United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150 WASHINGTON, WEDNESDAY, OCTOBER 6, 2004 No. 125

Senate

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

The PRESIDENT pro tempore. Today's prayer will be offered by CAPT Alan T. Baker, Chaplain of the U.S. Naval Academy, Annapolis, MD.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Lord, in this Chamber of leaders, who represent in their person, attitude, and vocation each of our 50 States in this great union, we now ask Your blessing, we invoke Your presence, we call upon Your wisdom, and we seek Your will for this great Nation.

Use these Senators throughout this crucial time in our Nation's history. May their work, conducted both in and out of this Chamber, build and not tear down. May their relationships, both in session and thereafter, be ones of collegiality, friendship, and respect. May You be with them as they strive to keep America great.

May You bless the 108th Congress and guide them as they continue to be compass points for our Nation and our world. May the direction they point keep them from temptation and evil, as they offer help and hope to those whose compass is adrift.

We ask this in the name of the one who created us, who sustains us, and who delivers us. 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. Good morning to the Chair and everyone listening today.

We will have a brief period of morning business for 30 minutes, with the first half under the control of the majority and the second 15 minutes under the control of the minority. We will then resume debate on the intelligence reform bill.

Yesterday, we did invoke cloture on the bill by a vote of 85 to 10; therefore, we will conclude this bill today.

This morning the managers will be here and will have additional cleared amendments to consider prior to a series of stacked votes, which are to begin at 11:30 this morning. In addition to those amendments that can be worked out, Senators may want to come to the Chamber to make closing remarks on the bill.

The order from last night provides for the Senate to begin voting at 11:30 on the pending amendments that will require rollcall votes. It is expected some of the pending amendments will be accepted after some modifications, or possibly withdrawn.

In any event, the voting sequence today will be lengthy. Therefore, Members should be prepared to remain close to the Chamber during that time. I expect to limit the votes to 10 minutes after the first vote in order to expedite passage of the bill.

I remind my colleagues that at the conclusion of the pending intelligence reform bill, we will begin consideration of the resolution relating to the Senate's intelligence restructuring. Our distinguished whips will have a proposal to put forth and we will begin work on that later today. Therefore, additional votes will occur following the completion of the Collins-Lieberman bill.

Lastly, I add that before we finish our business on Friday, which is our goal, we will consider any of the available conference reports, specifically, those of Homeland Security appropriations and FSC/ETI, if those are available.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

COMPLETING THE SENATE'S WORK

Mr. DASCHLE. Mr. President, we have come a long way and I congratulate our managers and thank, once again, our assistant Democratic leader for his assistance in moving our effort along. We will complete our work on the bill today. That is very gratifying. I only hope now once we have completed our work we can expedite consideration with the House. We will await their decisions with regard to how they might proceed. Clearly, we are in a position to complete our work in a reasonable time. I hope the same spirit of bipartisanship that was so clearly demonstrated from the very first day with regard to consideration of this legislation can be equally as evident and apparent as we finish our work. It is the only way the bill will get done under these circumstances. Again, I thank the majority leader for setting that tone.

I also say we are in a very good position to do the same with the legislative reorganization. A lot of thought and effort has gone into the working group's recommendations. I am one who believes this resolution is as close to the consensus within the Congress, within the Senate, at least, regarding how we might respond to the recommendations made by the 9/11 Commission as we will get. We cannot let the perfect be the enemy of the good.

We have provided the Senate with an opportunity to address the concerns raised by the 9/11 Commission in a very reasonable, thoughtful, and comprehensive way.

I thank the assistant Republican leader and the assistant Democratic

leader for their work and hope we can complete our work as a result of their contribution in the next couple of days.

We could have a very productive week. As the majority leader has indicated, there are other bills that could be addressed, as well. We have made a lot of progress and I hope we continue to do so.

I yield the floor.

DOMESTIC VIOLENCE AWARENESS MONTH

Mr. FRIST. Mr. President, this month is Domestic Violence Awareness Month. It was launched over 20 years ago by the National Coalition Against Domestic Violence. In 1989, the first Domestic Violence Awareness Month commemorative legislation was passed by the Congress. It has been passed every year since 1989.

We have come a long way in understanding the causes of domestic violence. Most importantly, we understand now that spousal battery is not a mere private matter, something that happens behind closed doors. Domestic violence is a crime. It devastates lives, rips apart families, and affects every aspect of community life. Its victims deserve our best efforts to prevent and prosecute family violence as we would any other violent crime.

Battery is a pattern of fear and intimidation to establish power and control over another person. It is wrong. Battering happens when one person believes they are entitled to control another. Acts of domestic violence include physical assault, sexual abuse, and psychological cruelty. It often escalates from insults and verbal jabs to physical harm.

Fortunately, the work done by many courageous and committed individuals, including community leaders and churches and police departments, family courts, shelters, and advocates, have made a difference. The Department of Justice reports that the number of female victims of intimate violence declined through the 1990s. The number of male victims of intimate violence also went down over this period.

As a society, we are much more aware of the danger signs and of our responsibility to respond and to intervene and to act. We are also more aware of our responsibility as moms and dads and husbands and wives to teach our children by example the value of compassion and respect.

I commend those dedicated to keeping this in the public's consciousness. I urge my colleagues to join in the effort to raise the public's awareness. We have come a long way, but there is still more to do.

I yield the floor.

Mr. DASCHLE. Senator BIDEN has long been a champion in bringing domestic violence to the forefront of the national agenda. He was a leader in the bipartisan effort to pass the Violence Against Women Act, and I worked with him last year to ensure the independence of the Office on Violence Against Women at the Department of Justice.

The Violence Against Women Act made a statement in law that fighting domestic violence is not just sound family policy, it is a moral imperative. It made a statement that domestic violence is not the shameful secret of a select few families, it is an issue with immense repercussions for all of us. Most importantly, it made a statement that as a country, a society, and a national family, we can do something about domestic violence.

As a direct result of the Violence Against Women Act our Nation has made significant strides in the fight against domestic violence. There are more domestic abuse hotlines and more shelters today than there were 10 years ago. There are more doctors, nurses, therapists, teachers, police officers, judges and other community leaders today who recognize the signs of domestic violence, and know how to help when they see those signs.

VAWA has also provided financial means to Native American communities and tribes to combat domestic violence. Before 1994, domestic violence and sexual assault services and resources were rare in Indian Country. VAWA has enabled Native communities to provide safe locations, counseling services, and technical assistance and training, and it has given these communities the flexibility to tailor those services to the unique needs of Indian people.

In addition, just last Wednesday, the Senate passed a VAWA STOP grant technical fix that would allow for a direct Federal tribal coalition relationship. This fix provides an important clarification to ensure that tribal domestic violence and sexual assault programs have a direct link with the Department of Justice underscoring the unique Federal-tribal relationship.

In South Dakota, in Rapid City and on the Pine Ridge Indian Reservation, a non-profit organization known as Cangleska is helping to break the cycle of violence by providing domestic violence prevention and intervention advocacy and services. Cangleska works with organizations like Sacred Circle that serve as a vital national resource for Native women, and I am proud to have it based in South Dakota.

There are similar organizations doing good work in communities all across America, Native and non-Native, rich and poor. We have made progress. But there is much more to be done.

Each year, more than 1 million women in America are victims of domestic violence, and more than 3 million American children witness domestic violence. Protecting the victims of domestic violence is essential, but it is not enough. Domestic violence does not just destroy families, it cascades through generations. Children who get abused or witness abuse are more likely to become parents who abuse.

Next year, when Congress re-authorizes the Violence Against Women Act, in addition to taking further steps to prevent domestic violence, we need to do more to help the children who witness it. This is the only way to begin to break the cycle of domestic violence.

This month, we acknowledge the strength and bravery of the victims and survivors of domestic violence, and we rededicate ourselves to raising awareness about and confronting this deeply disturbing issue.

Let us also vow to do even more in the months ahead to create a country and a climate where home is a refuge, and domestic violence a thing of the past.

Mr. CAMPBELL. Mr. President, today on the Senate floor we are recognizing the month of October as National Domestic Violence Awareness Month.

For far too long, we have been reluctant to talk openly about family violence. When I was growing up, few viewed violence in the home as a crime. As a young deputy sheriff, I learned that people thought of it as a private matter.

Today, we know that domestic violence is not a private family matter, it is a serious crime.

And for far too long, domestic violence has been seen as a problem which impacts only women, but this is not true either. Domestic violence is not just a woman's issue. It impacts the entire American family.

Domestic violence damages children. The seeds of violence are planted early. We know that children are harmed both emotionally and developmentally when they witness or experience violence.

Violence is a learned behavior. So, the cycle of domestic abuse continues generation after generation.

Domestic violence also threatens the security and peace of entire communities. The impacts of abuse are felt by the families, friends and co-workers of victims. They are felt by law enforcement officials, medical workers and other social service workers who are called upon to repair the lives shattered by violence.

Now, there are advocacy groups, support groups, 24-hour-crisis hotlines, and housing assistance.

And, today there is a network of almost 1800 domestic violence programs in the United States. Approximately 1,200 of these include shelter. Now, most shelters include facilities for the children, too.

Understanding first-hand the impact of family violence, I have made anti-violence and domestic violence legislation a top priority throughout my years in Congress.

A year ago, during the month of October, the Stamp Out Family Violence Stamp was issued. The stamp, similar to the Breast Cancer Stamp, earns monies for domestic violence shelters throughout the country, with special emphasis on programs for children who witness domestic violence. By the end of July this year, the stamp had netted $1.2 million for shelter programs.

But there is more to be done. Domestic violence can be prevented. Around the country there is innovative and exciting work taking place to help reduce family violence. While we must continue our efforts to provide help and shelter for victims, we must also step up our efforts in providing helps that will prevent violence.

Many believe that enacting broader Federal laws is the answer to this problem. But, I believe that adding more rules on the books without the ability to enforce them is a hollow and incomplete gesture.

We must all speak out on this issue. Victims must speak up and ask for help. Local, State and national authorities must speak up. And, communities must recognize the pervasive effects of violence on all aspects of community life. I believe that by combining education, research, and community-based efforts, we can create reasonable, multi-faceted solutions to a problem that has no boundaries and knows no laws.

Mrs. FEINSTEIN. Mr. President, today with my colleague, Senator KYL, I commemorate Domestic Violence Awareness Month and pay tribute to the millions of victims of domestic violence in the United States: both those who daily face fear and pain at the hands of the ones they love, and those who have had the courage to seek help.

Domestic violence causes far more pain than the visible marks of bruises and scars. It is devastating to be abused by someone that you love and think loves you in return. It is estimated that approximately 3 million incidents of domestic violence are reported each year in the United States. Tragically, domestic violence remains a pervasive threat to the fabric of America's families and the well-being of America's future.

Around the world, one out of three women is abused by their domestic partner or another member of their family. This means that each of us probably knows at least one victim of domestic abuse.

It is primarily a crime against women, who account for approximately 85 percent of domestic abuse victims each year. Indeed, nearly one-third of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives, and each year as many as 324,000 women experience domestic violence during their pregnancy. It is truly heartbreaking to hear these victims' stories and to know that so many women and even some men face this pain on a regular basis.

Domestic violence does not only happen to adults. Forty percent of girls age 14 to 17 report knowing someone their age who has been hit or beaten by a boyfriend, and approximately one in five female high school students reports being physically and/or sexually abused by a dating partner. And these are only the cases that are reported.

Additionally, many children are caught in the middle, witnessing abuse or being abused themselves. Domestic violence is witnessed by between 3.3 and 10 million children every year. And, studies show that half of all men who frequently assault their wives also frequently abuse their children. The emotional impact of this abuse during childhood can have a devastating effect on the rest of a person's life.

Domestic abuse creates a cycle of violence. Children who are abused or witness abuse are at a higher risk of abusing their own family and significant others as an adult as well as long-term physical and mental health problems, including alcohol and substance abuse. It is evident that these abuse victims follow the example they learned in childhood and continue the cycle of violence when they are adults.

Statistics can show the wide scope of domestic violence, but numbers cannot demonstrate how frightening domestic violence is to a victim. I have read stories of many victims, both men and women, whose lives are changed forever by the fear and pain they feel as a result of their partner's violent behavior.

Let me talk about just one story I read recently. At first glance, Pam Butler appeared to have the perfect life. She grew up in a stable, loving family in Palo Alto, CA. That stability was shattered when she met Michael Braga.

Michael Braga was a charismatic but troubled man who quickly romanced Pam Butler. He began to control every aspect of her life: limiting her contact with friends and family, controlling her money and living space and chipping away at her self-confidence. This behavior quickly escalated into violence. Pam was beaten unconscious on several occasions. She painfully learned to hide the signs of the beatings because she was ashamed to be in such a horrible situation.

After several beatings caused re-injury to an old skull fracture, Pam Butler realized that staying in the relationship could kill her. She enlisted the help of Santa Clara County Assistant District Attorney Joyce Allegro.

I am pleased to report that Mr. Braga was arrested and prosecuted. Following his trial, he was sentenced to 12 years in prison, one of the longest sentences for domestic violence passed down in California history.

As a result of her experiences with domestic violence, Pam Butler has devoted many hours to assisting other victims. She is the Domestic Violence Victim Advocate for the County of Santa Clara's Social Services Agency. She has also spoken about domestic violence across the United States. Her story is an inspiration to every person who has been a victim of domestic violence.

Another heartbreaking story is that of Michele, a Chicago woman who had been abused just as her mother and grandmother had before her. Michele's father hit and insulted her throughout her upbringing. Unfortunately, Michele was not able to break the cycle of violence and fell into the same trap as her mother and grandmother.

Her first husband beat her, cheated on her, called her insulting names and controlled her ability to come and go from her house. Although she was well-read and bright, Michele did not believe she had the ability to escape this horrible situation.

Ultimately, her husband left her and her children, and she continued the cycle of violence with other abusive men. Eventually, she and her children found themselves homeless. Only then did she realize that she could get help. Michele now encourages other victims to seek help and speak out against domestic violence.

It is vital that we act to stop the cycle of domestic violence. To this end, last April the Senate passed the Victims' Rights Act by a vote of 96 to 1. I am proud to have been a long-time supporter and cosponsor of this important legislation. The act amends the federal criminal code to expand the rights of victims, especially the protection of victims of domestic violence, during the course of an alleged offender's trial and imprisonment.

This is landmark legislation in its ability to ensure the rights of all victims, but it is especially important for victims of domestic abuse. The Victims' Rights Act assures victims the right to be reasonably protected from the accused. It guarantees the right to reasonable, accurate and timely notice of any public proceeding involving the crime, as well as any release or escape of the accused offender. And it protects the victim's right to be treated with fairness and with respect for his or her dignity and privacy.

The Victims' Rights Act is one of the most important pieces of legislation that I have had the privilege of supporting during my 12 years in the Senate. It is currently before the House Subcommittee on Crime, Terrorism and Homeland Security, and I strongly encourage the House to take it up soon.

In closing, I am grateful for the opportunity to honor the victims of domestic violence and to call for an end to the cycle of violence. It is my sincere hope that we will all know peace and security in our own homes.

The PRESIDENT pro tempore. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I join the majority leader and others who I understand will come to the floor to call attention to the need for recognition of the problems of domestic violence. October is National Domestic Violence Awareness Month. As the majority leader noted, last week we passed a resolution supporting the efforts to address more effectively domestic violence in this country.

This is an important issue, a very troubling issue to people all over this country. We have been lax in recognizing the depth and the breadth of the problem within our country. In South

Dakota and across the land, new efforts are being made to address the need for greater awareness, the need for greater education, the need for greater prevention, the need for greater response. And it is only if we as Senate leadership ensure that the people of this country recognize the importance of making this a higher priority will those needs be addressed throughout the Nation.

So I commend those who are taking the floor this morning to once again draw attention to these needs, draw attention to our need to respond, and to draw attention to the important priority it ought to have as we consider public policy.

ONGOING JOB CRISIS

Mr. DASCHLE. Mr. President, 18 months ago, a group of 450 economists, including 10 Nobel laureates, made it clear that because the White House put the narrow interests of a few ahead of our Nation's economy, its jobs plan would fail. It would fail to create jobs, it would fail to lift wages, and it would fail to bring down our deficit.

The warning was clear. Now the record is undeniable. In the last 3 years, we have lost 1.6 million private sector jobs. The last time the economy took this long to replace jobs lost in a recession was the Great Depression. Mr. President, 2.7 million manufacturing jobs have been lost, and many sent overseas on a one-way ticket. Unemployment has increased 40 percent, and today 8 million Americans are out of work. And 1.7 million have been out of work for 6 months or longer.

That is horrible news for a couple that is hoping to retire, a family that is trying to put a child through college, or anyone who has been living from paycheck to paycheck.

But this situation touches all Americans, including those who have jobs today. That is because the weakness in the job market has undermined wage and salary growth. Real household income has dropped 3.4 percent since 2001. Adding to the squeeze, college tuition is up, gas prices have risen to all-time highs, and the cost of health care has risen by 45 percent since 2001.

Middle-class families are beginning to believe that the deck is stacked against them, and for good reason. The CBO recently confirmed what many of us have been saying for the past few years: The President's economic plan rewards wealth and punishes work by shifting the tax burden onto the shoulders of middle-class families. Even with middle-class families bearing more than their fair share of the tax burden, the country is looking at years and years of record deficits and debt.

This past weekend, I traveled around South Dakota, meeting with people and going door to door. More than any time in my memory, people tell me they need two or three jobs—not to get ahead, not to save for a house or their child's education, but simply to make their monthly bills. Many good manufacturing jobs have left the State, and it is getting more difficult to find full-time jobs that pay a wage good enough to raise a family.

Recently, I received a letter from a young woman in Lake Andes. She has done everything right. She went to college, got a master's degree, and got advanced skills that could help move our economy forward. But because there are so few good jobs, she has been out of work now for months. Just to get by, she has applied for lower skilled work. But often she is passed over for those jobs because employers worry that she is overqualified. What does it say about our economy that someone with real skills, willing to work hard, cannot get a job?

Out in our small towns and farming and ranching communities, the story can even get worse. I have been visiting these communities for more than 25 years. There is nothing more gratifying to me than to see a family farmer or rancher raise their children, teach them how to farm, and then pass their land down to them. That is why we led the fight to create an exemption in the estate tax to allow families to pass from one generation to the next the farms they have lived on for generations before. But too many family farms are getting swallowed up.

More often, children are forced to leave the communities they know and the families they love to find work in other places. They don't want to leave, but they cannot find work good enough to allow them to raise a family. So the way of life their families have enjoyed for generations is being lost. These families have been struggling for years, watching all they have worked for slip away from them. Yet when they look to Washington, they do not see their Government fighting for them, or even hearing them at times. The administration continues to say the economy has turned a corner. When these families look ahead, they don't see a corner, they see a cliff, and they are worried they are going to fall off.

Americans do not want to wait until after the election to do something. They need help now. I am glad we extended the middle-class tax cuts. Middle-class families need relief. Previous tax cuts were unfairly skewed to the very wealthiest of Americans. This was the right thing to do. It will probably help those people who are struggling, but there is much more that we need to do.

First, we need to pass a real jobs bill, one that puts top priority on creating jobs at home, closes corporate tax loopholes, and ends the incentives that encourage companies to ship American jobs overseas.

Second, we need to extend the unemployment benefits. Every week, another 85,000 Americans exhaust their unemployment benefits. They should not be punished because the economic policies that are in place have created the longest jobs slump since the Great Depression.

Third, it is time to raise the minimum wage. Today, the minimum wage is $5.15 an hour, and it is worth less than $3 when using 1968 wage indicators. Americans who work at the minimum wage for 40 hours a week, 52 weeks a year, still fall $5,000 short of the poverty line. No American who works full time, 52 weeks a year, should live in poverty. In the time we have left this year, we should increase the minimum wage to $7. It will not lift every working family out of poverty, but it will move millions of minimum wage workers closer to the life of security and dignity they deserve.

Fourth, we need to pass a Transportation bill that would provide needed infrastructure improvements across the Nation.

Fifth, we need to help workers whose jobs have been outsourced overseas to get back on their feet.

Finally, we need to pass the renewable fuels standard. In South Dakota alone, a renewable fuels standard would create 10,000 jobs and revitalize the rural economy. By reducing reliance on foreign oil, families would be less vulnerable to high energy costs.

It looks as though this Congress will end having failed to take strong action on behalf of American working families. Unfortunately, the leadership has stood in the way of commonsense proposals that would create jobs and improve the lives of working people.

Republican opposition to legislation designed to create jobs and help workers would be troubling at any time, but considered together, at a time when working families continue to feel the effects of a 3-year-long jobs slump, their stubborn opposition demonstrates a troubling indifference to the needs of American middle-class families.

Americans still dream of a better life. They still dream of a better future for themselves and their families. We have a responsibility to give Americans a chance to make that dream real. But it is time we tell Americans who are struggling that help is on the way. We are not helpless. We can create jobs, lift wages, and stop the outsourcing of the American workplace. All it takes is leadership.

Americans have been looking to Congress to provide the new direction of economic leadership they need. We have 1 more week before the Senate recesses. The American people are demanding action, and we have an obligation to deliver it.

I yield the floor.

Mr. REID addressed the Chair.

The PRESIDENT pro tempore. Will the Senator allow me to make an announcement?

Mr. REID. Yes.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved that has not been used.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for 30 minutes, with the first half under the control of the majority leader and the second half under the control of the Democratic leader.

The Senator from Arizona.

DOMESTIC VIOLENCE

Mr. KYL. Mr. President, there are a lot of problems that affect people around the world and in this country. Some go unmentioned and yet affect millions of lives and are with us every day. One of those problems is the problem of domestic violence.

I was so pleased that both the majority leader and the Democratic leader, this morning, began their official presentations in the Senate talking about the problem of domestic violence and the fact that the Senate, last week, unanimously passed a resolution which supports ''the goals and ideals of National Domestic Violence Awareness Month,'' which is this month of October, and expresses ''the sense of the Senate that Congress should raise awareness of domestic violence in the United States and its devastating effects on families.''

Our message in passing this resolution is aimed both at a national audience as well as every individual who is a victim of domestic violence or who knows one. Their message is not a moment of silence, as is frequently the case but, rather, the message is: ''It's time to talk.'' And all around the country—indeed, the world—this message is being conveyed today and for the remainder of this month.

I want to thank Marie Claire magazine, for example, and organizations that are promoting this theme: ''It's time to talk.'' And why is that important? Because as almost anyone who understands the problem of domestic violence knows, the biggest reason the problem remains with us is that it is kept a secret.

People are ashamed or afraid to talk, to begin the conversation that would confront and, therefore, solve the problem. That is why ''It's time to talk'' is so important. It is not just the victims who should talk, it is society as a whole.

As the resolution states:

> There is a need to increase the public awareness about and understanding of domestic violence and the needs of battered women and their children.

It is hard to convey the sense of this problem talking statistics, but I think it is important that we understand the magnitude of the problem, not in terms of human suffering with individual stories but to understand the statistics of how serious the problem is. We have made progress to be sure, but it is still a very serious problem.

An average of more than three women are murdered by their husbands or boyfriends in the United States every day, and someone in the United States is sexually assaulted every 2 minutes each year. Each year, about 342,000 pregnant women in the United States are battered by the men in their lives, leading to pregnancy complications, including low weight gain, anemia, infections, and many others. In 2002 alone, 250,000 women and girls older than the age of 12 were raped or sexually assaulted, a quarter of a million women. One out of every 12 women has been stalked in her lifetime.

It is an issue not only for today's generation but for children because nearly 9 million witness domestic violence every day. This obviously creates a risk factor in their lives for having long-term physical and mental health problems, including substance abuse, being a victim of abuse, and becoming a perpetrator of abuse. A boy who witnesses his father's domestic violence is 10 times more likely to engage in domestic violence than a boy from a nonviolent home. Forty percent of girls ages 14 to 17 report knowing someone their age who has been hit or beaten by a boyfriend. One in five adolescent girls in the United States becomes a victim of physical or sexual abuse or both in a dating relationship.

