerns that my friend from Alabama has. I want to assure him that we have been over this. And the two things—one, is that not just the 9/11 Commission but a lot of folks, not universally felt, but a lot of people feel that the drug czar has not been all that the position could have been because he did not have any budget authority. He formed the budget but did not really have the muscle. As a matter of fact, Governor Kean and Congressman Hamilton, in their report, specifically said they did not want the national intelligence director to be like the drug czar.

Second, one of the conclusions I gather from the Scowcroft Report, but also others, including 9/11, is that what has happened up until now is that the Director of Central Intelligence has basically been the Director of the CIA—of course, the same person—and not had the time or the clout to coordinate the rest of the intelligence community.

That is part of the failure prior to September 11. That is why we specifically recommend breaking them in two, creating this director over everybody. The CIA is an important part, but there are a lot of other important parts. The FBI counterterrorism and the NSA, NRO, and NGA, as the Senator well knows, in terms of numbers of employees and the amount of the budget, are very big entities that, for now, have been too much outside the control of the Director of Central Intelligence.

So as I say, we have tried to balance. In some way, it might have been neater to take all the pieces and put them under a new secretary of intelligence, but then you really would have, for instance, broken the chain of command in the Defense Department.

We didn't want to do that. We are trying to have a balance to say when it comes to intelligence, there is one person accountable, and that is the national intelligence director.

I thank the Senator. I think this kind of discussion is very important to getting all of us to a point where we can not only proceed with the amendments but go ahead and ultimately next week adopt the bill and have a good feeling about it. Hopefully, we can lead the Senator from Alabama over his buyer's anxiety right now.

Mr. SESSIONS. It is a difficult thing. I remember the story very distinctly. There was an attempt to merge the FBI and DEA in the early 1980s. I wrote Associate Attorney General Giuliani a letter suggesting what should be merged is DEA and Alcohol, Tobacco, and Firearms. I saw him not long after that and he said: Jeff, we can't even merge agencies within the Department of Justice, don't you know? To merge an agency in Treasury with one of Justice is impossible.

While it is weird that we in the Congress and the President of the United States are not capable of merging agencies, as a practical matter, it is very difficult to do these things. I don't think most people realize how our Government really functions. It has great points. Some of the best people I have ever known serve in our Government. But there are problems in making it efficient.

I thank the managers for their leadership and hard work.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

MODIFICATION TO AMENDMENT NO. 3807

Mr. LIEBERMAN. Mr. President, I call up again amendment No. 3807 offered by Senator MCCAIN and myself.

The PRESIDING OFFICER. The amendment is now pending.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I am pleased to send to the desk a modification to the amendment which is essentially a change of one word. I believe having made that one-word change, this amendment implements another section of the 9/11 Commission Report and is acceptable on both sides.

I thank my dear friend and colleague, Senator COLLINS, for all the work we have done together on this amendment, and with other stakeholders who had some concerns about the amendment, generally supported it, and we have worked them all out.

The PRESIDING OFFICER. The amendment will be so modified.

The modification is as follows:

of applicants for such licenses or identification cards.

(C) TIME REQUIREMENT.—The process described in subparagraph (A) shall be conducted in a timely manner to ensure that—

(i) any recommendation for a proposed rule or report is provided to the Secretary of Transportation not later than 9 months after the date of enactment of this Act and shall include an assessment of the benefits and costs of the recommendation; and

(ii) a final rule is promulgated not later than 18 months after the date of enactment of this Act.

(c) GRANTS TO STATES.—

(1) ASSISTANCE IN MEETING FEDERAL STANDARDS.—Beginning on the date a final regulation is promulgated under subsection (b)(2), the Secretary of Transportation shall award grants to States to assist them in conforming to the minimum standards for driver's licenses and personal identification cards set forth in the regulation.

(2) ALLOCATION OF GRANTS.—The Secretary of Transportation shall award grants to States under this subsection based on the proportion that the estimated average annual number of driver's * * *.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank my colleague from Connecticut and my colleague from Arizona, Senator MCCAIN, for working with me to address concerns that have been raised by the National Governors Association regarding the provisions in the McCain-Lieberman amendment that dealt with the standardization of State drivers' licenses. I believe the change which has been made, which will require an assessment of the cost benefits of any new requirements, is an important one.

I ask unanimous consent that two letters from the National Governors Association be printed in the RECORD.

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

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, October 1, 2004.

Hon. SUSAN COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: On behalf of the nation's Governors I am writing to thank you for your efforts in negotiating a compromise on amendment language regarding minimum standards for state driver's licenses. I know that you share Governors' concerns regarding the security and integrity of state driver's license and identification processes and appreciate the difficulties that federal mandates, particularly unfunded mandates, placed on states.

Due in large part to your concern regarding the mandates in the McCain/Lieberman driver's license amendment, NGA was able to make suggestions to improve the measure. We understand that a provision has been added to require that the negotiated rulemaking committee perform an assessment of the benefits and costs of its recommendations. This change is essential to help ensure that the federal government provides adequate funding to states to implement the required mandates.

Governors are committed to working cooperatively with the federal government to develop and implement realistic, achievable standards that will enhance efforts to prevent document fraud and other illegal activity related to the issuance of driver's licenses and identification documents. We appreciate your willingness to work with states to address our concerns. With all the changes included in the amendment, it will provide a reasonable compromise for addressing this issue.

Thank you again for your consideration and assistance. We look forward to working with you during conference.

Sincerely,

RAYMOND C. SCHEPPACH,
Executive Director.

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, October 1, 2004.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN AND SENATOR LIEBERMAN: Governors share your concerns regarding the security and integrity of state driver's license and identification processes. While NGA opposes federal mandates on states, particularly unfunded mandates, we appreciate your willingness to work with states to improve your amendment regarding minimum requirements for state driver's licenses. As you know, NGA strongly opposes the more proscriptive driver's license mandate provisions under consideration in the House.

It is my understanding that your original amendment has been modified to include two important changes: (1) clarification that the standards that will be set in the rulemaking process will initially apply only to newly-issued and reissued driver's licenses; and (2) a requirement that state elected officials, including Governors, serve on the negotiated rulemaking committee. In addition, we request that a provision be added to require that the negotiated rulemaking committee perform an assessment of the annual benefits and costs of its recommendations.

The first two changes are vital to ensuring that the minimum requirements established under the amendment are workable, do not unnecessarily interfere with existing state laws and improvements, and benefit from the expertise and knowledge of state officials. Likewise, the last change is essential to help ensure that the federal government provides adequate funding to states to implement the required mandates.

Governors are committed to working cooperatively with the federal government to develop and implement realistic, achievable standards that will enhance efforts to prevent document fraud and other illegal activity related to the issuance of driver's licenses and identification documents. We appreciate your willingness to work with states to address our concerns. If all three changes are included in the amendment it will provide a reasonable compromise for addressing this issue.

Thank you again for your consideration and assistance.

Sincerely,

RAYMOND C. SCHEPPACH,
Executive Director.

Ms. COLLINS. Mr. President, I urge adoption of the modified amendment.

The PRESIDING OFFICER. Is there further debate?

Without objection, the amendment is agreed to.

The amendment (No. 3807), as modified, was agreed to.

Ms. COLLINS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I thank my colleagues for their work on intelligence reform. I want to make a few remarks on the intelligence reform bill.

I am supportive of the overall efforts of the Governmental Affairs Committee, what my colleague from Kansas, Senator ROBERTS, and my colleague from West Virginia, Senator ROCKEFELLER, are doing as well on intelligence reform, and I want to support this overall effort.

Before I proceed, it is important to underscore why this is such an important debate in the United States, especially when it is so deeply engaged in many places around the world and particularly in the Middle East and Iraq. In the context of the underlying bill, we need to make sure we clearly understand this.

There is some public uncertainty regarding these issues. As the debate showed last night, we have fundamental differences even between President Bush and Senator KERRY. But both agree, in my opinion, why the U.S. commitment to Iraq is absolutely essential and why we must not fail in Iraq or in this effort to reform our national intelligence.

For purposes of discussion, I recommend a rereading of Osama bin Laden's declaration of war against the Americans. He issued this in 1998. It is in the 9/11 Commission Report and it is chilling, but it tells you what is at stake in this debate.

He says this, and this is a direct quote from that declaration of war:

The Defence Secretary of the Crusading Americans had said that the explosions at Riyadh and Al-Khobar had taught him one lesson: that is not to withdraw when attacked by cowardly terrorists.

bin Laden continues:

We say to the Defence Secretary that his talk could induce a grieving mother to laughter! And it shows the fears that have enveloped you all. Where was this courage of yours when the explosion in Beirut took place in 1983 . . . You were transformed into scattered bits and pieces: 241 soldiers were killed, most of them Marines.

bin Laden continues:

When tens of your soldiers were killed in minor battles and one American pilot was dragged in the street of Mogadishu, you left the area in disappointment, humiliation, and defeat, carrying your dead with you.

Clinton appeared in front of the whole world threatening and promising revenge, but these threats were merely a preparation for withdrawal. You had been disgraced by Allah and you withdraw; the extent of your impotence and weaknesses became very clear.

As bin Laden had explained earlier in the declaration:

Efforts should be concentrated on destroying, fighting, and killing the (American) enemy until, by the grace of Allah, it is completely defeated.

The task is stated quite simply by bin Laden:

Killing Americans.

In June 2002, bin Laden spokesman, Suleiman Abu Gheith, placed this statement on the al-Qaida Web site:

We have the right to kill 4 million Americans—2 million of them children—and to exile twice as many and wound and cripple hundreds of thousands.

He said that:

We have the right to kill 4 million Americans—2 million of them children. . . .

What can we do to forestall these promised attacks? According to bin Laden, if we follow what he says, we can forestall these promised attacks if ''America should abandon the Middle East, convert to Islam and end the immorality and godlessness of its society and culture,'' for according to bin Laden, ''It is saddening to tell you that you are the worst civilization witnessed by the history of mankind.''

That is what we fight, and that is what we must stand strong against and be as strong and as organized as we possibly can and have as good intelligence as we possibly can to fight these fanatics.

These terrorists are fanatics. They are wrong about America, and America will fight. They may be fanatics—and they are—but James Schlesinger reminded us earlier this year in the Foreign Relations Committee that they are deadly serious and thoroughly persistent.

We have to therefore anticipate we will be engaged in this global war on terrorism for years to come and we must not waiver in this effort.

As Osama himself has said:

When the people see a strong horse and a weak horse, they naturally gravitate towards the strong horse.

Therefore, we as a nation and as a body must do everything within our means to demonstrate that we are not the weak horse. That is why retreat before we have successfully stabilized Iraq is not an option. Nothing was more dramatically visible throughout the Middle East and elsewhere of our retreat than were those earlier retreats cited by Osama bin Laden.

The debate over Iraq will continue, even after the election, regarding the timing of our move into Iraq, but that is a moot issue. We are there now and our soldiers are doing the best they can under difficult circumstances. We will bring them home, but make no mistake about the fact that we are anything but united in our determination to persevere and to prevail in Iraq. Success is the only acceptable course of action.

How then are we to be successful in sustaining order and stability in Iraq and bringing order to the chaos that the terrorists can potentially produce around the world? Only by embracing certain fundamental realities. First and foremost, establishing reasonable security is the prerequisite for achieving the goals of political stability. We are doing that in Iraq and we are doing that in Afghanistan. It is slow going and it is difficult, and there will be bumps along the way.

Second, neither the American nor the coalition forces can by themselves impose security on Iraq. Iraqis themselves must provide indispensable support and their own security. Only Iraqis can gather the intelligence to identify the regime remnants and foreign terrorists who must be largely neutralized before adequate security can be assured.

Moreover, it will be essential for Iraqi security forces to be the principal elements in rooting out terrorists and destroying their cells, with the coalition military increasingly in a supporting role.

Similarly, America must take charge of its own security in a way that is consistent with the changed realities in our post-9/11 world. This legislation we are debating, the first major overhaul of the intelligence system, is a major step in that direction. We have the capability, the ability, and the motive—our national security—to do this now and to do it right.

As my colleague Senator KYL from Arizona said yesterday, the problem before 9/11 was not due to too much intelligence. The problem obviously arose because we did not have enough intelligence, smart intelligence, creative intelligence. We could not gather enough information in a timely way to put together all of the possibilities in order to connect the dots, in order to predict that a particular kind of attack was going to occur on that day.

We have had a lot of good, constructive suggestions, from many places, from the 9/11 Commission, from the Senate Intelligence Committee, the great work of its chairman and my colleague Senator PAT ROBERTS from Kansas, from the administration, from the work of the Governmental Affairs Committee, Senator ROCKEFELLER also on the Intelligence Committee, from other commissions in trying to understand why we did not have enough intelligence and why we could not put it all together ahead of time.

Many of the recommendations of the Commission and legislative solutions in the proposed bill try to correct that problem of not having enough good intelligence and knowing precisely what we need to do with the intelligence once we have it.

Most importantly, we need to find a way of bringing the creativity and imagination back into the intelligence business. For too long, the system has been hampered by bureaucracy that by design is risk averse and unwilling to take the offensive. As Senator KYL mentioned the other day, if we look back at President Clinton's directives to the intelligence community, he tried to be forward leaning, especially with regard to al-Qaida and Osama bin Laden. But even though the President himself seemed to say we have to do everything we can to try to get these guys, he ran into bureaucratic barriers. Repeatedly, efforts were made to bring to his attention operations that would have either improved our intelligence or operationally deal with al-Qaida and Osama bin Laden, but they were shot down by various portions or places within the bureaucracy or lawyers within the system. If someone tried to do something, somebody else said this is too risky, we cannot do it.

We have to change that mentality. That was why the 9/11 Commission, the Senate Intelligence Committee, and many other observers have said we have to get out of this paralyzing risk-averse environment where people are afraid somebody is looking over their shoulders, is going to jump on them if they do anything that is the least bit out of the ordinary or risky. We have to get this bureaucratic mindset out because our very security depends on it.

I thank the chairman of the Governmental Affairs Committee, Senator COLLINS, for her great work on this, and the ranking member, Senator LIEBERMAN. I appreciate the important work of my colleagues Senator ROBERTS and Senator ROCKEFELLER, and I hope that we will speedily get to a resolution so we can pass this important bill soon and change the dynamic and make a safer America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the Senator from Kansas for his generous comments and for presenting a very compelling case for passing this legislation, a case that says we cannot delay; the stakes are too high; the issues are too compelling in the war against terrorism. I thank him for his support and for his hard work on this very important issue.

I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENTS NOS. 3798, 3799, 3800, 3911, 3912, 3932, 3864, 3772, 3813 AND 3717, EN BLOC

Ms. COLLINS. Mr. President, I have a number of amendments from both sides of the aisle that have been cleared by both of the managers of the bill. I ask unanimous consent that we proceed to the consideration of the following amendments, en bloc: Coleman

amendment 3798, Coleman amendment 3799, Coleman amendment 3800, Snowe amendment 3911, Snowe amendment 3912, Snowe amendment 3932, Frist amendment 3864, Bingaman amendment 3772, Reed of Rhode Island amendment 3813, and Feinstein amendment 3717.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments are pending.

Ms. COLLINS. I ask unanimous consent that the amendments be agreed to en bloc and that the motions to reconsider be laid upon the table.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 3798

(Purpose: To amend section 510 of the Homeland Security Act of 2002 to ensure widespread access to the Information Sharing Network)

At the appropriate place, insert the following:

SEC. ___. URBAN AREA COMMUNICATIONS CAPABILITIES.

Section 510 of the Homeland Security Act of 2002, as added by this Act, is amended by inserting '', and shall have appropriate and timely access to the Information Sharing Network described in section 206(c) of the National Intelligence Reform Act of 2004'' after ''each other in the event of an emergency''.

AMENDMENT NO. 3799

(Purpose: To require the enterprise architecture and implementation plan for the Information Sharing Network to include equipment and training requirements and utilization costs)

On page 137, line 20, strike ''and'' and all that follows through ''(9)'' on line 21, and insert the following:

(9) an estimate of training requirements needed to ensure that the Network will be adequately implemented and property utilized;

(10) an analysis of the cost to State, tribal, and local governments and private sector entities for equipment and training needed to effectively utilize the Network; and

(11)

AMENDMENT NO. 3800

(Purpose: To find that the United States needs to implement the 9/11 Commission's recommendation to adopt a unified incident command system and significantly enhance communications connectivity among first responders)

At the appropriate place, insert the following:

(1) The United States needs to implement the recommendations of the National Commission on Terrorist Attacks Upon the United States to adopt a unified incident command system and significantly enhance communications connectivity between and among civilian authorities, local first responders, and the National Guard. The unified incident command system should enable emergency managers and first responders to manage, generate, receive, evaluate, share, and use information in the event of a terrorist attack or a significant national disaster.

AMENDMENT NO. 3911

(Purpose: To require a report on the methodologies utilized for National Intelligence Estimates)

On page 210, between lines 22 and 23, insert the following:

SEC. 336. NATIONAL INTELLIGENCE COUNCIL REPORT ON METHODOLOGIES UTILIZED FOR NATIONAL INTELLIGENCE ESTIMATES.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the National Intelligence Council shall submit to Congress a report that includes the following:

(1) The methodologies utilized for the initiation, drafting, publication, coordination, and dissemination of the results of National Intelligence Estimates (NIEs).

(2) Such recommendations as the Council considers appropriate regarding improvements of the methodologies utilized for National Intelligence Estimates in order to ensure the timeliness of such Estimates and ensure that such Estimates address the national security and intelligence priorities and objectives of the President and the National Intelligence Director.

(b) FORM.—The report under subsection (a) shall be submitted in an unclassified form, but may include a classified annex.

On page 210, line 23, strike ''**336.**'' and insert ''**337.**''.

AMENDMENT NO. 3912

(Purpose: To require an evaluation of the effectiveness of the National Counterterrorism Center)

On page 210, between lines 22 and 23, insert the following:

SEC. 336. NATIONAL INTELLIGENCE DIRECTOR REPORT ON NATIONAL COUNTERTERRORISM CENTER.

(a) REPORT.—Not later than one year after the date of the establishment of the National Counterterrorism Center under section 143, the National Intelligence Director shall submit to Congress a report evaluating the effectiveness of the Center in achieving its primary missions under subsection (d) of that section.

(b) ELEMENTS.—The report under subsection (a) shall include the following:

(1) An assessment of the effectiveness of the National Counterterrorism Center in achieving its primary missions.

(2) An assessment of the effectiveness of the authorities of the Center in contributing to the achievement of its primary missions, including authorities relating to personnel and staffing, funding, information sharing, and technology.

(3) An assessment of the relationships between the Center and the other elements and components of the intelligence community.

(4) An assessment of the extent to which the Center provides an appropriate model for the establishment of national intelligence centers under section 144.

(c) FORM.—The report under subsection (a) shall be submitted in an unclassified form, but may include a classified annex.

AMENDMENT NO. 3932

(Purpose: Relating to alternative analyses of intelligence by the intelligence community)

On page 153, between lines 2 and 3, insert the following:

SEC. 207. ALTERNATIVE ANALYSES OF INTELLIGENCE BY THE INTELLIGENCE COMMUNITY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the National Intelligence Director should consider the advisability of establishing for each element of the intelligence community an element, office, or component whose purpose is the alternative analysis (commonly referred to as a ''red-team analysis'') of the information and conclusions in the intelligence products of such element of the intelligence community.

(b) REPORT.—(1) Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress a report on the actions taken to establish for each element of the intelligence community an element, office, or component described in subsection (a).

(2) The report shall be submitted in an unclassified form, but may include a classified annex.

AMENDMENT NO. 3864

(Purpose: To extend section 145(c) of the Aviation and Transportation Security Act)

At the appropriate place insert the following:

Section 145(c) of the Aviation and Transportation Security Act (49 U.S.C. 40101 note) is amended by striking ''more than'' and all that follows through ''after'' and inserting ''more than 48 months after''.

AMENDMENT NO. 3772

(Purpose: To establish the position of Chief Scientist of the National Intelligence Authority)

On page 45, between lines 10 and 11, insert the following:

(11) The Chief Scientist of the National Intelligence Authority.

On page 45, line 11, strike ''(11)'' and insert ''(12)''.

On page 45, line 14, strike ''(12)'' and insert ''(13)''.

On page 59, between lines 14 and 15, insert the following:

SEC. 131. CHIEF SCIENTIST OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF SCIENTIST OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Scientist of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) REQUIREMENT RELATING TO APPOINTMENT.—An individual appointed as Chief Scientist of the National Intelligence Authority shall have a professional background and experience appropriate for the duties of the Chief Scientist.

(c) DUTIES.—The Chief Scientist of the National Intelligence Authority shall—

(1) act as the chief representative of the National Intelligence Director for science and technology;

(2) chair the National Intelligence Authority Science and Technology Committee under subsection (d);

(3) assist the Director in formulating a long-term strategy for scientific advances in the field of intelligence;

(4) assist the Director on the science and technology elements of the budget of the National Intelligence Authority; and

(5) perform other such duties as may be prescribed by Director or by law.

(d) NATIONAL INTELLIGENCE AUTHORITY SCIENCE AND TECHNOLOGY COMMITTEE.—(1) There is within the Office of the Chief Scientist of the National Intelligence Authority a National Intelligence Authority Science and Technology Committee.

(2) The Committee shall be composed of the principal science officers of the National Intelligence Program.

(3) The Committee shall—

(A) coordinate advances in research and development related to intelligence; and

(B) perform such other functions as the Chief Scientist of the National Intelligence Authority shall prescribe.

On page 59, line 15, strike ''**131.**'' and insert ''**132.**''.

On page 202, line 16, strike ''131(b)'' and insert ''132(b)''.

AMENDMENT NO. 3813

(Purpose: To find that risk assessments and protective measures for liquefied natural gas marine terminals should be included in the plan of the Secretary of Homeland Security to protect critical infrastructure)

At the appropriate place, insert the following:

SEC. ___. LIQUEFIED NATURAL GAS MARINE TERMINALS.

Congress finds that plans developed by the Department of Homeland Security to protect critical energy infrastructure should include risk assessments and protective measures for existing and proposed liquefied natural gas marine terminals.

AMENDMENT NO. 3717

(Purpose: To provide that the Intelligence Community Reserve Corps shall have a personnel strength level authorized by law)

On page 39, strike lines 8 through 11 and insert the following:

(c) PERSONNEL STRENGTH LEVEL.—Congress shall authorize the personnel strength level for the National Intelligence Reserve Corps for each fiscal year.

AMENDMENT NO. 3771, AS MODIFIED

Ms. COLLINS. Mr. President, I ask unanimous consent that the pending amendment be set aside and that we proceed to the consideration of the Bingaman-Domenici amendment 3771, as modified. I send the modification to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. BINGAMAN and Mr. DOMENICI, , proposes an amendment numbered 3771, as modified.

The amendment, as modified, is as follows:

(Purpose: To authorize employees of Federally Funded Research and Development Centers and certain employees of the Department of Energy national laboratories to be eligible for the staff of the National Counterterrorism Center and the national intelligence centers)

On page 91, between lines 12 and 13, insert the following:

(C) Employees of Federally Funded Research and Development Centers (as that term is defined in part 2 of the Federal Acquisition Regulation), including employees of the Department of Energy national laboratories who are associated with field intelligence elements of the Department of Energy, shall be eligible to serve under contract or other mechanism with the National Counterterrorism Center under this paragraph.

On page 98, between lines 21 and 22, insert the following:

(C) Employees of Federally Funded Research and Development Centers (as that term is defined in part 2 of the Federal Acquisition Regulation), including employees of the Department of Energy national laboratories who are associated with field intelligence elements of the Department of Energy, shall be eligible to serve under contract or other mechanism with a national intelligence center under this paragraph.

Mr. LIEBERMAN. Mr. President, since World War II, our national laboratories, primarily serving Energy and Defense Department missions, have been the Nation's repository of expertise on nuclear weapons and other national security and technical issues. Although many of these national laboratories are known as Federal Funded Research and Development Centers, or FFRDC's, and are federally financed, lab employees are not Federal employees. They are employees of the contractors who operate these laboratories. This amendment would make employees of the FFRDC's eligible to serve at the National Counterterrorism Center and other national intelligence centers.

I agree with the sponsors of this amendment that if the national intelligence director, or NID, determines that he or she needs to tap the experts employed at our FFRDC's to help staff these centers, then he or she should be able to do so. But I also want to make it clear, that it is my understanding that we are not creating a new mission for the FFRDC's or authorizing the creation of a new FFRDC for this purpose. Use of these employees would be subject to the availability of funds to the NID, and would still be subject to the Federal conflict of interest provisions and the Federal Acquisition Regulations. Finally, nothing in this amendment is intended to circumvent staff year ceilings established by law for Defense Department-sponsored FFRDC's or any other FFRDC's.

Ms. COLLINS. Mr. President, I ask unanimous consent that the modification be agreed to, that the amendment, as modified, be agreed to, and that the motion to reconsider be laid upon the table.

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

The amendment (No. 3771), as modified, was agreed to.

AMENDMENT NO. 3756

Ms. COLLINS. Mr. President, I ask unanimous consent that the pending amendment be set aside and that the Senate now proceed to the immediate consideration of the Graham-Durbin amendment No. 3756.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will please report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. GRAHAM of Florida, proposes an amendment numbered 3756.

The amendment is as follows:

(Purpose: To establish additional education and training requirements for the National Intelligence Authority)

On page 108, between lines 8 and 9, insert the following:

SEC. 153. ADDITIONAL EDUCATION AND TRAINING REQUIREMENTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Foreign language education is essential for the development of a highly-skilled workforce for the intelligence community.

(2) Since September 11, 2001, the need for language proficiency levels to meet required national security functions has been raised, and the ability to comprehend and articulate technical and scientific information in foreign languages has become critical.

(b) LINGUISTIC REQUIREMENTS.—(1) The National Intelligence Director shall—

(A) identify the linguistic requirements for the National Intelligence Authority;

(B) identify specific requirements for the range of linguistic skills necessary for the intelligence community, including proficiency in scientific and technical vocabularies of critical foreign languages; and

(C) develop a comprehensive plan for the Authority to meet such requirements through the education, recruitment, and training of linguists.

(2) In carrying out activities under paragraph (1), the Director shall take into account education grant programs of the Department of Defense and the Department of Education that are in existence as of the date of the enactment of this Act.

(3) Not later than one year after the date of the enactment of this Act, and annually thereafter, the Director shall submit to Congress a report on the requirements identified under paragraph (1), including the success of the Authority in meeting such requirements. Each report shall notify Congress of any additional resources determined by the Director to be required to meet such requirements.

(4) Each report under paragraph (3) shall be in unclassified form, but may include a classified annex.

(c) PROFESSIONAL INTELLIGENCE TRAINING.—The National Intelligence Director shall require the head of each element and component within the National Intelligence Authority who has responsibility for professional intelligence training to periodically review and revise the curriculum for the professional intelligence training of the senior and intermediate level personnel of such element or component in order to—

(1) strengthen the focus of such curriculum on the integration of intelligence collection and analysis throughout the Authority; and

(2) prepare such personnel for duty with other departments, agencies, and element of the intelligence community.

Ms. COLLINS. Mr. President, I ask unanimous consent that the amendment be agreed to and that the motion to reconsider be laid upon the table.

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

The amendment (No. 3756) was agreed to.

Ms. COLLINS. Mr. President, as I indicated, those amendments have all been worked out. They have been cleared on both sides. We are making progress on this bill. There have been a great number of amendments filed. I encourage all Senators to work closely with the managers of the bill to allow us to proceed to consider this bill on Tuesday. We have a great deal of work to be done before that time, but we made progress today.

I also thank those Senators who came forward with their amendments today. Shortly, I will have an announcement about the voting schedule for Monday. We do expect to have a number of stacked votes in the mid to late afternoon. We are working on that list even as we speak.

AMENDMENT NO. 3803

Ms. COLLINS. Mr. President, on behalf of Senator CORNYN, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows.

The Senator from Maine (Ms. COLLINS), for Mr. CORNYN, proposes an amendment numbered 3803.

The amendment is as follows:

(Purpose: To provide for enhanced criminal penalties for crimes related to alien smuggling)

At the end of the bill, add the following:

TITLE IV—HUMAN SMUGGLING PENALTY ENHANCEMENT

SEC. 401. SHORT TITLE.

This title may be cited as the ''Human Smuggling Penalty Enhancement Act of 2004''.

SEC. 402. ENHANCED PENALTIES FOR ALIEN SMUGGLING.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) in clause (i)—

(I) by striking ''knowing that a person is an alien, brings'' and inserting ''knowing or in reckless disregard of the fact that a person is an alien, brings'';

(II) by striking ''Commissioner'' and inserting ''Under Secretary for Border and Transportation Security''; and

(III) by inserting ''and regardless of whether the person bringing or attempting to bring such alien to the United States intended to violate any criminal law'' before the semicolon;

(ii) in clause (iv), by striking ''or'' at the end;

(iii) in clause (v)—

(I) in subclause (I), by striking '', or'' and inserting a semicolon;

(II) in subclause (II), by striking the comma and inserting ''; or''; and

(III) by inserting after subclause (II) the following:

''(III) attempts to commit any of the preceding acts; or''; and

(iv) by inserting after clause (v) the following:

''(vi) knowing or in reckless disregard of the fact that a person is an alien, causes or attempts to cause such alien to be transported or moved across an international boundary, knowing that such transportation or moving is part of such alien's effort to enter or attempt to enter the United States without prior official authorization;''; and

(B) in subparagraph (B)—

(i) in clause (i)—

(I) by striking ''or (v)(I)'' and inserting '', (v)(I), or (vi)''; and

(II) by striking ''10 years'' and inserting ''20 years'';

(ii) in clause (ii), by striking ''5 years'' and inserting ''10 years''; and

(iii) in clause (iii), by striking ''20 years'' and inserting ''35 years'';

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A)—

(i) by inserting '', or facilitates or attempts to facilitate the bringing or transporting,'' after ''attempts to bring''; and

(ii) by inserting ''and regardless of whether the person bringing or attempting to bring such alien to the United States intended to violate any criminal law,'' after ''with respect to such alien''; and

(B) in subparagraph (B)—

(i) in clause (ii), by striking '', or'' and inserting a semicolon;

(ii) in clause (iii), by striking the comma at the end and inserting ''; or'';

(iii) by inserting after clause (iii), the following:

''(iv) an offense committed with knowledge or reason to believe that the alien unlawfully brought to or into the United States has engaged in or intends to engage in terrorist activity (as defined in section 212(a)(3)(B)(iv)),''; and

(iv) in the matter following clause (iv), as added by this subparagraph, by striking ''3 nor more than 10 years'' and inserting ''5 years nor more than 20 years''; and

(3) in paragraph (3)(A), by striking ''5 years'' and inserting ''10 years''.

SEC. 403. AMENDMENT TO SENTENCING GUIDELINES RELATING TO ALIEN SMUGGLING OFFENSES.