The cost is devastating. The real cost is the emotional and psychological harm that occurs to victims of domestic violence and to their families. But there is also a staggering cost to society. As we noted in the resolution adopted in the Senate, the cost of domestic violence, including rape, physical assault, and stalking, exceeds $5.8 billion each year, of which $4.1 billion is spent on direct medical and mental health care services.

The problem exists in my State of Arizona. Just to cite a couple statistics: 81 of the 440 homicides reported in Arizona in the year 2003 were a result of domestic and/or dating violence; this year, as of September 8, there were 61 domestic violence-related deaths reported; in the year 2002, every 5 minutes police responded to a call involving domestic violence; every 19 minutes an arrest was made as a result of a domestic violence incident; and every 36 minutes police were called to the scene of domestic violence where children were present. In that same year, 91 law enforcement agencies in Arizona reported a total of over 112,000 calls to service for domestic violence. Of those calls, there were a total of 26,000 arrests made.

I conclude by acknowledging the dedication of all the people tirelessly working behind the scenes to try to end domestic violence and to deal with the crisis of strengthening the survivors of domestic violence.

I have toured centers in Arizona—for example, city centers against family violence in Mesa, Glendale, and Scottsdale, all leading the way. We have raised money and dedicated sites for the Autumn House Domestic Violence Shelter, Chrysalis Shelter, the Center Against Sexual Abuse, ChildHelp USA, and the Sexual Assault Recovery Institute, and many others. I thank all of them for their efforts in trying to deal with this important crisis.

I also thank those of my colleagues who have been involved in this effort: my colleague DIANNE FEINSTEIN, who has worked so tirelessly in this effort in trying to provide help for victims of crime, for example; Senator BIDEN, who was one of the authors of the resolution about which I spoke earlier. There are others who will come to the floor of the Senate throughout the morning either to provide statements or to deliver them here noting the nature of the problem.

It is fitting that this month is designated as National Domestic Violence Awareness Month. It is fitting that our resolution passed in the Senate notes that we should raise awareness of domestic violence in the United States and its devastating effects on families, as I said in the beginning. In order to solve this problem, we have to begin by acknowledging it and confronting it. It is indeed time to talk.

The PRESIDING OFFICER. The Senator from Minnesota.

WAR ON TERROR AND THE ECONOMY

Mr. COLEMAN. Mr. President, I rise today to discuss the situation in the war on terror. I listened to the debate last night, and I heard the candidate from the other side of the aisle talk about what a mess things were, how terrible everything was, how terrible things are in Afghanistan. Afghanistan is on the verge of having elections. Ten million Afghanis have registered to vote in spite of threats.

The Vice President made a compelling case talking about El Salvador. People thought that democracy would never flourish. Yet because of the desire for democracy and the opportunity to vote, we have seen matters turn around.

I had the opportunity to be with the President of El Salvador and the Presidents of other Central American countries at a breakfast. We have democracy in Central America. The lure of democracy is so powerful.

I was listening to the distinguished minority leader, and he made references to the Great Depression, references to the economic situation today in analogy to the Great Depression.

The President has made it clear: As long as any American does not have employment, we have to do better. But the reality is so far from the Great Depression. Some people must walk around and see us surrounded in darkness. In 1996, when Bill Clinton was running for reelection, the January to August average unemployment at this time, where we stand today, was 5.5 percent. It is 5.6 percent today. The unemployment rate for African Americans during that same period, the first-

term average of President Clinton was 11.3 percent. It is 9.9 percent today. The unemployment rate for Hispanics during the first term of President Clinton was 9.7 percent. It is 7.2 percent today. America's standard of living is on the rise. Real after-tax incomes are up nearly 10 percent since December 2000, substantially better than the comparable time period in the previous business cycle. Consumer confidence continues to be substantially high. The national home ownership rate was at an alltime high. Minority ownership has set a new record of 51 percent in the second quarter and is up 2.1 percentage points from a year ago. Core inflation remains low. Mortgage rates remain at historic lows.

There are challenges in this economy, but to draw a comparison to the Great Depression is a little excessive. The reality is, we do have things to do. But I urge my colleagues on the other side of the aisle: Set us free. Let's get an energy bill passed, an energy bill that had 44 Republicans voting for it, 13 Democrats. The reality is that if the minority leader wanted to get this done, it could get done.

I represent the State of Minnesota. We are neighbors of the folks in South Dakota. I know they want an energy bill. Within that energy bill is a renewable fuels standards that would double the production of ethanol and will bring to life the soybean biodiesel industry, a great opportunity for our communities. If you want to grow jobs, get an energy bill passed. Give us the number of votes we need to get through cloture.

Let us have class action reform. We came within a few votes of getting that done. You want to grow jobs, talk to the manufacturers in this country, talk to the small business people. They will tell you what they need. They need class action reform. Our friends on the other side won't give it to us.

We need asbestos reform. We need medical malpractice reform. We couldn't even get welfare reform done. Again, those on the other side of the aisle were filibustering, saying: We will not allow it to happen. There is no work requirement today in welfare, if the welfare reform change that was previously passed expires.

We have a lot of work to do. There is a plan and a vision out there. The vision is to make American business competitive with businesses all over the world. We do that by cutting taxes. We don't do that by raising the tax on small businesses, many of which are subchapter S corporations or sole proprietorships that pay taxes at the rate of the highest level. They pay more than large corporations pay. Yet my friends on the other side of the aisle talk about rolling back that tax cut, which would have a devastating effect on small business.

In Minnesota we sometimes talk about the Scandinavian who loved his wife so much he almost told her. As I listened to the distinguished minority leader, I got this sense that folks care so much they will almost do something.

We have a path to do something. It lies through an energy bill. It lies through medical malpractice reform. It lies through class action reform. It lies through getting the FSC/ETI JOBS bill through. Right now American manufacturers are paying a double-digit tax, in effect, because of a WTO violation.

We can lower that. We can change it. Instead, we find it blocked. No, it is not the Great Depression. There is more work to be done. There is a path, but the path doesn't lie with obstruction. I know the people of Minnesota and of South Dakota need an energy bill, and they want one.

In the last few minutes I have, because I want to give some time to my friend and colleague, the Senator from Pennsylvania, I want to talk a little about what is happening in the war on terror and in Iraq.

This week, the forces of freedom won a major battle. We reclaimed the city of Samarra. We reclaimed it by working with the 5,000-member joint force of Americans and Iraqis liberating that city from insurgents and foreign fighters. The fact is that we are not out there by ourselves, and the reality is that we need the Iraqis to step forward, and they are doing so. Yet the Prime Minister of Iraq came here and addressed a joint session of this body and the House. He then was disparaged by the Democratic nominee for President; the Iraqi sacrifice was disparaged.

Last night, we heard the Democratic Vice Presidential candidate simply dismiss the sacrifice of our strongest ally. We are not in this alone. We are not going to win it alone. But we can win it. We are not going to win it if we take an attitude that it is simply a diversion, if we take an attitude that things are so messed up that nothing will come together. We are not going to win it with folks who don't have the resolve to see this through or have the consistency to say, yes, it is a good thing that Saddam is no longer in power. We are not going to win by dismissing the contributions of our allies—the Polish, the English, the Italians, the Salvadorans, and on and on. We are not going to win it if we dismiss the sacrifice of the Iraqi people. We need them to step forward. We saw in Samarra what happens when you come together: You can liberate a city from insurgents.

Mr. President, we have a lot of work to do. The situation is not perfect, but we can get it done with the leadership of this President.

I yield the floor.

Mr. SANTORUM. Mr. President, how much time is remaining?

The PRESIDENT pro tempore. There is 1 minute remaining.

GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT

Mr. SANTORUM. Mr. President, I was going to talk about the Kerry health plan, but I will do that later. I want to talk briefly on the Good Samaritan Volunteer Firefighter Assistance Act. We have been trying to clear a provision that would allow more equipment—used equipment—to go to volunteer firefighters from companies all over the United States by giving a slight change in the liability standard for companies that donate this equipment.

We have done this in the area of the Good Samaritan Food Donation Act, which resulted in billions and billions of dollars in additional food going out to hungry people in America. Nobody has been sued, by the way. What was sued under the Good Samaritan Food Donation Act—we were not taking money out of anyone's pocket with lawsuits. No one, to my knowledge, has been sued by donating firefighting equipment. Nobody is going to lose out—no lawyers—from lawsuits by this donation. It is an opportunity for companies that waste a lot of resources to be able to give back.

UNANIMOUS-CONSENT REQUEST—H.R. 1787

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 748, H.R. 1787, the Good Samaritan Volunteer Firefighter Assistance Act.

Mr. DURBIN. Reserving the right to object, Mr. President, I might say to the Senator from Pennsylvania, it is a very good bill and one I may be anxious to support. I think one Senator has a problem, but I am told it is very close. I will object at this moment, but I encourage the Senator to work actively because I believe we can clear this bill quickly.

Mr. SANTORUM. Mr. President, we have been working for several weeks on this bill. I know both Senators COLLINS and LIEBERMAN have been helpful. We are getting to the end of the bill. It is vitally important to be able to get this passed so we can get this help on the way. It only had three negative votes in the House of Representatives. This is something we should be able to do for our first responders.

The PRESIDENT pro tempore. There will now be a period under the control of the minority leader for 15 minutes.

The Senator from Illinois is recognized.

VICE PRESIDENTIAL DEBATE

Mr. DURBIN. Mr. President, last night, I was in Cleveland, OH—I got back in the early hours of this morning—to be present at the Vice Presidential debate between our colleague, Senator EDWARDS, and Vice President CHENEY. It is an interesting responsibility and assignment that I had, along with several of my colleagues on the Republican side, to provide the so-called spin after the debate. You would think that voters could reach their

own conclusions about who said what and how they should vote, but there are many who line up in an effort to stress the important and strong points made by their candidate. That was my role last night.

I am not going to presume to tell anybody who watched that debate who won or lost. I will point out two specific things that were said by Vice President CHENEY that I believe demand some clarification. He said at one point in the debate that he had never met Senator EDWARDS. In fact, he said:

In my capacity as Vice President, I am President of the Senate, the presiding officer. I am in the Senate most Tuesdays in session. The first time I met you [Senator EDWARDS] was when you walked on the stage tonight.

That is what Vice President CHENEY said last night. You know, all of us forget from time to time when we have met someone. In this particular instance, the Vice President had forgotten that at least on two previous occasions he had not only met Senator EDWARDS but had been in very close contact with him. In fact, at the National Prayer Breakfast on February 1, 2001, Vice President CHENEY acknowledged Senator EDWARDS, who was in the audience. They were at the same event. Then, at the swearing-in ceremony for Senator EDWARDS' colleague, Senator ELIZABETH DOLE, in 2003, in fact, Vice President CHENEY was standing right next to Senator DOLE and Senator EDWARDS.

So to suggest that he never met the man last night—it turns out that he had a lapse in memory. It happens to us all. It is a rather incidental thing in the scheme of things but for the other lapse of memory the Vice President had last night. I listened to him say these words, and I could not believe it. He said:

I have not suggested there is a connection between Iraq and 9/11.

I wrote that down and underlined it, saying I can't believe that, because I have heard him say repeatedly that there was a connection between 9/11 and Iraq that warranted our invasion of Iraq before we put together a broad and strong coalition to share in the burden. So with some research we find that at least on two occasions, and many others perhaps, the Vice President has forgotten again. This is what he said on December 2, 2002:

His [Saddam Hussein] regime has had high level contacts with al-Qaida going back a decade, and has provided training to al-Qaida terrorists.

That is a direct quote from Vice President CHENEY, who said last night he had never suggested that connection.

Then again, on January 22, 2004, on National Public Radio, the ''Morning Edition,'' he said:

I think there is overwhelming evidence that there was a connection between al-Qaida and the Iraqi government.

Those are his quotes. Last night, he denied them. I will tell you why he should have denied them. He was wrong. He was wrong then and wrong the other times he suggested the connection between Saddam Hussein and al-Qaida to justify our invasion of Iraq. In fact, the 9/11 Commission, a bipartisan commission, has dismissed that premise. The Senate Intelligence Committee, which I serve on, has dismissed that premise and said the intelligence community failed us when they made that suggestion. And here is the best part. On October 4 of this year, Secretary Donald Rumsfeld, in the President's Cabinet with the Vice President, said he had no hard evidence to link al-Qaida and Saddam Hussein. The Secretary of Defense said:

To my mind, I have not seen any strong, hard evidence linking the two.

Why is this significant? It is significant for the same reason that the report that is about to come out today, ordered by this administration, a report prepared by the chief U.S. weapons inspector in Iraq, again says that there is no evidence of weapons of mass destruction. This administration is in denial when it comes to the reality of Iraq.

Mr. STEVENS. Would the Senator like to yield there?

Mr. DURBIN. No, not until I have completed my statement; then I'll be happy to yield.

This administration is in denial when it comes to the reality of Iraq. We have a Vice President who linked Saddam Hussein and al-Qaida, and that has been debunked and dismissed by several sources, including his own Secretary of Defense, and an administration that still clings to this notion of weapons of mass destruction despite report after report of no evidence of weapons of mass destruction, and they tell the American people that is why we had to do this; that is why we had to invade before we put together a coalition, that is why we had to send troops into combat before they had the necessary body armor to protect themselves, before the Humvee vehicles that our brave soldiers were driving in Iraq were protected with armor, before our helicopters had the necessary defensive equipment, we sent our troops into harm's way.

The Bush administration saw an urgency based on wrong information. Today, neither the President nor Vice President will accept the reality that they were wrong. How can you make a policy in America to make it stronger unless and until you accept the reality?

Last night, Vice President CHENEY could not accept the reality that he was wrong linking 9/11 to Saddam Hussein, and the President cannot accept the reality that there were no weapons of mass destruction. In fact, now the report says the best they can find was a desire to build weapons of mass destruction. Is that what it takes to justify a preemptive attack on a country, that its leader may desire to create a weapon that could threaten us? I certainly hope the standard would be much higher.

If you look at the record—I listened to the Senator from Minnesota who talked to us about domestic issues—it is hard to imagine that they are going to make an argument on the Republican side that this has been a successful administration when it comes to domestic issues.

Just take a look at private sector jobs. Under President Clinton, 20.7 million private sector jobs were created; under President Bush, we lost 1.6 million private sector jobs. You have to go back 70 years through Democratic and Republican Presidents to find such a failure in the creation of jobs. But this administration clings tenaciously to the notion that their economic policy is the best.

I see the Senator from Delaware. How much time do I have remaining in morning business?

The PRESIDING OFFICER. The Senator has 7½ minutes.

Mr. DURBIN. Will the Chair advise me when I have 1 minute remaining?

Let me also talk about our fiscal situation. When we talk about the need for more money for education, more money for health care, tax credits for small businesses to provide health insurance, tax deductions for families to help pay for college tuition, we find we are in a difficult position to even consider it. Why?

Here is the chart that tells the story. Take a look at this. As President Clinton left office, there was a $236 billion surplus in the Federal Treasury. Today, under President Bush's leadership, there is a deficit of $422 billion, the largest deficit in the history of the United States.

We have our hands tied when it comes to doing things to help American families get through this tough time when they see the cost of gasoline, the cost of health care, and the cost of college tuition going up, while their personal incomes are not increasing.

Take a look, as well, at the specifics when it comes to real household income for families in America under President Bush. It declined by $1,535, 4 years of President Bush; real family income down $1,500.

Now take a look at the cost to families. Under President Bush's leadership, the cost of family health care premiums has gone up $3,599. When Senator EDWARDS turned last night to Vice President CHENEY and said, I don't think America can take 4 more years of this, this is what he is talking about. Real family income is declining and the cost to families for the necessities of life is increasing.

What we are finding out over and over is that families are not better off. We have seen household income go down under the Bush administration, gasoline prices up 22 percent, college tuition costs up 28 percent, family health care premiums up 45 percent. That is the harsh reality of the cost of

living for working families across America.

When Senator EDWARDS confronted Vice President CHENEY last night with those realities, what the Vice President said was, Well, we certainly hope everyone can find a job. Hope is not enough. You need a policy that does not reward the wealthiest in America with tax cuts, but that instead helps working families deal with the realities of the costs of life.

The Vice President and the President are wrong. They are wrong in their policies and some say resolute, I say perhaps too resolute, in sticking with the policy that has failed.

We are in a position where we need new leadership. We have that opportunity, and last night's debate showed the sharp contrast between the projected programs and hopes and policies of the Kerry/Edwards ticket as opposed to the harsh realities of the programs we have seen over the last 4 years.

Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, I ask unanimous consent that I have 5 minutes and the Senator from Delaware have 5 minutes.

Mr. DURBIN. I object to that request. If the Senator from Alaska is going to address me, I would like to have 5 minutes.

Mr. REID. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. STEVENS. If the Senator will not yield to me, I will not yield to him. I want 5 minutes and the Senator from Delaware wants 5 minutes. Does the Senator object?

Mr. DURBIN. I object, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, it is my understanding that, under the order that is now before the Senate, we on the minority side have about 3½ minutes remaining; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. REID. I ask unanimous consent that the Senator from Delaware be given 5 minutes and the Senator from Alaska be given 10 minutes.

Mr. STEVENS. I object. I only want 5 minutes, and I want to be able to respond to the Senator from Illinois. He would not yield to me. I see no reason why I should yield to him.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Senator CARPER has 3 minutes now. There is no unanimous consent request pending now, is there?

The PRESIDING OFFICER. There is not.

Mr. STEVENS. What is the time situation?

Mr. REID. I yield 3 minutes to the Senator from Delaware, Mr. CARPER.

The PRESIDING OFFICER. The Senator has 2½ minutes remaining. The Senator from Delaware is recognized for 2½ minutes.

Mr. STEVENS. Mr. President, I cannot hear.

The PRESIDING OFFICER. The Senator from Delaware has 2½ minutes.

The Senator from Delaware.

ESTABLISHING A NATIONAL PARK

Mr. CARPER. Mr. President, later this morning, I will introduce legislation, along with Senator BIDEN, calling for a feasibility study by the Department of the Interior for establishing a National Park Service unit in a State that has never had a national park.

Believe it or not, the State that started the Nation, the first State to ever ratify the Constitution, has no national park.

The State in which the first Swedes and Finns came to America and landed on what is now Wilmington, DE, calling it New Sweden, has no national park.

The State where John Dickinson grew up, who is a coauthor of the Great Compromise creating a bicameral legislature, has no national park.

I could go on.

The heritage of our State and the history of our State together create a fabric which, in a sense, is the tapestry of America. Senator BIDEN and I thus call on the Department of the Interior to conduct a feasibility study to see if maybe a wonderful idea that has evolved from a committee led by Dr. Jim Soles, a professor at the University of Delaware, might win favor with the Department of the Interior and maybe with our colleagues in the year to come.

What is being proposed is a Delaware national coastal heritage park.

It would weave together many of the elements and attractions along the coast of our State, which include the Atlantic Ocean, the Delaware Bay, and the Delaware River.

For the last year or more, a wonderful group of Delawareans has worked together with the Delaware State Division of Parks and Recreation, with the National Park Service, with the Delaware Division of Historical and Cultural Affairs to develop what we believe is a unique and innovative concept, a concept that would include four hubs. The major hub would be in Wilmington, DE, at the rocks where the first Swedes and Finns came ashore in 1638 to America to establish what is now the longest living active Episcopal church, Old Swedes Church, in North America.

That hub would be almost like the hub of a wheel, with spokes emanating to historic sites, natural areas, recreational opportunities, and other attractions in the area. There would be three other similar hubs up and down the State of Delaware as well.

Later today, when I have more time, I welcome the opportunity to share with my colleagues a bit more about this proposal. I have

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

The Senator from Alaska.

Mr. STEVENS. I yield myself time under the intelligence bill.

Mr. REID. Has the bill been reported?

The PRESIDING OFFICER. No.

NATIONAL INTELLIGENCE REFORM ACT OF 2004

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

The assistant 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:

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

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

Leahy/Grassley Amendment No. 3945, to require Congressional oversight of translators employed and contracted for by the Federal Bureau of Investigation.

Reid (for Harkin) Amendment No. 3821, to modify the functions of the Privacy and Civil Liberties Oversight Board.

Roberts Amendment No. 3742, 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.

Stevens Amendment No. 3827, to strike section 206, relating to information sharing.

Stevens Amendment No. 3840, to strike the fiscal and acquisition authorities of the National Intelligence Authority.

Stevens Amendment No. 3882, to propose an alternative section 141, relating to the Inspector General of the National Intelligence Authority.

Warner Amendment No. 3876, to preserve certain authorities and accountability in the implementation of intelligence reform.

Levin Modified Amendment No. 3809, to exempt military personnel from certain personnel transfer authorities.

Levin Amendment No. 3810, to clarify the definition of National Intelligence Program.

Stevens Amendment No. 3830, to modify certain provisions relating to the Central Intelligence Agency.

Warner Amendment No. 3875, to clarify the definition of National Intelligence Program.

Reid (for Leahy) Amendment No. 3913, to address enforcement of certain subpoenas.

Reid (for Leahy) Amendment No. 3916, to strengthen civil liberties protections.

Reid (for Leahy) Amendment No. 3915, to establish criteria for placing individuals on the consolidated screening watch list of the Terrorist Screening Center.

Collins (for Frist) Modified Amendment No. 3895, to establish the National Counterproliferation Center within the National Intelligence Authority.

Collins (for Frist) Amendment No. 3896, to include certain additional Members of Congress among the congressional intelligence committees.

The PRESIDING OFFICER. Under the previous order, the time until 11:30

a.m. will be equally divided for debate between the two managers and 15 minutes of that time will be under the control of Senator WARNER and Senator LEVIN.

The Senator from Maine.

Ms. COLLINS. Mr. President, I yield 10 minutes to the Senator from Alaska. I then hope we can proceed to four pending amendments of the Senator from Alaska.

Mr. REID. On this time, on behalf of Senator LIEBERMAN, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Alaska is recognized for 10 minutes, to be followed by the Senator from Illinois for 10 minutes.

AMENDMENTS NOS. 3830, AS MODIFIED, 3840, AS MODIFIED, AND 3882, AS MODIFIED, EN BLOC

Mr. STEVENS. I have sent three of the pending amendments to the desk in an amended form. These changes have been coordinated with the managers of the bill and I believe they are acceptable to them.

The first amendment, No. 3840, revises the acquisition authority of the national intelligence director and that is at the desk. The second amendment, No. 3830, modifies a certain provision related to the Central Intelligence Agency and that amendment is at the desk. Amendment No. 3882 revises the provisions related to the inspector general of the National Intelligence Authority. It conforms these provisions to those in the Inspector General Act and avoids duplication of the inspector general efforts across the impacted agencies. That amendment is at the desk.

I appreciate the courtesy of the managers of the bill and their staffs, and their willingness to engage in dialog on these amendments with me and my staff.

We are still working to resolve differences over amendment No. 3827 regarding the information-sharing network to address some of the concerns identified by the White House and others. We hope to reach a resolution on that language this morning, but, as I said, I thank the managers of the bill for their help in resolving these issues. It has been a matter of great concern to those of us who have worked with the intelligence community for quite some time.

I now ask unanimous consent that amendments Nos. 3840, 3830, and 3882 be amended as noted in the revised amendments that I have sent to the desk; that the amendments be considered en bloc and adopted en bloc, and that the motions to reconsider be laid upon the table.

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

The amendments, as modified, were agreed to, as follows:

AMENDMENT NO. 3830

On page 28, beginning on line 16, strike ''of the National Intelligence Director''.

On page 43, beginning on line 1, strike ''**OF THE NATIONAL INTELLIGENCE DIRECTOR**''.

On page 43, beginning on line 5, strike ''of the National Intelligence Director'' and insert ''for the National Intelligence Director and the Director of the Central Intelligence Agency''.