(a) DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the Sentencing Guidelines and Policy Statements reflect—

(A) the serious nature of the offenses and penalties referred to in this title;

(B) the growing incidence of alien smuggling offenses; and

(C) the need to deter, prevent, and punish such offenses;

(2) consider the extent to which the Sentencing Guidelines and Policy Statements adequately address whether the guideline offense levels and enhancements for violations of the sections amended by this title—

(A) sufficiently deter and punish such offenses; and

(B) adequately reflect the enhanced penalties established under this title;

(3) maintain reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the Sentencing Guidelines; and

(6) ensure that the Sentencing Guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

Ms. COLLINS. I ask unanimous consent the amendment be laid aside.

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

AMENDMENT NO. 3768

Ms. COLLINS. Mr. President, I send an amendment to the desk on behalf of the Senator from Montana, Mr. BAUCUS.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine (Ms. COLLINS), for Mr. BAUCUS, for himself and Mr. ROBERTS, proposes an amendment numbered 3768.

The amendment is as follows:

(Purpose: To require an annual report on the allocation of funding within the Office of Foreign Assets Control of the Department of the Treasury)

At the end, add the following new section:

SEC. 353. ANNUAL REPORT ON THE ALLOCATION OF RESOURCES WITHIN THE OFFICE OF FOREIGN ASSETS CONTROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury should allocate the resources of the Office of Foreign Assets Control to enforce the economic and trade sanctions of the United States in a manner that enforcing such sanctions—

(1) against al Qaeda and groups affiliated with al Qaeda is the highest priority of the Office;

(2) against members of the insurgency in Iraq is the second highest priority of the Office; and

(3) against Iran is the third highest priority of the Office.

(b) REQUIREMENT FOR ANNUAL REPORT.—Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Secretary of the Treasury, in consultation with the National Intelligence Director, shall submit to Congress a report on the allocation of resources within the Office of Foreign Assets Control.

(c) CONTENT OF ANNUAL REPORT.—An annual report required by subsection (b) shall include—

(1) a description of—

(A) the allocation of resources within the Office of Foreign Assets Control to enforce the economic and trade sanctions of the United States against terrorist organizations and targeted foreign countries during the fiscal year prior to the fiscal year in which such report is submitted; and

(B) the criteria on which such allocation is based;

(2) a description of any proposed modifications to such allocation; and

(3) an explanation for any such allocation that is not based on prioritization of threats determined using appropriate criteria, including the likelihood that—

(A) a terrorist organization or targeted foreign country—

(i) will sponsor or plan a direct attack against the United States or the interests of the United States; or

(ii) is participating in or maintaining a nuclear, biological, or chemical weapons development program; or

(B) a targeted foreign country—

(i) is financing, or allowing the financing, of a terrorist organization within such country; or

(ii) is providing safe haven to a terrorist organization within such country.

(d) EFFECTIVE DATE.—Notwithstanding section 341 or any other provision of this Act, this section shall take effect on the date of the enactment of this Act.

Ms. COLLINS. Mr. President, I ask unanimous consent the amendment be set aside.

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

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

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

AMENDMENT NO. 3768, AS MODIFIED

Ms. COLLINS. Mr. President, I ask unanimous consent that Baucus amendment No. 3768 be modified with the change at the desk.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The amendment (No. 3768), as modified, is as follows:

At the end, add the following new section:

SEC. 353. ANNUAL REPORT ON THE ALLOCATION OF RESOURCES WITHIN THE OFFICE OF FOREIGN ASSETS CONTROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury is not currently according emerging threats to the United States the proper priority and should reallocate the current resources of the Office of Foreign Assets Control to enforce the economic and trade sanctions of the United States in a manner that enforcing such sanctions substantially increases the priority given to—

(1) al Qaeda and groups affiliated with al Qaeda;

(2) members of the insurgency in Iraq; and

(3) Iran.

(b) REQUIREMENT FOR ANNUAL REPORT.—Not later than 180 days after the date of enactment of this Act, and annually thereafter,

the Secretary of the Treasury, in consultation with the National Intelligence Director, shall submit to Congress a report on the allocation of resources within the Office of Foreign Assets Control.

(c) CONTENT OF ANNUAL REPORT.—An annual report required by subsection (b) shall include—

(1) a description of—

(A) the allocation of resources within the Office of Foreign Assets Control to enforce the economic and trade sanctions of the United States against terrorist organizations and targeted foreign countries during the fiscal year prior to the fiscal year in which such report is submitted; and

(B) the criteria on which such allocation is based;

(2) a description of any proposed modifications to such allocation; and

(3) an explanation for any such allocation that is not based on prioritization of threats determined using appropriate criteria, including the likelihood that—

(A) a terrorist organization or targeted foreign country—

(i) will sponsor or plan a direct attack against the United States or the interests of the United States; or

(ii) is participating in or maintaining a nuclear, biological, or chemical weapons development program; or

(B) a targeted foreign country—

(i) is financing, or allowing the financing, of a terrorist organization within such country; or

(ii) is providing safe haven to a terrorist organization within such country.

(d) EFFECTIVE DATE.—Notwithstanding section 341 or any other provision of this Act, this section shall take effect on the date of the enactment of this Act.

Ms. COLLINS. 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.

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

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

AMENDMENT NO. 3903

Ms. COLLINS. Mr. President, I ask unanimous consent to set the pending amendment aside and call up the Stevens amendment No. 3903.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. STEVENS, Mr. INOUYE, Mr. WARNER, and Mr. KYL, proposes an amendment numbered 3903.

The amendment is as follows:

(Purpose: To strike section 201, relating to public disclosure of intelligence funding)

On page 115, strike line 15 and all that follows through page 115, line 25.

Ms. COLLINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. 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. DEWINE. I ask unanimous consent to proceed in morning business.

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

HONORING OUR ARMED FORCES

PRIVATE-FIRST CLASS NICHOLAUS ZIMMER

Mr. DEWINE. Mr. President, I come to the Senate floor today to pay tribute to a young Ohioan who gave his life in the line of duty fighting for freedom. Today I stand here to remember a soldier of inspiring independence and determination, a young man whose life was cut far too short when the tank he was in was hit by a rocket-propelled grenade in Kufa, Iraq. He was 20 years old.

Army PFC Nicholaus Zimmer was the only child of Lisa and Harold ''Gino'' Zimmer of Powell, OH. The two were proud, yet of course, worried when their son decided to enlist in the Army at the age of 17. Despite their natural parental concerns, they knew he would go his own way and do things in his own way. Because, you see, Nicholaus Zimmer was special. He was voted most unique in the Westland High School class of 2002. He defied stereotypes. He was unconventional. He had an exceptional spirit. Nicholaus was lovingly described as a bookish, pink-haired, 1970s-clothes-wearing, skateboarding kid who loved to question authority. I should note, though, that the pink hair description was constantly changing, as Nicholaus altered his hair color to blue and even shaved it once into a Mohawk haircut. Though most would consider pink hair as strictly a defining characteristic, it was not so for Nicholaus. As with other aspects of his life, Nicholaus could not be easily pigeonholed—not really—especially as a punk rock youth. No, he loved to read Shakespeare and would quote it while talking to teachers. Nicholaus was considering becoming an English teacher. Well, that or maybe an Apache helicopter pilot. Nicholaus was ambitious and set his goals high. He enlisted in the Army so he could earn money to go to college and see the world. He was assigned to the 2nd Battalion, 37th Armored Regiment, 1st Armored Division out of Friedberg, Germany. His job was driving M1A1 tanks—another irony in his life given the fact that Nicholaus didn't have a driver's license. Nevertheless, he drove that tank with great skill and expertise.

At age 19, Nicholaus was sent to Iraq. Nicholaus would send his parents souvenirs from Iraq, including shrapnel and money with Saddam Hussein's face on it. They in turn would send him his favorite books and baby wipes to take the sand off of his body.

Nicholaus was proud to serve. He was also anxious to come home, come home to show his parents the man he had become in the time that he was away.

As his mom said;

His year was up on Mother's Day. You could tell he was ready to come home. But he had a job to do.

Nicholaus was a good soldier. Here is how his company commander CPT John Moore described him:

Nick was a superb soldier and had a priceless sense of humor in a place where that came at a premium. He always had a great way of identifying with other soldiers and making the best of some pretty rough situations. As a soldier he was decorated twice for bravery in battle, and he never forgot his duty to his fellow troops. After our company lost our first man, Sergeant Mike Mitchell, Nick was best able to verbalize our sense of loss and what that grief meant to us, despite his junior rank, experience and young age. I will never forget his ability to joke and see the brighter side of any situation and his ability to identify with everybody regardless of rank. Nick's loss hit the 3rd Platoon and all of Crusader Company very hard and resonates through my company still.

I would like to share with you now an e-mail message posted on a soldier memorial Web site following Nicholaus's death. It is from the sister of that same Sergeant Mitchell. The sister writes:

To the family and friends of Nick—my name is Christine, and I am the sister of Michael Mitchell, who served with Nick. My brother was taken from us on April 4, 2004. My heart goes out to you because we definitely can understand your pain. . . . I want to thank you all since I will not be able to tell Nick myself. I guess Nick was helping the soldiers with the death of my brother. I read a letter that Captain Moore wrote where he said, ''Nobody will ever forget that Nick Zimmer was probably one of the most verbally expressive soldiers in this command and that he more than anyone else in the company helped us to identify the effects of Mike Mitchell's death so we could soldier through it and understand it.'' So Nick, thank you. You and my brother are together now. Please take care of each other.

I have no doubt that they are taking care of each other. Soldiers take care of each other in life and in death. When Nicholaus passed away, family, friends, and members of the Powell community came out to show their support for the Zimmer family. American flags lined the yards down the street, and neighbors stood along the road to pay their respects as the funeral procession passed, a procession that included Nicholaus's father and dozens of motorcycles adorned with flags.

Though it is never easy to say goodbye, the funeral of Nicholaus Zimmer was what he would have wanted. A two-star general sat next to a skateboarder with multiple piercings. Looking through the crowd, one could see tattooed bikers, men in business suits, and teenagers with a variety of unconventional hair colors. Yes, I think he would have liked it.

Indeed, Nicholaus Zimmer was a unique young man, a unique young man with the ability to bring people together of all walks of life. This was apparent at the funeral. It was apparent to anyone who knew him.

As his father said:

Look at Nicholaus as an example . . . He always lived the way he wanted to—and he died that way, too.

Mr. President, I never had the chance to meet Nicholaus Zimmer, but I wish I could have. I did have the privilege of

meeting Nicholaus's family during the calling hours for their son. I thank them for sharing their memories with me. They told me that Nicholaus was not the only member of their family to serve overseas. Nicholaus had an uncle who served in Vietnam and a grandfather who saw action in Korea. The Zimmer family is proud of their son's service. Our Nation, too, is proud of his service.

Mr. President, I will conclude with a message from the extended family of Army Specialist A.J. Vandayburg, an Ohio soldier from Mansfied, who was also killed in Iraq in April. They wrote the following to the Zimmer family:

Thank you, Nicholaus, for protecting us all. Sometimes we forget what our Armed Forces are doing for us. Freedom, unfortunately, comes with that unforgivable, unfathomable price. You will not be forgotten for your sacrifice. To your family, we say thank you, too, for your sacrifice. There are no words to replace a child, a brother, an uncle—a loved one. When you are able, seek out those who have given their all. We know from experience the price you have paid, and we mourn with you. God bless you all.

Mr. President, I think that letter expresses our sentiments, as well, to the family.

MARINE LANCE CORPORAL WILL STEVENS

Mr. BUNNING. Mr. President, I today honor LCpl Will Stevens of Russell, KY, for his service to his country in the United States Marine Corps. While LCpl Stevens is recovering from a combat injury to his foot in a hospital bed in San Diego, I point out the importance of his service to our country.

Will's service to his country in Iraq ensures a safer future for America and a more stable world in general. Will's family, his loved ones and his countrymen are the people who benefit from the work he did in Iraq. We are all indebted to him for our way of life, our freedoms and for an example of what it means to be a good American.

In the words of Will's grandfather, ''He is my hero . . . I am really proud of him and am relieved he is going to be alright.'' And so am I. I thank Will and all his fellow service members for their work. May God bless them.

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

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

AMENDMENTS NOS. 3930 AND 3931, EN BLOC

Mr. FRIST. Mr. President, on behalf of Senator MCCONNELL I now ask unanimous consent that the pending amendments be set aside, and I call up amendments Nos. 3930 and No. 3931, en bloc.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. MCCONNELL, for himself, and Mr. CORNYN, proposes an amendment numbered 3930.

The Senator from Tennessee [Mr. FRIST], for Mr. MCCONNELL, for himself, Mr. SANTORUM, and Mr. CORNYN, proposes an amendment numbered 3931.

Mr. FRIST. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 3930

(Purpose: To clarify that a volunteer for a federally-created citizen volunteer program and for the program's State and local affiliates is protected by the Volunteer Protection Act)

At the appropriate place, insert the following:

SEC. ___. FIRST RESPONDER CITIZEN VOLUNTEER PROTECTION ACT.

(a) SHORT TITLE.—This section may be cited as the ''First Responder Citizen Volunteer Protection Act''.

(b) IMPORTANCE OF VOLUNTEERS.—Section 2(a) of the Volunteer Protection Act of 1997 (42 U.S.C. 14501(a)) is amended—

(1) in paragraph (6), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following:

''(7) since the attacks of September 11, 2001, the Federal Government has encouraged Americans to serve their country as citizen volunteers for programs such as the Volunteers in Police Service (VIPS), Medical Reserve Corps (MRC), Community Emergency Response Team (CERT), Neighborhood Watch, and Fire Corps, which help increase our homeland security preparedness and response, and which provide assistance to our fire, police, health, and medical personnel, and fellow citizens in the event of a natural or manmade disaster, terrorist attack, or act of war; and''.

(c) CITIZEN VOLUNTEER PROGRAM.—Section 6 of the Volunteer Protection Act of 1997 (42 U.S.C. 14505) is amended by adding at the end the following:

''(7) GOVERNMENTAL ENTITY.—The term 'government entity' means for purposes of this Act—

''(A) Federal or State Government, including any political subdivision or agency thereof; and

''(B) a federally-established or funded citizen volunteer program, including those coordinated by the USA Freedom Corps established by Executive order 13254 (February 1, 2002), and the program's components and State and local affiliates.

AMENDMENT NO. 3931

(Purpose: To remove civil liability barriers that discourage the donation of equipment to volunteer fire companies)

At the appropriate place, insert the following:

TITLE ____. VOLUNTEER FIREFIGHTER ASSISTANCE

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Good Samaritan Volunteer Firefighter Assistance Act of 2004''.

SEC. ___02. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DISCOURAGE THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.

(a) LIABILITY PROTECTION.—A person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the equipment after the donation.

(b) EXCEPTIONS.—Subsection (a) shall not apply to a person if—

(1) the person's act or omission proximately causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or

(2) the person is the manufacturer of the fire control or fire rescue equipment.

(c) PREEMPTION.—This title preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this title shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.

(d) DEFINITIONS.—In this section:

(1) PERSON.—The term ''person'' includes any governmental or other entity.

(2) FIRE CONTROL OR RESCUE EQUIPMENT.—The term ''fire control or fire rescue equipment'' includes any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) STATE.—The term ''State'' includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.

(4) VOLUNTEER FIRE COMPANY.—The term ''volunteer fire company'' means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.

(e) EFFECTIVE DATE.—This title applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a), is donated on or after the date that is 30 days after the date of enactment of this Act.

SEC. 3. STATE-BY-STATE REVIEW OF DONATION OF FIREFIGHTER EQUIPMENT.

(a) REVIEW.—The Attorney General of the United States shall conduct a State-by-State review of the donation of firefighter equipment to volunteer firefighter companies during the 5-year period ending on the date of enactment of this Act.

(b) REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General of the United States shall publish and submit to Congress a report on the results of the review conducted under subsection (a).

(2) CONTENTS.—The report published and submitted under paragraph (1) shall include, for each State—

(A) the most effective way to fund firefighter companies;

(B) whether first responder funding is sufficient to respond to the Nation's needs; and

(C) the best method to ensure that the equipment donated to volunteer firefighter companies is in usable condition.

Mr. FRIST. I ask unanimous consent that the amendments be set aside.

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

Mr. FRIST. I ask unanimous consent that notwithstanding the filing requirement, it be in order for the managers to propose cleared amendments prior to the cloture vote.

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

Mr. FRIST. I ask unanimous consent that at 4:15 on Monday, October 4, the Senate proceed to votes in relation to

the following amendments; provided further that no second degrees be in order to the mentioned amendments prior to the votes; further, that there be 2 minutes equally divided for debate prior to each of the votes. The amendments are: Byrd No. 3845; Warner No. 3877, as modified; Stevens No. 3829; Stevens No. 3903; Stevens No. 3826; Stevens No. 3827.

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

AMENDMENT NO. 3705

Mr. FRIST. I now ask for the regular order with respect to Collins-Lieberman amendment No. 3705.

The PRESIDING OFFICER. That amendment is now pending.

Mr. FRIST. Mr. President, I thank the chairman and ranking member for their tremendous work today, really over the course of the last week, especially on the amendments that we have addressed over the course of the whole week. They have worked diligently. It has been a productive week. It has been a long week, but we have had good debate on an issue that is complex, an issue that we have all studied for a long period of time but an issue on which I believe debate and the amendment process contributes even greater to our understanding.

It has been very important for Members to come to the floor and debate their different views and their thoughts with respect to our intelligence agencies, their relationships one to another.

We have a number of amendments now pending. As the preview order provides, we will begin voting on some of those amendments at 4:15 on Monday.

I come to the floor at this time with the concern that the clock is still ticking and is working against us on the bill, in part because of the large number of potential amendments. People have submitted amendments and put them in language and begun talking about them, but we clearly need to pick up the pace in order to finish the bill early next week.

Following the completion of this bill, the Senate still must address the internal reform, the internal intelligence oversight reform that goes on in this body. We will begin that on the Senate floor after we complete the Collins-Lieberman bill.

Having said that, I will file a cloture motion in a moment. I do this to ensure that we will being the Collins-Lieberman bill to conclusion at a reasonable time next week, still giving us time to address the other aspect of reform, and that is the internal oversight reform in the Senate.

This is done in consultation with the managers and with the Democratic leadership. The purpose is not in any way to cut off Senators' rights, but I do remind my colleagues that when colture is invoked there is still an additional 30 hours of consideration if we need that.

I hope all of that time will be considered but not be necessarily used. Rule XXII provides for that postcloture time.

CLOTURE MOTION

Mr. FRIST. Mr. President, on behalf of Senator DASCHLE and myself, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 2845, Calendar No. 716, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

Bill Frist, Tom Daschle, Susan Collins, Lamar Alexander, Orrin Hatch, Lindsey Graham, John Warner, Judd Gregg, Saxby Chambliss, John Cornyn, Kay Bailey Hutchison, George Allen, Gordon Smith, Jim Talent, Norm Coleman, Ben Nighthorse Campbell, Mitch McConnell, Joseph Lieberman.

Mr. FRIST. I now ask consent that the live quorum under rule XXII be waived.

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

Mr. FRIST. This vote will occur Tuesday morning. I will announce on Monday the precise timing of the vote on Tuesday, but I will anticipate an early vote on that morning.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

Mr. STEVENS. Mr. President, Tuesday, September 14, was National POW/MIA Recognition Day. American citizens in towns and communities all across our Nation commemorated this occasion by pausing to remember American prisoners of war, those who continue to be missing, and their families.

A national observance was held on the River Parade Field at the Pentagon with an honor guard parade consisting of units from the Army, Marine Corps, Navy, Air Force and Coast Guard. Guests included the families of former POWs and MIAs and representatives of veterans' organizations.

The guest of honor for this occasion was our distinguished colleague and our dear friend, Senator DAN INOUYE of Hawaii. Senator INOUYE spoke eloquently about the significance of this remembrance as did Gen Richard Myers, chairman of the Joint Chiefs of Staff, and Deputy Secretary of Defense Paul Wolfowitz.

Secretary Wolfowitz's statement included an introduction of Senator INOUYE that captured the life and legacy of this great patriot. The eloquent remarks of General Myers, Secretary Wolfowitz and Senator INOUYE deserve the attention of the Senate. I ask unanimous consent that the speeches of General Myers, Dr. Wolfowitz and Senator INOUYE be printed in the RECORD.

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

REMARKS BY CHAIRMAN OF THE JOINT CHIEFS OF STAFF, GENERAL RICHARD B. MYERS, AT POW/MIA RECOGNITION DAY CEREMONY

Thank you so much for joining us as we remember our Prisoners of War and those still Missing in Action.

A special thanks Senator for joining us today. In my view, Senator Inouye embodies our nation's commitment to service and sacrifice—from his decorated military service during World War II to his dedicated public service over the last 40 years. Sir, thank you so much for your support of our military family and for taking the time to be with us today.

This past Saturday, as you know, marked the 3-year anniversary of September 11 terrorist attacks. The tragedies of that day, as well as our ongoing combat operations in the War on Terrorism, serve as a solemn reminder that service and sacrifice are really a part of our lives.

Those who take the oath of office, and put on our Nation's uniform, make a commitment to put the interests of others ahead of their own, and set aside their personal safety and comfort for the well being of others. They become part of our military family, dedicated to protecting all our families.

Today we remember those who embraced this quality to the fullest. When one of our own is killed in action, taken prisoner or missing, we lose a member of our military family. Certainly, I've experienced the loss of friends and squadron mates during my time in Vietnam and in the years since. I expect and know most of you here have experienced similar pain and similar grief.

When one of our own becomes a POW or is missing, their families, both the immediate family and the larger military family, endure the tragic pain of not knowing where they are or if they will ever return.

So it is for both the immediate family, and our larger military family, that today's ceremony carries really so much meaning. We gather to formally remember our loved ones and their service, and to renew our pledge that we shall never, never forget them.

The character of our Nation, in many respects, is reflected in the character of those who serve. Those we remember today reflect the very best of our Nation.

Our Deputy Secretary of Defense is also passionate about the welfare of our servicemen and women, and their families. And there is no one who fights harder on their behalf. He's demonstrated a selfless commitment to the ideals of freedom and democracy as Assistant Secretary of State, as our U.S. Ambassador to Indonesia, and teaching at some of our Nation's finest institutions.

It's a privilege and an honor to introduce our Deputy Secretary of Defense, the Honorable Paul Wolfowitz.

REMARKS OF DEPUTY SECRETARY OF DEFENSE PAUL WOLFOWITZ—INTRODUCTION OF SENATOR DANIEL INOUYE AT THE NATIONAL POW/MIA RECOGNITION DAY

Thank you, General Myers, for those inspiring words. And thank you for your strong leadership and faithful service to our country.

We are joined today by more than a few others who have served our nation: members of America's magnificent Armed Forces, and

many of our brave veterans, including the many former POWs who join us, and our special guest, Senator Dan Inouye.

I want to take this occasion to say thank you to Jerry Jennings, the President's point man for accounting for America's missing; and the dedicated men and women on his team. The recovery and return of our missing Americans can mean years of painstaking effort. And some 600 men and women, both military and civilians, around the world take part in everything from diplomatic negotiations and field operations to forensic analysis. They are tireless and dedicated. And through their latest efforts, the remains of fallen Americans have just been recovered in North Korea and are now headed home.

A special welcome to those of you who serve as leaders and volunteers of POW/MIA family groups. We appreciate your tireless devotion in keeping the home fires burning for those Americans still missing or unaccounted for. Your devotion to loved ones who have yet to return helps our nation to honor its commitment to those we must never forget.

We're here today to honor your commitment and your courage.

We're here to remember and honor the courage of America's POW's and missing countrymen who risked everything, facing the worst of war to preserve the best of America.

And we are here—above all—to reaffirm our commitment to keep the pledge President Bush has made to achieve ''the fullest possible accounting of our prisoners of war and those missing in action.'' The brave men and women who serve today—whether in Afghanistan or in Iraq or in other theaters of the war on terrorism—can do so with the full confidence that if they are captured, become missing or fall in battle, this nation will spare no effort to bring them home. That, too, is our solemn pledge. However long it takes, whatever it takes, whatever the cost.''

As General Myers reminded us, on Saturday, we observed the third anniversary of September 11th. I was with Secretary Rumsfeld and General Pete Pace and family members in Arlington Cemetery. We'd gathered at the burial spot for the Americans who died at their Pentagon posts just a few hundred yards away on that horrific day.

The serene beauty of their final resting place reminded us all that Americans are reluctant warriors. But, as Secretary Rumsfeld said, that September 11th three years ago was America's call to arms. And as they've always done, brave Americans have once again taken up arms to defend our safety, our security and our liberty.

I recently met one young soldier who was wounded grievously in Iraq. Yet, he described how ravaged Iraq had been before the Americans arrived, and how much good he had been able to do in the time he'd been there. Then, he put his own enormous sacrifice into this selfless context. He said: We're fighting for everything we believe in.'' He said: ''Something had to be done.''

We have with us today a man who embodies that same love for America, that same selfless devotion to preserve what America stands for. As a soldier and a senator, he has spent a lifetime fighting for everything America believes in. When something had to be done, he was there to do it. Ladies and gentlemen, Daniel Inouye is a true American hero.

On December 7, 1941, 17-year-old Dan Inouye stood beside his father outside their home in Honolulu, watching as dive-bombers attacked Pearl Harbor. As Japanese Americans, father and son were especially pained and stunned—as the Senator would later recall, they'd worked so hard to be good Americans. Dan jumped on his bicycle and rushed to the Red Cross station, where he taught first aid. There were so many injuries, it would be five days before he would return home.

Dan Inouye wanted to do more. But because he was of Japanese descent, he was classified as 4–C—meaning he was considered a—quote—''enemy alien.'' That made him—and all Japanese-Americans—ineligible for the draft.

Dan Inouye wasn't discouraged by the pain of this prejudice. Instead, he signed petitions that went to the President, asking for the opportunity to serve. And in the meantime, he went to medical school.

In 1942, President Roosevelt authorized a combat team of Japanese American volunteers. Senator Inouye has recalled what Franklin Roosevelt said when he authorized the unit. It was a phrase, the Senator has said, ''that meant a lot to the men of the regiment: 'Americanism is not and has never been a matter of race or color,' said FDR. 'Americanism is a matter of mind and heart.''' And Dan Inouye proved the truth in those words. He immediately quit medical school to enlist in the Army.

On the day young Dan Inouye left for Army training, his father went with him to the pickup point. He'd been silent for most of the ride. Then he cleared his throat, and looking straight ahead, he said to his son: ''America has been good to us... We all love this country. Whatever you do, do not dishonor your country. Remember; never dishonor your family. And if you must give your life, do so with honor.'' Senator Inouye later recalled: ''I knew exactly what he meant. I said, 'Yes, sir. Good-bye.'''

Dan Inouye shipped off to Europe, part of the 442nd Regimental Combat Team, made up mostly of Japanese Americans. As the Italian peninsula came into view, Dan Inouye asked some of his comrades what they'd been thinking on their last night aboard ship. Most said the same thing: they hoped they wouldn't dishonor their families. Senator Inouye would later say: ''We knew very well that, if we succeeded, their lives''—the lives of the little brothers and sisters and parents back home—''would be better.''

The 442nd's motto was ''Go for Broke.'' Its men would prove they were prepared to risk everything they had to win. Prepared to match prejudice with bravery of the highest order.

Senator, you once told me about a particular day in Italy. You sensed that the war was probably coming to an end, and you told one of your sergeants—for you'd received a battlefield commission by then, because the losses in your unit had been so great—you told that sergeant that the war was probably coming to an end soon, that he should be careful and not become one of the last men killed. What you didn't tell me was that you never intended to follow your own advice.

The war ended in Europe on May 8, 1945. Just 18 days before, on April 21, 1945, near San Terenzo, Lieutenant Inouye's unit was ordered to attack a heavily defended ridge. As the lieutenant crawled up the slope, he was hit by machine gun fire. But he kept going, destroying one machine-gun nest, then a second one, before he fell to the ground. He dragged himself toward a third bunker, and as he was about to pull the pin on his last grenade, a German grenade tore into his arm. He pried the grenade out of his lifeless hand, and threw it at the bunker. Another bullet hit him in the leg. Finally a medic gave him a shot of morphine, but Lieutenant Inouye wouldn't let them evacuate him until the area was secure . . . until he knew his men were safe.

Dan Inouye didn't play it safe. He risked everything to protect his men.

Uncommon valor was a common virtue throughout that unit. Based on their numbers and length of service, the 442nd became the most decorated unit in the history of the U.S. Army. And Daniel Inouye was one of the most decorated heroes among them . . . to include a much-belated Medal of Honor.

Dan Inouye's story of valor in battle would be more than enough to secure his place in history. But, it was merely prologue to an amazing story of service to our country.

The story continued when the people of Hawaii voted Daniel Inouye into office in 1954, as a member of the Territorial Legislature. In 1959, when Hawaii achieved statehood, he became its first member of the U.S. House of Representatives. In 1962, he was elected to the Senate. He is now in his seventh term.

Fifty years after entering public service, the man best known to Hawaiians simply as . . . ''Dan'' . . . is a legend on the Islands. I think Dan Inouye's an American legend, too.

Maybe there's a sort of irony that public servants from our nation's farthest outposts—Hawaii and Alaska—stand at the center of America's political life. I have had more than a passing interest in America's relations with Asia, and I can tell you how fortunate we are to have in Hawaii a state that extends America's reach so deeply into the Asia-Pacific. How fortunate we are to have a senator like Daniel Inouye, a man informed by the wisdom of his years, who looks only to the future. He gazes west, sees possibilities, and understands how important our relations with that great region of the world are for the future of this country. And he has done great service to this nation to build and strengthen those key relationships.

And we are fortunate in how great a friend Senator Dan Inouye has been to America's Armed Forces.

There is no one who understands better what the men and women of our Armed Forces want for this country and what they are prepared to give.

No one who understands better how important the unstinting support of the American people is for our troops as they undertake their difficult and dangerous work.

No one who understands better than Dan Inouye the kind of devotion to our nation the American soldier takes to war . . . and how important is the pledge we make to them that we will leave no man or woman behind.

Dan Inouye shares this nation's commitment . . . that we will not rest until we have the fullest possible accounting of each American who has risked it all in service to our country.

We thank you, Senator, for your support of our men and women in uniform, including on this critical issue.

Fifty years in public service is an impressive milestone. And just last week, Senator Inouye celebrated another significant milestone—his 80th birthday.

He spent that day as he spends most others . . . at his desk, working for America and America's men and women in uniform. It's a privilege, Senator, to have you here to wish you ''Happy 80th Birthday.'' . . . And many more.

Ladies and gentlemen, it's an honor to present to you Senator Daniel Inouye.

SENATOR DANIEL INOUYE

Secretary Wolfowitz, General Myers, former prisoners of war, family members of our missing in action, fellow veterans, and the men and women who proudly wear the uniform of our Armed Forces who are with us here today.

It is an honor for me to stand with you this morning as our Nation pauses to recognize those who have gone before us, those who have sacrificed so much, and continue to do so.

Grateful Americans are holding events such as these in cities and towns across this great land of ours, to express their gratitude to those who sacrificed their freedom to ensure ours, our American POWs, and to those who have never returned from foreign battlefields, our MIAs.

Americans honor their POWs and MIAs, their comrades, and their families through our worldwide commitment to account for our missing warriors, to bring our heroes home from distant lands, and to reunite them once again with their loved ones.