On page 43, line 14, add at the end the following: ''Any use of funds from the Reserve shall be subject to the direction and approval of the National Intelligence Director and in accordance with procedures issued by the Director.''.

On page 43, beginning on line 17, strike ''of the National Intelligence Director''.

On page 141, between lines 15 and 16, insert the following:

(H) the Director of the Central Intelligence Agency or his designee;

On page 141, line 16, strike ''(H)'' and insert ''(I)''.

On page 141, line 18, strike ''(I)'' and insert ''(J)''.

On page 141, line 21, strike ''(J)'' and insert ''(K)''.

On page 194, beginning on line 23, strike ''of the National Intelligence Director''.

AMENDMENT NO. 3840

On page 109, line 6, insert the words ''within the National Intelligence Program'' after the words ''for each intelligence program''.

On page 109, strike lines 12 and 13 and insert the following:

(B) serve as exclusive milestone decision authority, except that with respect to Department of Defense programs the Director shall serve as milestone decision authority jointly with the Secretary of Defense or the designee of the Secretary; and

On page 110, strike lines 8 through 18 and insert the following:

(4) If the National Intelligence Director and the Secretary of Defense are unable to reach agreement on a milestone decision under this subsection, the Director shall assume milestone decision authority subject to review by the President at the request of the Secretary.

AMENDMENT NO. 3882

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) INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—There is an Inspector General of the National Intelligence Authority. The Inspector General of the National Intelligence Authority and the Office of the Inspector General of the National Intelligence Authority shall be subject to the provisions of the Inspector General Act of 1978 (5 U.S.C. App.).

(b) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978 RELATING TO INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8J as section 8K; and

(2) by inserting after section 8I the following new section:

''SPECIAL PROVISIONS CONCERNING THE NATIONAL INTELLIGENCE AUTHORITY

''SEC. 8J. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the National Intelligence Authority (in this section referred to as the 'Inspector General') shall be under the authority, direction, and control of the National Intelligence Director (in this section referred to as the '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.

''(2) With respect to information described in paragraph (1), the Director may prohibit the Inspector General from initiating, carrying out, or completing any investigation, inspection, or audit, or from issuing any subpoena, if the Director determines that such prohibition is necessary to preserve the vital national security interests of the United States.

''(3) If the Director exercises the authority under paragraph (1) or (2), the Director shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of such authority within 7 days.

''(4) The Director shall advise the Inspector General at the time a report under paragraph (3) 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.

''(5) The Inspector General may submit to the congressional intelligence committees any comments on a report of which the Inspector General has notice under paragraph (4) that the Inspector General considers appropriate.

''(b) In addition to the qualifications for the appointment of the Inspector General under section 3(a), the Inspector General shall be appointed on the basis of prior experience in the field of intelligence or national security.

''(c)(1)(A) In addition to the duties and responsibilities of the Inspector General specified elsewhere in this Act, the Inspector General shall, for the purpose stated in subparagraph (B), provide policy direction for, and conduct, supervise, and coordinate audits and investigations relating to—

''(i) the coordination and collaboration among elements of the intelligence community within the National Intelligence Program; and

''(ii) the coordination and collaboration between elements of the intelligence community within the National Intelligence Program and other elements of the intelligence community.

''(B) The Inspector General shall conduct the activities described in subparagraph (A) to ensure that the coordination and collaboration referred to in that paragraph is conducted efficiently and in accordance with applicable law and regulation.

''(C) Before undertaking any investigation, inspection, or audit under subparagraph (A), the Inspector General shall consult with any other inspector general having responsibilities regarding an element of the intelligence community whose activities are involved in the investigation, inspection, or audit for the purpose of avoiding duplication of effort and ensuring effective coordination and cooperation.

''(2) In addition to the matters of which the Inspector General is required to keep the Director and Congress fully and currently informed under section 4(a), the Inspector General shall—

''(A) keep the Director and Congress fully and currently informed concerning—

''(i) violations of civil liberties and privacy that may occur in the programs and operations of the National Intelligence Authority; and

''(ii) violations of law and regulations, violations of civil liberties and privacy, and fraud and other serious problems, abuses, and deficiencies that may occur in the coordination and collaboration referred to in clauses (i) and (ii) of paragraph (1)(A); and

''(B) report the progress made in implementing corrective action with respect to the matters referred to in subparagraph (A).

''(3) To enable the Inspector General to fully and effectively carry out the duties and responsibilities specified in this Act, the Inspector General and the inspectors general of the other elements of the intelligence community shall coordinate their internal audit,

inspection, and investigative activities to avoid duplication and ensure effective coordination and cooperation.

''(4) The Inspector General shall 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.

''(d)(1) Each semiannual report prepared by the Inspector General under section 5(a) shall—

''(A) include an assessment of the effectiveness of all measures in place in the National Intelligence Authority for the protection of civil liberties and privacy of United States persons; and

''(B) be transmitted by the Director to the congressional intelligence committees.

''(2) In addition the duties of the Inspector General and the Director under section 5(d)—

''(A) the Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to—

''(i) the coordination and collaboration among elements of the intelligence community within the National Intelligence Program; and

''(ii) the coordination and collaboration between elements of the intelligence community within the National Intelligence Program and other elements of the intelligence community; and

''(B) the Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within 7 calendar days of receipt of such report, together with such comments as the Director considers appropriate.

''(3) Any report required to be transmitted by the Director to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified in that section, to the congressional intelligence committees.

''(4) In the event that—

''(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

''(B) an investigation, inspection, or audit carried out by the Inspector General should focus on any current or former National Intelligence Authority official who holds or held a position in the Authority that is subject to appointment by the President, by and with the advice and consent of the Senate, including such a position held on an acting basis;

''(C) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in subparagraph (B);

''(D) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in subparagraph (B); or

''(E) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, or audit,

the Inspector General shall immediately notify and submit a report on such matter to the congressional intelligence committees.

''(5) Pursuant to title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, or audit conducted by the office which has been requested by the Chairman or Ranking Minority Member of either committee.

''(e)(1) In addition to the other authorities of the Inspector General under this Act, the Inspector General shall have access to any personnel of the National Intelligence Authority, or any employee of a contractor of the Authority, whose testimony is needed for the performance of the duties of the Inspector General. Whenever such access is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Director without delay.

''(2) Failure on the part of any employee or contractor of the National Intelligence Authority to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, including loss of employment or termination of an existing contractual relationship.

''(3) Whenever, in the judgment of the Director, an element of the intelligence community that is part of the National Intelligence Program has unreasonably refused or not provided information or assistance requested by the Inspector General under paragraph (1) or (3) of section 6(a), the Director shall so inform the head of the element, who shall promptly provide such information or assistance to the Inspector General.

''(4) The level of classification or compartmentalization of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under section 6(a).

''(f) In addition to the authorities and requirements in section 7 regarding the receipt of complaints by the Inspector General—

''(1) the Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety; and

''(2) once such complaint or information has been received from an employee of the Federal Government—

''(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

''(B) no action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

''(g) In this section, the terms 'congressional intelligence committees', 'intelligence community', and 'National Intelligence Program' have the meanings given such terms in section 2 of the National Intelligence Reform Act of 2004.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—(1)(A) Section 8H(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is further amended—

(i) by redesignating subparagraph (C) as subparagraph (D); and

(ii) by inserting after subparagraph (B) the following new subparagraph (C):

''(C) An employee of the National Intelligence Authority, of an entity other than the Authority who is assigned or detailed to the Authority, or of a contractor of the Authority who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the National Intelligence Authority.''.

(B) In support of this paragraph, Congress makes the findings set forth in paragraphs (1) through (6) of section 701(b) of the Intelligence Community Whistleblower Protection Act of 1998 (title VII of Public Law 105–272; 5 U.S.C. App. 8H note).

(2) The Inspector General Act of 1978 is further amended—

(A) in section 8K, as redesignated by subsection (b)(1) of this section, by striking ''8F or 8H'' and inserting ''8F, 8H, 8I, or 8J''; and

(B) in section 11—

(i) in paragraph (1), by inserting ''the National Intelligence Director;'' after ''the Attorney General;''; and

(ii) in paragraph (2), by inserting ''the National Intelligence Authority,'' after ''the National Aeronautics and Space Administration,''.

(d) SEPARATE BUDGET ACCOUNT.—The National Intelligence Director shall, in accordance with procedures to be issued by the Director in consultation with congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of Inspector General of the National Intelligence Authority.

(e) SENSE OF CONGRESS ON ADOPTION OF STANDARDS OF REVIEW.—It is the sense of Congress that the Inspector General of the National Intelligence Authority, in consultation with other Inspectors General of the intelligence community and the President's Council on Integrity and Efficiency, should adopt standards for review and related precedent that are generally used by the intelligence community for reviewing whistleblower reprisal complaints made under sections 7 and 8J(f) of the Inspector General Act of 1978.

On page 203, strike lines 9 through 22.

On page 204, line 1, strike ''**312.**'' and insert ''**311.**''.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the senior Senator from Alaska for working with Senator LIEBERMAN and me to resolve these three amendments. I very much appreciate the good-faith suggestions that were made on both sides, and I am grateful to him for working with us to address his concerns.

I think we have come up with very good suggestions, and I am pleased that the amendments have been adopted.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. How much time do I have remaining of the 10 minutes?

The PRESIDING OFFICER. There is 7½ minutes.

WEAPONS OF MASS DESTRUCTION

Mr. STEVENS. Mr. President, I have heard this talk about the inspectors and their conclusion that they have not found weapons of mass destruction. Seventeen times the United Nations asked Saddam Hussein to disclose where the weapons of mass destruction were. We know he used them on the Kurds. We know he used them in Iran. We know we have evidence he was trying to build additional weapons but the inspectors kept asking to return. They asked again and again to return so they could find out if there was evidence of where he had those weapons of mass destruction.

Now they are before the Armed Services Committee this morning and they are going to testify that they have found ''no evidence'' of the weapons of mass destruction. We had the same conclusion with regard to the Iraqi air force. We were told Saddam had destroyed a series of airplanes. Later we found them buried in the Iraqi desert—a whole series of airplanes—the whole airplane buried. It was capable of being dug up, brought out of the dirt and used.

Now, we have not found the weapons of mass destruction yet. This Senator believes he had them. We know he had them in the Kurd area. We know he used them on Iran. This idea that somehow or another the President or the Vice President have lied, I am tired of hearing this disrespect for the President and Vice President of the United States and I will be willing to debate any time what happened in Iraq.

I went to Kuwait time after time, and to Saudi Arabia, and talked to the pilots who were flying the continuous air patrol over Iraq. Since the gulf war, our pilots were up there every day, and every day they were shot at by ground-to-air weapons that Saddam was not supposed to have at all.

This idea that somehow or another the President and Vice President of the United States lied because they believed there were weapons of mass destruction there, I believe there are weapons of mass destruction there and I still believe there are weapons there somewhere. Where they have taken them, I do not know, but they have not found them. The inspectors kept finding enough reason to go back and go back. They went back 17 times.

To say the President lied, what about those inspectors who said, We have to go back; we have not found them yet but we are going to find some more? Did they lie?

I think there ought to be greater respect for the Presidency and the Vice Presidency of this country, and in this campaign. I have never heard such disrespect. I did not go out and campaign against President Clinton and say he lied, and yet we know he did. He admitted he lied about the matters that were before the grand jury. Now we did not go out and accuse the President of lying. We had a lot of discussions on the floor about that.

So if we want to compare Presidents and who lied and who did not, I am ready any time the Democrats want to do it, but I am tired of this disrespect. It is time we showed respect for the system. I do not remember in the past when a Senator asked another Senator to yield and if that Senator had time, it normally would happen. At the very least the Senator would say: Let me finish my statement now and I will yield at the end of my statement. That kind of senatorial courtesy has to come back to the Senate.

If the Senator wants me to yield, I will yield the remainder of my time.

The PRESIDING OFFICER. Has the Senator yielded the floor?

The Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding I have 10 minutes.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Mr. President, let me say that——

Mr. STEVENS. The Senator has 10 minutes on his time on the 1 hour to which the Senator is entitled.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Mr. President, if the Senator will check the record, he will find that without exception I have always yielded for a question but I was in a difficult position because the Senator from Delaware wanted to speak after me. In the entire amount of time given to me, I would have been happy to yield.

I think, frankly, dialog between two Senators is something perilously close to debate in the Senate, which we hardly ever have. I am sorry we did not have that opportunity, but I think we have the opportunity at this moment.

What I hear from the Senator from Alaska is that we should show respect for the Office of the Presidency. I could not agree more. Whether the President is of my party or any other party, he should be given respect. Even if I disagree with that President, his policy or his statements, I am hoping that I will always be viewed as a person who has that respect for the Office of the Presidency. That is the least that is expected of every single Member of Congress, and I hope the people across the United States.

Having said that, I do not believe that disagreeing with the policies of an administration is disrespectful. In fact, I think it is part of the national debate which makes America so unique.

I do not believe it is disrespectful to say that the information given by the President, the Vice President, the Secretary of Defense, and the Secretary of State was wrong and misleading. It was. I have never used the word ''lie,'' nor would I because a lie means there was a deliberate misrepresentation. I don't have any evidence there was a deliberate misrepresentation. But there was a misrepresentation, at least in four specific elements. Let me tell you what they were.

The administration misled the American people in believing there were weapons of mass destruction—an arsenal of chemical, biological, and nuclear weapons set to strike countries in the Middle East as well as the United States—in Iraq before our invasion. We know now, based on clear and convincing evidence, there is no indication that Saddam Hussein ever had these arsenals of weapons of mass destruction. So when the President and the administration said that to justify the invasion, they were wrong. The American people were misled. That is a fact.

Point No. 2, this administration misled the American people about the capacity of Iraq to build nuclear weapons. Yesterday I came to the floor and talked about the most recent disclosure about aluminum tubes. The American people were misled into believing Saddam Hussein was about to become a nuclear power, threatening the region and the United States. The administration was wrong. The American people were misled.

Point No. 3, the administration said there was linkage, and I quoted this morning direct quotes from Vice President CHENEY. They argued there was linkage between Saddam Hussein and the 9/11 tragedy in America; that somehow Saddam Hussein and al-Qaida were consorting to attack the United States. We have seen repeatedly through the 9/11 Commission Report, the Senate Intelligence Committee report, as well as clear statements now, today, by the Secretary of Defense, that was wrong. The American people were misled. That is a fact.

These elements are facts that cannot be denied. To say the administration misled the American people is there for the record. I have not said the President lied. But I do say he gave wrong information to the American people, and even the President has conceded that fact. When the Secretary of Defense says there is no linkage, when the President removes the offensive words from the State of the Union Address, he concedes the fact that statements made before the invasion were misleading and they were wrong.

Why in the world can't this administration accept that reality? Why do they have to cling to the fiction that was presented to the American people?

The Senator from Alaska said we should show respect for the Presidency, and I agree. But more important, we need to show respect for the American people. They are the ones we serve, the President and every Member of Congress. We need to show them respect by giving them the clear, unvarnished truth so they understand the facts before we make critical decisions.

We have now lost over 1,050 of our best and brightest and bravest American soldiers in Iraq. We lost them because we invaded that country before we let the inspectors do their job in Iraq, before we created a broad coalition of countries that would join us in this military effort, and here we stand today.

Last night, Vice President CHENEY said don't demean the coalition. Other countries stand with us. I certainly respect the fact that they would stand by the side of America. But make no mistake, when you open the morning paper, regularly, virtually every morning you learn of the death of another American soldier. It is American soldiers who are fighting and dying in Iraq in much greater numbers, even, than any other country I should say, and much greater numbers than I think should be the case.

Had this President done the same thing his father did, gone to the United Nations for approval of our invasion, put together a coalition of nations

which included Arab nations—President Bush's father understood that, in the Persian Gulf. He knew that to bring in Arab nations as part of the coalition meant there would be less resentment in Arab states for our action. This President did not wait to bring in an Arab state to help us in this coalition of the willing. As a consequence, the resentment against the actions of the United States in the Arab world has been growing apace, and we have found the recruiting efforts to find more terrorists to not only invade Iraq and kill our soldiers but to spread around the world are mushrooming. Are we safer today because of that invasion, because we didn't build the coalition? I think not.

I am glad Saddam Hussein is in prison. I am glad he is out of power. But don't diminish the cost to the United States and the fact that there is no end in sight to this war in Iraq.

There was no plan from this administration to execute this war and protect our troops with body armor, with Humvees armored, with protective equipment on helicopters, and certainly we understand today, based on Ambassador Bremer's statements just 2 days ago, that we didn't have a sufficient number of troops to bring stability to the region.

We are paying the price for those bad decisions. Statements were made by this administration that were wrong and misleading. Decisions were made that clearly evidence that we were not prepared, as we should have been. We are paying that price, and there is no end in sight.

If the Senator from Alaska suggests it is disrespectful to the President to raise these issues, I respectfully disagree with him. It is our obligation to have an open, honest, national debate about the foreign policy of this country, which involves families far and wide in Illinois, Alaska, and around the United States.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I am delighted to have an opportunity to debate with the Senator from Illinois because I listened to the comments he made before, comments I violently disagree with. For instance, in 1998, President Clinton went before the general officers of this Nation, officers from all of our units of the military, and he told them he believed Saddam Hussein had weapons of mass destruction. He laid down a just challenge to Saddam Hussein to come forward and disclose them or he believed he might have to go into Iraq himself. That seems to be forgotten.

Apparently, the Senator from Illinois didn't hear the Vice President when he mentioned Mr. Zarqawi last night, a man who was in Iraq before even the problems of Afghanistan who was operating there. He is back there now. He had operated in Afghanistan and Pakistan, was part of the bad guys there. Now we know he is back in Iraq again. He is mentioned as being one of the senior contacts within the al-Qaida organization that was there before and came back again now. The Vice President has mentioned the contacts that existed in the al-Qaida world in Iraq.

I still believe he was right. There is no question about it. There was a portion of the terrorist organization in Iraq before, and they are back there now.

As far as the weapons of mass destruction, I believe at the time we had seen the briefings—and I am one of the eight in the Congress who received the same briefings the President of the United States got about Iraq. We got them in confidence. As a matter of fact, even the statement the Senator from Illinois made about Mr. Bremer, who is the President's representative, that is from a classified report that we should not be discussing on the floor. It ended up somehow being leaked, that one line from the report. But the report deals with the overall relationship of Mr. Bremer to the whole process.

The problem is this: When we look at the Bremer situation, what Bremer did—we were there. We talked to him. He did want more forces around Baghdad. He thought there should be more. The President relied upon our general officers. He told me personally and he told us as we went to Iraq and came back from Iraq, we are doing what our general officers request, as far as the troop strength is concerned.

The general officers disagreed with Bremer as to the location of those forces. There is no question about it. We probably should have had more. In my opinion, we should have been able to come through Iraq from the north, through Turkey, and come from the south from Kuwait, and had two forces moving through Iraq and squash those people over there.

Instead, because of developments in Turkey, we could not go through Turkey. We flew our troops down to Kuwait, we took their supples all the way around, and when the supplies reached them they then went in, and instead of having forces meet in Baghdad, particularly in Saddam Hussein's home part of Iraq, they then come back to Baghdad, and that left them spread out. My memory is that the insurrection started in the south because the forces had gone north and we couldn't spread them that thin.

People said: Send more troops. Send more troops. We heard that on the floor: Send more troops. The ability to maintain and supply those troops was a real difficult situation, particularly when all the support supplies were coming through Kuwait. We even started sending some supplies through Jordan.

But the problem really is what happened in terms of Saddam Hussein, in terms of the relationship to al-Qaida, and the relationship to weapons of mass destruction. I stood here on the floor of the Senate and called Saddam Hussein a Hitler. I did that at least 9 months before the war started. I still believe he was a Hitler. He invaded Kuwait, and we had to kick him out. He was rebuilding his military within that area that he still maintained control of in Iraq. We had control of the south and north part of his country. Yet look at it in terms of the no-fly zone we were trying to protect.

But in terms of the part he controlled he was rebuilding his military because of the money that came into his hands through the ''food-for-oil'' program.

You can stand here, no matter what you say, and say we haven't found weapons of mass destruction. That is true. We haven't found them. I still believe there are some out there, whether they are in adjoining nations or buried in the ground. Whatever happened to them, he had them.

To accuse the administration of misleading the public when they relied upon the intelligence analysts that we relied on—the same intelligence analysts President Clinton relied on when he made his 1998 speech. Certainly those of us who were here supported the resolution that asked the President to send troops into Iraq; we believed it. When you look at it, if we want to get into situations when Senator KERRY voted against the 1991 war resolution in spite of what Iraq did in invading Kuwait, he voted against us going into Kuwait to liberate Kuwait.

I think my friends on the other side of the aisle have been wrong for 30 years. As a matter of fact, those on the other side of the aisle mainly opposed the Reagan buildup in the 1980s. I was chairman of the Defense Appropriations Subcommittee, and I remember those votes. Fifty times here we voted on amendments that were offered to try to strike weapons systems from the defense bill that I managed to bring to the floor to rebuild the military capacity of the United States. All of those amendments came from the other side of the aisle.

When you look at it, when you look at the trouble, why did we have a shortage of intelligence? President Clinton started degrading human intelligence in the CIA. He denuded the intelligence system as far as human intelligence is concerned because he wanted to rely on the satellites in the air and the communications systems, electrical systems.

I cannot believe we are going to get into these one-sided statements. I would like to have a full debate. I am sort of at a loss. I don't have my records. The Senator from Illinois has his records, but I don't have them.

But I have a feeling that had we not denuded the CIA in the 1990s, we would have had better intelligence. But the information we had relied upon, the American public relied upon, and this Senate relied upon when we voted to give the President the right to go into Iraq.

To say the President was wrong because he relied on the same intelligence we relied upon I think is a faulty argument, and it should not happen on the floor of the Senate in a political season where we are trying to destroy the reputation which the President deserves for having the guts to do what Clinton didn't have the guts to do.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. There are 3½ minutes remaining.

Mr. DURBIN. Mr. President, let me say in response to the Senator from Alaska before he leaves the floor—I want to let him know I want to respond to his comments so there will be no mistake about it.

First, the statement that Ambassador Bremer's comments had something to do with classified information, what I have said on the floor was based upon some front pages of the newspapers. Ambassador Bremer was reported to have said to a private organization in a speech that one of the problems we have in Iraq today stems from the fact that we had an inadequate number of troops in the field to bring stability, to stop the looting and violence immediately after the deposition of Saddam Hussein. That is not classified. It is on the front pages of the newspapers. Ambassador Bremer has now backed away from those comments. But the fact is he made them, and many believe the same thing—that we had an inadequate number of troops at the right and appropriate moment and are paying the price today because the insurgency has grown.

Second, last night Vice President CHENEY, and this morning the Senator from Alaska, make a great deal about the so-called Ayman al-Zawahiri link, a ruthless terrorist who is affiliated with al-Qaida. The Vice President made the statement last night that the Senator made today—that there was a linkage between Ayman al-Zawahiri and Saddam Hussein and, therefore, proof positive al-Qaida and Saddam Hussein were working together justified the invasion.

I commend to my colleagues and those following the debate this morning's report from MSNBC.com from Washington:

A CIA report has found no conclusive evidence that former Iraqi President Saddam Hussein harbored Ayman al-Zawahiri which the Bush administration asserted before the invasion of Iraq.

This is a fact. It comes from the President's own CIA. They continue to build these straw men to justify an invasion when the facts don't back them up—no weapons of mass destruction, no nuclear arsenal, no evidence of bringing in yellowcake from Niger, no evidence of linkage with al-Qaida. And they cling tenaciously and stubbornly to these assertions even though the facts defeat them.

How can you trust an administration that will not accept the facts and reality to prepare a defense for America? Shouldn't the defense of our Nation be based on reality rather than theory? Shouldn't it be based on sound intelligence instead of political ideology? I would think so.

Any President who comes to this office with a predetermined set of ideas on what we need to do to protect America regardless of the facts is not serving our country well. I hope both political parties would acknowledge that.

AMENDMENT NO. 3801

Let me also say we are about to consider in the early parts of the debate this morning an amendment by Senator KYL to the underlying bill on intelligence reform. I oppose this amendment. I hope my colleagues will join me in opposing it.

We have come together with a bipartisan agreement on the civil liberties board. It is a board which has been created by both sides of the aisle working to implement the recommendations in the 9/11 Commission report. What Senator KYL is trying to do is take away some important powers and responsibilities of this board.

For example, he wants to eliminate the board's standard of review. This is the standard that the board uses to take a look at proposed expansions of the government's power and make sure they don't infringe on rights. What Senator KYL suggests is we take away the standard of review from the civil liberties board. That would frankly create a ship above water.

We need to make sure this board has a standard of review so they can look at government actions and decide whether they go too far. That is what the 9/11 Commission suggested and that is what we should stick to.

Senator KYL's amendment also would remove the Board's subpoena power. He said he would be concerned that this civil liberties board would be subpoenaing members of our Government, agents of our Government, to come in from all over the world and give them evidence. I hope the Senator from Arizona will read this provision more carefully and more closely because the subpoena authority in this bill is very narrow. It only applies to people outside of the Government.

The Kyl amendment would also eliminate the requirement of the board to inform the public about its activities in a manner consistent with protecting classified information. This directly contradicts the recommendation of the 9/11 Commission. We are talking about protecting the American public's rights, liberties, and freedoms. It is essential that the work of the civil liberties board be made public so the American people can understand what they are doing and whether our Government has gone too far. Why the Senator from Arizona would want to keep secrecy and a veil over this activity, I don't understand.

I certainly hope we reject the Kyl amendment which would demolish the Collins-Lieberman civil liberties board, a bipartisan creation. It would upset the delicate balance between government powers and civil liberties this bill strikes. I urge my colleagues to oppose the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. I ask unanimous consent that the time for the quorum call be charged equally to both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Is there still time on both sides under the order that has been entered?

The PRESIDING OFFICER. There is 20 minutes on each side.

Mr. REID. The Senator from Delaware gets 5 minutes.

Mr. CARPER. I thank the minority leader for yielding to me.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. I thank the Chair.

(The remarks of Mr. CARPER pertaining to the introduction of S. 2899 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. REID. I suggest the absence of a quorum and I ask the time be charged equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. REID pertaining to the submission of S. Res. 448 are printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Parliamentary inquiry: Was there time reserved for the Senator from Vermont prior to the vote?

The PRESIDING OFFICER. No.

Mr. LEAHY. Mr. President, I seek recognition in my own right.

Ms. COLLINS. Mr. President, how much time does the Senator need? I believe 30 minutes has been reserved for

Senator WARNER and Senator LEVIN of the hour and a half of debate that was available this morning.

Mr. LEAHY. Mr. President, am I correct that we are planning to vote at 11:30 on the Kyl amendment?

The PRESIDING OFFICER. That is the order.

Mr. LEAHY. Mr. President, I will speak for 3 to 4 minutes on the Kyl amendment.

Mr. REID. Mr. President, if I may say to my distinguished friend, the Senator from Vermont, time was evenly divided, and the minority's time is gone. We were not aware of the Senator from Vermont needing time.

I ask the Senator from Maine, does she wish to make a statement? All the time left is hers.

Ms. COLLINS. Mr. President, I do intend to speak, so we need to reserve time. I am also concerned that the two Senators who specifically requested time have not had an opportunity to speak.

Mr. REID. They have had an opportunity but have not taken it. We need to get this vote off near the time. The Senator from Vermont needs 3 or 4 minutes.

I ask unanimous consent that the Senator from Vermont be recognized for 4 minutes and that time also be added to that of the majority, so there would be an extra 8 minutes. We cannot extend it past that time because there are things people need to do.

Ms. COLLINS. Mr. President, I have no objection.

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

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the Senator from Nevada and the Senator from Maine.

Mr. President, I rise today to discuss the provisions in the Collins-Lieberman bill establishing a privacy and civil liberties oversight board and to respond to some of the disturbing discourse and efforts to undermine those provisions.

It is unquestioned that one of the key recommendations of the 9/11 Commission was the creation of a civil liberties board to fill a clear void in government structure for addressing these concerns. The Commission discovered that there was ''no office within the government whose job it is to look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered.'' In response to this vacuum, the Commission explicitly 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 we recommend and the commitment the government makes to defend our civil liberties.'' The 9/11 Commission concluded: ''We must find ways of reconciling security with liberty, since the success of one helps protect the other.''

The Commission was certainly right. There is no doubt that such a board is needed given the heightened civil liberty tensions created by the realities of terrorism and modern warfare. The tools of the information age include precise data-gathering, networked databases, and tracking and sensing technologies impervious to the common eye. The legal tools are similarly powerful, ranging from substantial capabilities under the USA PATRIOT Act and under our immigration laws. As the Commission noted, ''[e]ven without the changes we recommend, the American public has vested enormous authority in the U.S. government.'' In an even more pointed and ominous assessment of these powers, Vice Chairman Hamilton noted, in a recent Judiciary Committee hearing, these developments are ''an astounding intrusion in the lives of ordinary Americans that (are) routine today in government.''

One of my colleagues suggested that this bill is solely to strengthen our intelligence tools and ''not a bill regarding our civil liberties.'' But this is a myopic view. You cannot divorce one from the other. Security and liberty are always in tension in a free society, and that is readily apparent today. It is our vigilant duty to work hard at striking the right balance. We must enhance our capabilities, but with such powerful tools comes heightened responsibility, and the Commission has challenged us to take up those reins: ''This 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.''

We have an obligation to ensure that there are mechanisms in place that will see to it that this power is subject to appropriate checks and balances and congressional oversight. An effective civil liberties board can help provide those checks and contribute to preserving both liberty and security.

We need a civil liberties board whose members collectively can think critically and independently about the policies we implement as a nation and about how they affect our fundamental rights. The board must be able to participate in the policymaking process, review technology choices and options, peer into various agencies and assess actions, review classified materials and investigate concerns. This board must have the versatility to work closely with government officials, but at the same time it must be sufficiently independent to assess those government policies without fear, favor or compromise. Given these significant responsibilities, it is equally important that the board be accountable to Congress and the American people.

The civil liberties board outlined in the Collins-Lieberman bill makes great strides toward meeting these goals. It represents a true bipartisan effort from conception to introduction. I was pleased to work with these Senators along with Senator DURBIN to make this civil liberties board the kind of board that would honor the 9/11 Commission's intent. It should not go without notice that Commissioners Slade Gorton and Richard Ben-Veniste issued a bipartisan statement that, ''A civil liberties board of the kind we recommend can be found in the Collins-Lieberman bill in the Senate.''

This legislation establishes a bipartisan board that would have access to the documents and information needed to assess our counterterrorism policies that affect the vital civil liberties of the American people. It provides a mechanism for them to work closely with administration officials, including working with a network of newly created department-level privacy and civil liberty officers, whose proximity to decision makers will ensure that these concerns are considered from the earliest stages of policy formation. It requires the board to report to Congress on a regular basis, and—without compromising classified information—to inform the public about policies that affect their vital liberties.

Unfortunately, Senator KYL's amendment 3801 attempts to gut the carefully crafted, bipartisan civil liberty and privacy provisions that are the hallmark of the Collins-Lieberman bill. It is inconsistent with the recommendations of the 9/11 Commission and would undermine the civil liberties that we cherish.

First, Senator KYL's amendment attempts to cut off the information flow that would ensure that the board could accurately, reliably and effectively advise on the impact of policies on privacy and civil liberties. It would also eliminate the board's ability to subpoena people outside of the government who may have important information, such as private sector data collectors working on behalf of the government. It would also eliminate the privacy officers, as well as public hearings and reports to the public.

It is clear that the Commission intended for the board to have access to the information that it needed in order to effectively assess policy. In a recent House Judiciary Committee hearing, Vice Chairman Hamilton said, ''The key requirement is that government agencies must be required to respond to the board.'' He went on to note that the Commission itself had subpoena power, and ''if we had not had it, our job would have been much, much more difficult.'' I would note that the Collins-Lieberman bill does not go as far as to mandate subpoena power over government officials, but rather only over relevant non-government persons.

Given the secrecy and civil liberty concerns that have been pervasive in this administration, we should be enhancing information flow and dialogue, not eliminating it. It is ironic that at the same time that the administration has been making it more difficult for the public to learn what government agencies are up to, the government and its private sector partners have been

quietly building more and more databases to learn and store more information about the American people themselves.

Second, Senator KYL's amendment would eliminate a provision that gives the board important guidance on how to review requests by the government for new and enhanced powers. This is a critical omission. In order to balance liberty and security, we need to ensure that the board will be looking at policies through a prism that would allow for heightened security protection, while also ensuring that intrusions are not disproportionate to benefits, or that they would unduly undermine privacy and civil liberties. This guidance would also keep the board focused on the right priorities and prevent the mission creep that some fear.

Contrary to assertions that this would be a ''citizen board'' gone wild that would ''haul any agent in anywhere in the world and grill him,'' this board would consist of highly accomplished members who have the appropriate clearance to access classified information, who have extensive professional expertise on civil liberty and privacy issues, and who have the knowledge of how to view these concerns in the context of important antiterrorism objectives. Again, its subpoena power would be limited to nongovernment persons, and so could not used willy-nilly to drag in agents from the field.

It simply cannot be that the government can create and implement policies that impinge on our liberties without having to account to anyone. While that may make things convenient or easy, it certainly does not preserve the ideals of the country we are fighting to protect. As the Commission reminded us, ''if our liberties are curtailed, we lose the values that we are struggling to defend.''

Some have suggested that we leave this responsibility to ''federal agencies that are already equipped and designed for that function.'' But this misses precisely the point raised in the report. There is currently no such suitable entity that can look across government and offer an independent, uncompromised assessment of the impact of government powers on civil liberties. And I emphasize look, because some would suggest that we do not need a board with an affirmative obligation to go out and review policy. To the contrary, what we do not need is passivity. We need to be as vigilant about protecting our fundamental rights as we are in hunting down and capturing terrorists. It is what Commissioner Gorton, a former Republican Senator from Washington, described as a ''watchdog to assure maximum protection of individual rights and liberties in those programs.'' Similarly, Commissioner Hamilton has said that ''it ought to have a very tough investigative staff and it ought to be a very active board and agency.''

Others have suggested that the administration's recent efforts are a suitable substitute. I strongly disagree. Rather, the Executive Order attempted to foist upon us an anemic civil liberties board. I and several of my colleagues noted in a letter to the President that the board was not a bipartisan or independent entity. It had no authority to access information and it had no accountability. It was housed in the Department of Justice, and it was comprised solely of administration officials from the law enforcement and intelligence communities, precisely the communities that the board would have an obligation to oversee. It was the proverbial case of the fox guarding the henhouse. This would not have resulted in a vigorous consideration of policy that the Commission intended.

As the Commission noted, 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 to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use.''

We should be looking for ways to ensure that this burden of proof will be met, rather than weakening oversight and accountability.

As the 9/11 Commission noted, when it comes to security and civil liberties, ''while protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right.''

Senator KYL's amendment fails to ''keep it right,'' and I urge that the Senate honor the spirit of the recommendations of the 9/11 Commission, and reject it.

Senators COLLINS and LIEBERMAN have it right in their bill and we should not allow that to be gutted.

I ask unanimous consent that a letter to the President from myself and others on this subject be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 21, 2004.

Hon. GEORGE W. BUSH,
President of the United States,
The White House, Washington, DC.

DEAR PRESIDENT BUSH: We are writing in response to the recent creation and activities of the Administration's Board on Safeguarding Americans' Civil Liberties.

One of the key recommendations of the 9/11 Commission was the creation of a civil liberties board to balance the enormous powers granted by the people to the government for protection against terrorism. Critically, it concluded: ''We must find ways of reconciling security with liberty, since the success of one helps protect the other.''

There is no doubt that such a board is needed given heightened civil liberty tensions created by the realities of terrorism and modem warfare. The tools of the information age include precise data-gathering, networked databases, and tracking and sensing technologies impervious to the common eye. With such powerful tools comes heightened responsibility.

But the civil liberties board established by the August 27, 2004, Executive Order and the manner in which it is proceeding do little to further the goal of balancing liberty and security. The board resembles a presidential advisory team, and not an independent, bipartisan entity. Housed in the Department of Justice, the board will be comprised solely of Administration officials from the law enforcement and intelligence communities, precisely the communities that the board will need to oversee. In essence, this board's responsibility would be to oversee itself; it is the proverbial case of the fox guarding the hen house. Further, the board has no meaningful investigative authority, and there is no apparent role for Congress.

While such an entity may help inform the White House of the impact of Administration policies on civil liberties, it is no substitute for the sort of civil liberties board that would meet the 9/11 Commission's call for an ''enhanced system of checks and balances to protect the precious liberties that are vital to our way of life.'' Simply put, the Executive Order does not establish an entity with the authority, independence and accountability necessary to protect civil liberties.

Further, the board's hasty meeting, with no discussion of these matters, and with no advance notice to the public, is inherently inconsistent with the very characteristics of openness and accountability necessary to protect civil liberties. A post-meeting press release is simply not the kind of open communication that will foster any trust and confidence in this board's ability to protect the liberties we hold dear.

It is important that we have a civil liberties board that can think critically and independently about the policies we implement as a nation and how they impact our fundamental rights. Choices about its composition, powers and accountability should serve that goal and will need to be openly discussed and carefully weighed. The board must be able to participate in the policy-making process, review technology choices, peer into various agencies and assess actions, review classified materials, and investigate concerns. In particular, the hoard will need to be sufficiently independent of the Department of Justice to assess its actions without compromise.

Accountability is essential. We cannot assign a board such significant responsibilities without periodically reviewing its progress to ensure that its mandates are being met. Regular reports to Congress and the public provide such checks.

As the 9/11 Commission noted, when it comes to security and civil liberties, the ''balancing is no easy task, but we must constantly strive to keep it right.'' We agree. We must do this right and we must do it together. Congress is currently considering various proposals to create an effective civil liberties board that can achieve these goals, and we hope that the Administration and its civil liberties advisors will support and cooperate with Congress in its development.

Sincerely,

PATRICK LEAHY,
EDWARD M. KENNEDY,
RUSSELL D. FEINGOLD,
U.S. Senators.

Mr. LEAHY. Mr. President, I retain the remainder of my time.

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

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

Will the Senator suspend? Is time yielded to the Senator from West Virginia?

Ms. COLLINS. Mr. President, I yield 5 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 5 minutes.

Mr. ROCKEFELLER. Mr. President, I rise to speak in opposition to the amendment of my good friend from Virginia, Senator WARNER. The Warner amendment would effectively undermine the ability of the national intelligence director to manage the intelligence programs by changing the definition in the bill of what constitutes a national intelligence program.

Under the Collins-Lieberman bill, the national intelligence program includes all programs—all programs—projects, and activities of a number of national intelligence agencies, including the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office.

The Collins-Lieberman bill has been carefully crafted to provide the new intelligence director with the consolidated budget, personnel, and tasking authority necessary to manage the newly defined national intelligence program. The Warner amendment seeks to unravel this. It is a major ''undoing'' amendment. It unravels these unified authorities under the intelligence director by giving the Secretary of Defense significant control over the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office.

I specifically mention this troika of national intelligence agencies—NSA, NGA, and the NRO—because each agency is partially funded through the Joint Military Intelligence Program budget, known as JMIP.

For instance, in the President's fiscal year 2005 budget request, 30 percent of the National Geospatial-Intelligence Agency's budget comes from the JMIP. Similarly, hundreds of millions of dollars in the NRO and NSA budgets are funded through JMIP.

The Warner amendment would eliminate these programs from the definition of the national intelligence program, thereby splitting the management of these national intelligence agencies between the national intelligence director and the Secretary of Defense.

It is very important to note that these programs are not—repeat not—tactical military intelligence programs. The Secretary of Defense would retain control over these tactical military programs under the pending bill. So under the Collins-Lieberman bill, the national intelligence director, consistent with the 9/11 Commission mandate, is given authority over the programs and activities of these three basic programs.

But now the Warner amendment would have the Senate say: Hold on, we do not want the director to have complete authority over these agencies. We want a sizable portion of their activities to be jointly shared, jointly managed, jointly tasked by the national intelligence director and the Secretary of Defense.

That is exactly what the situation is today and why we are trying to change all of this. It is exactly the type of bifurcated arrangement the 9/11 Commission highlighted as fundamentally dysfunctional. This is exactly the type of crossways organizational setup that inhibits our intelligence community from achieving efficiency and effectiveness of management that we need to protect our national security. This is exactly the type of problem the Collins-Lieberman bill would correct.

Adoption of the Warner amendment would strip away from the national intelligence director an essential ability to manage what is now an intelligence community in name but not in reality.

I urge my colleagues to oppose this amendment. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the Senator from West Virginia for his comments.

Mr. President, I ask unanimous consent that it be in order for the Senator from Arizona and the Senator from Georgia to each have 2 minutes to discuss their amendment.

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

The Senator from Arizona is recognized for 2 minutes.

AMENDMENT NO. 3801

Mr. KYL. Mr. President, we are going to be asking unanimous consent to withdraw amendment No. 3801, which is an amendment Senator CHAMBLISS and I offered to deal with the problem of overlapping and redundant civil rights and privacy investigations, entities, or individuals that would be added to those that already exist to protect civil rights and privacy in the national intelligence director office and other offices of the intelligence community.

The head of the 9/11 Commission, Philip Zelikow, the Executive Director, noted one of the biggest problems we have with our intelligence collection and analysis when he said:

We also found—

''We'' meaning the 9/11 Commission—

that the 9/11 story illustrated the danger of risk aversion from constant worry of being investigated. We gave several important examples of officials who overinterpreted existing legal constraints for fear of exceeding their authority. We were also astonished by the extent to which CIA officials, beyond any others in the Government, already conduct their work in a manner that anticipates and guards themselves for the prospect of future investigations.

We found this in the Intelligence Committee, and the 9/11 Commission found the same thing—a profound aversion to taking risks because of all the people looking over the shoulders of these agents, ready to pounce on them if they do anything wrong or make a mistake.

What does the underlying legislation do? It exacerbates the problem because it requires that existing agencies of the Government either designate an existing officer or create a new position for privacy and civil liberties. Notwithstanding the fact that each Department—Homeland Security, Health and Human Services, CIA, and others—already have officers with the responsibility, including an inspector general, chief privacy officer, and the officer for civil rights and civil liberties.

In each one of these agencies, those officers currently exist. There is a new mandate placed on all of them, in addition to which the President, following the 9/11 Commission recommendation, appointed his own board on Safeguarding American's Civil Liberties, and the bill creates a privacy and civil liberties oversight board with subpoena power and puts under the National Intelligence Authority an officer for civil rights and liberties and a privacy officer, in addition to the already existing inspector general.

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

Mr. KYL. Mr. President, I ask unanimous consent for an additional 30 seconds.

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

Mr. KYL. And the creation of an ombudsman. This is overkill. It is going to exacerbate the problem of risk aversion with having too many people looking over the shoulder of too many people we tasked with the difficult job of collecting and analyzing intelligence.

Mr. President, 9/11 did not happen because we had too many people with privacy being violated or civil rights being violated. It happened because our intelligence was not good enough. Too many of these are going to impede our intelligence, and that is why we offered this amendment. I regret we are going to have to withdraw it, but I appreciate the fact that the sponsors of the legislation are committed to working with us in the conference to try to bring a better balance to the bill.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank my colleague from Arizona for his tremendous leadership on this particular issue.

I voted yesterday with our leadership to invoke cloture on this bill, but, frankly, I did so reluctantly because I sympathize with the comments that the Senator from Alaska, Mr. STEVENS, made just yesterday and the day before relative to the fact that we are rushing into an issue that is so complex that we really need to take the time to do this right. But I understand we are at

the end of this session and that we need to get this bill done and get it to conference. That is the only reason that Senator KYL and I are willing to withdraw this amendment. Let's get it to conference and try to clean this up there.

Once again, I have been reminded about the problems we have at the CIA under the leadership now of a new CIA Director whose hands are going to be tied by this particular provision that we are seeking to modify in this bill. We are concentrating, from an overall intelligence reform standpoint, on building up our collection of intelligence through human assets. But now with the creation of the civil liberties board in this bill, a political bureaucracy is being established that is going to be looking over the shoulder of every CIA agent around the world and is going to have the ability to determine whether that CIA agent violated the civil liberties of somebody in the prosecution of gathering intelligence. I think this is a very harmful provision in this bill.

The Senator from Arizona has provided strong leadership on this issue, and I thank him for that. We need to clean up the provision of the bill as it relates to the civil liberties board before we destroy the morale of our agents in the field. While I regret we are going to have to withdraw the amendment at this point in time, I also am encouraged by the comments of the chairman, as well as Senator LIEBERMAN, that they are willing to work with us as we move into conference. It is critical to make the necessary modifications in conference to ensure that our intelligence community has a free hand in trying to gather intelligence to protect the lives of our citizens without violating civil liberties, and without violating privacy rights. Our intelligence professionals have and will conduct their dangerous and important work within the framework of our laws.

I yield the floor.

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

AMENDMENT NO. 3801, WITHDRAWN

Mr. KYL. Mr. President, I ask unanimous consent that the amendment be withdrawn.

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

The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the two Senators. I understand their concern. This issue is going to be the subject of much discussion, I am sure, in the Senate-House conference. I very much appreciate the issues they have raised. I take them seriously, and I appreciate their cooperation in withdrawing the amendment. I thank my colleagues.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I join Senator COLLINS in thanking the Senator from Georgia and the Senator from Arizona for their support of the bill, for their deep commitment to national security, for raising the questions they have raised, which are good questions, and, frankly, for being willing, as we approach the final passage of this bill, to not press this particular concern and to allow us to go forward.

I look forward to working with them on matters of intelligence and national security in the years ahead.

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.

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. 3742, AS MODIFIED

Ms. COLLINS. Mr. President, I ask unanimous consent that we proceed to the consideration of the Roberts amendment, No. 3742, as modified.

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

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.

Mr. ROBERTS. I ask unanimous consent to call up amendment No. 3742, with a modification.

The PRESIDING OFFICER. The amendment is pending.

The amendment (No. 3742), as modified, is as follows:

AMENDMENT NO. 3742, AS MODIFIED

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 this Act, 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)(i) the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives; and

(ii) the Select Committee on Intelligence and the Committee on Appropriations of the Senate;

(B) in the case of a transfer of funds to or from, or a reprogramming within, the Department of Defense—

(i) the committees and select committees referred to in subparagraph (A);

(ii) the Committee on Armed Services of the House of Representatives; and

(iii) the Committee on Armed Services of the Senate; and

(C) in the case of a transfer of funds to or from, or a reprogramming within, the Federal Bureau of Investigation—

(i) the committees and select committees referred to in subparagraph (A);

(ii) the Committee on the Judiciary of the House of Representatives; and

(iii) the Committee on the Judiciary 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 AMENDMENTS ON FUNDING OF INTELLIGENCE ACTIVITIES.

Section 504 of the National Security Act of 1947 (50 U.S.C. 414) is amended—

(1) in subsection (a)(3)—

(A) in subparagraph (A), by adding ''and'' at the end;

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B); and

(2) in subsection (e), by striking paragraph (2) and inserting the following new paragraph (2):

''(2) the term 'appropriate congressional committees' means—

''(A)(i) the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives; and

''(ii) the Select Committee on Intelligence and the Committee on Appropriations of the Senate;

''(B) in the case of a transfer of funds to or from, or a reprogramming within, the Department of Defense—

''(i) the committees and select committees referred to in subparagraph (A);

''(ii) the Committee on Armed Services of the House of Representatives; and

''(iii) the Committee on Armed Services of the Senate; and

''(C) in the case of a transfer of funds to or from, or a reprogramming within, the Federal Bureau of Investigation—

''(i) the committees and select committees referred to in subparagraph (A);

''(ii) the Committee on the Judiciary of the House of Representatives; and

''(iii) the Committee on the Judiciary of the Senate; and''.