American POWs and MIAs have honored their Nation through their service and sacrifice, much like the magnificent young men and women standing so proudly on the parade field before us today. As I marched the line this morning, I was inspired beyond words by their professionalism. You honor all of us with your presence this morning.

Those who wear the uniform today, and those who went before them know—better than most—why bringing our missing Americans home is a sacred commitment. That mission rests squarely on the shoulders of those of us to whom you have entrusted some measure of leadership.

Your support and encouragement will continue to hold us accountable. Though this effort is ingrained in the hearts and minds of Americans, it is you who ensure this mission continues.

I want to say especially to the families of the missing and to you—their comrades—that your government will not rest until all come home.

More than 140 years ago, President Lincoln, desperately seeking to hold our Nation together, spoke of ''. . . those brave men who are now on the tented field or nobly meeting the foe in the front . . . that they who sleep in death . . . are not forgotten by those in highest authority . . . and should their fate be the same, their remains will not be uncared-for.''

At the dedication of a grand, national cemetery near the battlefield—at Gettysburg, Pennsylvania, in perhaps the most eloquent 272 words in American history, the President spoke to the families of those lost and to the soldiers still in combat.

He spoke of the honor that we must pay to those who have made the ultimate sacrifice to ensure their sacrifices were not in vain to ensure that this Nation will never forget.

We are equally committed today to the families of the missing from past conflicts, and to the soldiers still in combat.

More than 600 men and women are working around the world on that commitment—that mission. In my home State of Hawaii we have the headquarters of the Joint Task Force on Full Accounting that carries out these searches and the Combat Identification Lab which goes through the painstaking process of identifying the remains which are discovered.

I am very proud of their work and the small contribution that my state makes to this effort.

You are aware of the monumental effort to account for the missing from all wars. But the commitment goes much further than that.

While we seek to bring home the warriors of the past, we must also ensure that you warriors of the present—should you go into harm's way—your Nation will bring you home. ''Whatever it takes . . .''

The results of this mission can be seen on distant battlefields where numerous personnel in Afghanistan and Iraq have been recovered.

In Iraq alone, our heroic rescue forces have recovered more than 75 of our warriors alive. But in spite of our commitment to recover today's service members from today's battlefields, our challenge remains to account for those who fell in past conflicts.

I am told that more than 1,800 are unaccounted for from the Vietnam war—730 others have been identified and returned to their families since the end of that war.

Just last week, our troops from the Joint Task Force on Full Accounting brought home the remains of more American soldiers from the Korean war.

Throughout the world—from North Korea to Southeast Asia, in the South Pacific, and even in Europe and Russia, with the cooperation of the people and governments of many nations, the work goes on around the clock.

My fellow Americans, this past weekend the Nation commemorated the third anniversary of the terrorist attack on the United States. The horrifying memory of the attack remains fresh in our minds.

Less than one week after 9–11, Senator TED STEVENS and I were sent by the Senate to New York to assess the damage as we prepared our first supplemental appropriations measure to respond to the tragedy. As we circled the smoldering ruins I was struck by the devastation that lay below us.

The day before, we had toured the wreckage here at the Pentagon.

Let me tell all of you that those two experiences are etched in my brain never to be forgotten.

Today we recognize that the world remains a dangerous place. As much as we desire to live in peace we understand that there is likely to always be a need for a strong military to defend this country and to fight our Nation's wars.

Our obligation is both to future generations of those who go in harm's way, and to those of the past, as Lincoln said, we will assure all of you and them that we shall never forget.

That, my fellow Americans is our solemn pledge. Thank you.

ABUSE OF FOREIGN DETAINEES

Mr. LEAHY. Mr. President, almost five months after learning of the atrocities that occurred at Abu Ghraib, several of the investigations into U.S. detention policies are now complete. I commend Chairman WARNER for his efforts to investigate this scandal, but he remains hampered by the leadership of his own party and an administration that does not want the full truth revealed. While the investigations provide new insight into how the abuses occurred, they frequently raise as many new questions as they answer. Despite calls from a small handful of us who want to find the truth, Congress and this administration have failed to seriously investigate acts that bring dishonor upon our great Nation and endanger our soldiers overseas.

The Bush administration circled the wagons long ago and has continually maintained that the abuses were the work of 'a few bad apples.' I have long said that somewhere in the upper reaches of the executive branch a process was set in motion that rolled forward until it produced this scandal. Even without a truly independent investigation, we now know that the responsibility for abuse runs high up into the chain of command. To put this matter behind us, first we need to understand what happened at all levels of government. It is the responsibility of the Senate to investigate the facts, from genesis to final approval to implementation and abuse. However, this Senate, and in particular the Judiciary Committee, continues to fall short in its oversight responsibilities.

Democrats on the Judiciary Committee attempted in June to force the disclosure of policy memos on the treatment of detainees, but were defeated by a party-line vote. Recently, a Federal judge, recognizing the importance of public examination of such documents, ordered the Bush administration to comply with freedom of information laws and release a list of all documents on the detentions at Abu Ghraib prison by October 15. I commend this decision, but even that list would not tell the entire story.

A recent Washington Post column addressed the administration's attempt to whitewash this scandal. Jackson Diehl wrote:

> Cynics will not be surprised to learn that senior military commanders and Bush administration officials are on the verge of avoiding any accountability for the scandal of prisoner abuse in Iraq and Afghanistan—despite the enormous damage done by that affair to U.S. standing in Iraq and around the world; despite the well-documented malfeasance and possible criminal wrongdoing by those officials; despite the contrasting prosecution of low-ranking soldiers.

Allowing senior officials to avoid accountability sets a dangerous precedent. It is time for Congress, even this Republican Congress, to do its job and take action. We must send a message that no one in the chain of command—from an enlisted private at Abu Ghraib to the Commander-in-Chief—is above the laws of our Nation.

The investigations completed thus far provide additional insight into how the prison abuses occurred, but their narrow mandates prevented them from addressing critical issues. The reports by the Army Inspector General, Maj. Gen. George Fay, and Lt. Gen. Anthony Jones all suffered from structural limitations. The Army IG report was designed as ''a functional analysis'' of operations, not an investigation into any specific incidents. The Fay and Jones reports, tasked with reviewing the role of military intelligence at Abu Ghraib, were limited in scope to the military itself despite acknowledging that relationships between military intelligence, military police, and outside agencies were significant to the breakdown in order. Overall, these investigations collectively suffered from a lack of scope and authority, leaving key inquiries into issues like contractor abuses and ''ghost detainees'' unexplored.

The panel led by former Defense Secretary James Schlesinger was similarly limited to the role of the military and could not investigate the role of the CIA. The Schlesinger panel had no subpoena power and lacked true independence. Its loyalty to the Secretary of Defense is betrayed by its acceptance of a policy that is proving to be one of the root causes of this scandal. In August 2002, Assistant Attorney General

Jay Bybee wrote in a memo to White House Counsel Alberto Gonzales that, ''While many of these techniques may amount to cruel, inhuman or degrading treatment, they do not produce pain or suffering of the necessary intensity to meet the definition of torture.'' Alarmingly, in his recent testimony before the Senate Armed Services Committee, Dr. Schlesinger sounded more like an administration official than an independent investigator. His statement to the committee that, ''What constitutes humane treatment lies in the eye of the beholder'' is something I would have expected to read in a memo from Jay Bybee, not the head of an ''independent'' commission.

I could not disagree more with the statements of Dr. Schlesinger and Mr. Bybee. The Geneva Conventions and Convention Against Torture define humane treatment of prisoners, setting standards that protect our own soldiers when they are captured. A number of State Department lawyers fought to protect these standards in early 2002, when the President broke with decades of policy and decided against providing the Geneva protections to terrorist suspects. Military lawyers fought the same battle after Secretary Rumsfeld approved techniques for use at Guantanamo that are illegal under the Geneva Conventions.

The recently released reports illustrate why an independent investigation is still necessary. They brought us closer to the truth, but questions remain unanswered. Despite its failings, the Schlesinger report refuted the administration's efforts to avoid responsibility and to minimize this scandal as the misdeeds of 'a few bad apples.' The report documents a failure of leadership by some at higher levels in the chain of command, as well as poor planning from the top and a great deal of confusion about which interrogation and detention practices were acceptable. But the confusion was not caused solely by a lack of leadership. In recent months we have learned that senior officials in the White House, the Justice Department and the Pentagon set in motion a systematic effort to minimize, distort and even ignore our laws, policies and agreements on torture and the treatment of prisoners. The Schlesinger panel failed to follow the investigation to the highest levels of the administration.

Ultimately, what emerges from these reports is a striking contradiction. The reports state that there was no official policy of abuse and they do not recommend punishment for high-ranking officials. And yet, the reports show that decisions that were made by top officials, including the President himself, led to the abuses that occurred in the fields of battle.

Piecing together the facts and findings of these reports with information contained in other official documents and press accounts, a timeline emerges that shows how edicts from Washington trickled down, crossed oceans, and migrated from the front lines on one continent to the next.

In February 2002, President Bush signed a memorandum stating that the Geneva Conventions did not apply to members of al-Qaida and the Taliban. That decision was taken at the recommendation of the Attorney General and White House counsel, and over the objection of the Secretary of State.

Eight months later, in October 2002, with hundreds of prisoners captured in Afghanistan then being held at Guantanamo Bay, the Schlesinger report states that authorities at the base ''requested approval of strengthened counter-interrogation techniques.'' In December of that year, according to the Fay report, Secretary Rumsfeld approved for use at Guantanamo techniques such as ''stress positions, isolation for up to thirty days, removal of clothing and the use of detainees' phobias (such as the use of dogs).'' Lawyers in the military reacted negatively, strenuously arguing that the use of such techniques was anathema to military tradition and would ultimately come back to haunt the armed services. In January 2003, Secretary Rumsfeld rescinded his approval of the extreme interrogation techniques; new guidelines were issued in April 2003 from a Defense Department working group.

The Fay report reveals, however, that despite the Secretary's shift in policy, the methods he had authorized in December 2002 for use only at Guantanamo Bay quickly migrated to Afghanistan and other locations where our military is active. As early as December 2002, reports General Fay, ''interrogators in Afghanistan were removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation.''

It was also in December 2002 that two prisoners in U.S. custody were killed. Both deaths were ruled homicides by pathologists, but, at the time, the Army publicly attributed them to natural causes. It was not until journalists saw copies of the death certificates, which had been given to the non-English speaking families of the deceased, that the truth about the fatalities came out. In September, criminal charges were finally filed, 20 months after the deaths occurred.

These deaths are deeply disturbing, but at least we know some of the details of the cases and can seek justice against the perpetrators. A recent report by the Crimes of War Project uncovered an Afghan detainee's death that was never reported up the military chain of command. The detainee, Jamal Naseer, died in March 2003, allegedly after weeks of torture by American soldiers. Because the Special Forces unit that reportedly controlled the detention facility failed to report the death, it was never investigated. This incident is very troubling on its own, but, like so many other incidents we have discovered, it points to a much larger problem. The U.S. Army Criminal Investigation Command received a tip about Naseer's death earlier this year, but could not investigate the matter due to a lack of information. Christopher Coffey, an Army detective based at Bagram air base, told the L.A. Times:

> We're trying to figure out who was running the base. We don't know what unit was there. There are no records. The reporting system is broke across the board. Units are transferred in and out. There are no SOPs [standard operating procedures] and each unit acts differently.

The L.A. Times article illustrates a serious failure of leadership by the Department of Defense and the obvious shortcomings of allowing the Pentagon to investigate itself. The Army Inspector General's report, released in July, stated that the investigation's team ''that visited Iraq and Afghanistan discovered no incidents of abuse that had not been reported through command channels; all incidents were already under investigation.'' We now know this cannot be accurate. What we don't know is how many more deaths and cases of torture have gone unreported.

As I stated before, the Schlesinger report agreed with administration policy that detainees did not merit Geneva protections, a position with which I and many of those in uniform disagree. The panel acknowledged, however, that the President's policy of treating al-Qaida and Taliban detainees ''consistent with the principles of Geneva,'' was ''vague and lacking.'' Even a government treating prisoners ''consistent'' with the Conventions would not rely on interrogation practices like the ones we have witnessed. The techniques I just described, ones that were used in Guantanamo, Afghanistan, and Iraq are clearly illegal under the Geneva Conventions. Secretary Rumsfeld and, later, Lt. Gen. Ricardo Sanchez, authorized the use of techniques that were contrary to both U.S. military manuals and international law. Given this incredible overstepping of bounds, I find it incredible that the reports generated thus far have not recommended punishment of any kind for high level officials.

Meanwhile, the CIA conducted its own set of interrogations. The Fay and Schlesinger reports state that the CIA operated under a different set of rules, sometimes including the military and sometimes not. The Fay report states that ''the CIA's detention and interrogation practices contributed to a loss of accountability and abuse at Abu Ghraib.'' The result: further confusion among soldiers in the field over appropriate standards of treatment and the application of the Geneva Conventions.

How did these techniques, which were rescinded by Secretary Rumsfeld in January 2003 become so prevalent in Iraq? The Fay report states it flatly: ''Concepts for the non-doctrinal, in-field manual approaches and practices

clearly came from documents and personnel in Afghanistan and Guantanamo.'' Ultimately, the ''non-doctrinal'' approaches used at Abu Ghraib included nakedness and humiliation, the use of dogs to ''fear up'' detainees, and sexual and physical assaults. These approaches migrated to Iraq a number of ways, any of which might have been prevented by clear statements of policy from the top. Members of the 519th Military Intelligence Battalion served at Bagram Air Force Base in Afghanistan in 2002. Some of these soldiers have been implicated in the deaths of the two prisoners at Bagram. A number of soldiers from the 519th were sent to Iraq, and some of those have been implicated in the Abu Ghraib abuse scandal. As we all know, military intelligence played a major role in directing and carrying out the abuses at Abu Ghraib.

In addition, as the Fay report cites, ''Interrogators in Iraq, already familiar with the practice of some of these new ideas, implemented them even prior to any policy guidelines.'' Before long, as the Schlesinger report states, policy guidance backed up the interrogators' actions. In August 2003, Maj. Gen. Miller ''brought the Secretary of Defense's April 16, 2003, policy guidelines for Guantanamo with him,'' and gave this policy to Lt. Gen. Sanchez, who was, at the time, the highest level commander in Iraq. On September 14 of last year, according to the Schlesinger report, Lt. Gen. Sanchez approved a policy on interrogation that included techniques that, up to that point, had only been officially applied to so-called enemy combatants—those who, in the minds of President Bush and Secretary Rumsfeld, were not protected by the Geneva Conventions. The Bush administration has steadfastly claimed that the Geneva Conventions apply to the war in Iraq. And yet, Lt. Gen. Sanchez determined, with no authorization to do so, that some of the detainees held in Iraq were to be categorized as unlawful combatants.

How did Lt. Gen. Sanchez justify his authority to approve such techniques? The Schlesinger report found that Lt. Gen. Sanchez relied on the President's February 2002 memorandum and the Department of Justice's notorious August 1, 2002 memo twisting the definition of torture. It is deeply troubling, given this evidence, that the Bush administration has held fast to the contention that the abuses at Abu Ghraib were committed by ''a few bad apples.'' And it is extremely disconcerting that the very outcome that military lawyers warned of when they fought against the administration's desire to suspend the Geneva Conventions—the undermining of the military's tradition of upholding the rule of law—came to fruition. Our armed forces have been tainted by this scandal and our soldiers in the field placed at greater risk.

The Sanchez policy guidelines were technically in effect for only a month before being revised. But, as in Afghanistan, these illegal techniques were put to use almost immediately. Interrogators in Iraq relied upon the guidelines and may have done so believing that they were appropriate. The Jones report states that, ''Some of these incidents involved conduct which, in retrospect, violated international law. However, at the time some of the soldiers or contractors committed the acts, they may have honestly believed the techniques were condoned.''

I find it deeply disturbing that American soldiers would have acted on such guidelines. I have stated many times that those who violated the laws by assaulting and humiliating prisoners should be prosecuted. The buck should not stop there, however. The reports have shown that there was a serious breakdown in training and operations. There was one MP for every 75 prisoners at Abu Ghraib when the abuses occurred. And as the Army Inspector General found, interrogation facilities lacked oversight processes and control mechanisms. Even routine inspections were lacking.

What these reports show—and, unfortunately, it is an unstated revelation one discovers by reading between the lines—is that once President Bush and his top advisors let the genie out of the bottle by denying the protections of the Geneva Conventions and rewriting the definition of torture, they set off a chain reaction that spanned the globe. By changing the rules of treatment and interrogation for one group of detainees, by tossing away decades of military protocol, by writing and rescinding and rewriting guidelines so often that soldiers had no clear understanding of policy or practice, and by allowing the CIA to operate in the shadows, the leaders of the Bush administration lost control. What was initiated for one group of detainees in one location spilled over into other countries and to very different types of prisoners.

A day or two after the release of the Schlesinger and Fay-Jones reports, Secretary Rumsfeld still claimed that there was no evidence that prisoners had been abused during interrogations. I wonder if he took the time to read or to request a briefing on these investigations. He made the same statement twice before his handlers corrected him, in the middle of a press conference. Incredibly, he again misstated the facts, ''correcting'' himself to say that only two or three cases of abuse took place during interrogation. In fact, 13 of 44 instances of abuse involved interrogation. It leaves me to wonder. Meanwhile, President Bush has kept quiet about the findings of the reports. His silence is deafening.

As I have said before, there needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion. An independent commission, structured on the model of the 9/11 Commission, will allow us begin to heal the damage that has been done.

I am not alone in calling for an independent commission. Several organizations, including the American Bar Association, Human Rights First, Amnesty International, and Human Rights Watch, have urged the creation of an independent, bipartisan commission to investigate the prisoner abuses. A recent letter from eight retired generals and admirals to President Bush asked him to appoint a prisoner abuse commission modeled on the 9/11 Commission. In that letter, the flag officers stated, ''internal investigations by their nature . . . suffer from a critical lack of independence. Americans have never thought it wise or fair for one branch of government to police itself.''

The 9/11 Commission provides more than a structural model for a new commission; it also provides a lesson in how perseverance can overcome the administration's refusal to seek the truth. The Bush administration initially opposed the formation of the 9/11 Commission, just as it now opposes a prisoner abuse commission. The administration used the same argument against both commissions. It asserts that the numerous internal investigations are sufficient to uncover the truth. Dr. James Schlesinger, the head of the panel established by Secretary Rumsfeld to investigate the prisoner abuses, addressed this issue in his testimony to the Senate Government Affairs Committee in February 2002, as it debated the need for the 9/11 Commission. He argued for the creation of the Commission because, ''to this point many questions have been addressed piecemeal—or not at all. The purpose of the National Commission would be systematically and comprehensively to address such questions—and to give a complete accounting of the events leading up to 9/11. In my judgment, such a Commission would serve a high, indeed indispensable, national purpose.'' This is exactly the same reason we need an independent commission to investigate the prisoner abuse scandal.

The Governmental Affairs Committee report on the bill to establish the 9/11 Commission stated that it ''is a bipartisan initiative to help answer the many remaining questions in a constructive, methodical, and non-partisan way. The commission would complement investigations being undertaken by Congress and the Executive Branch.'' A prisoner abuse commission would fulfill a similar need—to fill the gaps that inevitably occur when an investigation is addressed in a piecemeal fashion. We already know some gaps exist—such as the ghost detainee problem and the role of contractors—others are sure to arise in the course of an independent investigation.

International law, as well as the Defense Department's own policies, requires the registration and accounting of all detainees. Detainees kept off of the official rolls—so called 'ghost detainees'—are held in violation of the law. The Fay-Jones report revealed that the ghost detainee problem was

far more pervasive than the Defense Department had previously acknowledged. General Kern, the investigation's appointing officer, testified before the Senate Armed Services Committee that there could be as many as 100 ghost detainees, but his panel could not thoroughly investigate the matter because the CIA refused to cooperate in the inquiry.

These revelations should not come as a surprise—human rights groups have been calling for an investigation into the ghost detainee issue for months. I first wrote to the National Security Advisor about mistreatment of detainees in June 2003, including a request for information on prisoners transferred in secret by the United States to other nations for interrogation. A report on secret detentions was released on June 17, 2004, by Human Rights First. The report, titled, Ending Secret Detentions, describes a number of officially undisclosed locations that sources—typically unnamed government sources quoted in the press—have described as detention centers for terrorism suspects. These sources have discussed facilities in Iraq, Afghanistan, Pakistan, Jordan, Diego Garcia, and on U.S. war ships. The ICRC has not been allowed access to these facilities. It issued a public statement in March expressing its growing concern over ''the fate of an unknown number of people captured . . . and held in undisclosed locations.'' To date, its requests have been denied.

After being rebuffed by the CIA, the Fay-Jones panel asked two offices to conduct further investigations into the ghost detainee issue: the Department of Defense Inspector General and the CIA Inspector General. Once again, this would result in one branch of government to policing itself. Like the Fay-Jones panel, the Inspectors General lack the authority to follow such investigations beyond their own departments—again allowing many questions to remain unanswered. We need to know what role senior administration officials in the White House, Justice Department, Defense Department, and CIA played in formulating the policies that allowed the illegal detention of ghost detainees. We know this problem emanated from senior officials—Secretary Rumsfeld admitted in June that he approved the secret detention of one detainee at the request of CIA Director Tenet. Only an independent commission with significant authority will be able to fully investigate this matter.

The Fay-Jones report also found that civilian contractors were complicit in the abuse of detainees. We already knew this, but the panel's findings raise new questions about whether the contractors will be held accountable for their actions. Thus far, one contractor has been charged for abuse in Afghanistan, but no charges have been filed against contractors in Iraq. As P.W. Singer points out in his recent Washington Post op-ed, ''Army investigators are at a loss over how to hold the contractors accountable. The Army referred individual employees' names to the Justice Department more than three months ago, but Attorney General Ashcroft has yet to take action.'' As these cases are referred to the Justice Department, the Judiciary Committee must fulfill its oversight responsibility to ensure these crimes do not go unpunished. Given the reports and allegations of abuses of Iraqi prisoners that involved civilian contractors, I am deeply troubled at the passivity being displayed by the Department of Justice. If loopholes exist in the law, the Department should be working with Congress to fill them.

Some argue that another investigation will prevent us from putting the scandal behind us, but ignoring the problem will not make it go away. Each week brings new allegations that reveal how much we still don't know. Human rights groups and journalists have been unrelenting in their efforts to uncover this scandal, and I applaud their contributions. The report released recently by the War Crimes Project revealed unreported deaths in Afghanistan. Veteran journalist Seymour Hersh claims in his new book that senior military and national security officials were repeatedly warned in 2002 and 2003 that prisoners were being abused. Mr. Hersh writes that FBI agents notified their superiors about abuses at Guantanamo and that these reports were passed along to officials at the Pentagon. The ACLU continues to fight in Federal courts to compel the administration to release documents related to torture. Even without further Government action, this scandal is not going to go away. It is time for us to lead the investigation, rather than wait to read about the latest discovery of abuse in tomorrow's paper. We must establish an independent commission.

In the coming months, the remaining Pentagon investigations will come to an end. It will be like finding an old jigsaw puzzle in the back of the closet—it looks complete, but you can never tell if there are pieces missing until you try to put it together. An independent commission can take on this important task; it will ensure that no pieces are missing and that we have a complete, unbiased assessment of a sad chapter in our Nation's history. The 9/11 Commission showed us that it can be painful to dredge up the past, but it is also a necessary step to moving forward.

CHILDREN'S HEALTH PROTECTION AND IMPROVEMENT ACT OF 2004

Mr. ROCKEFELLER. Mr. President, yesterday marked a critical juncture in the fight to provide comprehensive and affordable health care coverage for our Nation's children. Congress had a tremendous opportunity to improve the quality of life for hundreds of thousands of children, not just for the foreseeable future, but also over the long term. September 30, 2004, should have gone down in history as the day Congress set aside partisan politics and took a stand for children. Unfortunately, yesterday will be remembered as the day Congress chose political rhetoric over action and failed to protect health care coverage for children in working families.

Some of my colleagues will argue that September 30 only marked a statutory deadline and didn't really matter in terms of coverage for kids. I strongly disagree. Yesterday's deadline was about keeping our promise to America's working families that their children will have access to comprehensive, affordable, and reliable health care coverage. We in Congress have broken that promise, and it is unconscionable to think that Members would go home to campaign while the health care of some of most vulnerable children hangs in the balance.

We must act now to preserve health care coverage for children enrolled in the Children's Health Insurance Program, CHIP. This is too important an issue to delay even a day. Senators CHAFEE, KENNEDY, SNOWE, and I, along with Congressmen BARTON and DINGELL, have a bipartisan, bicameral bill on the table right now that will protect coverage for America's children. The Children's Health Protection and Improvement Act has the support of 48 bipartisan cosponsors in the House of Representatives and 33 bipartisan cosponsors in the Senate. Our legislation has been endorsed by over 100 local, state, and national organizations including the National Governors Association, the American Academy of Pediatrics, the American Hospital Association, the National Association of Children's Hospitals, the Catholic Health Association, Families USA, the Children's Defense Fund, and the March of Dimes. There is no reason why we cannot pass this legislation today.

If my colleagues were to talk to their Governors about the merits of the Children Health Protection and Improvement Act, all 50 Governors would say that our legislation addresses the long-term Federal funding shortfalls that will occur in SCHIP over the next 3 years.

If my colleagues were to visit doctors' offices and hospital emergency rooms and talk to general practitioners, pediatricians, and surgeons, these providers would confirm that our legislation makes it easier for children to access health services and reduces our Nation's growing uncompensated health care burden.

Most importantly, if my colleagues were to talk to working families in their home states who rely on CHIP, working families would say that our legislation guarantees real coverage for their children. Our legislation gives working families the peace of mind that comes from knowing their children would not just receive health care coverage tomorrow, next month, or next year, but for the next several

years until the CHIP program is reauthorized in fiscal year 2007.

It seems that some in this body are more concerned with sound bites than with actually providing health coverage for children. Of course, we can all attest to the success of the Children's Health Insurance Program over the years. We can all cite the 5.8 million children who were covered last year. But, I ask my colleagues, how are we going to do to protect the coverage of those 5.8 million children and ensure that even more children are covered?

While I strongly support greater outreach and enrollment in the CHIP program, the bottom line is that outreach is not a solution to States' coverage problems. States aren't covering additional children under CHIP because they cannot afford to cover the children already enrolled in their programs. In fact, according to the Kaiser Commission on Medicaid and the Uninsured, states are implementing measures—such as enrollment caps, premiums and enrollment fees, eligibility cuts, restricted benefits, and increased co-payments to scale back outreach and enrollment instead of increase them. The State of Florida is a prime example of this. Enrollment in Florida's CHIP program is closed for some children who are undeniably eligible. Outreach to more children who meet the eligibility requirements for Florida KidCare is futile if those kids cannot access actual coverage.

States are experiencing both State and Federal funding shortfalls that prevent them from covering kids. Senator GORDON SMITH and I offered legislation earlier this year to address State budget shortfalls. The State Fiscal Relief Act would extend the federal fiscal relief enacted last year to help resolve state budget deficits and prevent cuts in critical programs and services, including health care. Yet, Congress has yet to consider this important legislation. And now, Congress has failed to preserve approximately $1.1 billion in expiring CHIP funds for coverage. Our failure to act is sending a very strong message to the states that not only is Congress not willing to assist with budget shortfalls during an economic downturn, Congress is also not willing to uphold the federal guarantee of CHIP coverage.

CHIP is a Federal entitlement, and the Federal Government has a responsibility to make certain the program has the requisite funding to insure eligible children. Additional Federal funding for CHIP outreach should only be pursued after we have made sure states have the federal funding needed to cover the children currently on their rolls. Otherwise, outreach efforts will be ineffective because children will not have access to actual coverage.

The Children's Health Protection and Improvement Act would prevent nearly $1.1 billion in expiring CHIP funds from reverting to the Treasury so that states with unmet needs can use the money to preserve coverage for children currently enrolled and higher-spending states can cover additional children. Our legislation would also establish redistribution rules that will keep CHIP money in the CHIP program through fiscal year 2007.

Some of my colleagues have expressed concerns that our bill would not lead to new children being enrolled in CHIP. These concerns are simply unfounded. My home State of West Virginia, for example, is looking at the feasibility of a CHIP expansion that would cover an additional 4400 children under 300 percent of poverty. The biggest barrier to West Virginia going forward with this expansion is the lack of Federal funds. My state and many others are still recovering from the so-called ''CHIP dip,'' when Federal CHIP funding was $1 billion lower in fiscal years 2002–2004 than it was in fiscal year 2001. However, under the Children's Health Protection and Improvement Act, WV would qualify for redistributed funds which would give the state the ability to proceed with the expansion.

Finally, I respond to the claims made by some that the Secretary of Health and Human Services should be allowed to redistribute approximately $660 million in unspent fiscal year 2002 funds to the six states projected to have shortfalls next year. There are several problems with this approach. First, such an approach would concentrate the vast majority of the expiring fiscal year 2002 funds in just six states, when a total of 30 states would qualify for redistributed funds.

Second, unlike the Rockefeller-Chafee-Kennedy-Snowe bill, this approach would not address Federal funding shortfalls in these states in fiscal years 2006 and 2007. Moreover, such a proposal is likely to open up a larger Federal shortfall in fiscal years 2006 and 2007 for the other 12 states projected to have insufficient Federal funding before SCHIP is reauthorized in fiscal year 2007. This is because these 12 states would receive less in redistributed fiscal year 2002 funds under such a proposal than they would otherwise receive under our legislation.

Third, and most importantly, the Centers for Medicare and Medicaid Services, CMS, has not offered a specific formula for allocating funds to states that need them the most in fiscal year 2005, so there is no guarantee that CMS would actually do so. Furthermore, it is critical to note that Congress acted in both 2000 and 2003 to set a specific statutory formula for redistribution and has never allowed the administration, neither the previous one nor the current one, decide how to reallocate unspent funds. Leadership in both the House and the Senate supported these previous redistributions, which have directly contributed to the success of the CHIP program in recent years, so it is unclear why there seems to be a change in position now.

In recent days, several new ideas have been proposed for how to deal with expiring CHIP funds. Perhaps if it were March or April, and we had ample time to analyze these far-reaching proposals, then we could adequately consider each one. But, the fact of the matter is that we have a strongly bipartisan bill, supported by the Governors of all 50 States, that is ready to go right now. Our legislation has been properly vetted and appropriately scrutinized. The score of our bill is relatively small in relation to the number of children who would be covered. And, our legislation is the product of a long collaborative effort between states, advocacy groups, and Members of Congress instrumental in the creation of the CHIP program. I see no reason why we cannot pass this legislation now.

I am encouraged by Chairman GRASSLEY's statement that he wants to address the long-term Federal CHIP funding shortfalls. After all, the Finance Committee has a history of protecting health care coverage for children. It is where the CHIP program was created and where previous redistributions were conceived. I cannot imagine that members of the Finance Committee would want to jeopardize such a remarkable history by failing to protect CHIP coverage for hundreds of thousands of children over the next three years. I look forward to working with Chairman GRASSLEY and other members of the Finance Committee to pass a unanimous consent agreement on CHIP before we go home next week.

I also call on the President to take a similar stand for children. For reasons that are inconceivable to me, some of my colleagues on the other side of the isle have indicated that our legislation is partisan or politically motivated. That could not be further from the truth. Our legislation has strong bipartisan support in the House and the Senate, and all of the cosponsors have worked hard to keep this bill from becoming part of election-year politics. There is no reason for Congress not to pass our legislation next week and for the President not to sign it into law. Our children cannot afford to wait.

NATIONAL MUSEUM OF THE AMERICAN INDIAN

Mr. JOHNSON. Mr. President, I speak about the Smithsonian's new Museum of the American Indian. In June 1989, when I was still a Member of the House of Representatives, I cosponsored legislation to establish the National Museum of the American Indian within the Smithsonian Institution. The 15-year odyssey for this museum has presented us with more than just items behind glass. This museum tells the story of North and South Americas' native peoples. It shows their journey through time and gives optimism for the future.

First, I thank all those who have been involved since this process began so many years ago, in particular, Senators INOUYE and CAMPBELL, the original sponsors of this bill. The efforts of

thousands of people, both Native and non-native, are reflected in the magnificent structure commemorating the lives of the first Americans. I also thank the thousands of participants who have come from all over the Western Hemisphere to be a part of this historic museum opening, especially those Lakota, Dakota, and Nakota peoples who have made the journey from the Great Plains and particularly South Dakota. Those that have made the trip have shared with us the richness and beauty of their cultures.

I recently had the opportunity to tour the museum, and I am so proud to see the Native people of South Dakota represented in the museum. I am particularly contented to see that the exhibits are displayed in a manner where the tribes are able to see their story from their own point of view. This museum will forever grace the national mall in our Nation's Capitol from the serenity gardens created to surround the museum to the heart of the building's Potomac gathering place. It will take its visitors through time by allowing native people to tell their own story.

I also take this opportunity to speak of the future. With the ever changing roles of the United States government and Indian Tribes, it is imperative we constantly examine paths that strengthen that relationship. In regards to this relationship, I often hear of the tribal sovereignty and the obligations of the United States Government and its treaty and trust responsibilities. With health care in Indian Country funded at 50 percent its necessary levels and schools that are decades past their usefulness, I think that we need to take a serious look at these responsibilities. We need to do more to combat the deplorable conditions that many of our native peoples are subjected, and to develop a plan to alleviate these hardships.

Forever, this museum will grace our national mall. With this new beginning and its reflections of the past, we must now look to the future, the future of Indian country.

ADDITIONAL STATEMENTS

BAYAUD INDUSTRIES

• Mr. ALLARD. Mr. President, I would like to honor the fine work and dedication of Bayaud Industries of Denver, CO. This non-profit organization offers disabled Coloradans vocational rehabilitation and employment services. I am pleased to acknowledge their efforts and successes.

Founded in 1969, Bayaud Industries is celebrating this year its 35th anniversary of service to the disabled community. Bayaud currently employs and trains more than 300 disabled individuals so that they can succeed in the workplace with the goal to provide paid, steady work for every person enrolled in these programs. More than 5,000 disabled Coloradans have benefitted from the services provided by Bayaud Industries. Bayaud Industries is comprised of 48 staff members who are dedicated to helping the disabled community. Its efforts have resulted in a listing by the Denver Business Journal as one of the top 25 Colorado human service agencies. Additionally, Bayaud Industries has been awarded numerous grants from leading Colorado foundations and corporations.

Bayaud's services include vocational evaluation, work adjustment training, a General Office Skills Training program, job placement, and job coaching. The first step in training is in the Vocational Evaluation Program, a 4-week process that assesses an individual's skill needs to succeed in the workplace.

After an individual goes through Bayaud's Vocational Evaluation, the Work Adjustment Training helps individuals increase their self-confidence to help them acclimate appropriately to the workplace environment. Throughout this particular training, individuals are taught how to manage the daily stresses of any work environment, which helps create successful and stable employment.

Bayaud's General Office Skills Training program works to familiarize people with the technological aspects of the workplace. Computers are essential in many jobs, and these individuals are given the training necessary to make their employment a success.

Bayaud Industries uses these programs to provide help with one of the most important aspects of employment assistance: Job placement. From resume writing to interview skills, Bayaud Industries strives to ensure that all individuals are properly trained to search for a job that fits their needs and guarantees their achievement. This aspect of Bayaud is crucial to better understand the individual and to find the perfect job fit for both the business and the employee.

After job training and placement, Bayaud continues its relationship with their employees by offering job counseling. Through its quality assistance and care, Bayaud Industries fosters a relationship between these individuals and the 200 businesses across Colorado that employ them. Bayaud works to provide personalized assistance to all individuals with disabilities, addressing each client's specific needs and goals.

I thank Bayaud Industries for their continued efforts for the disabled community and to businesses across Colorado.

Bayaud's exemplary services are needed and greatly appreciated.•

DISCHARGED NOMINATION

The Senate Committee on Foreign Relations was discharged from further consideration of the following nomination and the nomination was confirmed: Alan Greenspan, of New York, to be United States Alternate Governor of the International Monetary Fund for a term of five years.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

H.R. 4596. An act to amend Public Law 97–435 to extend the authorization for the Secretary of the Interior to release certain conditions contained in a patent concerning certain land conveyed by the United States to Eastern Washington University until December 31, 2009.

H.R. 4606. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation and in coordination with other Federal, State, and local government agencies, to participate in the funding and implementation of a balanced, long-term groundwater remediation program in California, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1134. A bill to reauthorize and improve the programs authorized by the Public Works and Economic Development Act of 1965 (Rept. No. 108-382).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. KOHL (for himself and Mr. DEWINE):

S. 2880. A bill to amend title XI of the Social Security Act to ensure full and free competition in the medical device and hospital supply industries; to the Committee on Finance.

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 2881. A bill to clarify that State tax incentives for investment in new machinery and equipment are a reasonable regulation of commerce and not an undue burden on interstate commerce, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself and Mr. BIDEN):

S. 2882. A bill to make the program for national criminal history background checks for volunteer groups permanent; considered and passed.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2883. A bill to amend the International Child Abduction Remedies Act to limit the tort liability of private entities or organizations that carry out responsibilities of United States Central Authority under that Act; considered and passed.

By Mr. SHELBY (for himself, Mr. SARBANES, Mr. REED, Mr. BENNETT, Mr. BUNNING, Mrs. DOLE, Mr. CHAFEE, Mr. DODD, Mr. SCHUMER, Mr. BAYH, Mr. MILLER, Mr. ALLARD, Mr. ENZI, Mr. LAUTENBERG, Mrs. BOXER, Mr. CARPER, Ms. STABENOW, and Mr. CORZINE):

S. 2884. A bill to authorize the Secretary of Homeland Security to award grants to public

transportation agencies to improve security, and for other purposes; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT:

S. Res. 445. A resolution to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; to the Committee on Rules and Administration.

ADDITIONAL COSPONSORS

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1630

At the request of Mrs. DOLE, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1630, a bill to facilitate nationwide availability of 2–1–1 telephone service for information and referral services, and for other purposes.

S. 2338

At the request of Mr. BOND, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2395

At the request of Mr. CONRAD, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2395, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centenary of the bestowal of the Nobel Peace Prize on President Theodore Roosevelt, and for other purposes.

S. 2426

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 2426, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 2553

At the request of Mr. DODD, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2553, a bill to amend title XVIII of the Social Security Act to provide for coverage of screening ultrasound for abdominal aortic aneurysms under part B of the medicare program.

S. 2568

At the request of Mr. BIDEN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2602

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from Montana (Mr. BAUCUS), the Senator from Hawaii (Mr. AKAKA), the Senator from Arkansas (Mr. PRYOR), the Senator from Iowa (Mr. HARKIN), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 2602, a bill to provide for a circulating quarter dollar coin program to honor the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes.

S. 2759

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2759, a bill to amend title XXI of the Social Security Act to modify the rules relating to the availability and method of redistribution of unexpended SCHIP allotments, and for other purposes.

S. 2864

At the request of Mr. GRASSLEY, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2864, a bill to extend for eighteen months the period for which chapter 12 of title 11, United States Code, is reenacted.

S. 2866

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 2866, a bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the authority of the Secretary of Agriculture and the Commodity Credit Corporation to enter into memorandums of understanding with a State regarding the collection of approved State commodity assessments on behalf of the State from the proceeds of marketing assistance loans.

S. RES. 408

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. Res. 408, a resolution supporting the construction by Israel of a security fence to prevent Palestinian terrorist attacks, condemning the decision of the International Court of Justice on the legality of the security fence, and urging no further action by the United Nations to delay or prevent the construction of the security fence.

AMENDMENT NO. 3734

At the request of Mr. SPECTER, the names of the Senator from Maine (Ms. SNOWE) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of amendment No. 3734 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3801

At the request of Mr. KYL, the names of the Senator from Montana (Mr. BURNS) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of amendment No. 3801 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3803

At the request of Mr. CORNYN, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of amendment No. 3803 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3808

At the request of Mr. LEVIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of amendment No. 3808 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3839

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3839 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3840

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3840 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3845

At the request of Mr. BYRD, the names of the Senator from Alaska (Mr. STEVENS), the Senator from Hawaii (Mr. INOUYE), the Senator from Virginia (Mr. WARNER), the Senator from Iowa (Mr. HARKIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of amendment No. 3845 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3845 proposed to S. 2845, supra.

AMENDMENT NO. 3875

At the request of Mr. STEVENS, his name and the name of the Senator

from Montana (Mr. BURNS) were added as cosponsors of amendment No. 3875 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3877

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3877 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3879

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3879 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3880

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3880 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3903

At the request of Mr. STEVENS, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of amendment No. 3903 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KOHL (for himself and Mr. DEWINE):

S. 2880. A bill to amend title XI of the Social Security Act to ensure full and free competition in the medical device and hospital supply industries; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today with Senator DEWINE to introduce the Medical Device Competition Act of 2004. The legislation that we are introducing today is the product of perhaps the most important work of our Subcommittee in the last few years—ensuring that physicians, patients, and health care workers have access to the best and safest medical devices, devices that can literally make the difference between life and death.

For nearly three years, the Antitrust Subcommittee has undertaken a thorough investigation of the hospital purchasing industry. This industry accounting for more than an estimated $50 billion in commerce is responsible for purchasing nearly everything that a hospital buys to treat sick or injured patients, everything from simple bandaids to high tech x-ray machines, from pacemakers to surgical devices. Much of this purchasing is done under contracts negotiated by what are known as ''group purchasing organizations'', ''GPOs'', large organizations that aggregate the buying power of hundreds, and sometimes thousands, of hospitals in order to gain bargaining power and volume discounts from hospital suppliers.

Without question, the goal of gaining volume discounts through aggregating buying power that led to the creation of GPOs is laudable. Unfortunately, our inquiry revealed that a system created to aggregate demand and hold down cost had sometimes mutated into a tool for entrenching market power of dominant suppliers, locking out competitors, and suppressing innovation. All too often conflicts of interest and questionable GPO business practices denied physicians and their patients choice of needed medical devices and robbed hospitals of the benefit of competition.

Moreover, the power and importance of GPOs to our health care system increased as the GPO industry has undergone enormous consolidation in the last decade. As originally envisioned, GPOs were generally local or regional buying cooperatives each of whom accounting for a very small proportion of the market. Today, this situation is transformed. The two largest GPOs negotiate purchasing contracts for more than an estimated 60 percent of the Nation's not for profit hospital beds. The size and national scope of these large GPOs have turned them into the gatekeepers who can decide which medical devices doctors will use and which medical device companies will be able to sell their lifesaving goods..

Our investigation uncovered abuses and questionable practices that interfered with the GPOs' mission of buying the best products at the best prices. At the time our investigation began in 2001, it was all too common a practice for GPOs to contract with only one supplier of a medical device for lengthy terms. Industry observers also raised concerns over contracts which bundled commodities like hospital gowns with medical devices like pacemakers and surgical equipment, creating nearly insurmountable barriers for smaller manufacturers with specialized product lines to compete, regardless of the quality or effectiveness of their product. Some GPOs accepted high payments—so-called ''administrative fees''—well in excess of 3 percent from manufacturers. Worst of all, supposedly neutral contracting decisions were at times infected by equity interests held by GPOs or their executives in medical device companies.

We can be proud of the work of our subcommittee—and, indeed, many in the GPO industry—in responding to this situation. At our behest, six of the largest hospital buying groups agreed to fundamental reform by adopting codes of conduct governing their business activities and ethical responsibilities. These codes forbid anti-competitive business practices, and ban conflicts of interest that interfere with the GPOs' mission of buying the best products at the lowest prices. The GPOs that agreed to these new codes should be commended for their willingness to engage in real reform. Thanks to these GPOs' good work and willingness to engage in reform, many of the most egregious practices began to disappear from the marketplace and barriers to patients getting access to the best medical devices more have begun to come down.

Yet these reforms—as real and important as they are—have inherent limitations. They are completely voluntary and can be modified or even withdrawn by the GPOs at will. They have no enforcement mechanism nor any manner to objectively verify that they are being adhered to. We have no assurance that the reforms will not be abridged or abrogated should our subcommittee's oversight come to an end. We must now, therefore, find a way to ensure that these gains cannot be reversed.

Despite their enormous influence, GPOs have until now operated with little, if any, governmental oversight. Quite the contrary, these GPOs have operated under special government protection—a Congressionally granted exemption from anti-kickback law. This exemption—commonly known as the ''safe harbor'' for GPOs—allows GPOs to accept payments from hospital suppliers even though these purchases are reimbursed by the Medicare program. Acceptance of these payments from suppliers would be illegal absent this special exemption. The fact the hospital purchasing has this specially, Congressionally granted immunity from kickback mandates that government have the ability to oversee the manner GPOs are behaving under the protection of this exemption—oversight currently not required by law.

We are therefore today introducing legislation which will ensure that the Department of Health and Human Services will have the authority to oversee the functioning of the safe harbor and prevent anti-competitive or unethical GPO business practices. This is moderate and measured legislation which is not prescriptive in almost all respects. With only one exception, it does not outlaw any GPO practices or business arrangements. Instead, the bill grants oversight authority over hospital purchasing to HHS, and directs the HHS to draft regulations to prevent improper GPO conduct—that is, unethical conduct, anti-competitive practices, or practices which preclude products necessary for patient care or worker safety from reaching physicians and patients. HHS is further directed to consult with the Federal Trade Commission and the Attorney General in

developing these guidelines. Rather than micro-managing specific business practices, the discretion is left to the health policy experts at HHS, after consulting with the antitrust agencies—and only with the input of industry representatives through the notice and comment process—to develop the appropriate standards.

We recognize that different GPOs have different business models, and the goal of this approach is to permit GPOs to maintain these models as long as they do not violate basic precepts of good business conduct. As long as a GPO does not violate these standards, it continues to receive the immunity from anti-kickback law granted by the safe harbor. However, the penalty for GPOs that violate these standards is to be ineligible to participate in the safe harbor—that is, being unable to accept payments from hospital suppliers. This sanction should prevent GPOs from reverting to unethical or anti-competitive conduct, and give HHS the regulatory tools to supervise the industry so that it serves the interests of hospitals and patients.

The one area in which our legislation is prescriptive addresses a principle to which most parties on all sides of the GPO debate—hospitals, manufacturers, and most GPOs themselves—have already agreed. This is the provision that bans GPOs from accepting payments from vendors which exceed three percent of price of the good or service sold. The intent of this provision is to forbid excessive vendor fees which can bias a GPO contracting decision. The decision on which product is placed on a GPO contract should never turn on the amount of money paid by the manufacturer to the GPO; rather, a GPO's only goal should be to contract for the highest quality product at the lowest possible price. Most GPO's codes of conduct already ban vendor fees higher than 3 percent; however, during our investigation we learned that one of the nation's two largest GPOs had accepted fees above 20 percent. Indeed, data submitted to the Subcommittee showed that during 2002 over 20 percent of that GPO's revenues was derived from contracts with vendor fees higher than 3 percent, a proportion that had increased from the previous year. The safe harbor should not shield such practices, conduct which has the strong potential to bias the whole system.

In sum, we believe that our bill is a modest yet effective legislative approach to ensuring that the gains we have achieved over the past two years are not reversed, and that the safe harbor is administered in a way to promote innovation, competition, and cost savings. This legislation will give the authority that HHS needs to be an effective watchdog over hospital purchasing practices. Once this legislation is passed we can be confident that the reforms to the hospital purchasing industry that we have achieved over the last two years will remain in place, and that there will never be a return to practices that imperiled patient health and health worker safety, and blocked competition and innovation in this vital industry.

The bottom line is that our bill will encourage medical innovation, ensure doctors get the broadest choice of medical devices, and ensure that patients will receive the best possible devices available. These are goals we should all support. I urge my colleagues to join me in supporting this legislation.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2880

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medical Device Competition Act of 2004''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Given the increasing costs of health care in the United States, there is a compelling public interest in ensuring that there is full and free competition in the medical device and hospital supply industries so that the best and safest products are available to physicians and patients at a competitive price.

(2) By aggregating purchases, hospital group purchasing can reduce the cost of acquiring medical equipment and hospital supplies so long as such purchasing is done in a manner consistent with antitrust law and free competition.

(3) Some practices engaged in by certain hospital group purchasing organizations have had the effect of reducing competition in the medical device and hospital supply industries by denying some suppliers and device makers access to the hospital marketplace.

(4) There is a compelling public interest in having the Secretary of Health and Human Services, in consultation with the Attorney General and Federal Trade Commission, engage in oversight and supervision of the current Federal health care program anti-kickback exemption (also known as the safe harbor) provided to group purchasing organizations under subparagraphs (C) and (E) of section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)). This oversight and supervision should ensure that the safe harbor does not shield conduct that harms competition in the hospital supply and medical device industries.

SEC. 3. ENSURING FULL AND FREE COMPETITION.

(a) IN GENERAL.—Section 1128B(b)(3)(C) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)(C)) is amended—

(1) in clause (i), by striking '', and'' at the end and inserting a semicolon; and

(2) by adding at the end the following new clauses:

''(iii) the contracting, business, and ethical practices of the person are not inconsistent with regulations promulgated by the Secretary pursuant to subsection (g)(1);

''(iv) the person has been certified by the Secretary under subsection (g)(2) to be in compliance with the regulations promulgated pursuant to subsection (g)(1); and

''(v) the amount to be paid the person does not exceed a total of 3 percent of the purchase price of the goods or services provided by that vendor;''.

(b) REGULATIONS.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended by adding at the end the following new subsection:

''(g)(1)(A) The Secretary, in consultation with the Attorney General and the Federal Trade Commission, shall, not later than 1 year after the date of enactment of the Medical Device Competition Act of 2004, issue proposed regulations, and shall, not later than 2 years after such date of enactment, promulgate final regulations, specifying contracting, business, and ethical practices of persons described in paragraph (4) that are contrary to antitrust law and competitive principles, to ethical standards, or to the goal of ensuring that products necessary for proper patient care or worker safety are readily available to physicians, health care workers, and patients.

''(B) In issuing and promulgating regulations under subparagraph (A), the Secretary shall take into account—

''(i) the compelling public policy goals of—

''(I) encouraging competition and innovation in the hospital supply and medical device markets; and

''(II) reducing the cost of health care as a result of aggregating buying power;

''(ii) the potentially detrimental impact of certain anticompetitive contracting practices; and

''(iii) the need to avoid conflicts of interests and other unethical practices by persons described in paragraph (4).

''(2) The Secretary, in consultation with the Attorney General and the Federal Trade Commission, shall establish procedures for annually certifying that persons described in paragraph (4) are in compliance with the final regulations promulgated pursuant to paragraph (1).

''(3) The Secretary, in consultation with the Attorney General and Federal Trade Commission, shall, not less than 6 months after the date of enactment of the Medical Device Competition Act of 2004, issue proposed regulations, and shall, not later than 1 year after such date of enactment, promulgate final regulations, to clarify its regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 to specify that the definition of 'remuneration' under this section with respect to persons described in paragraph (4)—

''(A) includes only those reasonable costs associated with the procurement of products and the administration of valid contracts; and

''(B) does not include marketing costs, any extraneous fees, or any other payment intended to unduly or improperly influence the award of a contract based on factors other than the cost, quality, safety, or efficacy of the product.

''(4) A person described in this paragraph is a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursable under a Federal health care program.''.

(c) DEFINITION OF PURCHASING AGENT.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b), as amended by subsection (b), is amended by adding at the end the following new subsection:

''(h) For purposes of this section, the term 'purchasing agent' means any individual, organization, or other entity that negotiates and implements contracts to purchase hospital supplies or medical equipment, devices, products, or goods or services of any kind for any group of individuals or entities who are furnishing services reimbursable under a Federal health care program, including organizations commonly known as 'group purchasing organizations'.''.

(d) EFFECTIVE DATE.—Clause (v) of section 1128B(b)(3)(C) of the Social Security Act (42

U.S.C. 1320a–7b(b)(3)(C)), as added by subsection (a), shall take effect 1 year after the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 445—TO ELIMINATE CERTAIN RESTRICTIONS ON SERVICE OF A SENATOR ON THE SENATE SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT submitted the following resolution; which was referred to the Committee on Rules and Administration:

Mr. LOTT. Mr. President, since September 11, there has been an on-going debate about the quality of our Nation's intelligence capabilities. In recent months, this debate has intensified as questions have arisen about prewar intelligence concerning Iraq's program for developing weapons of mass destruction. In this period, when the United States is engaged in a global war against terrorism, it is imperative that our intelligence resources are used to the utmost of their capability.

The Senate Select Committee on Intelligence is charged with the responsibility of overseeing our Nation's intelligence capabilities. As a member of that committee, I can attest to the quality of the work performed by members and staff who serve on the committee. But there is a huge learning curve to fully comprehend how our Nation's intelligence capabilities are being deployed. There are very complex technological issues associated with international intelligence and Senators often do not have the time to develop expertise in understanding all of these systems. And that makes it difficult for all committee members to engage in effective oversight.

I believe the current structure of the Intelligence Committee handicaps the committee's ability to perform truly meaningful oversight. Unlike any other committee in the Senate, there are severe restrictions placed on how long a member can serve on the Intelligence Committee. A Senator can only serve on the committee for eight continuous years. And one-third of the members of the committee are required to cycle off the committee every 2 years.

I think the Senate can no longer afford the luxury of cycling members on and off the committee. We need an Intelligence Committee whose members have years of experience in understanding the entire spectrum of global intelligence just as we have a Finance Committee whose members have spent years learning the nuances and intricacies of the tax laws and Medicare. For that reason, I am today submitting a resolution eliminating both the 8-year term limit and the mandate to replace one-third of the committee every 2 years. I would note that the 9/11 Commission recommended that term limits on the committee be eliminated.

S. RES. 445

Resolved, That section 2 of Senate Resolution 400, 94th Congress, agreed to May 19, 1976, is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

AMENDMENTS SUBMITTED AND PROPOSED

SA 3945. Mr. LEAHY (for himself and Mr. GRASSLEY) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

SA 3946. Ms. COLLINS (for Mr. INHOFE) proposed an amendment to amendment SA 3849 proposed by Mr. CORZINE (for himself and Mr. LAUTENBERG) to the bill S. 2845, supra.

SA 3947. Mr. DOMENICI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 1876, to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project; which was ordered to lie on the table.

SA 3948. Mr. FRIST (for Mr. SHELBY (for himself and Mr. SARBANES)) proposed an amendment to the bill H.R. 1533, to amend the securities laws to permit church pension plans to be invested in collective trusts.

SA 3949. Ms. MURKOWSKI submitted an amendment intended to be proposed by her to the bill S. 1466, to facilitate the transfer of land in the State of Alaska, and for other purposes; which was referred to the Committee on Energy and Natural Resources.

TEXT OF AMENDMENTS—THURSDAY, SEPTEMBER 30, 2004

SA 3809. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, line 17, strike ''or'' at the end.

On page 28, line 19, strike the period and insert ''; and''.

On page 28, between lines 19 and 20, insert the following:

(D) the personnel involved are not military personnel and the funds were not appropriated to military personnel appropriations, except that the Director may make a transfer of such personnel or funds if the Secretary of Defense does not object to such transfer.

On page 91, between lines 12 and 13, insert the following:

(C) Nothing in this subsection shall be construed to authorize the National Intelligence Director to specify, or require the head of a department, agency, or element of the United States Government to approve a request for, the transfer, assignment, or detail of military personnel, except that the Director may take such action with regard to military personnel if the Secretary of Defense does not object to such action.

On page 98, between lines 21 and 22, insert the following:

(C) Nothing in this subsection shall be construed to authorize the National Intelligence Director to specify, or require the head of a department, agency, or element of the United States Government to approve a request for, the transfer, assignment, or detail of military personnel, except that the Director may take such action with regard to military personnel if the Secretary of Defense does not object to such action.

SA 3810. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, beginning on line 20, strike ''that is not part of the National Foreign Intelligence Program as of the date of the enactment of this Act''.

TEXT OF AMENDMENTS

SA 3945. Mr. LEAHY (for himself and Mr. GRASSLEY) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

SECTION 1. CONGRESSIONAL OVERSIGHT OF FBI USE OF TRANSLATORS.

Not later than 30 days after the date of enactment of this Act, and annually thereafter, the Attorney General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, that contains, with respect to each preceding 12-month period—

(1) the number of translators employed, or contracted for, by the Federal Bureau of Investigation or other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by the Federal, State, or local agencies on a full-time, part-time, or shared basis;

(3) the needs of the Federal Bureau of Investigation for the specific translation services in certain languages, and recommendations for meeting those needs;

(4) the status of any automated statistical reporting system, including implementation and future viability;

(5) the storage capabilities of the digital collection system or systems utilized;

(6) a description of the establishment and compliance with audio retention policies that satisfy the investigative and intelligence goals of the Federal Bureau of Investigation; and

(7) a description of the implementation of quality control procedures and mechanisms for monitoring compliance with quality control procedures.

SA 3946. Ms. COLLINS (for Mr. INHOFE) proposed an amendment to amendment SA 3849 proposed by Mr. CORZINE (for himself and Mr. LAUTENBERG) to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

In lieu of the matter to be inserted, insert the following:

TITLE ____—CHEMICAL FACILITIES SECURITY

SEC. ___0. 1. SHORT TITLE.

This title may be cited as the ''Chemical Facilities Security Act of 2004''.

SEC. ___02. DEFINITIONS.

In this title:

(1) ALTERNATIVE APPROACHES.—The term ''alternative approaches'' means ways of reducing the threat of a terrorist release, as well as reducing the consequences of a terrorist release from a chemical source, including approaches that—

(A) use smaller quantities of substances of concern;

(B) replace a substance of concern with a less hazardous substance; or

(C) use less hazardous processes.

(2) CHEMICAL SOURCE.—The term ''chemical source'' means a non-Federal stationary source (as defined in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2))) for which—

(A) the owner or operator is required to complete a risk management plan in accordance with section 112(r)(7)(B)(ii) of the Clean Air Act (42 U.S.C. 7412(r)(7)(B)(ii)); and

(B) the Secretary is required to promulgate implementing regulations under section ____03(a) of this title.

(3) CONSIDERATION.—The term ''consideration'' includes—

(A) an analysis of alternative approaches, including the benefits and risks of such approaches;

(B) the potential of the alternative approaches to prevent or reduce the threat or consequences of a terrorist release;

(C) the cost and technical feasibility of alternative approaches; and

(D) the effect of alternative approaches on product quality, product cost, and employee safety.

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) ENVIRONMENT.—The term ''environment'' has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(6) OWNER OR OPERATOR.—The term ''owner or operator'' has the meaning given the term in section 112(a) of the Clean Air Act (42 U.S.C. 7412(a)).

(7) RELEASE.—The term ''release'' has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SECURITY MEASURE.—

(A) IN GENERAL.—The term ''security measure'' means an action carried out to ensure or enhance the security of a chemical source.

(B) INCLUSIONS.—The term ''security measure'', with respect to a chemical source, includes measures such as—

(i) an employee training and background check;

(ii) the limitation and prevention of access to controls of the chemical source;

(iii) the protection of the perimeter of the chemical source;

(iv) the installation and operation of intrusion detection sensors;

(v) the implementation of measures to increase computer or computer network security;

(vi) the implementation of other security-related measures to protect against or reduce the threat of—

(I) a terrorist attack on the chemical source; or

(II) the theft of a substance of concern for offsite release in furtherance of an act of terrorism;

(vii) the installation of measures and controls to protect against or reduce the consequences of a terrorist attack; and

(viii) the conduct of any similar security-related activity, as determined by the Secretary.

(10) SUBSTANCE OF CONCERN.—The term ''substance of concern'' means—

(A) a chemical substance present at a chemical source in quantities equal to or exceeding the threshold quantities for the chemical substance, as defined in or established under paragraphs (3) and (5) of section 112(r) of the Clean Air Act (42 U.S.C. 7412(r)); and

(B) such other chemical substance as the Secretary may designate under section ____03(g).

(11) TERRORISM.—The term ''terrorism'' has the meaning given the term in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

(12) TERRORIST RELEASE.—The term ''terrorist release'' means—

(A) a release from a chemical source into the environment of a substance of concern that is caused by an act of terrorism; and

(B) the theft of a substance of concern by a person for off-site release in furtherance of an act of terrorism.

SEC. ____03. VULNERABILITY ASSESSMENTS AND SITE SECURITY PLANS.

(a) REQUIREMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that require the owner or operator of each chemical source included on the list described in subsection (f)(1)—

(A) to conduct an assessment of the vulnerability of the chemical source to a terrorist release, including identifying hazards that may result from a terrorist release; and

(B) to prepare and implement a site security plan that addresses the results of the vulnerability assessment.

(2) CONTENTS OF SITE SECURITY PLAN.—A site security plan required under the regulations promulgated under paragraph (1) or any other plan determined to be substantially equivalent by the Secretary under subsection (c)—

(A) shall include security measures to significantly reduce the vulnerability of the chemical source covered by the plan to a terrorist release;

(B) shall describe, at a minimum, particular equipment, plans, and procedures that could be implemented or used by or at the chemical source in the event of a terrorist release; and

(C) shall include consideration and, where practicable in the judgment of the owner or operator of the chemical source, implementation of options to reduce the threat of a terrorist release through the use of alternative approaches.

(3) PROMULGATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations establishing procedures, protocols, regulations, and standards for vulnerability assessments and site security plans.

(4) GUIDANCE TO SMALL ENTITIES.—Not later than 1 year after the date of enactment of this Act, the Secretary shall publish guidance to assist small entities in complying with paragraph (2)(C).

(5) THREAT INFORMATION.—To the maximum extent practicable under applicable authority and in the interests of national security, the Secretary shall provide to an owner or operator of a chemical source required to prepare a vulnerability assessment and site security plan threat information that is relevant to the chemical source.

(6) COORDINATED ASSESSMENTS AND PLANS.—The regulations promulgated under paragraphs (1) and (3) shall permit the development and implementation of coordinated vulnerability assessments and site security plans in any case in which more than 1 chemical source is operating at a single location or at contiguous locations, including cases in which a chemical source is under the control of more than 1 owner or operator.