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, I thank Chairman COLLINS and Senator LIEBERMAN for working with me to include this provision in the act. It preserves an important requirement from section 504 of the National Security Act of 1947. It is very simple: That funds appropriated for an intelligence activity must be specifically authorized.

I appreciate your cooperation on this matter. It is a very simple amendment.

I yield to the distinguished chairman of the Governmental Affairs Committee.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank Senator ROBERTS for offering this amendment. As chairman of the Senate Intelligence Committee, his expertise and advice on this bill have been invaluable. As he indicates, this preserves a requirement in section 504 of the National Security Act of 1947 that funds appropriated for an intelligence activity must also be specifically authorized before being obligated or expended.

It is my understanding that other committees with interest in this matter have been consulted and there is no objection. I will ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I strongly support this amendment and thank Senator ROBERTS for offering it. I thank him generally for the many ways in which he has strengthened this bill.

The bottom line here is this amendment will ensure that intelligence activities, which by their nature are classified and not subject to public scrutiny, receive specific review and authorization by the Senate and House of Representatives Intelligence Committees. It is another way to make clear that what we have said all along, that this bill does not represent an alteration of power and authority between the Congress and the executive branch, is in fact what happens. I thank the Senator and I am glad to support the amendment.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment, as modified.

The clerk will call the roll.

The legislative clerk called the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Are there any Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 198 Leg.]

YEAS—98

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

NOT VOTING—2

Edwards	Kerry

The amendment (No. 3742), as modified, was agreed to.

Ms. COLLINS. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, for the information of my colleagues, I am going to ask unanimous consent that we go to Senator LEAHY's amendment No. 3945. I anticipate that being accepted on a voice vote. Therefore, there will be no further rollcalls until 2 o'clock, for the information of my colleagues.

Mr. REID. Could we make that 2:15?

Ms. COLLINS. Madam President, I would be glad to amend the request to make it 2:15. I ask unanimous consent that be the order.

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

The Senator from Vermont.

AMENDMENT NO. 3945

Mr. LEAHY. Madam President, I understand my amendment regarding translators, No. 3945, is now before the Senate.

The PRESIDING OFFICER. It is pending.

Mr. LEAHY. Madam President, this is an amendment on behalf of myself and Senator GRASSLEY. We did this because 3 years ago, a law was passed requiring the Attorney General to report on the FBI translators program, why it was failing, and how he is going to fix it. The Attorney General has never followed the law and submitted that report.

Our amendment requires the Attorney General to submit a report on FBI translators within 30 days of enactment of this act.

Senator GRASSLEY, of course, is well known as being one of the most vigilant people on FBI oversight issues.

Last week the Justice Department's Office of Inspector General released an unclassified version of its Audit of the FBI's Foreign Language Program. The report shows that despite concerns expressed for years by some of us in Congress and by former FBI contractors, among others, and despite an influx of tens of millions of dollars to hire new linguists, the FBI foreign language translation unit continues to be saddled with growing backlogs, systemic difficulties, security problems, too few qualified staff, and an astounding lack of organization.

What is the use of taping thousands of hours of conversations of intelligence targets in foreign languages if we cannot translate the material promptly, securely, accurately and efficiently? 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.

Almost 3 years ago, Congress required the Attorney General to report upon where the FBI translators program was failing and how he was going to fix it. The Attorney General has never submitted that report.

To make sure that report is delayed no more, and to respond to the Inspector General's recommendations, Senator GRASSLEY and I have offered the Translator Reports Act of 2004 as an amendment. I am proud to be joined in this effort by my friend from Iowa, who has been ever-vigilant on FBI oversight issues.

Our amendment requires the Attorney General to submit a report on FBI translators within 30 days of enactment of the National Intelligence Reform Act. It also 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.

This report will allow Congress to meet the 9/11 Commission's directive that Congress exercise greater oversight over the counterintelligence and counterterrorism needs of the executive branch. I urge my colleagues to vote in favor of the amendment.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I appreciate the Senator from Vermont working with Senator LIEBERMAN and me. His amendment would require the Attorney General to submit annual reports to the House and Senate Judiciary Committees on the number of translators employed or contracted for by the FBI and other components of the Department of Justice, the needs of the FBI for translation services, a description of the implementation of quality control procedures, among other provisions.

As we know, there is a serious backlog of translation in the FBI, and this sends a very strong message that Congress is going to be carefully monitoring the progress of this program.

I urge support for the amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank the Senator from Vermont for this amendment. It responds to a direct call, a conclusion of the 9/11 Commission report that the FBI did not dedicate sufficient resources to the surveillance and translation needs of counterterrorism agents and lacks sufficient translators proficient in Arabic and other key languages.

The reporting requirement contained in this amendment will obviously help and force Congress to determine the scope of the problem and develop possible fixes. I thank the Senator from Vermont for his initiative and accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 3945.

The amendment (No. 3945) was agreed to.

Mr. LEAHY. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Ms. COLLINS. 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. LIEBERMAN. Madam 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. 3821, AS MODIFIED

Mr. LIEBERMAN. Madam President, I call up among the pending amendments amendment No. 3821 offered by the Senator from Iowa, Mr. HARKIN.

The PRESIDING OFFICER. The amendment is pending.

Mr. LIEBERMAN. I ask unanimous consent on behalf of Senator HARKIN to send a modification of the amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

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).

Mr. LIEBERMAN. Madam President, I urge adoption of the amendment, as modified.

The PRESIDING OFFICER. Is there further debate on the modified amendment?

Mr. LIEBERMAN. Very briefly, the Harkin amendment is focused on a requirement relative to the new board we are creating in this proposal. The new board, to watch out for the privacy and civil liberties rights of American citizens and others, is required to make periodic reports to Congress. This amendment now simply says that in those reports, there should be an opportunity for minority views to be recorded as well. It is a good amendment, as modified, having eliminated some more controversial provisions. I urge its adoption.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I very much appreciate the fact that the Senator from Iowa has worked with us on it. The revised amendment, unlike the original, is one I support and I, too, urge adoption of the modified amendment.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 3821), as modified was agreed to.

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

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

The motion to lay on the table was agreed to.

Ms. COLLINS. 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. Madam 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. 3809, AS MODIFIED

Ms. COLLINS. Madam President, I ask unanimous consent to proceed to the consideration of Levin amendment No. 3809, as modified.

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

AMENDMENT NO. 3962 TO AMENDMENT NO. 3809, AS MODIFIED

Ms. COLLINS. Madam President, I call up a second-degree amendment to that amendment. The second degree is numbered 3962. I ask unanimous consent that it be considered.

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

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for herself and Mr. LIEBERMAN, proposes an amendment numbered 3962 to amendment No. 3809, as modified.

Ms. COLLINS. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 1, line 3, strike ''military'' and all that follows through page 2, line 9, and insert the following:

uniformed services personnel, except that the Director may transfer military positions or billets if such transfer is for a period not to exceed three years; and

(E) nothing in section 143(i) or 144(f) shall be construed to authorize the 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 uniformed services personnel, except that the Director may take such action with regard to military positions or billets if such transfer is for a period not to exceed three years.

Ms. COLLINS. Madam President, I am going to have Senator LEVIN first discuss this issue, and then Senator LIEBERMAN and I will respond.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Madam President, military personnel comprise an important part of the national intelligence community. Managing military personnel is the appropriate function of the Secretary of Defense and the military departments.

The bill, as drafted, would permit the transfer of military personnel within the national intelligence program. This amendment strikes that language and does not permit the transfer of the military personnel within the national intelligence program.

The second-degree amendment makes it clear that the positions, of course, cannot be transferred. In other words, providing that the people who are in those positions are not transferred by the national intelligence director, if it is just the money for the positions, which providing it falls within the scope of reprogramming, for instance, and can be done in any event; providing it is the positions or the money attached to the positions that are transferred from one part of the intelligence community to another, that we do not prevent. It is the transfer of uniformed people that cannot be accepted, and this amendment would prevent that from happening.

So if we are in a situation, for instance, where the national intelligence director says, I want those five people from a particular agency, and if these are uniform military personnel, that would not be possible when my amendment is adopted. The national intelligence director would be able to transfer positions, or the money, and say

$400,000 or $1 million or whatever, providing, again, it is within or below the limit that is established, which would require programming approval by the Congress; providing it is below that limit, the NID continues to have that authority, which he would have in any event, to transfer funds or positions from one place to another. So we don't touch the money or the positions.

However, we maintain a chain of command. We maintain military careers. These are uniform military careers, and we do not have an outside civilian person changing that career by transferring a uniform military person from one place to another.

I thank my colleagues, the managers of the bill, for working out this language with us. It is a very important change in terms of military careers, in terms of military personnel, in terms of the management of military personnel, in terms of morale. But it does not disturb, again, the budgetary power or the shifting around of budgets—or billets, as we call them—or positions, providing, again, they are underneath and within the limits established by the reprogramming procedures that have been established, where individual agency heads are allowed to transfer money from one place to another. If it is above that limit, it is established by the reprogramming procedures, then, of course, they have to go through the normal reprogramming process before money can be transferred from one place to another.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, the Collins-Lieberman bill grants the national intelligence director the authority to transfer personnel within the national intelligence program to meet higher priorities. This is extremely important authority because we want to make sure the NID can, for example, staff up the National Counterterrorism Center with individuals from a variety of agencies, including military personnel who may be at the Defense Intelligence Agency, for example.

But the compromise that we have reached addresses two important concerns. One, it puts a 3-year limit on the length of time for this personnel. That is important because we don't want to disrupt the military careers of individuals who are temporarily transferred. Second, it makes clear that we are talking about slots, or billets, and not individual members of the military.

In other words, the NID cannot say: I want ''Colonel Murkowski'' to go to the National Counterterrorism Center. Instead, the NID would say: I want a linguist to go to the National Counterterrorism Center, or describe what the slot may be.

I think this is a good compromise on this issue, and it leaves intact the strong authority of the national intelligence director, while addressing the legitimate concerns raised by Senator LEVIN.

Mr. LIEBERMAN. Madam President, I rise to support this modification of the amendment. Here, again, we have reasoned together about the significant changes that will come about as a result of the underlying proposal in the creation of an NID. I think it will come out with a result that is fair and will be effective.

As I have said before, our intelligence forces today are like an army without a general. The whole idea of creating an NID is to put somebody in charge. Part of being in charge has to mean the ability to transfer the forces to places where the director thinks they are needed.

Senator LEVIN was understandably concerned about the impact that might have on the military chain of command. In an initial proposal he said these transfers could not occur without the approval of the Secretary of Defense. We thought that would frustrate the authority that we are trying to give to the national intelligence director. So we have come to a very reasonable compromise, which is, as Senator COLLINS and Senator LEVIN said, with regard to uniform military personnel working within the intelligence community. If the NID believes he needs three, four, or five positions from military intelligence, the slots can be moved. But the NID, with regard to uniformed military personnel, cannot go in and say, I want—as Senator COLLINS said—''Colonel Murkowski'' to be transferred to the national intelligence center, or some other subdivision of the intelligence community. That is quite reasonable. But it would allow the position, the slot, to be transferred. And then, presumably, for a process of negotiation, it would allow a process of negotiation to go on for the Secretary of Defense or the NID, or their designees, as to who actually filled that slot. With regard to nonuniformed personnel, including military personnel, those within the Department of Defense, they can be transferred by the national intelligence director, acting on his own.

I think this is a very good, balanced compromise. I thank Senator LEVIN for his characteristic thoughtfulness. I even thank him for his persistence, which I think has brought about a good result. I am happy to support this amendment, as modified.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, my thanks to the managers, not just for their work on this amendment, but their work generally on this bill. It has been exemplary and a model to all of us in this Senate as to how we can achieve things on a bipartisan basis. They worked together beautifully, and I commend them for it.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3962 to amendment No. 3809, as modified.

The amendment (No. 3962) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3809, as modified, as amended.

The amendment (No. 3809), as modified, as amended, was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDING THE TRADEMARK ACT OF 1946

Ms. COLLINS. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2796 and that 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 assistant legislative clerk read as follows:

A bill (S. 2796) to clarify that service marks, collective marks, and certification marks are entitled to the same protections, rights, and privileges as trademarks.

There being no objection, the Senate proceeded to consider the bill.

Ms. COLLINS. Madam President, I ask unanimous consent that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 2796) was read the third time and passed, as follows:

S. 2796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTIONS, RIGHTS, AND PRIVILEGES OF SERVICE MARKS, COLLECTIVE MARKS, AND CERTIFICATION MARKS.

The Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (commonly referred to as the Trademark Act of 1946) is amended—

(1) in section 3 (15 U.S.C. 1053) in the first sentence, by striking ''protection'' and inserting ''protections, rights, and privileges''; and

(2) in section 4 (15 U.S.C. 1054) in the first sentence, by striking ''protection'' and inserting ''protections, rights, and privileges''.

COPYRIGHT ROYALTY AND DISTRIBUTION REFORM ACT OF 2004

Ms. COLLINS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 744, H.R. 1417.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1417) to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Insert the part printed in italic.)

H.R. 1417

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 ''Copyright Royalty and Distribution Reform Act of 2004''.

[SEC. 2. REFERENCE.

[Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

[SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.

[(a) IN GENERAL.—Chapter 8 is amended to read as follows:

[''CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

[''Sec.
[''801. Copyright Royalty Judges; appointment and functions.
[''802. Copyright Royalty Judgeships; staff.
[''803. Proceedings of Copyright Royalty Judges.
[''804. Institution of proceedings.
[''805. General rule for voluntarily negotiated agreements.

[''§ 801. Copyright Royalty Judges; appointment and functions

[''(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint one of the three as the Chief Copyright Royalty Judge. In making such appointments, the Librarian shall consult with the Register of Copyrights.

[''(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

[''(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

[''(A) To maximize the availability of creative works to the public.

[''(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

[''(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

[''(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

[''(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

[''(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

[''(i) national monetary inflation or deflation; or

[''(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

[except that—

[''(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

[''(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

[The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

[''(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 8, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

[''(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

[''(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

[''(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

[''(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

[''(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

[''(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

[''(C) the Copyright Royalty Judges shall make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

[''(i) agree to such partial distribution;

[''(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B); and

[''(iii) file the agreement with the Copyright Royalty Judges.

[''(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

[''(4) To accept or reject royalty claims filed under section 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

[''(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b)(1) and (2).

[''(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

[''(7)(A) To adopt as the basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

[''(i) the Copyright Royalty Judges shall provide to the other participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, distribution, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as the basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, as the case may be; and

[''(ii) the Copyright Royalty Judges may decline to adopt the agreement as the basis for statutory terms and rates or as the basis for the distribution of statutory royalty payments, as the case may be, if any other participant described in subparagraph (A) objects to the agreement and the Copyright Royalty Judges find, based on the record before them, that the agreement is not likely to meet the statutory standard for setting the terms and rates, or for distributing the royalty payments, as the case may be.

[''(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b)(2) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

[''(c) RULINGS.—The Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges. The Copyright Royalty Judges may consult with the Register of Copyrights in making any rulings under section 802(f)(1).

[''(d) ADMINISTRATIVE SUPPORT.—The Librarian of Congress shall provide the Copyright Royalty Judges with the necessary administrative services related to proceedings under this chapter.

[''(e) LOCATION IN LIBRARY OF CONGRESS.—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

[''§ 802. Copyright Royalty Judgeships; staff

[''(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other two Copyright Royalty Judges, one shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h). In this subsection, 'adjudication' has the meaning given that term in section 551 of title 5, but does not include mediation.

[''(b) STAFF.—The Chief Copyright Royalty Judge shall hire 3 full-time staff members to assist the Copyright Royalty Judges in performing their functions.

[''(c) TERMS.—The terms of the Copyright Royalty Judges shall each be 6 years, except of the individuals first appointed, the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining Copyright Royalty Judges, one shall be appointed to a term of 2 years, and the other shall be appointed to a term of 4 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

[''(d) VACANCIES OR INCAPACITY.—

[''(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

[''(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

[''(e) COMPENSATION.—

[''(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL–1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL–2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

[''(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

[''(A) the rate of pay of one staff member shall be not more than the basic rate of pay payable for GS–15 of the General Schedule;

[''(B) the rate of pay of one staff member shall be not less than the basic rate of pay payable for GS–13 of the General Schedule and not more than the basic rate of pay payable for GS–14 of such Schedule; and

[''(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS–8 of the General Schedule and not more than the basic rate of pay payable for GS–11 of such Schedule.

[''(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

[''(1) IN MAKING DETERMINATIONS.—

[''(A) IN GENERAL.—Subject to subparagraph (B), the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact. Any such consultations between the Copyright Royalty Judges and the Register of Copyright on any question of law shall be in writing or on the record.

[''(B) NOVEL QUESTIONS.—(i) Notwithstanding the provisions of subparagraph (A), in any case in which the Copyright Royalty Judges in a proceeding under this title are presented with a novel question of law concerning an interpretation of those provisions of this title that are the subject of the proceeding, the Copyright Royalty Judges shall request the Register of Copyrights, in writing, to submit a written opinion on the resolution of such novel question. The Register shall submit and make public that opinion within such time period as the Copyright Royalty Judges may prescribe. Any consultations under this subparagraph between the Copyright Royalty Judges and the Register of Copyrights shall be in writing or on the record. The opinion of the Register shall not be binding on the Copyright Royalty Judges, but the Copyright Royalty Judges shall take the opinion of the Register into account in making the judges' determination on the question concerned.

[''(ii) In clause (i), a 'novel question of law' is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

[''(2) PERFORMANCE APPRAISALS.—

[''(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

[''(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

[''(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties inconsistent with his or her duties and responsibilities as Copyright Royalty Judge.

[''(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

[''(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

[''§ 803. Proceedings of Copyright Royalty Judges

[''(a) PROCEEDINGS.—

[''(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration royalty panel determinations, rulings by the Librarian of Congress before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, prior determinations of Copyright Royalty Judges under this chapter, and decisions of the court in appeals under this chapter before, on, or after such effective date. Any participant in a proceeding under subsection (b)(2) may submit relevant information and proposals to the Copyright Royalty Judges.

[''(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

[''(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

[''(b) PROCEDURES.—

[''(1) INITIATION.—

[''(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) Promptly upon the filing of a petition for a rate adjustment or determination under section 804(a) or 804(b)(8), or by no later than January 5 of a year specified in section 804 for the commencement of a proceeding if a petition has not been filed by that date, the Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004 or 1007, as the case may be.

[''(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding, under clause (i), except that the Copyright

Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements.

[''(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

[''(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

[''(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of $150;

[''(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

[''(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

[''(3) VOLUNTARY NEGOTIATION PERIOD.—

[''(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

[''(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

[''(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

[''(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

[''(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, a participant in the proceeding asserts that the contested amount of the claim is $10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing in writing of the initial claim, the initial response by any opposing participant, and one additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

[''(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of $10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

[''(5) PAPER PROCEEDINGS IN RATEMAKING PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter to determine royalty rates may decide, sua sponte or upon motion of a participant, to determine issues on the basis of initial filings in writing, initial responses by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the decision. The procedure under this paragraph—

[''(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

[''(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

[''(6) REGULATIONS.—

[''(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

[''(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

[''(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

[''(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be no earlier than four months, and no later than five months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, a participant in a proceeding may, within 15 days after the end of the discovery period specified in clause (iii), file an amended written direct statement based on new information received during the discovery process.

[''(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

[''(II) In this chapter, the term 'written direct statements' means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

[''(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

[''(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders and disputes pending at the end of such period.

[''(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, upon written notice, seek discovery of information and materials relevant and material to the proceeding. Any objection to any such discovery request shall be resolved by a motion or request to compel discovery made to the Copyright Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection (a)(2), who may approve the request only if the evidence that would be produced is relevant and material. A Copyright Royalty Judge may refuse a request to compel discovery of evidence that has been found to be relevant and material, only upon good cause shown. For purposes of the preceding sentence, the basis for 'good cause' may only be that—

[''(I) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

[''(II) the participant seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

[''(III) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the importance of the proposed discovery in resolving the issues.

[''(vi) The rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this title to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

[''(vii) The Copyright Royalty Judges may issue subpoenas requiring the production of evidence or witnesses, but only if the evidence requested to be produced or that would be proffered by the witness is relevant and material.

[''(viii) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period.

[''(c) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

[''(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(3)(C)(vi), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.

[''(2) REHEARINGS.—

[''(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion of a participant under subsection (b)(2), order a rehearing, after the determination in a proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

[''(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver their initial determination concerning rates and terms to the participants in the proceeding.

[''(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing.

[''(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

[''(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in

effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

[''(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

[''(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

[''(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

[''(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges.

[''(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be accompanied by the written record, and shall set forth the facts that the Copyright Royalty Judges found relevant to their determination. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

[''(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may amend the determination or the regulations issued pursuant to the determination in order to correct any technical errors in the determination or to respond to unforeseen circumstances that preclude the proper effectuation of the determination.

[''(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

[''(6) PUBLICATION OF DETERMINATION.—The Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

[''(d) JUDICIAL REVIEW.—

[''(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

[''(2) EFFECT OF RATES.—

[''(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is rendered on a later date.

[''(B) OTHER CASES.—In cases where rates and terms do not expire on a specified date or have not yet been established, successor or new rates or terms shall take effect on the first day of the second month that begins after the publication of the determination of the Copyright Royalty Judges in the Federal Register, except as otherwise provided in this title, and the rates and terms previously in effect, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

[''(C) OBLIGATION TO MAKE PAYMENTS.—(i) The pendency of an appeal under this subsection shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003, who would be affected by the determination on appeal, from providing the statements of account (and any report of use, to the extent required) and paying the royalties required under the relevant determination or regulations.

[''(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal.

[''(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution of royalty fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

[''(e) ADMINISTRATIVE MATTERS.—

[''(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

[''(A) DEDUCTION FROM FILING FEES.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

[''(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs of proceedings under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph shall remain available until expended.

[''(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

[''§ 804. Institution of proceedings

[''(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

[''(b) TIMING OF PROCEEDINGS.—

[''(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

[''(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3)(B) or (C), as the case may

be. A petition for adjustment of rates under section 11(d)(1)(B) as a result of a change is the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

[''(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

[''(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

[''(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

[''(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

[''(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

[''(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to sections 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

[''(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

[''(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

[''(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

[''(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

[''(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

[''(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3)(B) and (C).

[''(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

[''(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

[''(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

[''(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

[''(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 116, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

[''§ 805. General rule for voluntarily negotiated agreements

[''Any rates or terms under this title that—

[''(1) are agreed to by participants to a proceeding under section 803(b)(2),

[''(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

[''(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

[shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.''.

[(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by striking the item relating to chapter 8 and inserting the following:

[''8. Proceedings by Copyright Royalty Judges ..... 801''.

[SEC. 4. DEFINITION.

[Section 101 is amended by inserting after the definition of ''copies'' the following:

[''A 'Copyright Royalty Judge' is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.''.

[SEC. 5. TECHNICAL AMENDMENTS.