(b) CERTIFICATION AND SUBMISSION.—

(1) IN GENERAL.—Each owner or operator of a chemical source shall certify in writing to the Secretary that the owner or operator has completed a vulnerability assessment and has developed and implemented or is implementing a site security plan in accordance with this title, including—

(A) regulations promulgated under paragraphs (1) and (3) of subsection (a); and

(B) any applicable procedures, protocols, or standards endorsed or recognized by the Secretary under subsection (c)(1).

(2) SUBMISSION.—Not later than 18 months after the date of promulgation of regulations under paragraphs (1) and (3) of subsection (a), an owner or operator of a chemical source shall provide to the Secretary copies of the vulnerability assessment and site security plan of the chemical source for review.

(3) OVERSIGHT.—The Secretary shall, at such times and places as the Secretary determines to be appropriate, conduct or require the conduct of vulnerability assessments and other activities (including third-party audits) to ensure and evaluate compliance with—

(A) this title (including regulations promulgated under paragraphs (1) and (3) of subsection (a)); and

(B) other applicable procedures, protocols, or standards endorsed or recognized by the Secretary under subsection (c)(1).

(4) SUBMISSION OF CHANGES.—The owner or operator of a chemical source shall—

(A) provide to the Secretary a description of any significant change that is made to the vulnerability assessment or site security plan required for the chemical source under this section, not later than 90 days after the date the change is made; and

(B) update the certification of the vulnerability assessment or site security plan.

(c) SPECIFIED STANDARDS.—

(1) EXISTING PROCEDURES, PROTOCOLS, AND STANDARDS.—Upon submission of a petition by any person to the Secretary, and after receipt by that person of a written response from the Secretary, any procedures, protocols, and standards established by the Secretary under regulations promulgated under subsection (a)(3) may—

(A) endorse or recognize procedures, protocols, regulations, and standards—

(i) that are established by—

(I) industry;

(II) State or local authorities; or

(III) other applicable law; and

(ii) the requirements of which the Secretary determines to be—

(I) substantially equivalent to the requirements under subsections (a)(1), (a)(2), and (a)(3); and

(II) in effect on or after the date of enactment of this Act; and

(B) require that a vulnerability assessment and site security plan address a particular threat or type of threat.

(2) NOTIFICATION OF SUBSTANTIAL EQUIVALENCY.—If the Secretary endorses or recognizes existing procedures, protocols, regulations, and standards described in paragraph (1)(A), the Secretary shall provide to the person that submitted the petition a notice that the procedures, protocols, regulations, and standards are substantially equivalent to the requirements of paragraph (1) and paragraphs (1) and (3) of subsection (a).

(3) NO ACTION BY SECRETARY.—If the Secretary does not endorse or recognize existing procedures, protocols, and standards described in paragraph (1)(A), the Secretary shall provide to each person that submitted a petition under paragraph (1) a written notification that includes a clear explanation of the reasons why the endorsement or recognition was not made.

(d) PREPARATION OF ASSESSMENTS AND PLANS.—As of the date of endorsement or recognition by the Secretary of a particular procedure, protocol, or standard under subsection (c)(1)(A), any vulnerability assessment or site security plan that is prepared by a chemical source before, on, or after the

date of endorsement or recognition of, and in accordance with, that procedure, protocol, or standard, shall, for the purposes of subsection (b)(3) and section ___04, be judged by the Secretary against that procedure, protocol, or standard rather than the relevant regulations promulgated under subsection (c) and paragraphs (1) and (3) of subsection (a) (including such a vulnerability assessment or site security plan prepared before, on, or after the date of enactment of this Act).

(e) REGULATORY CRITERIA.—In exercising the authority under subsections (a) and (c) with respect to a chemical source, the Secretary shall consider—

(1) the likelihood that a chemical source will be the target of terrorism;

(2) the nature and quantity of the substances of concern present at a chemical source;

(3) the potential extent of death, injury, or serious adverse effects to human health or the environment that would result from a terrorist release;

(4) the potential harm to critical infrastructure and national security from a terrorist release;

(5) cost and technical feasibility;

(6) scale of operations; and

(7) such other security-related factors as the Secretary determines to be appropriate and necessary to protect the public health and welfare, critical infrastructure, and national security.

(f) LIST OF CHEMICAL SOURCES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall develop a list of chemical sources in existence as of that date.

(2) CONSIDERATIONS.—In developing the list under paragraph (1), the Secretary shall consider the criteria specified in subsection (e).

(3) FUTURE DETERMINATIONS.—Not later than 3 years after the date of promulgation of regulations under subsection (c) and paragraphs (1) and (3) of subsection (a), and every 3 years thereafter, the Secretary shall, after considering the criteria described in subsection (e)—

(A) determine whether additional facilities (including, as of the date of the determination, facilities that are operational and facilities that will become operational in the future) shall be considered to be a chemical source under this title;

(B) determine whether any chemical source identified on the most recent list under paragraph (1) no longer presents a risk sufficient to justify retention of classification as a chemical source under this title; and

(C) update the list as appropriate.

(4) REGULATIONS.—The Secretary may make a determination under this subsection in regulations promulgated under paragraphs (1) and (3) of subsection (a).

(g) DESIGNATION, EXEMPTION, AND ADJUSTMENT OF THRESHOLD QUANTITIES OF SUBSTANCES OF CONCERN.—

(1) IN GENERAL.—The Secretary may, by regulation—

(A) designate certain chemical substances in particular threshold quantities as substances of concerns under this title;

(B) exempt certain chemical substances from designation as substances of concern under this title; and

(C) adjust the threshold quantity of a chemical substance.

(2) CONSIDERATIONS.—In designating or exempting a chemical substance or adjusting the threshold quantity of a chemical substance under paragraph (1), the Secretary shall consider the potential extent of death, injury, or serious adverse effects to human health or the environment that would result from a terrorist release of the chemical substance.

(3) REGULATIONS.—The Secretary may make a designation, exemption, or adjustment under paragraph (1) in regulations promulgated under paragraphs (1) and (3) of subsection (a).

(h) 5-YEAR REVIEW.—Not later than 5 years after the date of certification of a vulnerability assessment and a site security plan under subsection (b)(1), and not less often than every 5 years thereafter (or on such a schedule as the Secretary may establish by regulation), the owner or operator of the chemical source covered by the vulnerability assessment or site security plan shall—

(1) review the adequacy of the vulnerability assessment and site security plan; and

(2)(A) certify to the Secretary that the chemical source has completed the review and implemented any modifications to the site security plan; and

(B) submit to the Secretary a description of any changes to the vulnerability assessment or site security plan.

(i) PROTECTION OF INFORMATION.—

(1) DISCLOSURE EXEMPTION.—Except with respect to certifications specified in subsections (b)(1)(A) and (h)(2)(A), vulnerability assessments and site security plans obtained in accordance with this title, and materials developed or produced exclusively in preparation of those documents (including information shared with Federal, State, and local government entities under paragraphs (3) through (5)), shall be exempt from disclosure under—

(A) section 552 of title 5, United States Code; or

(B) any State or local law providing for public access to information.

(2) NO EFFECT ON OTHER DISCLOSURE.—Nothing in this title affects the handling, treatment, or disclosure of information obtained from chemical sources under any other law.

(3) DEVELOPMENT OF PROTOCOLS.—

(A) IN GENERAL.—The Secretary, in consultation with the Director of the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall, by regulation, establish confidentiality protocols for maintenance and use of information that is obtained from owners or operators of chemical sources and provided to the Secretary under this title.

(B) REQUIREMENTS FOR PROTOCOLS.—A protocol established under subparagraph (A) shall ensure that—

(i) each copy of a vulnerability assessment or site security plan submitted to the Secretary, all information contained in or derived from that assessment or plan, and other information obtained under section ___06, is maintained in a secure location; and

(ii) except as provided in paragraph (5)(B), or as necessary for judicial enforcement, access to the copies of the vulnerability assessments and site security plans submitted to the Secretary, and other information obtained under section ___06, shall be limited to persons designated by the Secretary.

(4) DISCLOSURE IN CIVIL PROCEEDINGS.—In any Federal or State civil or administrative proceeding in which a person seeks to compel the disclosure or the submission as evidence of sensitive information contained in a vulnerability assessment or security plan required by subsection (a) or (b) and is not otherwise subject to disclosure under other provisions of law—

(A) the information sought may be submitted to the court under seal; and

(B) the court, or any other person, shall not disclose the information to any person until the court, in consultation with the Secretary, determines that the disclosure of the information does not pose a threat to public security or endanger the life or safety of any person.

(5) PENALTIES FOR UNAUTHORIZED DISCLOSURE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any individual referred to in paragraph (3)(B)(ii) who acquires any information described in paragraph (3)(A) (including any reproduction of that information or any information derived from that information), and who knowingly or recklessly discloses the information, shall—

(i) be imprisoned not more than 1 year, fined in accordance with chapter 227 of title 18, United States Code (applicable to class A misdemeanors), or both; and

(ii) be removed from Federal office or employment.

(B) EXCEPTIONS.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to a person described in that subparagraph that discloses information described in paragraph (3)(A)—

(I) to an individual designated by the Secretary under paragraph (3)(B)(ii);

(II) for the purpose of section ___06; or

(III) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with a requirement of this title.

(ii) LAW ENFORCEMENT OFFICIALS AND FIRST RESPONDERS.—Notwithstanding subparagraph (A), an individual referred to in paragraph (3)(B)(ii) who is an officer or employee of the United States may share with a State or local law enforcement or other official (including a first responder) the contents of a vulnerability assessment or site security plan, or other information described in that paragraph, to the extent disclosure is necessary to carry out this title.

SEC. ___04. ENFORCEMENT.

(a) FAILURE TO COMPLY.—If an owner or operator of a chemical source fails to certify or submit a vulnerability assessment or site security plan in accordance with this title, the Secretary may issue an order requiring the certification and submission of a vulnerability assessment or site security plan in accordance with section ___03(b).

(b) DISAPPROVAL.—The Secretary may disapprove under subsection (a) a vulnerability assessment or site security plan submitted under section ___03(b) if the Secretary determines that—

(1) the vulnerability assessment or site security plan does not comply with regulations promulgated under paragraph (1) and (3) of subsection (a) or the procedure, protocol, or standard endorsed or recognized under section ___03(c); or

(2) the site security plan, or the implementation of the site security plan, is insufficient to address—

(A) the results of a vulnerability assessment of a chemical source; or

(B) a threat of a terrorist release.

(c) COMPLIANCE.—If the Secretary disapproves a vulnerability assessment or site security plan of a chemical source under subsection (b), the Secretary shall—

(1) provide the owner or operator of the chemical source a written notification of the determination that includes a clear explanation of deficiencies in the vulnerability assessment, site security plan, or implementation of the assessment or plan;

(2) consult with the owner or operator of the chemical source to identify appropriate steps to achieve compliance; and

(3) if, following that consultation, the owner or operator of the chemical source does not achieve compliance in accordance by such date as the Secretary determines to

be appropriate under the circumstances, issue an order requiring the owner or operator to correct specified deficiencies.

(d) EMERGENCY POWERS.—

(1) DEFINITION OF EMERGENCY THREAT.—The term ''emergency threat'' means a threat of a terrorist act that could result in a terrorist release at a chemical source—

(A) that is beyond the scope of the site security plan as implemented at the chemical source;

(B) the likelihood of the immediate occurrence of which is high;

(C) the consequences of which would be severe; and

(D) based on the factors described in subparagraphs (A) through (C), would not be appropriately and reasonably addressed, or addressed in a timely manner, by the Secretary under subsections (a) through (c).

(2) INITIATION OF ACTION.—

(A) IN GENERAL.—If the Secretary (in consultation with State and local law enforcement officials) determines that an emergency threat exists, the Secretary may bring a civil action on behalf of the United States in United States district court to immediately require each covered source potentially subject to the emergency threat to take such actions as are necessary to respond to the emergency threat.

(B) NOTICE AND PARTICIPATION.—The Secretary shall provide to each covered source that is the subject of a civil action under subparagraph (A)—

(i) notice of any injunctive relief to compel compliance with this subsection that is being sought; and

(ii) an opportunity to participate in any proceedings relating to the civil action.

(3) EMERGENCY ORDERS.—

(A) IN GENERAL.—If the Secretary determines that it is not practicable to ensure prompt action to protect public safety from an emergency threat by commencing a civil action under paragraph (2), the Secretary may issue such orders as are necessary to ensure public safety.

(B) CONSULTATION.—Before issuing an order under subparagraph (A), the Secretary shall—

(i) consult with State and local law enforcement officials; and

(ii) attempt to confirm the accuracy of the information on which the action proposed to be taken is based.

(C) EFFECTIVENESS OF ORDERS.—

(i) IN GENERAL.—An order issued by the Secretary under this paragraph shall be effective for the 60-day period beginning on the date of issuance of the order unless the Secretary files a civil action under paragraph (2) before the expiration of that period.

(ii) EXTENSION OF EFFECTIVE PERIOD.—With respect to an order issued under this paragraph, the Secretary may file a civil action before the end of the 60-day period described in clause (i) to extend the effective period of the order for—

(I) 14 days; or

(II) such longer period as the court in which the civil action is filed may authorize.

(e) PROTECTION OF INFORMATION.—Any determination of disapproval or order made or issued under this section shall be exempt from disclosure—

(1) under section 552 of title 5, United States Code;

(2) under any State or local law providing for public access to information; and

(3) except as provided in section ___03(i)(4), in any Federal or State civil or administrative proceeding.

SEC. ___05. INTERAGENCY TECHNICAL SUPPORT AND COOPERATION.

The Secretary—

(1) may request other Federal agencies to provide technical and analytical support (other than field work) in implementing this title; and

(2) may provide reimbursement for such technical and analytical support received as the Secretary determines to be appropriate.

SEC. ___06. RECORDKEEPING; SITE INSPECTIONS; PRODUCTION OF INFORMATION.

(a) RECORDKEEPING.—The owner or operator of a chemical source that is required to prepare a vulnerability assessment or site security plan under section ___03(a) shall maintain a current copy of those documents.

(b) RIGHT OF ENTRY.—In carrying out this title, the Secretary (or a designee), on presentation of credentials, shall have a right of entry to, on, or through—

(1) any premises of an owner or operator of a chemical source described in subsection (a); and

(2) any premises on which any record required to be maintained under subsection (a) is located.

(c) REQUESTS FOR RECORDS.—In carrying out this title, the Secretary (or a designee) may require the submission of, or, on presentation of credentials, may at reasonable times seek access to and copy—

(1) any records, reports, or other information described in subsection (a); and

(2) any other documentation necessary for—

(A) review or analysis of a vulnerability assessment or site security plan; or

(B) implementation of a site security plan.

(d) COMPLIANCE.—If the Secretary determines that an owner or operator of a chemical source is not maintaining, producing, or permitting access to records as required by this section, the Secretary may issue an order requiring compliance with the relevant provisions of this section.

SEC. ___0 7. PENALTIES.

(a) JUDICIAL RELIEF.—Any owner or operator of a chemical source that violates or fails to comply with any order issued by the Secretary under this title or a site security plan submitted to the Secretary under this title (or, in the case of an exemption described in section ___03(d), a procedure, protocol, or standard endorsed or recognized by the Secretary under section ___03(c)) may, in a civil action brought in United States district court, be subject, for each day on which the violation occurs or the failure to comply continues, to—

(1) an order for injunctive relief; or

(2) a civil penalty of not more than $50,000.

(b) ADMINISTRATIVE PENALTIES.—

(1) PENALTY ORDERS.—The Secretary may issue an administrative penalty of not more than $250,000 for failure to comply with an order issued by the Secretary under this title.

(2) NOTICE AND HEARING.—Before issuing an order described in paragraph (1), the Secretary shall provide to the person against which the penalty is to be assessed—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the person receives the notice, a hearing on the proposed order.

(3) PROCEDURES.—The Secretary may promulgate regulations outlining the procedures for administrative hearings and appropriate review, including necessary deadlines.

(c) TREATMENT OF INFORMATION IN JUDICIAL PROCEEDINGS.—Information submitted or obtained by the Secretary, information derived from that information, and information submitted by the Secretary under this title (except under section ___011) shall be treated in any judicial or administrative action as if the information were classified material.

SEC. ___08. PROVISION OF TRAINING.

The Secretary may provide training to State and local officials and owners and operators in furtherance of the purposes of this title.

SEC. ___09. JUDICIAL REVIEW.

(a) REGULATIONS.—Not later than 60 days after the date of promulgation of a regulation under this title, any person may file a petition for judicial review relating to the regulation with—

(1) the United States Court of Appeals for the District of Columbia; or

(2) with the United States circuit court—

(A) having jurisdiction over the State in which the person resides; or

(B) for the circuit in which the principal place of business of the person is located.

(b) FINAL AGENCY ACTIONS OR ORDERS.—Not later than 60 days after the date on which a covered source receives notice of an action or order of the Secretary under this title with respect to the chemical source, the chemical source may file a petition for judicial review of the action or order with the United States district court for the district in which—

(1) the chemical source is located; or

(2) the owner or operator of the chemical source has a principal place of business.

(c) STANDARD OF REVIEW.—

(1) IN GENERAL.—On the filing of a petition under subsection (a) or (b), the court of jurisdiction shall review the regulation or other final action or order that is the subject of the petition in accordance with chapter 7 of title 5, United States Code.

(2) BASIS.—

(A) IN GENERAL.—Judicial review of a regulation, or of a final agency action or order described in paragraph (1) that is based on an administrative hearing held on the record, shall be based on the record of the proceedings, comments, and other information that the Secretary considered in promulgating the regulation, taking the action, or issuing the order being reviewed.

(B) OTHER ACTIONS AND ORDERS.—Judicial review of a final agency action or order described in paragraph (1) that is not described in subparagraph (A) shall be based on any submissions to the Secretary relating to the action or order, and any other information, that the Secretary considered in taking the action or issuing the order.

SEC. ___10. NO EFFECT ON REQUIREMENTS UNDER OTHER LAW.

(a) IN GENERAL.—Except as provided in section ___03(i), nothing in this title affects any duty or other requirement imposed under any other Federal or State law.

(b) OTHER FEDERAL LAW.—

(1) IN GENERAL.—Notwithstanding subsection (a), a chemical source that is required to prepare a facility vulnerability assessment and implement a facility security plan under any another Federal law may petition the Secretary to be subject to the other Federal law in lieu of this title.

(2) DETERMINATION OF SUBSTANTIAL EQUIVALENCE.—If the Secretary determines that a Federal law covered by a petition submitted by a chemical source under paragraph (1) is substantially equivalent to this title—

(A) the Secretary may grant the petition; and

(B) the chemical source shall be subject to the other Federal law in lieu of this title.

SEC. ___11. AGRICULTURAL BUSINESS SECURITY GRANT PROGRAM.

(a) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term ''eligible entity'' means a retail or production agricultural business (including a business that is engaged in the production or processing of seafood) that employs not more than such number of individuals at a chemical source included in the list described in section ___03(f)(1) as shall be determined by the Secretary, in consultation

with the Administrator of the Small Business Administration and the Secretary of Agriculture.

(b) GRANTS.—The Secretary shall provide grants to an eligible entity that is a chemical source included in the list described in section ___03(f)(1) selected under this section to enable the eligible entity at the chemical source—

(1) to improve security measures; and

(2) to protect against or reduce the consequence of a terrorist attack.

(c) CRITERIA.—In establishing criteria for the selection of, or in otherwise selecting, eligible entities to receive a grant under this section, the Secretary shall—

(1) consider on an individual, location-by-location basis, each applicant for a grant; and

(2) require each eligible entity that receives a grant to use funds from the grant only for the purposes described in subsection (b) in accordance with guidance of the Secretary.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SA 3947. Mr. DOMENICI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 1876, to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Provo River Project Transfer Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term ''Agreement'' means the contract numbered 04–WC-40-8950 and entitled ''Agreement Among the United States, the Provo River Water Users Association, and the Metropolitan Water District of Salt Lake & Sandy to Transfer Title to Certain Lands and Facilities of the Provo River Project'' and shall include maps of the land and features to be conveyed under the Agreement.

(2) ASSOCIATION.—The term ''Association'' means the Provo River Water Users Association, a nonprofit corporation organized under the laws of the State.

(3) DISTRICT.—The term ''District'' means the Metropolitan Water District of Salt Lake & Sandy, a political subdivision of the State.

(4) PLEASANT GROVE PROPERTY.—

(A) IN GENERAL.—The term ''Pleasant Grove Property'' means the 3.79-acre parcel of land acquired by the United States for the Provo River Project, Deer Creek Division, located at approximately 285 West 1100 North, Pleasant Grove, Utah, as in existence on the date of enactment of this Act.

(B) INCLUSIONS.—The term ''Pleasant Grove Property'' includes the office building and shop complex constructed by the Association on the parcel of land described in subparagraph (A).

(5) PROVO RESERVOIR CANAL.—The term ''Provo Reservoir Canal'' means the canal, and any associated land, rights-of-way, and facilities acquired, constructed, or improved by the United States as part of the Provo River Project, Deer Creek Division, extending from, and including, the Murdock Diversion Dam at the mouth of Provo Canyon, Utah, to and including the Provo Reservoir Canal Siphon and Penstock, as in existence on the date of enactment of this Act.

(6) SALT LAKE AQUEDUCT.—The term ''Salt Lake Aqueduct'' means the aqueduct and associated land, rights-of-way, and facilities acquired, constructed, or improved by the United States as part of the Provo River Project, Aqueduct Division, extending from, and including, the Salt Lake Aqueduct Intake at the base of Deer Creek Dam to and including the Terminal Reservoirs located at 3300 South St. and Interstate Route 215 in Salt Lake City, Utah, as in existence on the date of enactment of this Act.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior or a designee of the Secretary.

(8) STATE.—The term ''State'' means the State of Utah.

SEC. 3. CONVEYANCE OF LAND AND FACILITIES.

(a) CONVEYANCES TO ASSOCIATION.—

(1) PROVO RESERVOIR CANAL.—

(A) IN GENERAL.—In accordance with the terms and conditions of the Agreement and subject to subparagraph (B), the Secretary shall convey to the Association, all right, title, and interest of the United States in and to the Provo Reservoir Canal.

(B) CONDITION.—The conveyance under subparagraph (A) shall not be completed until the Secretary executes the Agreement and accepts future arrangements entered into by the Association, the District, the Central Utah Water Conservancy District, and the Jordan Valley Water Conservancy District providing for the operation, ownership, financing, and improvement of the Provo Reservoir Canal.

(2) PLEASANT GROVE PROPERTY.—In accordance with the terms and conditions of the Agreement, the Secretary shall convey to the Association, all right, title, and interest of the United States in and to the Pleasant Grove Property.

(b) CONVEYANCE TO DISTRICT.—

(1) IN GENERAL.—In accordance with the terms and conditions of the Agreement and subject to the execution of the Agreement by the Secretary, the Secretary shall convey to the District, all right, title, and interest of the United States in and to the Salt Lake Aqueduct.

(2) EASEMENTS.—

(A) IN GENERAL.—As part of the conveyance under paragraph (1), the Secretary shall grant to the District permanent easements to—

(i) the National Forest System land on which the Salt Lake Aqueduct is located; and

(ii) land of the Aqueduct Division of the Provo River Project that intersects the parcel of non-Federal land authorized to be conveyed to the United States under section 104(a) of Public Law 107–329 (116 Stat. 2816).

(B) PURPOSE.—The easements conveyed under subparagraph (A) shall be for the use, operation, maintenance, repair, improvement, or replacement of the Salt Lake Aqueduct by the District.

(C) LIMITATION.—The United States shall not carry out any activity on the land subject to the easements conveyed under subparagraph (A) that would materially interfere with the use, operation, maintenance, repair, improvement, or replacement of the Salt Lake Aqueduct by the District.

(D) BOUNDARIES.—The boundaries of the easements conveyed under subparagraph (A) shall be determined by the Secretary, in consultation with the District and the Secretary of Agriculture.

(E) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(i) IN GENERAL.—On conveyance of the easement to the land described in subparagraph (A)(ii), the Secretary, subject to the easement, shall transfer to the Secretary of Agriculture administrative jurisdiction over the land.

(ii) ADMINISTRATIVE SITE.—The land transferred under clause (i) shall be administered by the Secretary of Agriculture as an administrative site.

(F) ADMINISTRATION.—The easements conveyed under subparagraph (A) shall be administered by the Secretary of Agriculture in accordance with section 501(b)(3) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(b)(3)).

(c) CONSIDERATION.—

(1) ASSOCIATION.—

(A) IN GENERAL.—In exchange for the conveyance under subsection (a)(1), the Association shall pay the Secretary an amount that is equal to the sum of—

(i) the net present value of any remaining debt obligation of the United States with respect to the Provo Reservoir Canal; and

(ii) the net present value of any revenues from the Provo Reservoir Canal that, based on past history—

(I) would be available to the United States but for the conveyance of the Provo Reservoir Canal under subsection (a)(1); and

(II) would be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391), and credited under the terms of Reclamation Manual/Directives and Standards PEC 03–01.

(B) DEDUCTION.—In determining the net present values under clauses (i) and (ii) of subparagraph (A), the Association may deduct from the net present value such sums as are required for the reimbursement described in the Agreement.

(2) DISTRICT.—

(A) IN GENERAL.—In exchange for the conveyance under subsection (b)(1), the District shall pay the Secretary an amount that is equal to the sum of—

(i) the net present value of any remaining debt obligation of the United States with respect to the Salt Lake Aqueduct; and

(ii) the net present value of any revenues from the Salt Lake Aqueduct that, based on past history—

(I) would have been available to the United States but for the conveyance of the Salt Lake Aqueduct under subsection (b)(1); and

(II) would be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391), and credited under the terms of Reclamation Manual/Directives and Standards PEC 03–01.

(B) DEDUCTION.—In determining the net present values under clauses (i) and (ii) of subparagraph (A), the District may deduct from the net present value such sums as are required for the reimbursement described in the Agreement.

(d) PAYMENT OF COSTS.—In addition to amounts paid to the Secretary under subsection (c), the Association and the District shall, in accordance with the Agreement, pay the Secretary—

(1) any necessary and reasonable administrative and real estate transfer costs incurred by the Secretary in carrying out the conveyance; and

(2) ½ of any necessary and reasonable costs associated with complying with—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C)(i) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(ii) any other Federal cultural resource laws.

(e) COMPLIANCE WITH ENVIRONMENTAL LAWS.—

(1) IN GENERAL.—Before conveying land and facilities under subsections (a) and (b), the Secretary shall comply with all applicable requirements under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) any other law applicable to the land and facilities.

(2) EFFECT.—Nothing in this Act modifies or alters any obligations under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 4. EXISTING CONTRACTS.

(a) DEER CREEK DIVISION CONSTRUCTION CONTRACT.—Notwithstanding the conveyances under subsections (a) and (b)(1) of section 3 and subject to the terms of the Agreement, any portion of the Deer Creek Division, Provo River Project, Utah, that is not conveyed under that section shall continue to be operated and maintained by the Association, in accordance with the contract numbered I1r–874, dated June 27, 1936, and entitled the ''Contract Between the United States and Provo River Water Users Association Providing for the Construction of the Deer Creek Division of the Provo River Project, Utah''.

(b) PROVO RIVER PROJECT AND JORDAN AQUEDUCT SYSTEM CONTRACTS.—Subject to the terms of the Agreement, any written contract of the United States in existence on the date of enactment of this Act relating to the operation and maintenance of any division or facility of the Provo River Project or the Jordan Aqueduct System is confirmed and declared to be a valid contract of the United States that is enforceable in accordance with the express terms of the contract.

(c) USE OF CENTRAL UTAH PROJECT WATER.—

(1) IN GENERAL.—Subject to paragraph (2), any entity with contractual Provo Reservoir Canal or Salt Lake Aqueduct capacity rights in existence on the date of enactment of this Act may, in addition to the uses described in the existing contracts, use the capacity rights, without additional charge or further approval from the Secretary, to transport Central Utah Project water on behalf of the entity or others.

(2) LIMITATIONS.—An entity shall not use the capacity rights to transport Central Utah Project water under paragraph (1) unless—

(A) the transport of the water is expressly authorized by the Central Utah Water Conservancy District;

(B) the use of the water facility to transport Central Utah Project water is expressly authorized by the entity responsible for operation and maintenance of the facility; and

(C) carrying Central Utah Project water through Provo River Project facilities would not—

(i) materially impair the ability of the Central Utah Water Conservancy District or the Secretary to meet existing express environmental commitments for the Bonneville Unit; or

(ii) require the release of additional Central Utah Project water to meet those environmental commitments.

(d) AUTHORIZED MODIFICATIONS.—The Agreement may provide for—

(1) the modification of the 1936 Repayment Contract for the Deer Creek Division of the Provo River Project to reflect the partial prepayment, the adjustment of the annual repayment amount, and the transfer of the Provo Reservoir Canal and the Pleasant Grove Property; and

(2) the modification or termination of the 1938 Repayment Contract for the Aqueduct Division of the Provo River Project to reflect the complete payout and transfer of all facilities of the Aqueduct Division.

(e) EFFECT OF ACT.—Nothing in this Act impairs any contract (including subscription contracts) in effect on the date of enactment of this Act that allows for or creates a right to convey water through the Provo Reservoir Canal.

SEC. 5. EFFECT OF CONVEYANCE.

On conveyance of any land or facility under subsection (a) or (b)(1) of section 3—

(1) the land and facilities shall no longer be part of a Federal reclamation project;

(2) the Association and the District shall not be entitled to receive any future reclamation benefits with respect to the land and facilities, except for benefits that would be available to other nonreclamation facilities; and

(3) the United States shall not be liable for damages arising out of any act, omission, or occurrence relating to the land and facilities, but shall continue to be liable for damages caused by acts of negligence committed by the United States or by any employee or agent of the United States before the date of conveyance, consistent with chapter 171 of title 28, United States Code.

SEC. 6. REPORT.

If a conveyance required under subsection (a) or (b)(1) of section 3 is not completed by the date that is 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(1) describes the status of the conveyance;

(2) describes any obstacles to completing the conveyance; and

(3) specifies an anticipated date for completion of the conveyance.

SA 3948. Mr. FRIST (for Mr. SHELBY (for himself and Mr. SARBANES)) proposed an amendment to the bill H.R. 1533, to amend the securities laws to permit church pension plans to be invested in collective trusts; as follows:

On page 2, strike lines 17 through 22 and insert the following:

''(2) by striking 'other than any plan described in clause (A), (B), or (C)' and inserting the following: 'or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D)'.''.

SA 3949. Ms. MURKOWSKI submitted an amendment intended to be proposed by her to the bill S. 1466, to facilitate the transfer of land in the State of Alaska, and for other purposes; which was referred to the Committee on Energy and Natural Resources; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Alaska Land Transfer Acceleration Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITIONS.

In this Act:

(1) NATIVE ALLOTMENT.—The term ''Native allotment'' means an allotment claimed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) STATE.—The term ''State'' means the State of Alaska.

TITLE I—STATE SELECTIONS AND CONVEYANCES

SEC. 101. COMMUNITY GRANT SELECTIONS AND CONVEYANCES.

(a) IN GENERAL.—Section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) is amended by adding at the end the following:

''(n) The minimum tract selection size is waived with respect to a selection made by the State of Alaska under subsection (a) for the following selections:

National Forest Community Grant Application Number	Area Name	Est. Acres
209	Yakutat Airport Addition.	111
264	Bear Valley (Portage).	120
284	Hyder-Fish Creek.	61
310	Elfin Cove ...	37
384	Edna Bay Admin Site.	37
390	Point Hilda	29.''.

(b) COMMUNITY GRANT SELECTIONS.—Section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) (as amended by subsection (a)) is amended by adding at the end the following:

''(o)(1) The State of Alaska may elect to convert a selection filed under subsection (b) to a selection under subsection (a) by notifying the Secretary of the Interior in writing.

''(2) If the State of Alaska makes an election under paragraph (1), the entire selection shall be converted to a selection under subsection (a).

''(3) The Secretary of the Interior shall not convey a total of more than 400,000 acres of public domain land selected under subsection (a) or converted under paragraph (1) to a public domain selection under subsection (a).

''(4) Conversion of a selection under paragraph (1) shall not increase the survey obligation of the United States with respect to the land converted.

''(p) All selection applications of the State of Alaska that are on file with the Secretary of the Interior under the public domain provisions of subsection (a) on the date of enactment of this subsection and any selection applications that are converted to a subsection (a) selection under subsection (o)(1) are approved as suitable for community or recreational purposes.''.

SEC. 102. PRIORITIZATION OF LAND TO BE CONVEYED.

Section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2)) is amended—

(1) by striking ''(2) As soon as practicable'' and inserting the following:

''(2)(A) As soon as practicable'';

(2) by striking ''The sequence of'' and inserting the following:

''(B)(i) The sequence of''; and

(3) by adding at the end the following:

''(ii) In establishing the priorities for tentative approval under clause (i), the State shall—

''(I) in the case of a selection under section 6(a) of Public Law 85–508 (commonly known as the 'Alaska Statehood Act') (72 Stat. 340), include all land selected; or

''(II) in the case of a selection under section 6(b) of that Act—

''(aa) include at least 5,760 acres; or

''(bb) if a waiver has been granted under section 6(g) of that Act or less than 5,760 acres of the entitlement remains, prioritize the selection in such increments as are available for conveyance.''.

SEC. 103. SELECTION OF CERTAIN REVERSIONARY INTERESTS HELD BY THE UNITED STATES.

(a) IN GENERAL.—All reversionary interests held by the United States in land owned by the State or any political subdivision of the State and any Federal land leased by the State under the Act of August 23, 1950 (25 U.S.C. 293b), or the Act of June 4, 1953 (25 U.S.C. 293a), that is prioritized for conveyance by the State under section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2))—

(1) are deemed to be selected; and

(2) may, with the concurrence of the Secretary or the head of the Federal agency with administrative jurisdiction over the land, be conveyed under section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340).

(b) EFFECT ON ENTITLEMENT.—If, before the date of enactment of this Act, the entitlement of the State has not been charged with respect to a parcel for which a reversionary interest is conveyed under subsection (a), the total acreage of the parcel shall be charged against the remaining entitlement of the State.

(c) MINIMUM ACREAGE REQUIREMENT NOT APPLICABLE.—The minimum acreage requirement under subsections (a) and (b) of section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) shall not apply to the selection of reversionary interests under subsection (a).

(d) STATE WAIVER.—On conveyance to the State of any reversionary interest selected under subsection (a), the State shall be deemed to have waived all right to any future credit should the reversion not occur.

(e) LIMITATION.—This section shall not apply to—

(1) reversionary interests in land acquired by the United States through the use of amounts from the Exxon Valdez Oil Spill Trust Fund; or

(2) reversionary interests in any land conveyed to the State as a result of the ''Terms and Conditions for Land Consolidation and Management in Cook Inlet Area'' as ratified by section 12 of Public Law 94–204 (43 U.S.C. 1611 note).

SEC. 104. EFFECT OF HYDROELECTRIC WITHDRAWALS.

(a) LAND WITHDRAWN, RESERVED, OR CLASSIFIED FOR POWER SITE OR POWER PROJECT PURPOSES.—If the State has filed a future selection application under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)) for land withdrawn, reserved, or classified for power site or power project purposes, notwithstanding the withdrawal, reservation, or classification for power site or power project purposes, the following parcels of land shall be deemed to be vacant, unappropriated, and unreserved within the meaning of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339):

Serial Number	Area Name	General Selection Application Number
AKAA 058747	Bradley Lake.	GS 5141
AKAA 058848	Bradley Lake.	GS 44
AKAA 058266	Eagle River/ Ship Creek/ Peters Creek.	GS 1429
AKAA 058265	Eagle River/ Ship Creek/ Peters Creek.	GS 1209
AKAA 058374	Salmon Creek.	GS 327
AKF 031321	Nenana River.	GS 2182
AKAA 059056	Solomon Gulch at Valdez.	GS 86
AKFF 085798	Kruzgamepa River Pass Creek.	GS 4096.

(b) LIMITATION.—Subsection (a) does not apply to any land that is—

(1) located within the boundaries of a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); or

(2) otherwise unavailable for conveyance under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339).

(c) REQUIREMENT APPLICABLE TO NATIONAL FOREST SYSTEM LAND.—Any land described in subsection (a) that is in a unit of the National Forest System shall not be conveyed unless the Secretary of Agriculture approved the State selection before January 3, 1994.

(d) REQUIREMENTS APPLICABLE TO HYDROELECTRIC APPLICATIONS AND LICENSED PROJECTS.—

(1) HYDROELECTRIC APPLICATIONS.—Any selection of land described in subsection (a) that is included in a hydroelectric application—

(A) shall be subject to the jurisdiction of the Federal Energy Regulatory Commission; and

(B) shall not be conveyed while the hydroelectric application is pending.

(2) LICENSED PROJECT.—Any selection of land described in subsection (a) that is included in a licensed project shall be subject to—

(A) the jurisdiction of the Federal Energy Regulatory Commission;

(B) the rights of third parties; and

(C) the right of reentry under section 24 of the Federal Power Act (16 U.S.C. 818).

(e) EFFECT OF SECTION.—Nothing in this section negates or diminishes any right of an applicant to petition for restoration and opening of land withdrawn or classified for power purposes under section 24 of the Federal Power Act (16 U.S.C. 818).

SEC. 105. ENTITLEMENT FOR THE UNIVERSITY OF ALASKA.

(a) IN GENERAL.—As of January 1, 2003, the remaining State entitlement for the benefit of the University of Alaska under the Act of January 21, 1929 (45 Stat. 1091, chapter 92), is 456 acres.

(b) REVERSIONARY INTERESTS.—The Act of January 21, 1929 (45 Stat. 1091, chapter 92), is amended by adding at the end the following:

''SEC. 3. (a) The State of Alaska (referred to in this Act as the 'State'), acting on behalf of, and with the approval of, the University of Alaska, may select—

''(1) any mineral interest (including an interest in oil or gas) in land located in the State, the unreserved portion of which is owned by the University of Alaska; or

''(2) any reversionary interest held by the United States in land located in the State, the unreserved portion of which is owned by the University of Alaska.

''(b) The total acreage of any parcel of land for which a partial interest is conveyed under subsection (a) shall be charged against the remaining entitlement of the State under this Act.

''(c) In taking title to a reversionary interest, the State, with the approval of the University of Alaska, waives all right to any future acreage credit if the reversion does not occur.

''SEC. 4. The Secretary may survey any vacant, unappropriated, and unreserved land in the State for purposes of allowing selections under this Act.

''SEC. 5. The authorized outstanding selections under this Act shall be not more than—

''(1) 125 percent of the remaining entitlement; plus

''(2) the number of acres of land that are in conflict with land owned by the University of Alaska, as identified in Native allotment applications on record with the Bureau of Land Management.''.

SEC. 106. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a binding written agreement with the State with respect to—

(1) the exact number and location of acres of land remaining to be conveyed under each entitlement established or confirmed by Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340), from—

(A) the land selected by the State as of January 3, 1994; and

(B) selections under the Act of January 21, 1929 (45 Stat. 1091, chapter 92);

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed; and

(4) the survey of the exterior boundaries of the land to be conveyed.

(b) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that any concerns or issues identified by any Federal agency potentially affected are given consideration.

(c) ERRORS.—The State, by entering into an agreement under subsection (a), shall receive any gain or bear any loss that results from errors in prior surveys, protraction diagrams, or the computation of the ownership of third parties on any land conveyed under an agreement entered into under subsection (a).

(d) AVAILABILITY OF AGREEMENTS.—Agreements entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

(e) EFFECT.—Nothing in this section increases the entitlement provided to the State under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340), or the Act of January 21, 1929 (45 Stat. 1091, chapter 92).

SEC. 107. EFFECT OF FEDERAL MINING CLAIMS.

(a) CONDITIONAL RELINQUISHMENTS.—

(1) IN GENERAL.—To facilitate the conversion of Federal mining claims to State mining claims, a Federal mining claimant may file with the Secretary a voluntary relinquishment of the Federal mining claim conditioned on conveyance of the land to the State.

(2) CONVEYANCE OF RELINQUISHED CLAIM.—The Secretary may convey the land described in the relinquished Federal mining claim to the State.

(3) OBLIGATIONS UNDER FEDERAL LAW.—Until the date on which the land is conveyed under paragraph (2), a Federal mining claimant shall be subject to any obligations relating to the land under Federal law.

(4) NO RELINQUISHMENT.—If the land previously encumbered by the relinquished Federal mining claim is not conveyed to the State under paragraph (2), the relinquishment of land under paragraph (1) shall be of no effect.

(b) RIGHTS-OF-WAY; OTHER INTEREST.—On conveyance to the State of a relinquished Federal mining claim under this section, the State shall assume authority over any leases, licenses, permits, rights-of-way, operating plans, other land use authorizations, or reclamation obligations applicable to the relinquished Federal mining claim on the date of conveyance.

SEC. 108. LAND MISTAKENLY RELINQUISHED OR OMITTED.

Notwithstanding the selection deadlines under section 6(a) of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340)—

(1) the State selection application AA–17607 NFCG 75, located in the Chugach National Forest, is reinstated to the parcels of land originally selected in 1978, which are more particularly described as—

(A) S½ sec. 14, T. 11 S., R. 11 W., of the Copper River Meridian;

(B) S½ sec. 15, T. 11 S., R. 11 W., of the Copper River Meridian;

(C) E½SE¼ sec. 16, T. 11 S., R. 11 W., of the Copper River Meridian;

(D) E½, E½W½, SW¼SW¼ sec. 21, T. 11 S., R. 11 W., of the Copper River Meridian;

(E) N½, SW¼, N½SE¼ sec. 22, T. 11 S., R. 11 W., of the Copper River Meridian;

(F) N½, SW¼, N½SE¼ sec. 23, T. 11 S., R. 11 W., of the Copper River Meridian;

(G) NW¼ sec. 27, T. 11 S., R. 11 W., of the Copper River Meridian; and

(H) N½N½, SE¼NE¼ sec. 28, T. 11 S., R. 11 W., of the Copper River Meridian; and

(2) the following parcels of land are considered topfiled under section 906(e) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 1635(e)):

(A) The parcels of land omitted from the State's topfiling of the Utility and Transportation Corridor, and other parcels of land encompassing the Trans-Alaskan Pipeline System, withdrawn by Public Land Order No. 5150 (except for any land within the boundaries of a conservation system unit), which are more particularly described as—

(i) secs. 1–30, 32–36, T. 27 N., R. 11 W., of the Fairbanks Meridian;

(ii) secs. 10, 13—18, 21–28, and 33–36, T. 20 N., R. 13 W., of the Fairbanks Meridian;

(iii) secs. 13, 14, and 15, T. 20 N., R. 14 W., of the Fairbanks Meridian;

(iv) secs. 1–5, 8–17, and 20–28, T. 19 N., R. 13 W., of the Fairbanks Meridian;

(v) secs. 29–32, T. 20 N., R. 16 W., of the Fairbanks Meridian;

(vi) secs. 5–11, 14–23, and 25–36, T. 19 N., R. 16 W., of the Fairbanks Meridian;

(vii) secs. 30 and 31, T. 19 N., R. 15 W., of the Fairbanks Meridian;

(viii) secs. 5 and 6, T. 18 N., R. 15 W., of the Fairbanks Meridian;

(ix) secs. 1–2 and 7–34, T. 16 N., R. 14 W., of the Fairbanks Meridian; and

(x) secs. 4–9, T. 15 N., R. 14 W., of the Fairbanks Meridian.

(B) Secs. 1, 2, 11–14, T. 10 S., R. 42 W., of the Seward Meridian.

TITLE II—ALASKA NATIVE CLAIMS SETTLEMENT ACT

SEC. 201. LAND AVAILABLE AFTER SELECTION PERIOD.

(a) IN GENERAL.—To make certain Federal land available for conveyance to a Native Corporation that has sufficient remaining entitlement, the Secretary may waive the filing deadlines under sections 12 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611, 1615) if—

(1) the Federal land is—

(A) located in a township in which all or any part of a Native Village is located; or

(B) surrounded by—

(i) land that is owned by the Native Corporation; or

(ii) selected land that will be conveyed to the Native Corporation;

(2) the Federal land—

(A) became available after the end of the original selection period;

(B)(i) was not selected by the Native Corporation because the Federal land was subject to a competing claim or entry; and

(ii) the competing claim or entry has lapsed; or

(C) was previously an unavailable Federal enclave within a Native selection withdrawal area;

(3)(A) the Secretary provides the Native Corporation with a specific time period in which to decline the Federal land; and

(B) the Native Corporation does not submit to the Secretary written notice declining the land within the period established under subparagraph (A); and

(4) the State has voluntarily relinquished any valid State selection or top-filing for the Federal land.

(b) CONGRESSIONAL ACTION.—Subsection (a) shall not apply to a parcel of Federal land if Congress has specifically made other provisions for disposition of the parcel of Federal land.

SEC. 202. COMBINED ENTITLEMENTS.

Section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611) is amended—

(1) in the second sentence of subsection (b), by striking ''Regional Corporation shall'' and inserting ''Regional Corporation shall, not later than October 1, 2005,''; and

(2) by adding at the end the following:

''(f)(1) The entitlements received by any Village Corporation under subsection (a) and the reallocations made to the Village Corporation under subsection (b) may be combined, at the discretion of the Secretary, without—

''(A) increasing or decreasing the combined entitlement; or

''(B) increasing the limitation on selections of Wildlife Refuge System land, National Forest System land, or State-selected land under subsection (a).

''(2) The combined entitlement under paragraph (1) may be fulfilled from selections under subsection (a) or (b) without regard to the entitlement specified in the selection application.

''(3) All selections under a combined entitlement under paragraph (1) shall be adjudicated and conveyed in compliance with this Act.

''(4) Except in a case in which a survey has been contracted for before the date of enactment of this subsection, the combination of entitlements under paragraph (1) shall not require separate patents or surveys, to distinguish between conveyances made to a Village Corporation under subsections (a) and (b).''.

SEC. 203. AUTHORITY TO CONVEY BY WHOLE SECTION.

Section 14(d) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(d)) is amended—

(1) by striking ''(d) the Secretary'' and inserting the following:

''(d)(1) The Secretary''; and

(2) by adding at the end the following:

''(2) For purposes of applying the rule of approximation under this section, the largest legal subdivision that may be conveyed in excess of the applicable acreage limitation specified in subsection (a) shall be—

''(A) in the case of land managed by the Bureau of Land Management that is not within a conservation system unit, the next whole section;

''(B) in the case of land managed by an agency other than the Bureau of Land Management that is not within a conservation system unit, the next quarter-section and only with concurrence of the agency; or

''(C) in the case of land within a conservation system unit, a quarter of a quarter section, and if the land is managed by an agency other than the Bureau of Land Management, only with the concurrence of that agency.

''(3)(A) If the Secretary determines pursuant to paragraph (2) that an entitlement of a Village Corporation (other than a Village Corporation listed in section 16(a)) or a Regional Corporation may be fulfilled by conveying a specific tract of surveyed or unsurveyed land, the Secretary and the affected Village or Regional Corporation may enter into an agreement providing that all land entitlements under this Act shall be deemed satisfied by conveyance of the specifically identified and agreed upon tract of land.

''(B) An agreement entered into under subparagraph (A) shall be—

''(i) in writing;

''(ii) executed by the Secretary and the Village or Regional Corporation; and

''(iii) authorized by a corporate resolution adopted by the affected Village or Regional Corporation.

''(C) After execution of an agreement under subparagraph (A) and conveyance of the agreed upon tract to the affected Village or Regional Corporation—

''(i) the Secretary shall not make any further adjustments to calculations relating to acreage entitlements of the Village or Regional Corporation; and

''(ii) the Village or Regional Corporation shall not be entitled to any further conveyances under this Act.

''(D) A Village or Regional Corporation shall not be eligible to receive land under subparagraph (A) if the Village or Regional Corporation has received the full land entitlement of the Village or Regional Corporation through—

''(i) an actual conveyance of land; or

''(ii) a previous agreement.

''(E) If the calculations of the Secretary indicate that the final survey boundaries for any Village or Regional Corporation entitlement for which an agreement has not been entered into under this paragraph include acreage in a quantity that exceeds the statutory entitlement of the corporation by 1/10 of 1 percent or less, but not more than the applicable acreage limitation specified in paragraph (2)—

''(i) the entitlement shall be considered satisfied by the conveyance of the surveyed area; and

''(ii) the Secretary shall not change the survey for the sole purpose of an acreage adjustment.

''(F) This paragraph does not limit or otherwise affect the ability of a Village or Regional Corporation to enter into land exchanges with the United States.''.

SEC. 204. CONVEYANCE OF CEMETERY SITES AND HISTORICAL PLACES.

Section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) is amended—

(1) by striking ''(1) The Secretary'' and inserting the following:

''(1)(A) The Secretary'';

(2) by striking ''Only title'' and inserting the following:

''(B) Only title''; and

(3) by adding at the end the following:

''(C)(i) Notwithstanding acreage allocations made before the date of enactment of this subparagraph, the Secretary may convey any cemetery site or historical place—

''(I) with respect to which there is an application on record with the Secretary on the date of enactment of this paragraph; and

''(II) that is eligible for conveyance.

''(ii) Clause (i) shall also apply to any of the 188 closed applications that are determined to be eligible and reinstated under Secretarial Order No. 3220 dated January 5, 2001.

''(D) No applications submitted for the conveyance of land under subparagraph (A) that were closed before the date of enactment of this paragraph may be reinstated other than those specified in subparagraph (C)(ii).

''(E) After the date of enactment of this paragraph—

''(i) no application may be filed for the conveyance of land under subparagraph (A); and

''(ii) no pending application may be amended, except as necessary to conform the application to the description in the certification of eligibility of the Bureau of Indian Affairs.

''(F) Unless, not later than 1 year after the date of enactment of this paragraph, a Regional Corporation that has filed an application for a historic place submits to the Secretary a statement on the significance of and the location of the historic place—

''(i) the application shall not be valid; and

''(ii) the Secretary shall reject the application.

''(G) The State and the head of the Federal agency with administrative jurisdiction over the land shall have 30 days to provide written comments to the Secretary—

''(i) identifying any third party interest to which a conveyance under subparagraph (A) should be made subject; and

''(ii) describing any easements recommended for reservation.''.

SEC. 205. ALLOCATIONS BASED ON POPULATION.

Section 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)) is amended by adding at the end the following:

''(C)(i) Notwithstanding any other provision of this subsection, as soon as practicable after enactment of this subparagraph, the Secretary shall allocate to a Regional Corporation eligible for an allocation under subparagraph (A) the Regional Corporation's share of 200,000 acres from lands withdrawn under this subsection, to be credited against acreage to be allocated to the Regional Corporation under subparagraph (A).

''(ii) Clause (i) shall apply to Chugach Alaska Corporation pursuant to the terms of the 1982 CNI Settlement Agreement.

''(iii) With respect to Cook Inlet Region, Inc., or Koniag, Inc.—

''(I) clause (i) shall not apply; and

''(II) the portion of the 200,000 acres allocated to Cook Inlet Region Inc. or Koniag, Inc., shall be retained by the United States.

''(iv) This subparagraph shall not affect any prior agreement entered into by a Regional Corporation other than the agreements specifically referred to in this subparagraph.''.

SEC. 206. AUTHORITY TO WITHDRAW LAND.

Section 14(h)(10) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(10)) is amended—

(1) by striking ''(10) Notwithstanding'' and inserting the following:

''(10)(A) Notwithstanding''; and

(2) by adding at the end the following:

''(B) If a Regional Corporation does not have enough valid selections on file to fulfill the remaining entitlement of the Regional Corporation under paragraph (8), the Secretary may use the withdrawal authority under subparagraph (A) to withdraw land that is vacant, unappropriated, and unreserved on the date of enactment of this subparagraph for selection by, and conveyance to, the Regional Corporation to fulfill the entitlement.''.

SEC. 207. REPORT ON WITHDRAWALS.

Not later than 18 months after the date of enactment of this Act, the Secretary shall—

(1) review the withdrawals made pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)) to determine if any portion of the lands withdrawn pursuant to that provision can be opened to appropriation under the public land laws or if their withdrawal is still needed to protect the public interest in those lands;

(2) provide an opportunity for public notice and comment, including recommendations with regard to lands to be reviewed under paragraph (1); and

(3) submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that identifies any portion of the lands so withdrawn that can be opened to appropriation under the public land laws consistent with the protection of the public interest in these lands.

SEC. 208. AUTOMATIC SEGREGATION OF LAND FOR UNDERSELECTED VILLAGE CORPORATIONS.

Section 22(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) is amended by adding at the end the following:

''(3) In lieu of withdrawal under paragraph (2), land may be segregated from all other forms of appropriation for the purposes described in that paragraph if—

''(A) the Secretary and the Village Corporation enter into an agreement identifying the land for selection; and

''(B) the Village Corporation files an application for selection of the land.''.

SEC. 209. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a written agreement with a Native Corporation relating to—

(1) the land remaining to be conveyed to the Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) from land selected as of September 1, 2004, or land made available under section 201, 206, or 208 of this Act;

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed;

(4) the selection entitlement to which selections are to be charged, regardless of the entitlement under which originally selected;

(5) the survey of the exterior boundaries of the land to be conveyed;

(6) the additional survey to be performed under section 14(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(c)); and

(7) the resolution of conflicts with Native allotment applications.

(b) REQUIREMENTS.—An agreement under subsection (a)—

(1) shall be authorized by a resolution of the Native Corporation entering into the agreement; and

(2) shall include a statement that the entitlement of the Native Corporation shall be considered complete on execution of the agreement.

(c) CORRECTION OF CONVEYANCE DOCUMENTS.—In an agreement under subsection (a), the Secretary and the Native Corporation may agree to make technical corrections to the legal description in the conveyance documents for easements previously reserved so that the easements provide the access intended by the original reservation.

(d) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that the concerns or issues identified by the State and all Federal agencies potentially affected by the agreement are given consideration.

(e) ERRORS.—Any Native Corporation entering into an agreement under subsection (a) shall receive any gain or bear any loss resulting from errors in prior surveys, protraction diagrams, or computation of the ownership of third parties on any land conveyed.

(f) EFFECT.—

(1) IN GENERAL.—An agreement under subsection (a) shall not—

(A) affect the obligations of Native Corporations under prior agreements; or

(B) result in a Native Corporation relinquishing valid selections of land in order to qualify for the withdrawal of other tracts of land.

(2) EFFECT ON SUBSURFACE RIGHTS.—The terms of an agreement entered into under subsection (a) shall be binding on a Regional Corporation with respect to the location and quantity of subsurface rights of the Regional Corporation under section 14(f) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(f)).

(3) EFFECT ON ENTITLEMENT.—Nothing in this section increases the entitlement provided to any Native Corporation under—

(A) the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or

(B) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(g) BOUNDARIES OF A NATIVE VILLAGE.—An agreement entered into under subsection (a) may not define the boundaries of a Native Village.

(h) AVAILABILITY OF AGREEMENTS.—An agreement entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

TITLE III—NATIVE ALLOTMENTS

SEC. 301. CORRECTION OF CONVEYANCE DOCUMENTS.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) is amended by adding at the end the following:

''(d)(1) If an allotment application is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (43 U.S.C. 1634) had the land described in the application been in Federal ownership on December 2, 1980, the Secretary may correct a conveyance to a Native Corporation or to the State that includes land described in the allotment application to exclude the described allotment land with the written concurrence of the Native Corporation or the State.

''(2) A written concurrence shall—

''(A) include a finding that the land description proposed by the Secretary is acceptable; and

''(B) attest that the Native Corporation or the State has not—

''(i) granted any third party rights or taken any other action that would affect the ability of the United States to convey full title under the Act of May 17, 1906 (34 Stat. 197, chapter 2469); and;

''(ii) stored or allowed the deposit of hazardous waste on the land.

''(3) On receipt of an acceptable written concurrence, the Secretary, shall—

''(A) issue a corrected conveyance document to the State or Native Corporation, as appropriate; and

''(B) issue a certificate of allotment to the allotment applicant.

''(4) No documents of reconveyance from the State or an Alaska Native Corporation or evidence of title, other than the written concurrence and attestation described in paragraph (2), are necessary to use the procedures authorized by this subsection.''.

SEC. 302. TITLE RECOVERY OF NATIVE ALLOTMENTS.

(a) IN GENERAL.—In lieu of the process for the correction of conveyance documents available under subsection (d) of section 18 of the Alaska Native Claims Settlement Act (as added by section 301), any Native Corporation may elect to reconvey all of the land encompassed by an allotment claim or a portion of the allotment claim agreeable to the applicant in satisfaction of the entire claim by tendering a valid and appropriate deed to the United States.

(b) CERTIFICATE OF ALLOTMENT.—If the United States determines that the allotment is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (42 U.S.C. 1634) had the land described in the allotment application been in Federal ownership on December 2, 1980, and obtains title evidence acceptable under the Department of Justice title standards, the United States shall accept the deed from the Native Corporation and issue a certificate of allotment to the allotment applicant.

(c) PROBATE NOT REQUIRED.—If the Native Corporation reconveys the entire interest of the Native Corporation in the allotment claim of a deceased applicant, the United States may accept the deed and issue the certificate of allotment without waiting for a determination of heirs or the approval of a will.

(d) NO LIABILITY.—The United States shall not be subject to liability under Federal or State law for the presence of any hazardous substance in land or an interest in land solely as a result of any reconveyance to, and transfer by, the United States of land or interests in land under this section.

SEC. 303. NATIVE ALLOTMENT REVISIONS ON LAND SELECTED BY OR CONVEYED TO A NATIVE CORPORATION.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 301) is amended by adding at the end the following:

''(e)(1) An allotment applicant who had an application pending before the Department of the Interior on December 18, 1971, and whose application is still open on the records of the Department of the Interior as of the date of enactment of this subsection may revise the land description in the application to describe land other than the land that the applicant originally intended to claim if—

''(A) the application—

''(i) describes land selected by or conveyed by interim conveyance or patent to a Native Corporation formed to receive benefits under this Act; or

''(ii) otherwise conflicts with an interest in land granted to a Native Corporation by the United States;

''(B) the revised land description describes land selected by or conveyed by interim conveyance or patent to a Native Corporation of approximately equal acreage in substitution for the land described in the original application;

''(C) the Director of the Bureau of Land Management has not adopted a final plan of survey for the final entitlement of the Native Corporation or its successor in interest; and

''(D) the Native Corporation that selected the land or its successor in interest provides a corporate resolution authorizing reconveyance or relinquishment to the United States of the land, or interest in land, described in the revised application.

''(2) The land description in an allotment application may not be relocated under this section unless the Secretary has determined—

''(A) that the allotment application is valid or would have been approved under section 905 of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1634) had the land in the allotment application been in Federal ownership on December 2, 1980;

''(B) in consultation with the administering agency, that the proposed revision would not create an isolated inholding within a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); and

''(C) that the proposed revision will facilitate completion of a land transfer in the State.

''(3)(A) On obtaining title evidence acceptable under Department of Justice title standards and acceptance of a reconveyance or relinquishment from a Native Corporation under paragraph (1), the Secretary shall issue a Native allotment certificate to the applicant for the land reconveyed or relinquished by the Native Corporation.

''(B) Any allotment revised under this section shall, when allotted, be made subject to any easement, trail, right-of-way, or any third-party interest (other than a fee interest) in existence on the revised allotment land on the date of revision.''.

SEC. 304. COMPENSATORY ACREAGE.

(a) IN GENERAL.—The Secretary shall adjust the acreage entitlement computation records for the State or an affected Native Corporation to account for any difference in the amount of acreage between the corrected description and the previous description in any conveyance document as a result of actions taken under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or section 18(e) of the Alaska Native Claims Settlement Act (as added by section 303), or for other voluntary reconveyances to the United States for the purpose of facilitating land transfers in the State.

(b) LIMITATION.—No adjustment to the acreage conveyance computations shall be made where the State or an affected Native Corporation retains a partial estate in the described allotment land.

(c) AVAILABILITY OF ADDITIONAL LAND.—If, as a result of implementation under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or any voluntary reconveyance to facilitate a land transfer, a Village Corporation has insufficient remaining selections from which to receive its full entitlement under the Alaska Native Claims Settlement Act, the Secretary may use the authority and procedures available under paragraph (3) of section 22(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) (as added by section 208) to make additional land available for selection by the Village Corporation.

SEC. 305. REINSTATEMENTS AND RECONSTRUCTIONS.

(a) IN GENERAL.—Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 303) is amended by adding at the end the following:

''(f)(1) If an applicant for a Native allotment filed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469) petitions the Secretary to reinstate a previously closed Native allotment application or to accept a reconstructed copy of an application claimed to have been timely filed with an agency of the Department of the Interior, the United States—

''(A) may seek voluntary reconveyance of any land described in the application that is reinstated or reconstructed after the date of enactment of this subsection; but

''(B) shall not file an action in any court to recover title from a current landowner.

''(2) A certificate of allotment that is issued for any allotment application for which a request for reinstatement or reconstruction is received or accepted after the date of enactment of this subsection shall be made subject to any Federal appropriation, trail, right-of-way, easement, or existing third party interest of record, including third party interests created by the State, without regard to the date on which the Native allotment applicant initiated use and occupancy.''.

SEC. 306. AMENDMENTS TO SECTION 41 OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Section 41(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g(b)) is amended—

(1) in paragraph (1)(A), by inserting before the semicolon at the end the following: ''(except that the term 'nonmineral', as used in that Act, shall for the purpose of this subsection be defined as provided in section 905(a)(3) of the Alaska National Interests Lands Conservation Act (42 U.S.C. 1634(a)(3)), except that such definition shall not apply to land within a conservation system unit)''; and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and indenting the clauses appropriately;

(B) by inserting ''(A)'' after ''(2)'';

(C) in clause (ii) (as redesignated by subparagraph (A)), by inserting after ''Department of Veterans Affairs'' the following: ''or based on other evidence acceptable to the Secretary''; and

(D) by adding at the end the following:

''(B)(i) If the Secretary requests that the Secretary of Veterans Affairs make a determination whether a veteran died as a direct consequence of a wound received in action, the Secretary of Veterans Affairs shall, within 60 days of receipt of the request—

''(I) provide a determination to the Secretary if the records of the Department of Veterans Affairs contain sufficient information to support such a determination; or

''(II) notify the Secretary that the records of the Department of Veterans Affairs do not contain sufficient information to support a determination and that further investigation will be necessary.