[(a) CABLE RATES.—Section 111(d) is amended—

[(1) in paragraph (2), in the second sentence, by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges.''; and

[(2) in paragraph (4)—

[(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges'';

[(B) in subparagraph (B)—

[(i) in the first sentence, by striking ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights,'' and inserting ''Copyright Royalty Judges shall'';

[(ii) in the second sentence, by striking ''Librarian determines'' and inserting ''Copyright Royalty Judges determine''; and

[(iii) in the third sentence—

[(I) by striking ''Librarian'' each place it appears and inserting ''Copyright Royalty Judges''; and

[(II) by striking ''convene a copyright arbitration royalty panel'' and inserting ''conduct a proceeding''; and

[(C) in subparagraph (C), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

[(b) EPHEMERAL RECORDINGS.—Section 112(e) is amended—

[(1) in paragraph (3)—

[(A) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (1) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, or such other period as the parties may agree.''; and

[(B) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

[(2) in paragraph (4)—

[(A) by amending the first sentence to read as follows: ''In the absence of license agreements negotiated under paragraphs (2) and (3), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (5), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.'';

[(B) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges'';

[(C) in the fourth sentence, by striking ''its decision'' and inserting ''their decision''; and

[(D) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

[(3) in paragraph (5), by striking ''or decision by the Librarian of Congress'' and inserting '', decision by the Librarian of Congress, or determination by the Copyright Royalty Judges'';

[(4) by striking paragraph (6) and redesignating paragraphs (7), (8), and (9), as paragraphs (6), (7), and (8), respectively; and

[(5) in paragraph (6)(A), as so redesignated, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

[(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) is amended—

[(1) in paragraph (1)—

[(A) in subparagraph (A)—

[(i) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services shall cover the 5-year period beginning on January 1 of the year following the second year in which the proceedings are commenced, except where differential transitional periods are provided in section 804(b)(3), or such other period as the parties may agree.''; and

[(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

[(B) in subparagraph (B)—

[(i) by amending the first sentence to read as follows: ''In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), or such other date as the parties may agree.''; and

[(ii) in the second sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

[(C) by amending subparagraph (C) to read as follows:

[''(C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

[(2) in paragraph (2)—

[(A) in subparagraph (A)—

[(i) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, except where different transitional periods are provided in section 804(b)(3)(A), or such other period as the parties may agree.''; and

[(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

[(B) in subparagraph (B)—

[(i) by amending the first sentence to read as follows: ''In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the period specified in subparagraph (A), or such other period as the parties may agree.''; and

[(ii) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges''; and

[(C) by amending subparagraph (C) to read as follows:

[''(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

[(3) in paragraph (3), by striking ''or decision by the Librarian of Congress'' and inserting '', decision by the Librarian of Congress, or determination by the Copyright Royalty Judges''; and

[(4) in paragraph (4), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''.

[(d) PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.—Section 115(c)(3) is amended—

[(1) in subparagraph (A)(ii), by striking ''(F)'' and inserting ''(E)'';

[(2) in subparagraph (B)—

[(A) by striking ''under this paragraph'' and inserting ''under this section''; and

[(B) by striking ''subparagraphs (B) through (F)'' and inserting ''this subparagraph and subparagraphs (B) through (E)'';

[(3) in subparagraph (C)—

[(A) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by this section shall cover the period beginning with the effective date of such terms and rates, but not earlier than January 1 of the second year following the year in which the petition is filed, and ending on the effective date of successor terms and rates, or such other period as the parties may agree.''; and

[(B) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

[(4) in subparagraph (D)—

[(A) by amending the first sentence to read as follows: ''In the absence of license agreements negotiated under subparagraphs (B) and (C), the Copyright Royalty Judges shall commence proceedings pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to subparagraph (E), shall be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C) or such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.'';

[(B) in the third sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

[(C) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

[(5) in subparagraph (E)—

[(A) in clause (i)—

[(i) in the first sentence, by striking ''the Librarian of Congress'' and inserting ''a copyright arbitration royalty panel, the Librarian of Congress, or the Copyright Royalty Judges''; and

[(ii) in the second sentence, by striking ''(C), (D) or (F) shall be given effect'' and inserting ''(C) or (D) shall be given effect as to digital phonorecord deliveries''; and

[(B) in clause (ii)(I), by striking ''(C), (D) or (F)'' each place it appears and inserting ''(C) or (D)''; and

[(6) by striking subparagraph (F) and redesignating subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

[(e) COIN-OPERATED PHONORECORD PLAYERS.—Section 116 is amended—

[(1) in subsection (b), by amending paragraph (2) to read as follows:

[''(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.''; and

[(2) in subsection (c)—

[(A) in the subsection heading, by striking ''COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS'' and inserting ''DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES''; and

[(B) by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges''.

[(f) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 is amended—

[(1) in subsection (b)—

[(A) in paragraph (1)—

[(i) in the first sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

[(ii) by striking the second and third sentences;

[(B) in paragraph (2), by striking ''the Librarian of Congress:'' and all that follows through the end of the sentence and inserting ''a copyright arbitration royalty panel, the Librarian of Congress, or the Copyright Royalty Judge, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.''; and

[(C) in paragraph (3)—

[(i) in the second sentence—

[(I) by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

[(II) by striking ''paragraph (2).'' and inserting ''paragraph (2) or (3).'';

[(ii) in the last sentence, by striking '''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

[(iii) by striking ''(3) In'' and all that follows through the end of the first sentence and inserting the following:

[''(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under

section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to copyright owners in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

[''(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges.'';

[(2) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively;

[(3) in subsection (c), as so redesignated, in the matter preceding paragraph (1)—

[(A) by striking ''(b)(2)'' and inserting ''(b)(2) or (3)'';

[(B) by striking ''(b)(3)'' and inserting ''(b)(4)''; and

[(C) by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges'';

[(4) in subsection (d), as so redesignated—

[(A) by striking ''in the Copyright Office'' and inserting ''with the Copyright Royalty Judges''; and

[(B) by striking ''Register of Copyrights'' and inserting ''Copyright Royalty Judges''; and

[(5) in subsection (f), as so redesignated, by striking ''(d)'' and inserting ''(c)''.

[(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

[(1) in paragraph (3), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

[(2) in paragraph (4)—

[(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''; and

[(B) by amending subparagraphs (B) and (C) to read as follows:

[''(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

[''(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, subject to any distributions made under section 801(b)(3).''.

[(h) DIGITAL AUDIO RECORDING DEVICES.—

[(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''.

[(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) is amended by striking ''Librarian of Congress shall convene a copyright arbitration royalty panel which'' and inserting ''Copyright Royalty Judges''.

[(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 is amended—

[(A) in subsection (a), by amending paragraph (1) to read as follows:

[''(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.''; and

[(B) by amending subsections (b) and (c) to read as follows:

[''(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

[''(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.''.

[(4) DETERMINATION OF CERTAIN DISPUTES.—(A) Section 1010 is amended to read as follows:

["§ 1010. Determination of certain disputes

[''(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

[''(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

[''(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

[''(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

[''(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.''.

[(B) The item relating to section 1010 in the table of sections for chapter 10 is amended to read as follows:

[''1010. Determination of certain disputes.''.

[SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

[(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act, except that the Librarian of Congress shall appoint interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

[(b) TRANSITION PROVISIONS.—

[(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the enactment of this Act under the provisions of title 17, United States Code, amended by this Act, and pending on such date of enactment. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted.

[(2) EFFECTIVE PERIODS FOR CERTAIN RATEMAKING PROCEEDINGS.—Notwithstanding paragraph (1), terms and rates in effect under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title for the period 2003 through 2004, and any rates published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 for the years 2003 through 2004, shall be effective until the first applicable effective date for successor terms and rates specified in section 804(b)(2) or (3)(A) of title 17, United States Code, or until such later date as the parties may agree. Any proceeding commenced before the enactment of this Act pursuant to section 114(f)(2) and chapter 8 of

title 17, United States Code, to adjust or determine such rates and terms for periods following 2004 shall be terminated upon the enactment of this Act and shall be null and void.

[(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act before the date of the enactment of this Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Copyright Royalty and Distribution Reform Act of 2004''.

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.

(a) IN GENERAL.—Chapter 8 is amended to read as follows:

''CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

''§ 801. Copyright Royalty Judges; appointment and functions

''(a) APPOINTMENT.—Upon the recommendation of the Register of Copyrights, the Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge.

''(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

''(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

''(A) To maximize the availability of creative works to the public.

''(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

''(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

''(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

''(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

''(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

''(i) national monetary inflation or deflation; or

''(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

except that—

''(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

''(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

''(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 8, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

''(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

''(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

''(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

''(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

''(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

''(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

''(C) The Copyright Royalty Judges may make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

''(i) agree to such partial distribution;

''(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);

''(iii) file the agreement with the Copyright Royalty Judges; and

''(iv) agree that such funds are available for distribution.

''(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

''(4) To accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

''(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b) (1) and (2).

''(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

''(7)(A) To adopt as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

''(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, distribution, or other determination set by the agreement an opportunity to comment on the agreement and shall provide to the other participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, distribution, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, as the case may be; and

''(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, as the case may be, if any other participant described in subparagraph (A) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates, or for distributing the royalty payments, as the case may be.

''(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b) (2) or (3) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

''(C) Interested parties may negotiate and agree to, and the Copyright Royalty Judges may adopt, an agreement that specifies as terms notice and recordkeeping requirements that apply in lieu of those that would otherwise apply under regulations.

''(8) To perform other duties, as assigned by the Register of Copyrights within the Library of Congress, except as provided in section 802(g) at times when Copyright Royalty Judges are not engaged in performing the other duties set forth in this section.

''(c) RULINGS.—As provided in section 802(f)(1), the Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges.

''(d) ADMINISTRATIVE SUPPORT.—The Librarian of Congress shall provide the Copyright

Royalty Judges with the necessary administrative services related to proceedings under this chapter.

''(e) LOCATION IN LIBRARY OF CONGRESS.—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

''§ 802. Copyright Royalty Judgeships; staff

''(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—

''(1) IN GENERAL.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other two Copyright Royalty Judges, one shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h).

''(2) DEFINITION.—In this subsection, the term 'adjudication' has the meaning given that term in section 551 of title 5, but does not include mediation.

''(b) STAFF.—The Chief Copyright Royalty Judge shall hire 3 full-time staff members to assist the Copyright Royalty Judges in performing their functions.

''(c) TERMS.—The terms of the Copyright Royalty Judges shall each be 6 years, except of the individuals first appointed, the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining Copyright Royalty Judges, one shall be appointed to a term of 2 years, and the other shall be appointed to a term of 4 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

''(d) VACANCIES OR INCAPACITY.—

''(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

''(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

''(e) COMPENSATION.—

''(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL–1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL–2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

''(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

''(A) the rate of pay of one staff member shall be not more than the basic rate of pay payable for level 10 of GS–15 of the General Schedule;

''(B) the rate of pay of one staff member shall be not less than the basic rate of pay payable for GS–13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS–14 of such Schedule; and

''(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS–8 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS–11 of such Schedule.

''(3) LOCALITY PAY.—All rates of pay referred to under this subsection shall include locality pay.

''(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

''(1) IN MAKING DETERMINATIONS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact. A Copyright Royalty Judge or Judges, or by motion to the Copyright Royalty Judge or Judges, any participant in a proceeding may request a determination of the resolution by the Register of Copyrights on any material question of substantive law (not including questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate) concerning an interpretation or construction of those provisions of this title that are the subject of the proceeding. Any such motion requesting a written decision by the Register of Copyrights shall be in writing or on the record, and reasonable provision shall be made for comment by the participants in the proceeding in such a way as to minimize duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges his or her decision within 14 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and shall be included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Register of Copyrights, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

''(B) NOVEL QUESTIONS.—(i) In any case in which a novel question of law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question. To the extent practicable, provision shall be made for comment on such request by the participants in the proceeding, in such a way as to minimize duplication and delay. The Register shall transmit his or her decision to the Copyright Royalty Judges within 30 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely transmitted, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

''(ii) In clause (i), a 'novel question of law' is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

''(C) CONSULTATION.—Notwithstanding the provisions of subparagraph (A), the Copyright Royalty Judges shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any such determination or ruling shall not be binding upon the Register of Copyrights.

''(D) SUA SPONTE REVIEW OF LEGAL CONCLUSIONS BY THE REGISTER OF COPYRIGHTS.—The Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall issue a written decision correcting such legal error, which shall be made part of the record of the proceeding. Additionally, the Register of Copyrights shall cause to be published in the Federal Register such written decision together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. As to conclusions of substantive law involving an interpretation of the statutory provisions of this title, the decision of the Register of Copyrights shall be binding upon the Copyright Royalty Judges in subsequent proceedings under this chapter. When a decision has been rendered pursuant to subsection 802(f)(1)(D), the Register of Copyrights may, on the basis of and in accordance with such decision, intervene as of right in any appeal of a final determination of the Copyright Royalty Judges pursuant to section 803(d) in the United States Court of Appeals for the District of Columbia Circuit. If, prior to intervening in such an appeal, the Register of Copyrights gives notification and undertakes to consult with the Attorney General with respect to such intervention, and the Attorney General fails within reasonable period after receipt of such notification to intervene in such appeal, the Register of Copyrights may intervene in such appeal in his or her own name by any attorney designated by the Register of Copyrights for such purpose. Intervention by the Register of Copyrights in his or her own name shall not preclude the Attorney General from intervening on behalf of the United States in such an appeal as may be otherwise provided or required by law.

''(E) EFFECT ON JUDICIAL REVIEW.—Nothing in this section shall be interpreted to alter the standard applied by a court in reviewing legal determinations involving an interpretation or construction of the provisions of this title or to affect the extent to which any construction or interpretation of the provisions of this title shall be accorded deference by a reviewing court.

''(2) PERFORMANCE APPRAISALS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

''(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

''(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties that conflict with his or her duties and responsibilities as a Copyright Royalty Judge.

''(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

''(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying

physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

''§ 803. Proceedings of Copyright Royalty Judges

''(a) PROCEEDINGS.—

''(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations of the Copyright Royalty Tribunal, Librarian of Congress, copyright arbitration royalty panels, the Register of Copyrights, and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered pursuant to subsection 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

''(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

''(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

''(b) PROCEDURES.—

''(1) INITIATION.—

''(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) Promptly upon the filing of a petition for a rate adjustment or upon a determination made under section 804(a) or as provided under section 804(b)(8), or by no later than January 5 of a year specified in section 804 for the commencement of a proceeding if a petition has not been filed by that date, the Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be.

''(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding, under clause (i), except that the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. Notwithstanding the preceding sentence, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period under section 803(b)(3), and any objection filed by such a petitioner shall not be taken into account by the Copyright Royalty Judges.

''(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

''(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

''(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of $150;

''(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

''(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

''(3) VOLUNTARY NEGOTIATION PERIOD.—

''(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

''(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

''(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

''(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

''(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, a participant in the proceeding asserts a claim in the amount of $10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and 1 additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

''(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of $10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

''(5) PAPER PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter may decide, sua sponte or upon motion of a participant, to determine issues on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the decision. The procedure under this paragraph—

''(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

''(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

''(6) REGULATIONS.—

''(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. All regulations issued by the Copyright Royalty Judges are subject to the approval of the Librarian of Congress. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

''(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

''(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

''(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be no earlier than four months, and no later than five months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, the Copyright Royalty Judges may allow a participant in a proceeding to file an amended written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period specified in clause (iii).

''(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

''(II) In this chapter, the term 'written direct statements' means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

''(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

''(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders and disputes pending at the end of such period.

''(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may request of an opposing participant nonprivileged documents directly related to the written direct statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production made to the Copyright Royalty Judges according to regulations adopted by the Copyright Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection (a)(2). Upon such motion, the Copyright Royalty Judges may order discovery pursuant to regulations established under this paragraph.

''(vi) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, upon a written motion to the Copyright Royalty Judges, request of an opposing participant or witness other relevant information and materials if absent the discovery sought the moving party would be prejudiced or the Copyright Royalty Judges' resolution of the proceeding would be substantially impaired. Absent a showing of substantial good cause or demonstration of a likelihood of substantial prejudice, no participant in a proceeding may take more than 3 depositions and propound

more than 10 interrogatories in that proceeding. Absent such a showing, the total number of depositions ordered in such a proceeding shall not exceed 10, and the total number of interrogatories shall not exceed 25 in each proceeding. In determining whether discovery will be granted under this clause, the Copyright Royalty Judges may consider—

''(I) whether the information sought would serve to protect the integrity of the proceeding, to prevent substantial prejudice to any participant, or to correct a material misrepresentation or omission by any participant;

''(II) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

''(III) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

''(IV) whether the participant seeking discovery has had ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

''(vii) The rules and practices in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this chapter to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

''(viii) In proceedings to determine royalty rates, the Copyright Royalty Judges may issue a subpoena commanding a participant or witness in a proceeding to determine royalty rates to appear and give testimony or to produce and permit inspection of documents or tangible things if the Copyright Royalty Judges' resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Such subpoena shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this subparagraph shall preclude the Copyright Royalty Judges from requesting the production by a nonparticipant of information or materials relevant to the resolution by the Copyright Royalty Judges of a material issue of fact. A Copyright Royalty Judge may not issue a subpoena under this clause to any person who was a participant in a proceeding to determine royalty rates and has negotiated a settlement with respect to those rates.

''(ix) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period and shall take place outside the presence of the Copyright Royalty Judges.

''(x) No evidence, including exhibits, may be submitted in the written direct statement of a participant without a sponsoring witness, except where the Copyright Royalty Judges have taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

''(c) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

''(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(3)(C)(vi), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.

''(2) REHEARINGS.—

''(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion of a participant under subsection (b)(2), order a rehearing, after the determination in a proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

''(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver their initial determination concerning rates and terms to the participants in the proceeding.

''(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing, except as provided under subsection (d)(1).

''(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

''(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

''(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

''(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

''(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

''(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges.

''(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be supported by the written record and shall set forth the findings of fact relied on by the Copyright Royalty Judges. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

''(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may, with the approval of the Register of Copyrights, issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the Federal Register.

''(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

''(6) PUBLICATION OF DETERMINATION.—The Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

''(7) LATE PAYMENT.—A determination of Copyright Royalty Judges may include terms with respect to late payment, but in no way shall such terms prevent the copyright holder from asserting other rights or remedies provided under this title.

''(d) JUDICIAL REVIEW.—

''(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination. Any party that did not participate in a rehearing may not raise any issue that was the subject of that rehearing at any stage of judicial review of the hearing determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

''(2) EFFECT OF RATES.—

''(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is rendered on a later date.

''(B) OTHER CASES.—In cases where rates and terms do not expire on a specified date or have not yet been established, the Copyright Royalty Judges shall determine the dates that successor or new rates or terms shall take effect. Except as otherwise provided in this title, the rates and terms previously in effect, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

''(C) OBLIGATION TO MAKE PAYMENTS.—

''(i) The pendency of an appeal under this subsection shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003, who would be affected by the determination on appeal, from—

''(I) providing the statements of account and any report of use; and

''(II) paying the royalties required under the relevant determination or regulations.

''(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal.

''(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution

of royalty fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

''(e) ADMINISTRATIVE MATTERS.—

''(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

''(A) DEDUCTION FROM FILING FEES.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

''(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs incurred under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph shall remain available until expended.

''(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

''§ 804. Institution of proceedings

''(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, 119, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons for such determination, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

''(b) TIMING OF PROCEEDINGS.—

''(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

''(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3) (B) or (C), as the case may be. A petition for adjustment of rates under section 11(d)(1)(B) as a result of a change is the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

''(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

''(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

''(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

''(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

''(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to section 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

''(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

''(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

''(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

''(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

''(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

''(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3) (B) and (C).

''(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

''(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

''(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

''(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

''(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

''§ 805. General rule for voluntarily negotiated agreements

''Any rates or terms under this title that—

''(1) are agreed to by participants to a proceeding under section 803(b)(3),

''(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

''(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.''.

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by striking the item relating to chapter 8 and inserting the following:

SEC. 4. DEFINITION.

Section 101 is amended by inserting after the definition of ''copies'' the following:

''A 'Copyright Royalty Judge' is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.''.

SEC. 5. TECHNICAL AMENDMENTS.

(a) CABLE RATES.—Section 111(d) is amended—

(1) in paragraph (2), in the second sentence, by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges.''; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges'';

(B) in subparagraph (B)—

(i) in the first sentence, by striking ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights,'' and inserting ''Copyright Royalty Judges shall'';

(ii) in the second sentence, by striking ''Librarian determines'' and inserting ''Copyright Royalty Judges determine''; and

(iii) in the third sentence—

(I) by striking ''Librarian'' each place it appears and inserting ''Copyright Royalty Judges''; and

(II) by striking ''convene a copyright arbitration royalty panel'' and inserting ''conduct a proceeding''; and

(C) in subparagraph (C), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

(b) EPHEMERAL RECORDINGS.—Section 112(e) is amended—

(1) in paragraph (3)—

(A) by amending the first sentence to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by paragraph (1) during the 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, or such other periods as the parties may agree.''; and

(B) by striking the second sentence;

(C) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(D) in the fourth sentence, by striking ''negotiation'';

(2) in paragraph (4)—

(A) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (5), be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.'';

(B) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges'';

(C) in the fourth sentence, by striking ''its decision'' and inserting ''their decision'';

(D) in the fifth sentence, by striking ''negotiated as provided'' and inserting ''described''; and

(E) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(3) in paragraph (5), by striking ''or decision by the Librarian of Congress'' and inserting '', decision by the Librarian of Congress, or determination by the Copyright Royalty Judges'';

(4) by striking paragraph (6) and redesignating paragraphs (7), (8), and (9), as paragraphs (6), (7), and (8), respectively; and

(5) in paragraph (6)(A), as so redesignated, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending the first sentence to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.'';

(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(iii) in the fourth sentence, by striking ''negotiation'';

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.'';

(ii) in the second sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(iii) in the second sentence, by striking ''negotiated as provided'' and inserting ''described''; and

(C) by amending subparagraph (C) to read as follows:

''(C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by amending the first paragraph to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.'';

(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(iii) in the fourth sentence, by striking ''negotiation'';

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.'';

(ii) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges''; and

(iii) in the last sentence by striking ''negotiated as provided'' and inserting ''described in''; and

(C) by amending subparagraph (C) to read as follows:

''(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

(3) in paragraph (3), by striking ''or decision by the Librarian of Congress'' and inserting '', decision by the Librarian of Congress, or determination by the Copyright Royalty Judges''; and

(4) in paragraph (4)—

(A) by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''; and

(B) by adding after the first sentence ''The notice and recordkeeping rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 shall remain in effect until new regulations are promulgated by the Copyright Royalty Judges. If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, avoid significant disruption of the function of the designated agents that are authorized to collect and distribute royalty fees as such functions exist on the day prior to the effective date of this Act.''.

(d) PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.—Section 115(c)(3) is amended—

(1) in subparagraph (A)(ii), by striking ''(F)'' and inserting ''(E)'';

(2) in subparagraph (B)—

(A) by striking ''under this paragraph'' and inserting ''under this section''; and

(B) by striking ''subparagraphs (B) through (F)'' and inserting ''this subparagraph and subparagraphs (B) through (E)'';

(3) in subparagraph (C)—

(A) by amending the first sentence to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during periods beginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree.'';

(B) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(C) in the fourth sentence, by striking ''negotiation'';

(4) in subparagraph (D)—

(A) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty

Judges shall, subject to subparagraph (E), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C), such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.'';

(B) in the third sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(C) in the third sentence, by striking ''negotiated as provided in subparagraphs (B) and (C)'' and inserting ''described'';

(5) in subparagraph (E)—

(A) in clause (i)—

(i) in the first sentence, by striking ''Librarian of Congress'' and inserting ''Librarian of Congress, Copyright Royalty Judges, or a copyright arbitration royalty panel to the extent those determinations were accepted by the Librarian of Congress''; and

(ii) in the second sentence, by striking ''(C), (D) or (F) shall be given effect'' and inserting ''(C) or (D) shall be given effect as to digital phonorecord deliveries''; and

(B) in clause (ii)(I), by striking ''(C), (D) or (F)'' each place it appears and inserting ''(C) or (D)''; and

(6) by striking subparagraph (F) and redesignating subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

(e) COIN-OPERATED PHONORECORD PLAYERS.—Section 116 is amended—

(1) in subsection (b), by amending paragraph (2) to read as follows:

''(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.''; and

(2) in subsection (c)—

(A) in the subsection heading, by striking ''COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS'' and inserting ''DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES''; and

(B) by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges''.