''(ii) Not later than 1 year after notification to the Secretary that further investigation is necessary, the Department of Veterans Affairs shall complete the investigation and provide a determination to the Secretary.''.

TITLE IV—FINAL PRIORITIES; CONVEYANCE AND SURVEY PLANS

SEC. 401. DEADLINE FOR ESTABLISHMENT OF REGIONAL PLANS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary, in coordination and consultation with Native Corporations, other Federal land management agencies, and the State, shall update and revise the 12 preliminary Regional Conveyance and Survey Plans.

(b) INCLUSIONS.—The updated and revised plans under subsection (a) shall identify any conflicts to be resolved and recommend any actions that should be taken to facilitate the finalization of land conveyances in a region by 2009.

SEC. 402. DEADLINE FOR ESTABLISHMENT OF VILLAGE PLANS.

Not later than 30 months after the date of enactment of this Act, the Secretary, in coordination with affected Federal land management agencies, the State, and Village Corporations, shall complete a final closure plan with respect to the entitlements for each Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

SEC. 403. FINAL PRIORITIZATION OF ANCSA SELECTIONS.

(a) IN GENERAL.—Any Native Corporation that has not received its full entitlement or entered into a voluntary, negotiated settlement of final entitlement shall submit the final, irrevocable priorities of the Native Corporation—

(1) in the case of a Village, Group, or Urban Corporation entitlement, not later than 36 months after the date of enactment of this Act; and

(2) in the case of a Regional Corporation entitlement, not later than 42 months after the date of enactment of this Act.

(b) ACREAGE LIMITATIONS.—The priorities submitted under subsection (a) shall not exceed land that is the greater of—

(1) not more than 125 percent of the remaining entitlement; or

(2) not more than 640 acres in excess of the remaining entitlement.

(c) CORRECTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the priorities submitted under subsection (a) may not be revoked, rescinded, or modified by the Native Corporation.

(2) TECHNICAL CORRECTIONS.—Not later than 90 days after the date of receipt of a notification by the Secretary that there appears to be a technical error in the priorities, the Native Corporation may correct the technical error in accordance with any recommendations of, and in a manner prescribed by or acceptable to, the Secretary.

(d) RELINQUISHMENT.—

(1) IN GENERAL.—As of the date on which the Native Corporation submits its final priorities under subsection (a)—

(A) any unprioritized, remaining selections of the Native Corporation—

(i) are relinquished, but any part of the selections may be reinstated for the purpose of correcting a technical error; and

(ii) have no further segregative effect; and

(B) all withdrawals under sections 11 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1610, 1615) under the relinquished selections are terminated.

(2) RECORDS.—All relinquishments under paragraph (1) shall be included in Bureau of Land Management land records.

(e) FAILURE TO SUBMIT PRIORITIES.—If a Native Corporation fails to submit priorities by the deadline specified in subsection (a)—

(1) with respect to a Native Corporation that has priorities on file with the Secretary, the Secretary—

(A) shall convey to the Native Corporation the remaining entitlement of the Native Corporation, as determined based on the most recent priorities of the Native Corporation on file with the Secretary and in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(B) may reject any selections not needed to fulfill the entitlement; or

(2) with respect to a Native Corporation that does not have priorities on file with the Secretary, the Secretary shall satisfy the entitlement by conveying land selected by the Secretary, in consultation with the appropriate Native Corporation, the Federal land managing agency with administrative jurisdiction over the land to be conveyed, and the State, that, to the maximum extent practicable, is—

(A) compact;

(B) contiguous to land previously conveyed to the Native Corporation; and

(C) consistent with the applicable preliminary Regional Conveyance and Survey Plan referred to in section 401.

(f) PLAN OF CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall—

(A) identify any Native Corporation that does not have sufficient priorities on file;

(B) develop priorities for the Native Corporation in accordance with subsection (e); and

(C) provide to the Native Corporation a plan of conveyance based on the priorities developed under subparagraph (B).

(2) FINALIZED SELECTIONS.—Not later than 180 days after the date on which the Secretary provides a plan of conveyance to the affected Village, Group, or Urban Corporation and the Regional Corporation, the Regional Corporation shall finalize any Regional selections that are in conflict with land selected by the Village, Group, or Urban Corporation that has not been prioritized by the deadline under subsection (a)(1).

(g) DISSOLVED OR LAPSED CORPORATIONS.—

(1)(A) If a Native Corporation is lapsed or dissolved at the time final priorities are required to be filed under this section and does not have priorities on file with the Secretary, the Secretary shall establish a deadline for the filing of priorities that shall be one year from the provisions of notice of the deadline.

(B) To fulfill the notice requirement under paragraph (1), the Secretary shall—

(i) publish notice of deadline to a lapsed or dissolved Native Corporation in a newspaper of general circulation nearest the locality where the affected land is located; and

(ii) seek to notify in writing the last known shareholders of the lapsed or dissolved corporation.

(C) If a Native Corporation does not file priorities with the Secretary before the deadline set pursuant to subparagraph (A), the Secretary shall notify Congress.

(2) If a Native Corporation with final priorities on file with the Bureau of Land Management is lapsed or dissolved, the United States—

(A) shall continue to administer the prioritized selected land under applicable law; but

(B) may reject any selections not needed to fulfill the lapsed or dissolved Native Corporation's entitlement.

SEC. 404. FINAL PRIORITIZATION OF STATE SELECTIONS.

(a) FILING OF FINAL PRIORITIES.—

(1) IN GENERAL.—The State shall, not later than the date that is 4 years after the date of enactment of this Act, in accordance with section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)), file final priorities with the Secretary for all land grant entitlements to the State which remain unsatisfied on the date of the filing.

(2) RANKING.—All selection applications on file with the Secretary on the date specified in paragraph (1) shall—

(A) be ranked on a Statewide basis in order of priority; and

(B) include an estimate of the acreage included in each selection.

(3) INCLUSIONS.—The State shall include in the prioritized list land which has been top-filed under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)).

(4) ACREAGE LIMITATION.—

(A) IN GENERAL.—Acreage for top-filings shall not be counted against the 125 percent limitation established under section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)).

(B) RELINQUISHMENT.—

(i) IN GENERAL.—The State shall relinquish any selections that exceed the 125 percent limitation.

(ii) FAILURE TO RELINQUISH.—If the State fails to relinquish a selection under clause (i), the Secretary shall reject the selection.

(5) LOWER-PRIORITY SELECTIONS.—Notwithstanding the prioritization of selection applications under paragraph (1), if the Secretary reserves sufficient entitlements for the top-filed selections, the Secretary may continue to convey lower-priority selections.

(b) DEADLINE FOR PRIORITIZATION.—

(1) IN GENERAL.—The State shall irrevocably prioritize sufficient selections to allow the Secretary to complete transfer of 101,000,000 acres by September 30, 2009.

(2) REPRIORITIZATION.—Any selections remaining after September 30, 2009, may be reprioritized.

(c) FINANCIAL ASSISTANCE.—The Secretary may, using amounts made available to carry out this Act, provide financial assistance to other Federal agencies, the State, and Native Corporations and entities to assist in completing the transfer of land by September 30, 2009.

TITLE V—ALASKA LAND CLAIMS HEARINGS AND APPEALS

SEC. 501. ALASKA LAND CLAIMS HEARINGS AND APPEALS.

(a) ESTABLISHMENT.—The Secretary may establish a field office of the Office of Hearings and Appeals in the State to decide matters within the jurisdiction of the Department of the Interior involving hearings and appeals, and other review functions of the Secretary regarding land transfer decisions and Indian probates in the State.

(b) APPOINTMENTS.—For purposes of carrying out subsection (a), the Secretary shall appoint administrative law judges selected in accordance with section 3105 of title 5, United States Code (commonly known as the ''Administrative Procedure Act'').

TITLE VI—REPORT AND AUTHORIZATION OF APPROPRIATIONS

SEC. 601. REPORT.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the status of the implementation of this Act.

(b) CONTENTS.—The report shall—

(1) describe the status of conveyances to Alaska Natives, Native Corporations, and the State; and

(2) include recommendations for completing the conveyances required by this Act.

SEC. 602. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

PRIVILEGES OF THE FLOOR

Mr. ALLARD. Mr. President, I ask unanimous consent that Rob Brown, a legislative fellow in my office, be granted the privileges of the floor during the consideration of S. 2845.

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

Mr. LIEBERMAN. Mr. President, I ask unanimous consent, that Christopher Alexander, a fellow in Senator KENNEDY's office, be granted the privilege of the floor during consideration of S. 2845.

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

MEASURES PLACED ON THE CALENDAR—H.R. 4596 AND H.R. 4606

Mr. FRIST. I understand that there are two bills at the desk and due for a second reading. I ask unanimous consent that the clerk read the titles of the bills for a second time, en bloc.

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

The clerk will read the bills by title, en bloc.

The legislative clerk read as follows:

A bill (H.R. 4596) to amend Public Law 97–435 to extend the authorization for the Secretary of the Interior to release certain conditions contained in a patent concerning certain land conveyed by the United States to Eastern Washington University until December 31, 2009.

A bill (H.R. 4606) to authorize the Secretary of the Interior, acting through the Bureau of Reclamation and in coordination with other Federal, State, and local government agencies, to participate in the funding and implementation of a balanced, long-term groundwater remediation program in California, and for other purposes.

Mr. FRIST. I would object to further proceedings, en bloc.

The PRESIDING OFFICER. The objection is heard. The bills will be placed on the calendar.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 108–173, appoints the following individuals to the Commission on Systemic Interoperability: Vicky B. Gregg of Tennessee and Ivan G. Seidenberg of New York.

EXECUTIVE SESSION

NOMINATION OF ALAN GREENSPAN TO BE UNITED STATES ALTERNATE GOVERNOR OF THE INTERNATIONAL MONETARY FUND

Mr. FRIST. As in executive session, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of the following nomination: Alan Greenspan, PN–1841. I further ask unanimous consent the Senate proceed to its consideration, the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate resume legislative session.

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

The nomination considered and confirmed is as follows:

INTERNATIONAL MONETARY FUND

Alan Greenspan, of New York, to be United States Alternate Governor of the International Monetary Fund.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

MAKING NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS FOR VOLUNTEERS PERMANENT

PREVENTION OF CHILD ABDUCTION PARTNERSHIP ACT

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of S. 2882 and S. 2883, en bloc.

The PRESIDING OFFICER. The clerk will state the bills by title, en bloc.

The legislative clerk read as follows:

A bill (S. 2882) to make a program for national criminal history background checks for volunteer groups permanent.

A bill (S. 2883) to amend the International Child Abduction Remedies Act to limit the tort liability of private entities or organizations that carry out responsibilities of the United States Central Authority under that Act.

There being no objection, the Senate proceeded to consideration of the bills, en bloc.

Mr. FRIST. I ask unanimous consent the bills be read a third time and passed, the motions to reconsider be laid upon the table and any statements regarding this matter be printed in the RECORD.

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

The bills (S. 2882 and S. 2883) were read the third time and passed, as follows:

S. 2882

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. VOLUNTEER GROUP ACCESS TO CRIMINAL BACKGROUND CHECKS PROGRAM.

Section 108(a)(3)(A) of the PROTECT Act (Public Law 108–21) is amended by striking ''an 18-month'' and inserting ''a''.

S. 2883

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prevention of Child Abduction Partnership Act''.

SEC. 2. LIMITATION ON LIABILITY.

Section 7 of the International Child Abduction Remedies Act (42 U.S.C. 11606) is amended by adding at the end the following new subsection:

''(f) LIMITED LIABILITY OF PRIVATE ENTITIES ACTING UNDER THE DIRECTION OF THE UNITED STATES CENTRAL AUTHORITY.—

''(1) LIMITATION ON LIABILITY.—Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this Act, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

''(2) EXCEPTION FOR INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this Act.

''(3) EXCEPTION FOR ORDINARY BUSINESS ACTIVITIES.—The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.''.

Mr. HATCH. Mr. President, I rise today to commend my colleagues for passing by unanimous consent two bills which I sponsored—a bill to extend the pilot program for national criminal history background checks for volunteers who work with children, and the Prevention of Child Abduction Partnership Act.

The first bill extends the pilot program created by the PROTECT Act. The pilot program allows the National Center for Missing and Exploited Children, NCMEC, in coorperation with the FBI, to provide a background check process for volunteers working for organizations, such as the Boys and Girls Clubs of America, National Mentoring Partnership, and the National Council of Youth Sports. The National Center for Missing and Exploited Children provides its expertise to assist volunteer organizations in evaluating the criminal records of volunteers to determine if the volunteers are fit to interact and provide care for children.

So far, the NCMEC has processed over 2,500 checks. Through these checks the Center has been able to prevent criminals, including child molesters, from applying and securing volunteer positions with youth organizations. Of those applicants whose files showed an offense, over 50 percent of the applicants lied and indicated they did not have a criminal record. Some of the startling examples of people who were found unfit to work with children included: (1) one convicted of manslaughter, (2) one found guilty on charges of Aggravated Criminal Sexual Assault as well as domestic battery, (3) one convicted of three charges of endangering the welfare of a child, (4) one convicted of lewdness and was charged for kidnapping, (5) one charged with sexual contact with a child under the age of 16, (6) one charged with 31 counts, including multiple rapes and assaults, indecent liberties, eluding, and prostitution, (7) one charged with aggravated battery of a pregnant woman, and (8) one charged with oral copulation by force, rape by force, and oral copulation by force, in one instance the victim under 14 and in another, 10 years younger. My bill would allow this invaluable program to continue to prevent convicted criminals such as these from working with children.

The Prevention of Child Abduction Partnership Act grants private entities, including the National Center for Missing and Exploited Children, immunity from tort liability when they are assisting the U.S. State Department in carrying out its functions under the International Child Abduction Remedies Act.

MISSING CHILD COLD CASE REVIEW ACT OF 2004

Mr. FRIST. I ask unanimous consent the Judiciary Committee be discharged from further consideration of S. 2435 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2485) to permit Inspectors General to authorize staff to provide assistance to the National Center for Missing and Exploited children, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate is considering and passing the ''Missing Child Cold Case Review Act of 2004,'' S. 2435, which will allow an Inspector General to authorize his or her staff to provide assistance on and conduct reviews of the inactive case files involving children, or ''cold cases,'' stored at the National Center for Missing & Exploited Children (NCMEC) and to develop recommendations for further investigations.

I thank Senators GRASSLEY, LINCOLN and HATCH for joining me as cosponsors of this bipartisan legislation. I thank them for their leadership in this area.

Speed is everything in homicide investigations. As a former prosecutor in Vermont, I know firsthand that speed is of the essence when trying to solve a homicide. This focus on speed, however, has led the law enforcement community to generally believe that any case not solved within the first 72 hours or lacking significant leads and witness participation has little likelihood of being solved, regardless of the expertise and resources deployed. With time, such unsolved cases become ''cold,'' and these are among the most difficult and frustrating cases detectives face because they are, in effect, cases that other investigators, for whatever reason, failed to solve.

Our Nation's law enforcement agencies, regardless of size, are not immune to rising crime rates, staff shortages and budget restrictions. Such obstacles have strained the investigative and administrative resources of all agencies. More crime often means that fewer cases are vigorously pursued, fewer opportunities arise for follow-up and individual caseloads increase for already overworked detectives.

All the obstacles that hamper homicide investigations in their early phases contribute to cold cases. The National Center for Missing & Exploited Children—our Nation's top resource center for child protection—presently retains a backlog of cold cases involving children that law enforcement departments nationwide have stopped investigating primarily due to all those obstacles. NCMEC serves as a clearinghouse for all cold cases in which a child has not been found and/or the suspect has not been identified.

The bill that we pass today will allow an inspector general to provide staff support to NCMEC for the purpose of conducting reviews of inactive case files to develop recommendations for further investigation and similar activities. The inspector general community has one of the most diverse and talented criminal investigative cadres in the Federal Government. A vast majority of these special agents have come from traditional law enforcement agencies, and are highly-trained and extremely capable of dealing with complex, criminal cases.

Under current law, an inspector general's duties are limited to activities related to the programs and operations of an agency. Our bill would allow an inspector general to permit criminal investigators under his or her supervision to review cold case files, so long as doing so would not interfere with normal duties. An inspector general would not conduct actual investigations, and any inspector general would only commit staff when the office's mission-related workloads permitted. At no time would these activities be allowed to conflict with or delay the stated missions of an inspector general.

From time to time a criminal investigator employed by an inspector general may be between investigations or otherwise available for brief periods of time. This act would also allow those resources to be provided to the National Center for Missing & Exploited Children. Commitment of resources would be at a minimum and would not materially affect the budget of any office.

We have before us the type of bipartisan legislation that should move easily through the House once it passes the Senate. It is supported by the Department of Justice Office of the Inspector General. I applaud the ongoing work of the National Center for Missing & Exploited Children and hope the House will follow the Senate's leadership and promptly pass this bill to provide NCMEC with the resources it requires to solve cold cases involving missing children.

Mr. FRIST. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (S. 2435) was read the third time and passed, as follows:

S. 2435

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Missing Child Cold Case Review Act of 2004''.

SEC. 2. AUTHORITY OF INSPECTORS GENERAL.

Title XXXVII of the Crime Control Act of 1990 (42 U.S.C. 5779 et seq.) is amended by inserting after section 3701 the following:

''SEC. 3701A. AUTHORITY OF INSPECTORS GENERAL.

''(a) IN GENERAL.—An Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) may authorize staff to assist the National Center for Missing and Exploited Children—

''(1) by conducting reviews of inactive case files to develop recommendations for further investigations; and

''(2) by engaging in similar activities.

''(b) LIMITATIONS.—

''(1) PRIORITY.—An Inspector General may not permit staff to engage in activities described in subsection (a) if such activities will interfere with the duties of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.).

''(2) FUNDING.—No additional funds are authorized to be appropriated to carry out this section.''.

AUTHORIZING THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION TO CARRY OUT CONSTRUCTION ACTIVITIES

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 5105, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5105) to authorize the Board of Regents of the Smithsonian Institution to carry out construction and related activities in support of the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project on Kitt Peak near Tucson, Arizona.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5105) was read the third time and passed.

PERMITTING CHURCH PENSION PLANS TO BE INVESTED IN COLLECTIVE TRUSTS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be discharged from further consideration of H.R. 1533, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1533) to amend the securities laws to permit church pension plans to be invested in collective trusts.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to this bill be printed in the RECORD.

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

The amendment (No. 3948) was agreed to, as follows:

(Purpose: To make a technical correction)

On page 2, strike lines 17 through 22 and insert the following:

''(2) by striking 'other than any plan described in clause (A), (B), or (C)' and inserting the following: 'or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D)'.''. '

The bill (H.R. 1533), as amended, was read the third time and passed.

RAIL SECURITY ACT OF 2004

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 536, S. 2273.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2273) to provide increased rail transportation security, which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 2273

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Rail Security Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

(a) IN GENERAL.—

(1) VULNERABILITY ASSESSMENT.—The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Secretary of Transportation, shall complete a vulnerability assessment of freight and passenger rail transportation (encompassing [rail carriers,] *railroads,* as that term is defined in section 20102(1) of title 49, United States Code). The assessment shall include—

(A) identification and evaluation of critical assets and infrastructures;

(B) identification of threats to those assets and infrastructures;

(C) identification of vulnerabilities that are specific to the transportation of hazardous materials via railroad; and

(D) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection systems, procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the assessment.

(2) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS.—The assessment shall take into account actions taken or planned by both public and private entities to address identified security issues and assess the effective integration of such actions.

(3) RECOMMENDATIONS.—Based on the assessment conducted under paragraph (1), the Under Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Under Secretary has for—

(A) improving the security of rail tunnels, rail bridges, rail switching *and car storage* areas, other rail infrastructure and facilities, information systems, and other areas identified by the Under Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service;

(B) deploying [weapon detection equipment;] *equipment to detect explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;*

(C) training employees in terrorism prevention, passenger evacuation, and response activities;

(D) conducting public outreach campaigns on passenger railroads;

(E) deploying surveillance equipment; and

(F) identifying the immediate and long-term [economic impact] *osts* of measures that may be required to address those risks.

(4) PLANS.—The report required by subsection (c) shall include—

(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the government to provide increased security support at high or severe threat levels of alert; and

(B) a plan for coordinating rail security initiatives undertaken by the public and private sectors.

(b) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment required by subsection (a), the Under Secretary of Homeland Security for Border and Transportation Security shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, *first responders,* shippers of hazardous materials, public safety officials (including those within other agencies and offices within the Department of Homeland [Security)] *Security),* and other relevant parties.

(c) REPORT.—

(1) CONTENTS.—Within 180 days after the date of enactment of this Act, the Under Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report containing the assessment and prioritized recommendations required by subsection (a) and an estimate of the cost to implement such recommendations.

(2) FORMAT.—The Under Secretary may submit the report in both classified and redacted formats if the Under Secretary determines that such action is appropriate or necessary.

(d) 2-YEAR UPDATES.—The Under Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations every 2 years and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $5,000,000 for fiscal year 2005 for the purpose of carrying out this section.

SEC. 3. RAIL SECURITY.

(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended by striking ''the rail carrier'' each place it appears and inserting ''any rail carrier''.

(b) REVIEW OF RAIL REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Under Secretary of Homeland Security for Border and Transportation Security, shall review existing rail regulations of the Department of Transportation for the purpose of identifying areas in which those regulations need to be revised to improve rail security.

SEC. 4. STUDY OF FOREIGN RAIL TRANSPORT SECURITY PROGRAMS.

(a) REQUIREMENT FOR STUDY.—Within one year after the date of enactment of the Rail Security Act of 2004, the Comptroller General shall complete a study of the rail passenger transportation security programs that are carried out for rail transportation systems in Japan, member nations of the European Union, and other foreign countries.

(b) PURPOSE.—The purpose of the study shall be to identify effective rail transportation security measures that are in use in foreign rail transportation systems, including innovative measures and screening procedures determined effective.

(c) REPORT.—The Comptroller General shall submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include the Comptroller General's assessment regarding whether it is feasible to implement within the United States any of the same or similar security measures that are determined effective under the study.

SEC. 5. PASSENGER, BAGGAGE, AND CARGO SCREENING.

(a) REQUIREMENT FOR STUDY AND REPORT.—The Under Secretary of Homeland Security for Border and Transportation Security, in cooperation with the Secretary of Transportation, shall—

(1) analyze the cost and feasibility of requiring security screening for passengers, baggage, and [mail] *cargo* on passenger trains; and

(2) report the results of the study, together with any recommendations that the Under Secretary may have for implementing a rail security screening program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act.

(b) PILOT PROGRAM.—As part of the study under subsection (a), the Under Secretary shall complete a pilot program of random security screening of passengers and baggage at 5 passenger rail stations served by Amtrak selected by the Under Secretary. In conducting the pilot program, the Under Secretary shall—

(1) test a wide range of explosives detection technologies, devices and methods;

(2) require that intercity rail passengers produce government-issued photographic identification which matches the name on the passenger's tickets prior to boarding trains; and

(3) attempt to *give preference to locations at the highest risk of terrorist attack and* achieve a distribution of participating train stations in terms of geographic location, size, passenger volume, and whether the station is used by commuter rail passengers as well as Amtrak passengers.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security to carry out this section $5,000,000 for fiscal year 2005.

SEC. 6. CERTAIN PERSONNEL LIMITATIONS NOT TO APPLY.

Any statutory limitation on the number of employees in the Transportation Security Administration of the Department of Transportation, before or after its transfer to the Department of Homeland Security, does not apply to the extent that any such employees are responsible for implementing the provisions of this Act.

[SEC. 7. FIRE AND LIFE SAFETY IMPROVEMENTS.]

SEC. 7. FIRE AND LIFE-SAFETY IMPROVEMENTS.

(a) [LIFE SAFETY] *LIFE-SAFETY NEEDS*.—The Secretary of Transportation is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to *Amtrak* tunnels on the Northeast Corridor in New York, NY, Baltimore, MD, and Washington, DC.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

(1) For the 6 New York tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers—

(A) $100,000,000 for fiscal year 2005;
(B) $100,000,000 for fiscal year 2006;
(C) $100,000,000 for fiscal year 2007;
(D) $100,000,000 for fiscal year 2008; and
(E) $170,000,000 for fiscal year 2009.

(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

(A) $10,000,000 for fiscal year 2005;
(B) $10,000,000 for fiscal year 2006;
(C) $10,000,000 for fiscal year 2007;
(D) $10,000,000 for fiscal year 2008; and
(E) $17,000,000 for fiscal year 2009.

(3) For the Washington, DC Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

(A) $8,000,000 for fiscal year 2005;
(B) $8,000,000 for fiscal year 2006;
(C) $8,000,000 for fiscal year 2007;
(D) $8,000,000 for fiscal year 2008; and
(E) $8,000,000 for fiscal year 2009.

(c) INFRASTRUCTURE UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for fiscal year 2005 $3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to this section shall remain available until expended.

(e) [PLAN] *PLANS* REQUIRED.—The Secretary may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing *appropriate* project budget, construction schedule, recipient staff organization, document control and record keeping, change order procedure, quality control and assurance, periodic plan updates, periodic status reports, and such other [matter] *matters* the Secretary deems [appropriate;] *appropriate*.

(f) REVIEW OF PLANS.—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak. If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the portions of the plan the Secretary finds incomplete or deficient, approve all other portions of the plan, obligate the funds associated with those other portions, and execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

[(f)] *(g)* FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all [life safety] *portions* of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) [seek] *obtain* financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use of the [tunnels.] *tunnels, if feasible.*

[SEC. 8. TRANSPORTATION SECURITY.]

SEC. 8. MEMORANDUM OF AGREEMENT.

(a) MEMORANDUM OF AGREEMENT.—Within 60 days after the date of enactment of this Act, the Secretary of Transportation and the [Under Secretary of Homeland Security for Border and Transportation Security] *Secretary of Homeland Security* shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

(b) RAIL SAFETY REGULATIONS.—Section 20103(a) of title 49, United States Code, is amended by striking ''safety'' the first place it appears, and inserting ''safety, including security,''.

SEC. 9. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents

''(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Security Act of 2004, Amtrak shall submit to the Chairman of the National Transportation Safety Board *and the Secretary of Transportation* a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

''(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

''(1) A process by which Amtrak will maintain and provide to the National Transportation Safety [Board,] *Board and the Secretary of Transportation*, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

''(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

''(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

''(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

''(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

''(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

''(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

''(c) USE OF INFORMATION.—The National Transportation Safety [Board and Amtrak] *Board, the Secretary of Transportation, and Amtrak* may not release to any person information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

''(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak $500,000 for fiscal year 2005 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''Sec.
''24316. Plan to assist families of passengers involved in rail passenger accidents.''.

[SEC. 10. SYSTEM-WIDE AMTRAK SECURITY UPGRADES.]

SEC. 10. SYSTEMWIDE AMTRAK SECURITY UPGRADES.

(a) IN GENERAL—Subject to subsection (c), the Under Secretary of Homeland Security for Border and Transportation Security is authorized to make grants, through the Secretary of Transportation, to Amtrak—

(1) to secure major tunnel access points and ensure tunnel integrity in New York, Baltimore, and Washington, DC;

(2) to secure Amtrak trains;

(3) to secure Amtrak stations;

(4) to obtain a watch list identification system approved by the Under Secretary;

(5) to obtain train tracking and *interoperable* communications systems that are coordinated to the maximum extent possible;

(6) to hire additional police and security officers, including canine units; and

(7) to expand emergency preparedness efforts.

(b) CONDITIONS.—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless the projects are contained in a systemwide security plan approved by the Under Secretary, in consultation with the Secretary of Transportation, [and] *and, for capital projects*, meet the requirements of section 7(e)(2). *The plan shall include appropriate measures to address security awareness, emergency response, and passenger evacuation training.*

(c) EQUITABLE GEOGRAPHIC ALLOCATION.—The [Secretary] *Under Secretary* shall ensure that, subject to meeting the highest security needs on Amtrak's entire system, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

(d) AVAILABILITY OF FUNDS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security [$62,500,000] *$63,500,000* for fiscal year 2005 for the purposes of carrying out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 11. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES.

(a) SECURITY IMPROVEMENT GRANTS.—The Under Secretary of Homeland Security for Border and Transportation Security is authorized to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used in the transportation of hazardous materials, *universities, colleges and research centers, State and local governments (for passenger facilities and infrastructure not owned by Amtrak)*, and, through the Secretary of Transportation, to Amtrak, for full or partial reimbursement of costs incurred in the conduct of activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security threats, including—

(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

(2) accommodation of cargo or passenger screening equipment at the United States-Mexico border or the United States-Canada border;

(3) the security of hazardous material transportation by rail;

(4) secure intercity passenger rail stations, trains, and infrastructure;

(5) structural modification or replacement of [pressurized tank cars] *rail cars transporting high hazard materials* to improve their resistance to acts of terrorism;

(6) employee security awareness, preparedness, passenger evacuation, and emergency response training;

(7) public security awareness campaigns for passenger train operations; [and]

(8) the sharing of intelligence and information about security threats;

(9) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(10) to hire additional police and security officers, including canine units; and

[(8)] *(11)* other improvements recommended by the report required by section 2, including infrastructure, facilities, and equipment upgrades.

(b) ACCOUNTABILITY.—The Under Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Under Secretary.

(c) EQUITABLE ALLOCATION.—The Under Secretary shall equitably distribute the funds authorized by this section, taking into account geographic location, and shall encourage non-Federal financial participation in awarding grants. With respect to grants for passenger rail security, the Under Secretary shall also take into account passenger volume and whether a station is used by commuter rail passengers as well as intercity rail passengers.

[(c)] *(d)* CONDITIONS.—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless Amtrak meets the conditions set forth in section 10(b) of this Act.

[(d) TANK CAR REPLACEMENT INCENTIVE.—A grant under subsection (a)(5) may be for up to 15 percent of the cost of the modification or replacement of a pressurized tank car.]

(e) ALLOCATION BETWEEN RAILROADS AND OTHERS.—Unless as a result of the assessment required by section 2 the Under Secretary of Homeland Security for Border and Transportation Security determines that critical rail transportation security needs require reimbursement in greater amounts to any eligible entity, no grants under this section may be made—

(1) in excess of $65,000,000 to Amtrak; or

(2) in excess of $100,000,000 for the purposes described in paragraphs (3) and (4) *(5)* of subsection (a).

[(f) PROCEDURES FOR GRANT AWARD.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

(g)] *(f)* AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security [$250,000,000] *$350,000,000* for fiscal year 2005 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

(g) HIGH HAZARD MATERIALS DEFINED.—In this section, the term ''high hazard materials'' means poison inhalation hazard materials, Class 2.3 gases, Class 6.1 materials, and anhydrous ammonia.

[SEC. 12. DEPARTMENT OF TRANSPORTATION OVERSIGHT.]

SEC. 12. OVERSIGHT AND GRANT PROCEDURES.