(f) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the first sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(ii) by striking the second and third sentences;

(B) in paragraph (2), by striking ''Librarian of Congress:'' and all that follows through the end of the sentence and inserting ''Librarian of Congress, a copyright arbitration royalty panel, or the Copyright Royalty Judges, to the extent that they were accepted by the Librarian of Congress, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.''; and

(C) in paragraph (3)—

(i) in the second sentence—

(I) by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(II) by striking ''paragraph (2).'' and inserting ''paragraph (2) or (3).'';

(ii) in the last sentence, by striking '''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(iii) by striking ''(3) In'' and all that follows through the end of the first sentence and inserting the following:

''(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to copyright owners in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

''(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges.'';

(2) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively;

(3) in subsection (c), as so redesignated, in the matter preceding paragraph (1)—

(A) by striking ''(b)(2)'' and inserting ''(b)(2) or (3)'';

(B) by striking ''(b)(3)'' and inserting ''(b)(4)''; and

(C) by striking ''a copyright arbitration royalty panel under subsection (b)(3)'' and inserting ''the Copyright Royalty Judges under subsection (b)(3), to the extent that they were accepted by the Librarian of Congress'';

(4) in subsection (d), as so redesignated—

(A) by striking ''in the Copyright Office'' and inserting ''with the Copyright Royalty Judges''; and

(B) by striking ''Register of Copyrights shall prescribe'' and inserting ''Copyright Royalty Judges shall prescribe as provided in section 803(b)(6)''; and

(5) in subsection (f), as so redesignated, by striking ''(d)'' and inserting ''(c)''.

(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

(1) in paragraph (3), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''; and

(B) by amending subparagraphs (B) and (C) to read as follows:

''(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

''(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have the discretion to proceed to distribute any amounts that are not in controversy.''.

(h) DIGITAL AUDIO RECORDING DEVICES.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''.

(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) is amended by striking ''Librarian of Congress shall convene a copyright arbitration royalty panel which'' and inserting ''Copyright Royalty Judges''.

(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 is amended—

(A) in subsection (a), by amending paragraph (1) to read as follows:

''(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.''; and

(B) by amending subsections (b) and (c) to read as follows:

''(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

''(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.''.

(4) DETERMINATION OF CERTAIN DISPUTES.—(A) Section 1010 is amended to read as follows:

''§ 1010. Determination of certain disputes

''(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

''(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

''(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

''(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

''(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection

(d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.''.

(B) The item relating to section 1010 in the table of sections for chapter 10 is amended to read as follows:

''1010. Determination of certain disputes.''.

SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act, except that the Librarian of Congress shall appoint 1 or more interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

(b) TRANSITION PROVISIONS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the enactment of this Act under the provisions of title 17, United States Code, amended by this Act, and pending on such date of enactment. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted. For the purposes of this paragraph, the Librarian of Congress may determine whether a proceeding has commenced.

(2) PENDING PROCEEDINGS.—Notwithstanding paragraph (1), any proceeding commenced before the enactment of this Act may be terminated by the Librarian of Congress, with the approval of the Copyright Royalty Judges. In such cases, the Copyright Royalty Judges shall initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.

(3) EFFECTIVE PERIODS FOR CERTAIN RATEMAKING PROCEEDINGS.—Notwithstanding paragraph (1), terms and rates in effect under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title for the period 2003 through 2004, and any rates published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 for the years 2003 through 2004, shall be effective until the later of the first applicable effective date for successor terms and rates specified in section 804(b)(2) or (3)(A) of title 17, United States Code, or until such later date as the parties may agree or the Copyright Royalty Judges may establish. If successor terms and rates have not yet been established by such date, licensees shall continue to make royalty payments at the rates and on the terms previously in effect, subject to retroactive adjustment when successor rates and terms for such services are established.

(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act before the effective date of this Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.

Mr. HATCH. Mr. President, I am pleased that the Senate is considering the Hatch-Leahy substitute to H.R. 1417, the ''Copyright Royalty and Distribution Reform Act of 2004,'' which provides a much-needed overhaul of the process by which statutory royalty rates are determined and the manner in which the fees paid pursuant to statutory licenses are distributed to copyright holders.

The extensive reforms made this bill are important to virtual all the participants in the process, and I hope that my colleagues will consent to move this bill without delay.

The measure we are considering today represents a recently-reached compromise which I am hopeful can be enacted without delay.

Because the areas of disagreement with H.R. 1417 were relatively narrow in scope, the Hatch-Leahy substitute to H.R. 1417 retains most of the House-passed bill, but does contain a few important changes that are the product of several months of negotiations and discussions between the Hatch and Leahy offices and various stakeholders. The most significant substantive change involves the scope of available discovery in ratemaking proceedings. The changes to the discovery provisions are self-explanatory, so I will not belabor them here.

This bill responds to widespread dissatisfaction among the participants in the current system involving Copyright Arbitration Royalty Panels—or ''CARPs''. I will refrain from going into detail about this highly-technical bill—which many would find about as interesting as watching astroturf grow—and will simply express my firm belief that it addresses many of the legitimate concerns expressed by the stakeholders, the members of the House and Senate Judiciary Committees, and the many others that have provided valuable input and that lent us their expertise during the legislative process. I am content simply to refer my colleagues to the comprehensive and detailed committee report drafted by the House if they desire an explanation of the concerns and problems this legislation addresses.

While we were not able to reach absolute consensus on a few difficult issues, for the most part this legislation reflects broad agreement on the fundamental changes that are required to make the existing CARP process more efficient, logical, and—some would content—bearable by participants.

In conclusion, I would be remiss if I did not publicly recognize that this legislation is the product of some very hard work by our counterparts in the House. Chairman SENSENBRENNER, Chairman SMITH, and Representative BERMAN deserve much of the credit for building a near consensus on this bill and for moving it through the House. I commend them for their bicameral, bipartisan approach to this legislation and for the hard work put in by their respective staffs.

In particular, I would like to thank Blaine Merritt, David Whitney, and Alec French for their hard work.

I would also like to thank Marybeth Peters, the Register of Copyrights, and David O. Carson, the General Counsel of the Copyright Office, for providing invaluable technical assistance to members in both chambers of Congress on this complicated bill.

I would be equally remiss if I did not recognize the outstanding efforts of some in the Senate, including Senator LEAHY and his staff—in particular Susan Davies, Rich Phillips, and Dan Fine—for their efforts on this bill. I also commend Mary Foden and Dave Jones of my staff for their hard work and their efforts to build a consensus around the bill in the Senate.

With that, I will urge my colleagues to vote for H.R. 1417 with the Hatch-Leahy substitute.

Mr. LEAHY. Mr. President, I am pleased that the Senate is taking up and passing the Copyright Royalty and Distribution Reform Act of 2004. I have been working to reform the copyright royalty arbitration procedures for several years. As early as 2002, I noted in a Judiciary Committee hearing that there was widespread dissatisfaction with the current law.

In particular, we heard the testimony of Frank Schliemann of Onion River Radio of Montpelier, VT. Mr. Schliemann noted that many small webcasters could not afford to take part in CARP proceedings, even though their livelihoods would depend on the outcome. We also heard from Billy Strauss, president of Websound, another small webcaster in Brattleboro, VT. Mr. Strauss noted many of the structural problems that plagued the old CARP procedures. In addition, I have been concerned that the current procedures are often hindered by unreasonable delays, and the outcomes subject to manipulation.

The Copyright Royalty and Distribution Reform Act responds to these concerns. It replaces arbitrators, who serve for only one CARP procedure and are paid by the parties, with full-time administrative judges. As a result, the financial burden of taking part in a CARP procedure is alleviated. In addition, all parties can rest assured that there will be continuity and stability in the resolution of these proceedings. At the same time, this bill preserves the traditional role of the Register of Copyrights. This bill also resolves long-standing disputes over the availability of discovery. Because discovery is available where it is needed, the copyright royalty judges will have the information necessary to render a correct determination but the costs of discovery will be kept to a minimum.

I am pleased to have cosponsored with Senator HATCH the amendment in the nature of a substitute to the House bill. I thank Chairman SENSENBRENNER, Chairman SMITH, and Congressman BERMAN for their leadership in this matter. We believe that in

adopting this version of the House bill, H.R. 1417, we will be able to move to final passage without delay. It is time these important reforms were implemented.

Ms. COLLINS. Madam President, I ask unanimous consent that the amendment that is at the desk be agreed to, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 3975) was agreed to.

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

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The bill (H. R. 1417), as amended, was read the third time and passed.

ECONOMIC DEVELOPMENT ADMINISTRATION REAUTHORIZATION ACT OF 2004

Ms. COLLINS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 754, S. 1134.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1134) to reauthorize and improve the program authorized by the Public Works and Economic Development Act of 1965.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1134

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[SHORT TITLE.—This Act may be cited as the ''Economic Development Administration Reauthorization Act of 2003''.

[SEC. 2. FINDINGS AND DECLARATIONS.

[Section 2 of the Public Works and Economic Development Act of 1965, as amended (''PWEDA'') (42 U.S.C. 3121), is revised to read as follows:

[''SEC. 2. FINDINGS AND DECLARATIONS.

[''(a) FINDINGS.—Congress finds that—

[''(1) while the fundamentals for growth in the American economy remain strong, there continue to be areas experiencing chronic high unemployment, underemployment, low per capita incomes, and outmigration as well as areas facing sudden and severe economic dislocations due to structural economic changes, changing trade patterns, certain Federal actions (including environmental requirements that result in the removal of economic activities from a locality), and natural disasters;

[''(2) sustained economic growth in our Nation, States, cities and rural areas is produced by expanding free enterprise through trade and enhanced competitiveness of regions;

[''(3) the goal of Federal economic development programs is to raise the standard of living for all citizens and increase the wealth and overall rate of growth of the economy by encouraging local and regional communities to develop a more competitive and diversified economic base by:

[''(A) promoting job creation through increased innovation, productivity, and entrepreneurship; and

[''(B) empowering local and regional communities experiencing chronic high unemployment and low per capita income to attract substantially increased private-sector capital investment;

[''(4) while economic development is an inherently local process, the Federal Government should work in partnership with public and private local, regional, tribal and State organizations to maximize the impact of existing resources and enable regions, communities, and citizens to participate more fully in the American dream and national prosperity;

[''(5) in order to avoid wasteful duplication of effort and achieve meaningful, long-lasting results, Federal, State, tribal and local economic development activities should have a clear focus, improved coordination, a comprehensive approach, common measures of success, and simplified and consistent requirements; and

[''(6) Federal economic development efforts will be more effective if they are coordinated with, and build upon, the trade, workforce investment, and technology programs of the United States.

[''(b) DECLARATIONS.—Congress declares that, in order to promote a strong and growing economy throughout the United States:

[''(1) assistance under this Act should be made available to both rural and urban distressed communities;

[''(2) local communities should work in partnership with neighboring communities, Indian tribes, the States, and the Federal Government to increase their capacity to develop and implement comprehensive economic development strategies to enhance regional competitiveness in the global economy and support long-term development of regional economies; and

[''(3) whether suffering from long-term distress or a sudden dislocation, distressed communities should be encouraged to focus on strengthening entrepreneurship and competitiveness, and to take advantage of the development opportunities afforded by technological innovation and expanding and newly opened global markets.''.

[SEC. 3. DEFINITIONS.

[Section 3 of PWEDA (42 U.S.C. 3122) is amended as follows:

[(1) Subparagraph (4)(A) of this section is amended by striking subparagraph (i) and redesignating successive subparagraphs (ii) through (vii) as (i) through (vi) and revising subparagraph (iv) as re-designated to read as follows:

[''(iv) a city or other political subdivision of a State, including a special purpose unit of State or local government, or a consortium of political subdivisions;''.

[(2) Subparagraph 4(B) is amended by adding at the end thereof a new sentence:

[''The requirement under subparagraph (A)(vi) that the nonprofit organization or association is 'acting in cooperation with officials of a political subdivision of a State' does not apply in the case of research, training and technical assistance grants under section 207 that are national or regional in scope.''.

[(3) Paragraphs (8), (9) and (10) are amended by re-designating them as paragraphs (9), (10), and (11) and a new paragraph (8) is added as follows:

[''(8) REGIONAL COMMISSIONS.—The term 'Regional Commissions' as used in section 403 of this Act refers to the regional economic development authorities: the Delta Regional Authority (Public Law No. 106–554, sec. 1(a)(4) [div. B, title VI], 114 Stat. 2763A–268) (7 U.S.C. 2009aa et seq.), the Denali Commission (Public Law No. 105–277, div. C, title III, 112 Stat. 2681–637) (42 U.S.C. 3121 note), and the Northern Great Plains Regional Authority (Public Law No. 107–171, 116 Stat. 375) (7 U.S.C. 2009bb et seq.).''.

[(4) A new paragraph (12) is added at the end to read as follows:

[''(12) UNIVERSITY CENTER.—The term 'university center' refers to a University Center for Economic Development established pursuant to the authority of section 207(a)(2)(D) of this Act.''.

[SEC. 4. WORKING WITH NONPROFIT ORGANIZATIONS IN ESTABLISHMENT OF ECONOMIC DEVELOPMENT PARTNERSHIPS.

[Section 101 of PWEDA (42 U.S.C. 3131) is amended as follows:

[(1) In subsection (b) strike ''and multi-State regional organizations'' and insert in lieu thereof ''multi-State regional organizations, and nonprofit organizations''.

[(2) In subsection (d), strike ''adjoining'' each time it occurs.

[SEC. 5. SUB-GRANTS IN CONNECTION WITH PUBLIC WORKS PROJECTS.

[Section 201 of PWEDA (42 U.S.C. 3141) is amended by adding a new subsection (d) as follows:

[''(d) SUB-GRANTS.—

[''(1) Subject to paragraph (2), a recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a sub-grant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.

[''(2) Under paragraph (1), a recipient may not redistribute grant funds to a for-profit entity.''.

[SEC. 6. CLARIFICATION OF GRANTS FOR STATE PLANNING.

[Section 203 of PWEDA (42 U.S.C. 3143) is amended as follows:

[(1) Revise paragraph (1) of subsection (d) to read as follows:

[''(1) DEVELOPMENT.—Any State plan developed with assistance under this section shall, to the maximum extent practicable, take into consideration regional economic development strategies.'';

[(2) Strike paragraph (3) of subsection (d) in its entirety and re-designate paragraphs (4) and (5) as (3) and (4);

[(3) Revise re-designated paragraph (3) of subsection (d) by striking ''and'' at the end of subparagraph (C) and re-designating current subparagraph (D) as (E) and adding a new subparagraph (D) to read as follows:

[''(D) assist in carrying out state's workforce investment strategy (as outlined in the State plan required under section 112 of the Workforce Investment Act of 1998 (29 U.S.C. 2822)); and'';

[(4) Add a new subsection (e) at the end thereof as follows:

[''(e) SUB-GRANTS.—

[''(1) Subject to paragraph (2), a recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a sub-grant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.

[''(2) Under paragraph (1), a recipient may not redistribute grant funds to a for-profit entity.''.

[SEC. 7. SIMPLIFICATION OF DETERMINATION OF GRANT RATES.

[Sections 204 and 205 of PWEDA (42 U.S.C. 3144, 3145) are amended to read as follows:

["SEC. 204. COST SHARING.

["(a) FEDERAL SHARE.—The Secretary shall issue regulations to establish the applicable grant rates for projects based on the relative needs of the areas in which the projects are located. Except as provided in subsection (c) below, the amount of a grant for a project under this title may not exceed 80 percent of the cost of the project.

["(b) NON-FEDERAL SHARE.—In determining the amount of the non-Federal share of the cost of a project, the Secretary may provide credit toward the non-Federal share for all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, and services, and assumptions of debt.

["(c) INCREASE IN FEDERAL SHARE.—

["(1) INDIAN TRIBES.—In the case of a grant to an Indian tribe, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

["(2) CERTAIN STATES, POLITICAL SUBDIVISIONS, AND NONPROFIT ORGANIZATIONS.—In the case of a grant to a State (or a political subdivision of a State), that the Secretary determines has exhausted its effective taxing and borrowing capacity, or in the case of a grant to a nonprofit organization that the Secretary determines has exhausted its effective borrowing capacity, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

["SEC. 205. GRANTS SUPPLEMENTING OTHER AGENCY GRANTS (42 U.S.C. 3145).

["(a) DEFINITION OF DESIGNATED FEDERAL GRANT PROGRAM.—In this section, the term 'designated Federal grant program' means any Federal grant program that—

["(1) provides assistance in the construction or equipping of public works, public service, or development facilities;

["(2) is designated as eligible for an allocation of funds under this section by the Secretary; and

["(3) assists projects that are—

["(A) eligible for assistance under this title; and

["(B) consistent with a comprehensive economic development strategy.

["(b) SUPPLEMENTARY GRANTS.—Subject to subsection (c) below, in order to assist eligible recipients to take advantage of designated Federal grant programs, on the application of an eligible recipient, the Secretary may make a supplementary grant for a project for which the eligible recipient is eligible but, because of the recipient's economic situation, for which the eligible recipient cannot provide the required non-Federal share.

["(c) REQUIREMENTS APPLICABLE TO SUPPLEMENTARY GRANTS.—

["(1) AMOUNT OF SUPPLEMENTARY GRANTS.—The share of the project cost supported by a supplementary grant under this section may not exceed the applicable grant rate under section 204.

["(2) FORM OF SUPPLEMENTARY GRANTS.—The Secretary shall make supplementary grants by—

["(A) the payment of funds made available under this Act to the heads of the Federal agencies responsible for carrying out the applicable Federal programs; or

["(B) the award of funds under this Act which will be combined with funds transferred from other Federal agencies in projects administered by the Secretary.

["(3) FEDERAL SHARE LIMITATIONS SPECIFIED IN OTHER LAWS.—Notwithstanding any requirement as to the amount or source of non-Federal funds that may be applicable to a Federal program, funds provided under this section may be used to increase the Federal share for specific projects under the program that are carried out in areas described in section 301(a) above the Federal share of the cost of the project authorized by the law governing the program.''.

[SEC. 8. REGULATIONS ON ALLOCATIONS TO ENSURE JOB CREATION POTENTIAL.

[Subsection 206 of PWEDA (42 U.S.C. 3146) is amended by striking ''and'' at the end of subparagraph (1)(C), inserting ''and'' at the end of paragraph (2), and adding a new paragraph (3) at the end thereof to read as follows:

["(3) allocations of assistance under this title promote job creation through increased innovation, productivity, and entrepreneurship, and financial assistance extended pursuant to such allocations will have a high probability of meeting or exceeding applicable performance requirements established in connection with extension of the assistance.''.

[SEC. 9. INCREASED FLEXIBILITY IN GRANTS FOR TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.

[(a) Section 207 of PWEDA (42 U.S.C. 3147) is amended by striking ''and'' at the end of subparagraph (2)(F) of subsection (a), re-designating current subparagraph (G) as (H), and adding a new subparagraph (G) to read as follows:

["(G) studies that evaluate the effectiveness of collaborations between projects funded under this Act with projects funded under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.); and''.

[(b) Section 207 is further amended by adding a new subsection (c) to read as follows:

["(c) SUB-GRANTS.—A recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a sub-grant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.''.

[SEC. 10. REMOVAL OF SECTION.

[Section 208 of PWEDA (42 U.S.C. 3148) is stricken in its entirety and insert in lieu thereof:

["SEC. 208. [Repealed].".

[SEC. 11. IMPROVEMENTS IN ADMINISTRATION GRANTS FOR ECONOMIC ADJUSTMENT INVOLVING REVOLVING LOAN FUND PROJECTS.

[(a) Subsection (d) of section 209 of PWEDA (42 U.S.C. 3149) is amended by striking ''an eligible'' in each case it occurs in paragraphs (1) and (2) and inserting in lieu thereof ''a recipient''.

[(b) Section 209 of PWEDA (42 U.S.C. 3149) is amended by adding a new subsection (e) at the end thereof as follows:

["(e) SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.—The Secretary shall promulgate regulations to ensure the proper operation and financial integrity of revolving loan funds established by recipients with assistance under this section.

["(1) EFFICIENT ADMINISTRATION.—In order to improve the ability to manage and administer the Federal interest in revolving loan funds and in accordance with regulations issued for such purposes, the Secretary may amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria. In addition, the Secretary may assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation and a third party may retain assets of the fund to defray costs related to liquidation. The Secretary may also take such other actions with respect to management and administration as the Secretary determines to be appropriate to carry out the purposes of this Act, including actions to enable revolving loan funds operators to sell or securitize loans to the secondary market (except that such actions may not include issuance of a Federal guaranty by the Secretary).

["(2) RELEASE OF FEDERAL INTERESTS.—The Secretary may release, in whole or in part, any property interest in connection with a revolving loan fund grant after the date that is 20 years after the date on which the grant was awarded, provided that the recipient—

["(A) is in compliance with the terms of its grant and operating the fund at an acceptable level of performance as determined by the Secretary; and

["(B) reimburses the government prior to the release for the amount of the Secretary's investment in the fund or the pro-rata share of the fund at the time of the release, whichever is less.

Any action taken by the Secretary pursuant to this subsection with respect to a revolving loan fund shall not constitute a new obligation provided that all grant funds associated with the original grant award have been disbursed to the recipient.''.

[SEC. 12. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

[Section 211 of PWEDA (42 U.S.C. 3151) is amended to read as follows:

["SEC. 211. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

["In any case in which the Secretary has made a grant for a construction project under sections 201 or 209 of this title, and before closeout of the project, the Secretary determines that the cost of the project based on the designs and specifications that were the basis of the grant has decreased because of decreases in costs—

["(1) without further appropriations action, the Secretary may approve the use of the excess funds or a portion of the funds to improve the project; and

["(2) any amount of excess funds remaining after application of paragraph (1) may be used for other investments authorized for support under this Act.

In addition to paragraphs (1) and (2) of this section, in the event of construction underruns in projects utilizing funds transferred from other Federal agencies pursuant to section 604 of this Act, the Secretary may utilize these funds in conjunction with paragraphs (1) or (2) with the approval of the originating agency or will return the funds to the originating agency.''.

[SEC. 13. SPECIAL IMPACT AREAS.

[Title II of PWEDA is further amended by adding a new section 214 as follows:

["SEC. 214. SPECIAL IMPACT AREAS.

["SPECIAL IMPACT AREAS.—The Secretary is authorized to make grants, enter into contracts and provide technical assistance for projects and programs that the Secretary finds will fulfill a pressing need of the area and be useful in alleviating or preventing conditions of excessive unemployment or underemployment or assist in providing useful employment opportunities for the unemployed or underemployed residents in the area. In extending assistance under this section, the Secretary may waive, in whole or in part, as appropriate, the provisions of section 302 of this Act provided that the Secretary determines that such assistance will carry out the purposes of the Act.''.

[SEC. 14. PERFORMANCE INCENTIVES.

[Title II of PWEDA is further amended by adding a new section 215 as follows:

["SEC. 215. PERFORMANCE INCENTIVES.

["(a) In accordance with regulations issued for such purposes, the Secretary may award

transferable performance credits in an amount that does not exceed 10 percent of the grant amount awarded under sections 201 or 209 of this Act on or after the effective date of this amendment. The Secretary shall base such performance incentives on the extent to which a recipient meets or exceeds performance requirements established in connection with extension of the assistance.

[''(b) A recipient awarded a transferable performance credit under this section may redeem the credit to increase the Federal share of a subsequent grant funded under sections 201 and 209 of this Act above the maximum Federal share allowable under section 204 up to 80 percent of the project cost. A performance credit must be redeemed within 5 years of its issue date.