(a) SECRETARIAL OVERSIGHT.—The Secretary of Transportation may use up to 0.5

percent of amounts made available to Amtrak for capital projects under the Rail Security Act of 2004 to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects.

(b) USE OF FUNDS.—The Secretary may use amounts available under subsection (a) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under subsection (a).

(c) PROCEDURES FOR GRANT AWARD.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this Act, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

SEC. 13. RAIL SECURITY RESEARCH AND DEVELOPMENT.

(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The Under Secretary of Homeland Security for Border and Transportation Security, in conjunction with the Secretary of Transportation, shall carry out a research and development program for the purpose of improving freight and intercity passenger rail [security, including] *security that may include* research and development projects to—

(1) reduce the vulnerability of passenger trains, stations, and equipment to [explosives;] *explosives and hazardous chemical, biological, and radioactive substances;*

(2) test new emergency response techniques and technologies;

(3) develop improved freight technologies, including—

(A) technologies for sealing rail cars;

(B) automatic inspection of rail cars;

(C) communication-based train controls; and

(D) emergency response training;

(4) test wayside detectors that can detect tampering with railroad equipment; and

(5) support enhanced security for the transportation of hazardous materials by rail, including—

(A) technologies to detect a breach in a tank car and transmit information about the integrity of tank cars to the train crew;

(B) research to improve tank car integrity, with a focus on tank cars that carry [toxic-inhalation chemicals; and] *high hazard materials (as defined in section 11(g) of this Act;*

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public [safety.] *safety;*

(6) other projects recommended in the report required by section 2.

(b) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Under Secretary of Homeland Security for Border and Transportation Security shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department and the Department of Transportation. *The Under Secretary of Homeland Security for Border and Transportation Security shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation if the Secretary of Transportation—*

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique facility or capability that would be useful in carrying out the project.

[(c) ACCOUNTABILITY.—The Under Secretary of Homeland Security for Border and Transportation Security shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique facility or capability that would be useful in carrying out the project.]

(c) ACCOUNTABILITY.—The Under Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Under Secretary.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $50,000,000 in each of fiscal years 2005 and 2006 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 14. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.

(a) TRACK STANDARDS.—Within 90 days after the date of enactment of this Act, the Federal Railroad Administration shall—

(1) require each [railroad] *track owner* using continuous welded rail track to include procedures (in its [program] *procedures* filed with the [Administration) that] *Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to* improve the identification of cracks in rail joint bars;

(2) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(3) establish a program to periodically review continuous welded rail joint bar inspection data from railroads and Administration track inspectors and, whenever the Administration determines that it is necessary or appropriate, require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail.

(b) TANK CAR STANDARDS.—The Federal Railroad Administration shall—

(1) within 1 year after the date of enactment of this Act, validate the predictive model it is developing to quantify the [maximum] *relevant* dynamic forces acting on railroad tank cars under accident conditions; and

(2) within 18 months after the date of enactment of this Act, initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars.

(c) OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.—Within 2 years after the date of enactment of this Act, the Federal Railroad [Administration, in coordination with the National Transportation Safety Board, shall—] *Administration shall—*

(1) conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989; and

(2) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure with recommendations for measures to eliminate or mitigate the risk of catastrophic failure.

SEC. 15. NORTHERN BORDER RAIL PASSENGER REPORT.

Within 180 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the heads of other appropriate Federal departments and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that contains—

(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;

(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in ''The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America'', dated January 18, 2001;

(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the ''Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States'', dated April 2, 2003;

(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing prescreened passenger lists for rail passengers travelling between the United States and Canada to the Department of Homeland Security;

(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers; and

(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing prescreened passenger lists to the Department of Homeland Security.

SEC. 16. REPORT REGARDING IMPACT ON SECURITY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.

(a) STUDY.—The Secretary of Homeland Security shall, in consultation with State and local government officials, conduct a study on the impact of blocked highway-railroad grade crossings on the ability of emergency responders, including ambulances and police, fire, and other emergency vehicles, to perform public safety and security duties in the event of a terrorist attack.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the findings of the study conducted under subsection (a) and recommendations for reducing the impact of blocked crossings on emergency response.

SEC. 17. WHISTLEBLOWER PROTECTION PROGRAM.

(a) IN GENERAL.—Subchapter A of chapter 201 of title 49, United States Code, is amended by inserting after section 20115 the following:

''§ 20116. Whistleblower protection for rail security matters

''(a) DISCRIMINATION AGAINST EMPLOYEE.—No rail carrier engaged in interstate or foreign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a perceived threat to security; or

''(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a perceived threat to security; or

''(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

''(b) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than $20,000.

''(c) PROCEDURAL REQUIREMENTS.—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this title, including the burdens of proof, applies to any complaint brought under this section.

''(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

''(e) DISCLOSURE OF IDENTITY.—

''(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

''(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20115 the following:

''20116. Whistleblower protection for rail security matters.''.

Mr. FRIST. I ask unanimous consent that the committee reported amendments be agreed to, the bill, as amended, be read the third time and passed, and the motion to reconsider be laid upon the table.

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

The committee amendments were agreed to.

The bill (S. 2273), as amended, was read the third time and passed, as follows:

S. 2273

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Rail Security Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

(a) IN GENERAL.—

(1) VULNERABILITY ASSESSMENT.—The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Secretary of Transportation, shall complete a vulnerability assessment of freight and passenger rail transportation (encompassing railroads, as that term is defined in section 20102(1) of title 49, United States Code). The assessment shall include—

(A) identification and evaluation of critical assets and infrastructures;

(B) identification of threats to those assets and infrastructures;

(C) identification of vulnerabilities that are specific to the transportation of hazardous materials via railroad; and

(D) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection systems, procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the assessment.

(2) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS.—The assessment shall take into account actions taken or planned by both public and private entities to address identified security issues and assess the effective integration of such actions.

(3) RECOMMENDATIONS.—Based on the assessment conducted under paragraph (1), the Under Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Under Secretary has for—

(A) improving the security of rail tunnels, rail bridges, rail switching and car storage areas, other rail infrastructure and facilities, information systems, and other areas identified by the Under Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service;

(B) deploying equipment to detect explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

(C) training employees in terrorism prevention, passenger evacuation, and response activities;

(D) conducting public outreach campaigns on passenger railroads;

(E) deploying surveillance equipment; and

(F) identifying the immediate and long-term costs of measures that may be required to address those risks.

(4) PLANS.—The report required by subsection (c) shall include—

(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the government to provide increased security support at high or severe threat levels of alert; and

(B) a plan for coordinating rail security initiatives undertaken by the public and private sectors.

(b) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment required by subsection (a), the Under Secretary of Homeland Security for Border and Transportation Security shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, first responders, shippers of hazardous materials, public safety officials (including those within other agencies and offices within the Department of Homeland Security), and other relevant parties.

(c) REPORT.—

(1) CONTENTS.—Within 180 days after the date of enactment of this Act, the Under Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report containing the assessment and prioritized recommendations required by subsection (a) and an estimate of the cost to implement such recommendations.

(2) FORMAT.—The Under Secretary may submit the report in both classified and redacted formats if the Under Secretary determines that such action is appropriate or necessary.

(d) 2-YEAR UPDATES.—The Under Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations every 2 years and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $5,000,000 for fiscal year 2005 for the purpose of carrying out this section.

SEC. 3. RAIL SECURITY.

(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended by striking ''the rail carrier'' each place it appears and inserting ''any rail carrier''.

(b) REVIEW OF RAIL REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Under Secretary of Homeland Security for Border and Transportation Security, shall review existing rail regulations of the Department of Transportation for the purpose of identifying areas in which those regulations need to be revised to improve rail security.

SEC. 4. STUDY OF FOREIGN RAIL TRANSPORT SECURITY PROGRAMS.

(a) REQUIREMENT FOR STUDY.—Within one year after the date of enactment of the Rail Security Act of 2004, the Comptroller General shall complete a study of the rail passenger transportation security programs that are carried out for rail transportation systems in Japan, member nations of the European Union, and other foreign countries.

(b) PURPOSE.—The purpose of the study shall be to identify effective rail transportation security measures that are in use in foreign rail transportation systems, including innovative measures and screening procedures determined effective.

(c) REPORT.—The Comptroller General shall submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include the Comptroller General's

assessment regarding whether it is feasible to implement within the United States any of the same or similar security measures that are determined effective under the study.

SEC. 5. PASSENGER, BAGGAGE, AND CARGO SCREENING.

(a) REQUIREMENT FOR STUDY AND REPORT.—The Under Secretary of Homeland Security for Border and Transportation Security, in cooperation with the Secretary of Transportation, shall—

(1) analyze the cost and feasibility of requiring security screening for passengers, baggage, and cargo on passenger trains; and

(2) report the results of the study, together with any recommendations that the Under Secretary may have for implementing a rail security screening program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act.

(b) PILOT PROGRAM.—As part of the study under subsection (a), the Under Secretary shall complete a pilot program of random security screening of passengers and baggage at 5 passenger rail stations served by Amtrak selected by the Under Secretary. In conducting the pilot program, the Under Secretary shall—

(1) test a wide range of explosives detection technologies, devices and methods;

(2) require that intercity rail passengers produce government-issued photographic identification which matches the name on the passenger's tickets prior to boarding trains; and

(3) attempt to give preference to locations at the highest risk of terrorist attack and achieve a distribution of participating train stations in terms of geographic location, size, passenger volume, and whether the station is used by commuter rail passengers as well as Amtrak passengers.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security to carry out this section $5,000,000 for fiscal year 2005.

SEC. 6. CERTAIN PERSONNEL LIMITATIONS NOT TO APPLY.

Any statutory limitation on the number of employees in the Transportation Security Administration of the Department of Transportation, before or after its transfer to the Department of Homeland Security, does not apply to the extent that any such employees are responsible for implementing the provisions of this Act.

SEC. 7. FIRE AND LIFE-SAFETY IMPROVEMENTS.

(a) LIFE-SAFETY NEEDS.—The Secretary of Transportation is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York, NY, Baltimore, MD, and Washington, DC.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

(1) For the 6 New York tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers—

(A) $100,000,000 for fiscal year 2005;
(B) $100,000,000 for fiscal year 2006;
(C) $100,000,000 for fiscal year 2007;
(D) $100,000,000 for fiscal year 2008; and
(E) $170,000,000 for fiscal year 2009.

(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

(A) $10,000,000 for fiscal year 2005;
(B) $10,000,000 for fiscal year 2006;
(C) $10,000,000 for fiscal year 2007;
(D) $10,000,000 for fiscal year 2008; and
(E) $17,000,000 for fiscal year 2009.

(3) For the Washington, DC Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

(A) $8,000,000 for fiscal year 2005;
(B) $8,000,000 for fiscal year 2006;
(C) $8,000,000 for fiscal year 2007;
(D) $8,000,000 for fiscal year 2008; and
(E) $8,000,000 for fiscal year 2009.

(c) INFRASTRUCTURE UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for fiscal year 2005 $3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to this section shall remain available until expended.

(e) PLANS REQUIRED.—The Secretary may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing appropriate project budget, construction schedule, recipient staff organization, document control and record keeping, change order procedure, quality control and assurance, periodic plan updates, periodic status reports, and such other matters the Secretary deems appropriate.

(f) REVIEW OF PLANS.—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak. If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the portions of the plan the Secretary finds incomplete or deficient, approve all other portions of the plan, obligate the funds associated with those other portions, and execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

(g) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) obtain financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use of the tunnels, if feasible.

SEC. 8. MEMORANDUM OF AGREEMENT.

(a) MEMORANDUM OF AGREEMENT.—Within 60 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

(b) RAIL SAFETY REGULATIONS.—Section 20103(a) of title 49, United States Code, is amended by striking ''safety'' the first place it appears, and inserting ''safety, including security,''.

SEC. 9. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents

''(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Security Act of 2004, Amtrak shall submit to the Chairman of the National Transportation Safety Board and the Secretary of Transportation a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

''(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

''(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

''(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

''(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

''(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

''(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

''(6) A process by which the treatment of the families of nonrevenue passengers will be

the same as the treatment of the families of revenue passengers.

''(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

''(c) USE OF INFORMATION.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release to any person information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

''(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak $500,000 for fiscal year 2005 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''Sec.
''24316. Plan to assist families of passengers involved in rail passenger accidents.''.

SEC. 10. SYSTEMWIDE AMTRAK SECURITY UPGRADES.

(a) IN GENERAL—Subject to subsection (c), the Under Secretary of Homeland Security for Border and Transportation Security is authorized to make grants, through the Secretary of Transportation, to Amtrak—

(1) to secure major tunnel access points and ensure tunnel integrity in New York, Baltimore, and Washington, DC;

(2) to secure Amtrak trains;

(3) to secure Amtrak stations;

(4) to obtain a watch list identification system approved by the Under Secretary;

(5) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(6) to hire additional police and security officers, including canine units; and

(7) to expand emergency preparedness efforts.

(b) CONDITIONS.—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless the projects are contained in a systemwide security plan approved by the Under Secretary, in consultation with the Secretary of Transportation, and, for capital projects, meet the requirements of section 7(e)(2). The plan shall include appropriate measures to address security awareness, emergency response, and passenger evacuation training.

(c) EQUITABLE GEOGRAPHIC ALLOCATION.—The Under Secretary shall ensure that, subject to meeting the highest security needs on Amtrak's entire system, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

(d) AVAILABILITY OF FUNDS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $63,500,000 for fiscal year 2005 for the purposes of carrying out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 11. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES.

(a) SECURITY IMPROVEMENT GRANTS.—The Under Secretary of Homeland Security for Border and Transportation Security is authorized to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, State and local governments (for passenger facilities and infrastructure not owned by Amtrak), and, through the Secretary of Transportation, to Amtrak, for full or partial reimbursement of costs incurred in the conduct of activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security threats, including—

(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

(2) accommodation of cargo or passenger screening equipment at the United States-Mexico border or the United States-Canada border;

(3) the security of hazardous material transportation by rail;

(4) secure intercity passenger rail stations, trains, and infrastructure;

(5) structural modification or replacement of rail cars transporting high hazard materials to improve their resistance to acts of terrorism;

(6) employee security awareness, preparedness, passenger evacuation, and emergency response training;

(7) public security awareness campaigns for passenger train operations;

(8) the sharing of intelligence and information about security threats;

(9) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(10) to hire additional police and security officers, including canine units; and

(11) other improvements recommended by the report required by section 2, including infrastructure, facilities, and equipment upgrades.

(b) ACCOUNTABILITY.—The Under Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Under Secretary.

(c) EQUITABLE ALLOCATION.—The Under Secretary shall equitably distribute the funds authorized by this section, taking into account geographic location, and shall encourage non-Federal financial participation in awarding grants. With respect to grants for passenger rail security, the Under Secretary shall also take into account passenger volume and whether a station is used by commuter rail passengers as well as intercity rail passengers.

(d) CONDITIONS.—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless Amtrak meets the conditions set forth in section 10(b) of this Act.

(e) ALLOCATION BETWEEN RAILROADS AND OTHERS.—Unless as a result of the assessment required by section 2 the Under Secretary of Homeland Security for Border and Transportation Security determines that critical rail transportation security needs require reimbursement in greater amounts to any eligible entity, no grants under this section may be made—

(1) in excess of $65,000,000 to Amtrak; or

(2) in excess of $100,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $350,000,000 for fiscal year 2005 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

(g) HIGH HAZARD MATERIALS DEFINED.—In this section, the term ''high hazard materials'' means poison inhalation hazard materials, Class 2.3 gases, Class 6.1 materials, and anhydrous ammonia.

SEC. 12. OVERSIGHT AND GRANT PROCEDURES.

(a) SECRETARIAL OVERSIGHT.—The Secretary of Transportation may use up to 0.5 percent of amounts made available to Amtrak for capital projects under the Rail Security Act of 2004 to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects.

(b) USE OF FUNDS.—The Secretary may use amounts available under subsection (a) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under subsection (a).

(c) PROCEDURES FOR GRANT AWARD.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this Act, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

SEC. 13. RAIL SECURITY RESEARCH AND DEVELOPMENT.

(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The Under Secretary of Homeland Security for Border and Transportation Security, in conjunction with the Secretary of Transportation, shall carry out a research and development program for the purpose of improving freight and intercity passenger rail security that may include research and development projects to—

(1) reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances;

(2) test new emergency response techniques and technologies;

(3) develop improved freight technologies, including—

(A) technologies for sealing rail cars;

(B) automatic inspection of rail cars;

(C) communication-based train controls; and

(D) emergency response training;

(4) test wayside detectors that can detect tampering with railroad equipment; and

(5) support enhanced security for the transportation of hazardous materials by rail, including—

(A) technologies to detect a breach in a tank car and transmit information about the integrity of tank cars to the train crew;

(B) research to improve tank car integrity, with a focus on tank cars that carry high hazard materials (as defined in section 11(g) of this Act;

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety;

(6) other projects recommended in the report required by section 2.

(b) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Under Secretary of Homeland Security for Border and Transportation Security shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department and the Department of Transportation. The Under Secretary of Homeland Security for Border and Transportation Security shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique facility or capability that would be useful in carrying out the project.

(c) ACCOUNTABILITY.—The Under Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Under Secretary.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $50,000,000 in each of fiscal years 2005 and 2006 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 14. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.

(a) TRACK STANDARDS.—Within 90 days after the date of enactment of this Act, the Federal Railroad Administration shall—

(1) require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(2) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(3) establish a program to periodically review continuous welded rail joint bar inspection data from railroads and Administration track inspectors and, whenever the Administration determines that it is necessary or appropriate, require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail.

(b) TANK CAR STANDARDS.—The Federal Railroad Administration shall—

(1) within 1 year after the date of enactment of this Act, validate the predictive model it is developing to quantify the relevant dynamic forces acting on railroad tank cars under accident conditions; and

(2) within 18 months after the date of enactment of this Act, initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars.

(c) OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.—Within 2 years after the date of enactment of this Act, the Federal Railroad Administration shall—

(1) conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989; and

(2) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure with recommendations for measures to eliminate or mitigate the risk of catastrophic failure.

SEC. 15. NORTHERN BORDER RAIL PASSENGER REPORT.

Within 180 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the heads of other appropriate Federal departments and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that contains—

(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;

(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in ''The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America'', dated January 18, 2001;

(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the ''Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States'', dated April 2, 2003;

(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing prescreened passenger lists for rail passengers travelling between the United States and Canada to the Department of Homeland Security;

(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers; and

(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing prescreened passenger lists to the Department of Homeland Security.

SEC. 16. REPORT REGARDING IMPACT ON SECURITY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.

(a) STUDY.—The Secretary of Homeland Security shall, in consultation with State and local government officials, conduct a study on the impact of blocked highway-railroad grade crossings on the ability of emergency responders, including ambulances and police, fire, and other emergency vehicles, to perform public safety and security duties in the event of a terrorist attack.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the findings of the study conducted under subsection (a) and recommendations for reducing the impact of blocked crossings on emergency response.

SEC. 17. WHISTLEBLOWER PROTECTION PROGRAM.

(a) IN GENERAL.—Subchapter A of chapter 201 of title 49, United States Code, is amended by inserting after section 20115 the following:

''§ 20116. Whistleblower protection for rail security matters

''(a) DISCRIMINATION AGAINST EMPLOYEE.—No rail carrier engaged in interstate or foreign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a perceived threat to security; or

''(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a perceived threat to security; or

''(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

''(b) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than $20,000.

''(c) PROCEDURAL REQUIREMENTS.—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this title, including the burdens of proof, applies to any complaint brought under this section.

''(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

''(e) DISCLOSURE OF IDENTITY.—

''(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

''(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20115 the following:

''20116. Whistleblower protection for rail security matters.''.

PUBLIC TRANSPORTATION TERRORISM PREVENTION ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2884 that was introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2884) to authorize the Secretary of Homeland Security to award grants to public transportation agencies to improve security, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to this bill be printed in the RECORD.

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

The bill (S. 2884) was read the third time and passed, as follows:

S. 2884

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Public Transportation Terrorism Prevention Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) throughout the world, public transportation systems have been a primary target of terrorist attacks, causing countless death and injuries;

(2) 6,000 public transportation agencies operate in the United States;

(3) 14,000,000 people in the United States ride public transportation each work day;

(4) safe and secure public transportation systems are essential to the Nation's economy and for significant national and international public events;

(5) the Federal Transit Administration has invested $68,700,000,000 since 1992 for construction and improvements to the Nation's public transportation systems;

(6) the Federal Government appropriately invested $11,000,000,000 in fiscal years 2002 and 2003 to protect our Nation's aviation system and its 1,800,000 daily passengers;

(7) the Federal Government invested $115,000,000 in fiscal years 2003 and 2004 to protect public transportation systems in the United States;

(8) the Federal Government has invested $9.16 in aviation security improvements per passenger, but only $0.006 in public transportation security improvements per passenger;

(9) the General Accounting Office, the Mineta Institute for Surface Transportation Policy Studies, the American Public Transportation Association, and other experts have reported an urgent need for significant investment in transit security improvements; and

(10) the Federal Government has a duty to deter and mitigate, to the greatest extent practicable, threats against the Nation's public transportation systems.

SEC. 3. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary of Transportation shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective public transportation security roles and responsibilities of the Department of Transportation and the Department of Homeland Security.

(b) CONTENTS.—The memorandum of understanding described in subsection (a) shall—

(1) establish a process to develop security standards for public transportation agencies;

(2) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

(3) create a method of direct coordination with public transportation agencies on security matters;

(4) address any other issues determined to be appropriate by the Secretary of Transportation and the Secretary of Homeland Security; and

(5) include a formal and permanent mechanism to ensure coordination and involvement by the Department of Transportation, as appropriate, in public transportation security.

SEC. 4. SECURITY ASSESSMENTS.

(a) PUBLIC TRANSPORTATION SECURITY ASSESSMENTS.—

(1) SUBMISSION.—Not later than 30 days after the date of enactment of this Act, the Federal Transit Administration of the Department of Transportation shall submit all public transportation security assessments and all other relevant information to the Department of Homeland Security.

(2) REVIEW.—The Secretary of Homeland Security shall review and augment the security assessments received under paragraph (1).

(3) ALLOCATIONS.—The assessments described in paragraph (1) shall be used as the basis for allocating grant funds under section 5, unless the Secretary of Homeland Security determines that an adjustment is necessary to respond to an urgent threat or other significant factors, after notification to the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) SECURITY IMPROVEMENT PRIORITIES.—The Secretary of Homeland Security shall establish security improvement priorities, in consultation with the management and employee representatives of each public transportation system receiving an assessment that will be used by public transportation agencies for any funding provided under section 5.

(5) UPDATES.—The Secretary of Homeland Security shall annually update the assessments referred to in this subsection and conduct assessments of all transit agencies considered to be at greatest risk of a terrorist attack.

(b) USE OF ASSESSMENT INFORMATION.—The Secretary of Homeland Security shall use the information collected under subsection (a)—

(1) to establish the process for developing security guidelines for public transportation security;

(2) to design a security improvement strategy that minimizes terrorist threats to public transportation systems; and

(3) to design a security improvement strategy that maximizes the efforts of public transportation systems to mitigate damage from terrorist attacks.

(c) BUS PUBLIC TRANSPORTATION SYSTEMS.—The Secretary of Homeland Security shall conduct assessments of local bus-only public transportation systems to determine the specific needs of this form of public transportation that are appropriate to the size and nature of the bus system.

(d) RURAL PUBLIC TRANSPORTATION SYSTEMS.—The Secretary of Homeland Security shall conduct assessments of selected public transportation systems that receive funds under section 5311 of title 49, United States Code, to determine the specific needs of this form of public transportation that are appropriate to the size and nature of the system.

SEC. 5. SECURITY ASSISTANCE GRANTS.

(a) CAPITAL SECURITY ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary of Homeland Security shall award grants directly to public transportation agencies for allowable capital security improvements based on the priorities established under section 4(a)(4).

(2) ALLOWABLE USE OF FUNDS.—Grants awarded under paragraph (1) may be used for—

(A) tunnel protection systems;

(B) perimeter protection systems;

(C) redundant critical operations control systems;

(D) chemical, biological, radiological, or explosive detection systems;

(E) surveillance equipment;

(F) communications equipment;

(G) emergency response equipment;

(H) fire suppression and decontamination equipment;

(I) global positioning or automated vehicle locator type system equipment;

(J) evacuation improvements; and

(K) other capital security improvements.

(b) OPERATIONAL SECURITY ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary of Homeland Security shall award grants directly to public transportation agencies for allowable operational security improvements based on the priorities established under section 4(a)(4).

(2) ALLOWABLE USE OF FUNDS.—Grants awarded under paragraph (1) may be used for—

(A) security training for transit employees, including bus and rail operators, mechanics, customer service, maintenance employees, transit police, and security personnel;

(B) live or simulated drills;

(C) public awareness campaigns for enhanced public transportation security;

(D) canine patrols for chemical, biological, or explosives detection;

(E) overtime reimbursement for enhanced security personnel during significant national and international public events, consistent with the priorities established under section 4(a)(4); and

(F) other appropriate security improvements identified under section 4(a)(4), excluding routine, ongoing personnel costs.

(c) CONGRESSIONAL NOTIFICATION.—Not later than 3 days before any grant is awarded under this section, the Secretary of Homeland Security shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate of the intent to award such grant.

(d) TRANSIT AGENCY RESPONSIBILITIES.—Each public transportation agency that receives a grant under this section shall—

(1) identify a security coordinator to coordinate security improvements;

(2) develop a comprehensive plan that demonstrates the agency's capacity for operating and maintaining the equipment purchased under this subsection; and

(3) report annually to the Department of Homeland Security on the use of grant funds received under this section.

(e) RETURN OF MISSPENT GRANT FUNDS.—If the Secretary of Homeland Security determines that a grantee used any portion of the grant funds received under this section for a purpose other than the allowable uses specified for that grant under this section, the grantee shall return any amount so used to the Treasury of the United States.

SEC. 6. INTELLIGENCE SHARING.

(a) INTELLIGENCE SHARING.—The Secretary of Homeland Security shall ensure that the Department of Transportation receives appropriate and timely notification of all credible terrorist threats against public transportation assets in the United States.

(b) INFORMATION SHARING ANALYSIS CENTER.—

(1) ESTABLISHMENT.—The Department of Homeland Security shall fund the reasonable

costs of the Information Sharing and Analysis Center for Public Transportation (referred to in this subsection as the ''ISAC'') established pursuant to Presidential Directive 63 to protect critical infrastructure.

(2) PUBLIC TRANSPORTATION AGENCY PARTICIPATION.—The Secretary of Homeland Security—

(A) shall require those public transportation agencies that the Secretary determines to be at significant risk of terrorist attack to participate in the ISAC;

(B) shall encourage all other public transportation agencies to participate in the ISAC; and

(C) shall not charge any public transportation agency a fee for participation in the ISAC.

SEC. 7. RESEARCH, DEVELOPMENT, AND DEMONSTRATION GRANTS.

(a) GRANTS AUTHORIZED.—The Secretary of Homeland Security, in consultation with the Federal Transit Administration, shall award grants to public or private entities to conduct research into, and demonstration of, technologies and methods to reduce and deter terrorist threats or mitigate damages resulting from terrorist attacks against public transportation systems.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) researching chemical, biological, radiological, or explosive detection systems that do not significantly impede passenger access;

(2) researching imaging technologies;

(3) conducting product evaluations and testing; and

(4) researching other technologies or methods for reducing or deterring terrorist attacks against public transportation systems, or mitigating damage from such attacks.

(c) REPORTING REQUIREMENT.—Each entity that receives a grant under this section shall report annually to the Department of Homeland Security on the use of grant funds received under this section.

(d) RETURN OF MISSPENT GRANT FUNDS.—If the Secretary of Homeland Security determines that a grantee used any portion of the grant funds received under this section for a purpose other than the allowable uses specified under subsection (b), the grantee shall return any amount so used to the Treasury of the United States.

SEC. 8. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT TO CONGRESS.—Not later than March 31 of each year, the Secretary of Homeland Security shall submit a report, which describes the implementation of section 4 through 7, and the state of public transportation security in the United States, to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(2) the Committee on Governmental Affairs of the Senate; and

(3) the Committee on Appropriations of the Senate.

(b) ANNUAL REPORT TO GOVERNORS.—Not later than March 31 of each year, the Secretary of Homeland Security shall submit a report to the governor of each State in which a transit agency that has received a grant under this Act is operating that specifies the amount of grant funds distributed to each such transit agency and the use of such grant funds.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) CAPITAL SECURITY ASSISTANCE PROGRAM.—There are authorized to be appropriated $2,370,000,000 for fiscal year 2005 to carry out the provisions of section 5(a), which shall remain available until expended.

(b) OPERATIONAL SECURITY ASSISTANCE PROGRAM.—There are authorized to be appropriated to carry out the provisions of section 5(b)—

(1) $534,000,000 for fiscal year 2005;

(2) $333,000,000 for fiscal year 2006; and

(3) $133,000,000 for fiscal year 2007.

(c) INTELLIGENCE.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 6.

(d) RESEARCH.—There are authorized to be appropriated $130,000,000 for fiscal year 2005 to carry out the provisions of section 7, which shall remain available until expended.

SEC. 10. SUNSET PROVISION.

This Act is repealed on October 1, 2007.

ORDERS FOR MONDAY, OCTOBER 4, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Monday, October 4. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and that there then be a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the minority leader or his designee and the second 30 minutes under the control of the majority leader or his designee; provided further that following morning business, the Senate resume consideration of S. 2845, the intelligence reform bill.

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

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, on Monday the Senate will resume consideration of the intelligence reform bill. Under the order, there will be a series of stacked votes beginning at 4:15 on Monday. That will be, in all likelihood, the first series of votes on Monday. Monday will be a very, very busy day, and there are likely to be many more votes after these stacked votes over the course of the day into the evening. In all likelihood, we will be voting and debating well into the evening on Monday in order that we can complete this bill early next week.

The cloture motion I filed a few minutes ago will ripen on Tuesday morning, and that will determine the remaining action on this bill. Again, I will remind everyone that upon completion of this legislation, the pending legislation, the Collins-Lieberman bill, which focuses on executive reforms, we will also address the Senate intelligence reforms next week.

As you can tell, there is a lot of work that needs to be done before the Senate adjourns. We will adjourn next Friday on October 8 after we address both of these issues. Again, I want to stress we have both of these important pieces of legislation we will address before departing. Thus, I anticipate very busy sessions between now and next Friday.

As I mentioned earlier, we have had a very busy week, a very productive week. I thank all of our colleagues on both sides of the aisle for their patience and for their hard work. I thank the Presiding Officer, the Senator from Alabama, for his commitment this afternoon, and now into the evening, and for his steady hand at the gavel.

I wish all a restful weekend.

ADJOURNMENT UNTIL MONDAY, OCTOBER 4, 2004, AT 10 A.M.

Mr. FRIST. Mr. President, 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 6:19 p.m., adjourned until Monday, October 4, 2004, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate October 1, 2004:

INTERNATIONAL MONETARY FUND

ALAN GREENSPAN, OF NEW YORK, TO BE UNITED STATES ALTERNATE GOVERNOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF FIVE YEARS.