[''(c) An original recipient may also sell or transfer the credit in its entirety to another eligible recipient for use in connection with a grant approved by the Secretary under this Act without reimbursement to the Secretary for redemption in accordance with subsection (b) above.

[''(d) The Secretary shall attach such terms and conditions or limitations as the Secretary deems appropriate in issuing a performance credit. Performance credits shall be paid out of appropriations for economic development assistance programs made available in the year of redemption to the extent of availability.

[''(e) The Secretary shall include information regarding issuance of performance credits in the annual report under section 603 of this Act.''.

[SEC. 15. COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES.

[Subparagraph (a)(3)(A) of section 302 of PWEDA (42 U.S.C. 3162) is amended by adding ''maximizes effective development and use of the workforce (consistent with any applicable state and local workforce investment strategy under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.),'' between ''access,'' and ''enhances''.

[SEC. 16. DESIGNATION OF ECONOMIC DEVELOPMENT DISTRICTS.

[Subparagraph (a)(3)(B) of section 401 of PWEDA (42 U.S.C. 3171) is amended by striking ''by each affected State and''.

[SEC. 17. DISTRICT INCENTIVES.

[Section 403 of PWEDA (42 U.S.C. 3173) is amended by striking it in its entirety and redesignating sections 404 and 405 as sections 403 and 404. Section 403 as re-designated is amended by adding at the end the following new sentence: ''If any part of an economic development district is in a region covered by one or more other Regional Commissions as defined in section 3(8) of this Act, the economic development district shall ensure that a copy of the comprehensive economic development strategy of the district is provided to the affected regional commission.''.

[SEC. 18. ECONOMIC DEVELOPMENT INFORMATION CLEARINGHOUSE.

[Section 502 of PWEDA (42 U.S.C. 3192) is amended to read as follows:

[''SEC 502. ECONOMIC DEVELOPMENT INFORMATION CLEARINGHOUSE

[''In carrying out this Act, the Secretary shall—

[''(1) maintain a central information clearinghouse on the Internet with information on economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal Government, links to State economic development organizations, and links to other appropriate economic development resources;

[''(2) assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal and State laws in locating and applying for the assistance;

[''(3) assist areas described in section 301(a) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas; and

[''(4) obtain appropriate information from other Federal agencies needed to carry out the duties under this Act.''.

[SEC. 19. REMOVAL OF UNUSED AUTHORITY.

[Section 505 of PWEDA (42 U.S.C. 3195) is amended by striking it in its entirety and sections 506 and 507 are re-designated as sections 505 and 506.

[SEC. 20. PERFORMANCE EVALUATIONS OF GRANT RECIPIENTS.

[Section 505 of PWEDA (42 U.S.C. 3196) as re-designated is amended as follows:

[(1) In subsection (c), strike ''after the effective date of the Economic Development Administration Reform Act of 1998''.

[(2) In paragraph (d)(2), strike ''and'' before ''disseminating results'' and insert '', and measuring the outcome-based results of the university centers' activities'' before the period at the end thereof.

[(3) In paragraph (d)(3) of section 506, insert before the period at the end thereof ''as evidenced by outcome-based results, including the number of jobs created or retained, and amount of private-sector funds leveraged''.

[(4) In subsection (e) of section 506, strike ''university center or'' each occasion it occurs.

[SEC. 21. CITATION CORRECTIONS.

[Section 602 PWEDA (42 U.S.C. 3212) is amended by striking the citations to ''40 U.S.C. 276A—276A–5'' and ''section 276c'' and inserting in lieu thereof, ''40 U.S.C. 3141 et seq.'' and ''section 3154'', respectively.

[SEC. 22. DELETION OF UNNECESSARY PROVISION.

[Section 609 of PWEDA (42 U.S.C. 3219) is amended by striking subsection (a) in its entirety and striking the subsection designation ''(b)''.

[SEC. 23. GENERAL AUTHORIZATION OF APPROPRIATIONS.

[Section 701 of PWEDA (42 U.S.C. 3231) is amended to read as follows:

[''SEC. 701. GENERAL AUTHORIZATION OF APPROPRIATIONS.

[''(a) ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS.—There are authorized to be appropriated for economic development assistance programs to carry out this Act $331,027,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005, 2006, 2007, and 2008, to remain available until expended.

[''(b) SALARIES AND EXPENSES.—There are authorized to be appropriated for salaries and expenses of administering this Act $33,377,000 for fiscal year 2004, and such sums as may be necessary for each of the fiscal years from 2005 through 2008, to remain available until expended.''.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Economic Development Administration Reauthorization Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS AND DECLARATIONS.

Section 2 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121) is amended to read as follows:

''SEC. 2. FINDINGS AND DECLARATIONS.

''(a) FINDINGS.—Congress finds that—

''(1) there continue to be areas of the United States experiencing chronic high unemployment, underemployment, outmigration, and low per capita incomes, as well as areas facing sudden and severe economic dislocations because of structural economic changes, changing trade patterns, certain Federal actions (including environmental requirements that result in the removal of economic activities from a locality), and natural disasters;

''(2) economic growth in the States, cities, and rural areas of the United States is produced by expanding economic opportunities, expanding free enterprise through trade, developing and strengthening public infrastructure, and creating a climate for job creation and business development;

''(3) the goal of Federal economic development programs is to raise the standard of living for all citizens and increase the wealth and overall rate of growth of the economy by encouraging communities to develop a more competitive and diversified economic base by—

''(A) creating an environment that promotes economic activity by improving and expanding public infrastructure;

''(B) promoting job creation through increased innovation, productivity, and entrepreneurship; and

''(C) empowering local and regional communities experiencing chronic high unemployment and low per capita income to develop private sector business and attract increased private sector capital investment;

''(4) while economic development is an inherently local process, the Federal Government should work in partnership with public and private State, regional, tribal, and local organizations to maximize the impact of existing resources and enable regions, communities, and citizens to participate more fully in the American dream and national prosperity;

''(5) in order to avoid duplication of effort and achieve meaningful, long-lasting results, Federal, State, tribal, and local economic development activities should have a clear focus, improved coordination, a comprehensive approach, and simplified and consistent requirements; and

''(6) Federal economic development efforts will be more effective if the efforts are coordinated with, and build upon, the trade, workforce investment, transportation, and technology programs of the United States.

''(b) DECLARATIONS.—In order to promote a strong and growing economy throughout the United States, Congress declares that—

''(1) assistance under this Act should be made available to both rural- and urban-distressed communities;

''(2) local communities should work in partnership with neighboring communities, the States, Indian tribes, and the Federal Government to increase the capacity of the local communities to develop and implement comprehensive economic development strategies to alleviate economic distress and enhance competitiveness in the global economy; and

''(3) whether suffering from long-term distress or a sudden dislocation, distressed communities should be encouraged to support entrepreneurship to take advantage of the development opportunities afforded by technological innovation and expanding newly opened global markets.''.

SEC. 102. DEFINITIONS.

(a) ELIGIBLE RECIPIENT.—Section 3(4)(A) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3122(4)(A)) is amended—

(1) by striking clause (i) and redesignating clauses (ii) through (vii) as clauses (i) through (vi), respectively; and

(2) in clause (iv) (as redesignated by paragraph (1)) by inserting '', including a special purpose unit of a State or local government engaged in economic or infrastructure development activities,'' after ''State''.

(b) REGIONAL COMMISSIONS; UNIVERSITY CENTER.—Section 3 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3122) is amended—

(1) by redesignating paragraphs (8), (9), and (10) as paragraphs (9), (10), and (11), respectively;

(2) by inserting after paragraph (7) the following:

''(8) REGIONAL COMMISSIONS.—The term 'Regional Commissions' means—

''(A) the Appalachian Regional Commission established under chapter 143 of title 40, United States Code;

''(B) the Delta Regional Authority established under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa et seq.);

''(C) the Denali Commission established under the Denali Commission Act of 1998 (42 U.S.C. 3121 note; 112 Stat. 2681–637 et seq.); and

''(D) the Northern Great Plains Regional Authority established under subtitle G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb et seq.).''; and

(3) by adding at the end the following:

''(12) UNIVERSITY CENTER.—The term 'university center' means an institution of higher education or a consortium of institutions of higher education established as a University Center for Economic Development under section 207(a)(2)(D).''.

SEC. 103. ESTABLISHMENT OF ECONOMIC DEVELOPMENT PARTNERSHIPS.

Section 101 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3131) is amended—

(1) in subsection (b), by striking ''and multi-State regional organizations'' and inserting ''multi-State regional organizations, and nonprofit organizations''; and

(2) in subsection (d)(1), by striking ''adjoining'' each place it appears.

SEC. 104. COORDINATION.

Section 103 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3132) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Secretary'';

(2) in subsection (a) (as designated by paragraph (1)), by inserting ''Indian tribes,'' after ''districts,''; and

(3) by adding at the end the following:

''(b) MEETINGS.—To carry out subsection (a), or for any other purpose relating to economic development activities, the Secretary may convene meetings with Federal agencies, State and local governments, economic development districts, Indian tribes, and other appropriate planning and development organizations.''.

TITLE II—GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT

SEC. 201. GRANTS FOR PLANNING.

Section 203(d) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3143(d)) is amended—

(1) in paragraph (1), by inserting '', to the maximum extent practicable,'' after ''developed'' the second place it appears;

(2) by striking paragraph (3) and inserting the following:

''(3) COORDINATION.—Before providing assistance for a State plan under this section, the Secretary shall consider the extent to which the State will consider local and economic development district plans.''; and

(3) in paragraph (4)—

(A) by striking ''and'' at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by adding after subparagraph (C) the following:

''(D) assist in carrying out the workforce investment strategy of a State;

''(E) promote the use of technology in economic development, including access to high-speed telecommunications; and''.

SEC. 202. COST SHARING.

(a) FEDERAL SHARE.—Section 204 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144) is amended by striking subsection (a) and inserting the following:

''(a) FEDERAL SHARE.—Except as provided in subsection (c), the Federal share of the cost of any project carried out under this title shall not exceed—

''(1) 50 percent; plus

''(2) an additional percent that—

''(A) shall not exceed 30 percent; and

''(B) is based on the relative needs of the area in which the project will be located, as determined in accordance with regulations promulgated by the Secretary.''.

(b) NON-FEDERAL SHARE.—Section 204(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144(b)) is amended by inserting ''assumptions of debt,'' after ''equipment,''.

(c) INCREASE IN FEDERAL SHARE.—Section 204 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144) is amended by adding at the end the following:

''(c) INCREASE IN FEDERAL SHARE.—

''(1) INDIAN TRIBES.—In the case of a grant to an Indian tribe for a project under this title, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

''(2) CERTAIN STATES, POLITICAL SUBDIVISIONS, AND NONPROFIT ORGANIZATIONS.—In the case of a grant to a State, or a political subdivision of a State, that the Secretary determines has exhausted the effective taxing and borrowing capacity of the State or political subdivision, or in the case of a grant to a nonprofit organization that the Secretary determines has exhausted the effective borrowing capacity of the nonprofit organization, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

''(3) TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.—In the case of a grant provided under section 207, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project if the Secretary determines that the project funded by the grant merits, and is not feasible without, such an increase.''.

SEC. 203. SUPPLEMENTARY GRANTS.

(a) IN GENERAL.—Section 205 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3145) is amended by striking subsection (b) and inserting the following:

''(b) SUPPLEMENTARY GRANTS.—Subject to subsection (c), in order to assist eligible recipients in taking advantage of designated Federal grant programs, on the application of an eligible recipient, the Secretary may make a supplementary grant for a project for which the recipient is eligible but for which the recipient cannot provide the required non-Federal share because of the economic situation of the recipient.''.

(b) REQUIREMENTS APPLICABLE TO SUPPLEMENTARY GRANTS.—Section 205(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3145(c)) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

''(1) AMOUNT OF SUPPLEMENTARY GRANTS.—The share of the project cost supported by a supplementary grant under this section may not exceed the applicable Federal share under section 204.

''(2) FORM OF SUPPLEMENTARY GRANTS.—The Secretary shall make supplementary grants by—

''(A) the payment of funds made available under this Act to the heads of the Federal agencies responsible for carrying out the applicable Federal programs; or

''(B) the provision of funds under this Act, which will be combined with funds transferred from other Federal agencies in projects administered by the Secretary.''; and

(2) by striking paragraph (4).

SEC. 204. REGULATIONS ON RELATIVE NEEDS AND ALLOCATIONS.

Section 206 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3146) is amended—

(1) in paragraph (1)(C), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(3)(A) rural and urban economically distressed areas are not harmed by the establishment or implementation by the Secretary of a private sector leveraging goal for a project under this title;

''(B) any private sector leveraging goal established by the Secretary does not prohibit or discourage grant applicants under this title from public works in, or economic development of, rural or urban economically distressed areas; and

''(C) the relevant Committees of Congress are notified prior to making any changes to any private sector leveraging goal; and

''(4) grants made under this title promote job creation and will have a high probability of assisting the recipient in meeting or exceeding applicable performance requirements established in connection with the grants.''.

SEC. 205. GRANTS FOR TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 207(a)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147(a)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (I); and

(3) by inserting after subparagraph (F) the following:

''(G) studies that evaluate the effectiveness of coordinating projects funded under this Act with projects funded under other Acts;

''(H) assessment, marketing, and establishment of business clusters; and''.

(b) COOPERATION REQUIREMENT.—Section 207(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147(a)) is amended by striking paragraph (3) and inserting the following:

''(3) COOPERATION REQUIREMENT.—In the case of a project assisted under this section that is national or regional in scope, the Secretary may waive the provision in section 3(4)(A)(vi) requiring a nonprofit organization or association to act in cooperation with officials of a political subdivision of a State.''.

SEC. 206. PREVENTION OF UNFAIR COMPETITION.

(a) IN GENERAL.—Section 208 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3148) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 208.

SEC. 207. GRANTS FOR ECONOMIC ADJUSTMENT.

(a) ASSISTANCE TO MANUFACTURING COMMUNITIES.—Section 209(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149(c)) is amended—

(1) in paragraph (3), by striking ''or'';

(2) in paragraph (4), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(5) the loss of manufacturing jobs, for reinvesting in and diversifying the economies of the communities.''.

(b) DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT; SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.—Section 209 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149) is amended by striking subsection (d) and inserting the following:

''(d) SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.—

''(1) IN GENERAL.—The Secretary shall promulgate regulations to maintain the proper operation and financial integrity of revolving loan funds established by recipients with assistance under this section.

''(2) EFFICIENT ADMINISTRATION.—The Secretary may—

''(A) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

''(B) assign or transfer assets of a revolving loan fund to third party for the purpose of liquidation, and the third party may retain assets of the fund to defray costs related to liquidation; and

''(C) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

''(3) TREATMENT OF ACTIONS.—An action taken by the Secretary under this subsection with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

''(4) PRESERVATION OF SECURITIES LAWS.—

''(A) NOT TREATED AS EXEMPTED SECURITIES.—No securities issued pursuant to paragraph (2)(C) shall be treated as exempted securities for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless exempted by rule or regulation of the Securities and Exchange Commission.

''(B) PRESERVATION.—Except as provided in subparagraph (A), no provision of this subsection or any regulation promulgated by the Secretary under this subsection supersedes or otherwise affects the application of the securities laws (as the term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization under that Commission.''.

SEC. 208. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

Section 211 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3151) is amended to read as follows:

''SEC. 211. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

''(a) IN GENERAL.—In the case of a grant to a recipient for a construction project under section 201 or 209, if the Secretary determines, before closeout of the project, that the cost of the project, based on the designs and specifications that were the basis of the grant, has decreased because of decreases in costs, the Secretary may approve, without further appropriation, the use of the excess funds (or a portion of the excess funds) by the recipient—

''(1) to increase the Federal share of the cost of a project under this title to the maximum percentage allowable under section 204; or

''(2) to improve the project.

''(b) OTHER USES OF EXCESS FUNDS.—Any amount of excess funds remaining after application of subsection (a) may be used by the Secretary for providing assistance under this Act.

''(c) TRANSFERRED FUNDS.—In the case of excess funds described in subsection (a) in projects using funds transferred from other Federal agencies pursuant to section 604, the Secretary shall—

''(1) use the funds in accordance with subsection (a), with the approval of the originating agency; or

''(2) return the funds to the originating agency.

''(d) REVIEW BY COMPTROLLER GENERAL.—

''(1) REVIEW.—The Comptroller General of the United States shall review the implementation of this section for each fiscal year.

''(2) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this section, and annually thereafter, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the findings of the Comptroller General under this subsection.''.

SEC. 209. SPECIAL IMPACT AREAS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) is amended by adding at the end the following:

''SEC. 214. SPECIAL IMPACT AREAS.

''(a) IN GENERAL.—On the application of an eligible recipient that is determined by the Secretary to be unable to comply with the requirements of section 302, the Secretary may waive, in whole or in part, the requirements of section 302 and designate the area represented by the recipient as a special impact area.

''(b) CONDITIONS.—The Secretary may make a designation under subsection (a) only after determining that—

''(1) the project will fulfill a pressing need of the area; and

''(2) the project will—

''(A) be useful in alleviating or preventing conditions of excessive unemployment or underemployment; or

''(B) assist in providing useful employment opportunities for the unemployed or underemployed residents in the area.

''(c) NOTIFICATION.—At the time of the designation under subsection (a), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written notice of the designation, including a justification for the designation.''.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 213 the following:

''Sec. 214. Special impact areas.''.

SEC. 210. PERFORMANCE AWARDS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 209) is amended by adding at the end the following:

''SEC. 215. PERFORMANCE AWARDS.

''(a) IN GENERAL.—The Secretary may make a performance award in connection with a grant made, on or after the date of enactment of this section, to an eligible recipient for a project under section 201 or 209.

''(b) PERFORMANCE MEASURES.—

''(1) REGULATIONS.—The Secretary shall promulgate regulations to establish performance measures for making performance awards under subsection (a).

''(2) CONSIDERATIONS.—In promulgating regulations under paragraph (1), the Secretary shall consider the inclusion of performance measures that assess—

''(A) whether the recipient meets or exceeds scheduling goals;

''(B) whether the recipient meets or exceeds job creation goals;

''(C) amounts of private sector capital investments leveraged; and

''(D) such other factors as the Secretary determines to be appropriate.

''(c) AMOUNT OF AWARDS.—

''(1) IN GENERAL.—The Secretary shall base the amount of a performance award made under subsection (a) in connection with a grant on the extent to which a recipient meets or exceeds performance measures established in connection with the grant.

''(2) MAXIMUM AMOUNT.—The amount of a performance award may not exceed 10 percent of the amount of the grant.

''(d) USE OF AWARDS.—A recipient of a performance award under subsection (a) may use the award for any eligible purpose under this Act, in accordance with section 602 and such regulations as the Secretary may promulgate.

''(e) FEDERAL SHARE.—Notwithstanding section 204, the funds of a performance award may be used to pay up to 100 percent of the cost of an eligible project or activity.

''(f) TREATMENT IN MEETING NON-FEDERAL SHARE REQUIREMENTS.—For the purposes of meeting the non-Federal share requirements under this, or any other, Act the funds of a performance award shall be treated as funds from a non-Federal source.

''(g) TERMS AND CONDITIONS.—In making performance awards under subsection (a), the Secretary shall establish such terms and conditions as the Secretary considers to be appropriate.

''(h) FUNDING.—The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.

''(i) REPORTING REQUIREMENT.—The Secretary shall include information regarding performance awards made under this section in the annual report required under section 603.

''(j) REVIEW BY COMPTROLLER GENERAL.—

''(1) REVIEW.—The Comptroller General shall review the implementation of this section for each fiscal year.

''(2) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this section, and annually thereafter, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the findings of the Comptroller under this subsection.''.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 214 the following:

''Sec. 215. Performance awards.''.

SEC. 211. PLANNING PERFORMANCE AWARDS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 210) is amended by adding at the end the following:

''SEC. 216. PLANNING PERFORMANCE AWARDS.

''(a) IN GENERAL.—The Secretary may make a planning performance award in connection with a grant made, on or after the date of enactment of this section, to an eligible recipient for a project under this title located in an economic development district.

''(b) ELIGIBILITY.—The Secretary may make a planning performance award to an eligible recipient under subsection (a) in connection with a grant for a project if the Secretary determines before closeout of the project that—

''(1) the recipient actively participated in the economic development activities of the economic development district in which the project is located;

''(2) the project is consistent with the comprehensive economic development strategy of the district;

''(3) the recipient worked with Federal, State, and local economic development entities throughout the development of the project; and

''(4) the project was completed in accordance with the comprehensive economic development strategy of the district.

''(c) MAXIMUM AMOUNT.—The amount of a planning performance award made under subsection (a) in connection with a grant may not exceed 5 percent of the amount of the grant.

''(d) USE OF AWARDS.—A recipient of a planning performance award under subsection (a) shall use the award to increase the Federal share of the cost of a project under this title.

''(e) FEDERAL SHARE.—Notwithstanding section 204, the funds of a planning performance award may be used to pay up to 100 percent of the cost of a project under this title.

''(f) FUNDING.—The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 215 the following:

''Sec. 216. Planning performance awards.''.

SEC. 212. DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 211) is amended by adding at the end the following:

''SEC. 217. DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT.

''(a) IN GENERAL.—Subject to subsection (b), a recipient of a grant under section 201, 203, or 207 may directly expend the grant funds or may redistribute the funds in the form of a subgrant to other eligible recipients to fund required components of the scope of work approved for the project.

''(b) LIMITATION.—A recipient may not redistribute grant funds received under section 201 or 203 to a for-profit entity.

''(c) ECONOMIC ADJUSTMENT.—Subject to subsection (d), a recipient of a grant under section 209 may directly expend the grant funds or may redistribute the funds to public and private entities in the form of a grant, loan, loan guarantee, payment to reduce interest on a loan guarantee, or other appropriate assistance.

''(d) LIMITATION.—Under subsection (c), a recipient may not provide any grant to a private for-profit entity.''.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 216 the following:

''Sec. 217. Direct expenditure or redistribution by recipient.''.

SEC. 213. BROWNFIELDS REDEVELOPMENT.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 212) is amended by adding at the end the following:

''SEC. 218. BROWNFIELDS REDEVELOPMENT.

''(a) DEFINITION OF BROWNFIELD SITE.—In this section, the term 'brownfield site' has the meaning given the term in section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39)).

''(b) GRANTS.—On the application of eligible recipients, the Secretary may make grants for projects on brownfield sites to alleviate or prevent conditions of inadequate private capital investment, unemployment, underemployment, blight, underutilized or abandoned land, outmigration or population loss, or infrastructure deterioration, including projects consisting of—

''(1) acquisition, development, or reuse of land and infrastructure improvements for a public works, service, or facility;

''(2) development of public facilities, including design and engineering, construction, rehabilitation, alteration, expansion, or improvement, and related machinery and equipment;

''(3) business development (including funding of a revolving loan fund);

''(4) planning;

''(5) technical assistance; and

''(6) any other assistance determined by the Secretary to alleviate the economic impacts of brownfield sites consistent with the objectives of this title.

''(c) PROHIBITION ON REMEDIATION.—

''(1) DEFINITIONS.—In this subsection:

''(A) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' has the meaning given the term in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)).

''(B) RELEASE.—The term 'release' has the meaning given the term in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(22)).

''(C) REMEDIATION.—The term 'remediation' does not include response activities described in section 104(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(a)(3)).

''(2) PROHIBITION.—Except as provided in paragraph (3), a grant made under this section shall not be used for remediation to prevent or minimize the release of hazardous substances.

''(3) EXCEPTION FOR INCIDENTAL REMEDIATION.—

''(A) IN GENERAL.—Paragraph (2) does not apply to remediation that is incidental to the economic redevelopment project.

''(B) LIMITATION.—Except as provided in subparagraph (C), incidental remediation shall not exceed $50,000 at any individual project.

''(C) EXCEPTIONAL CIRCUMSTANCES.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary may waive subparagraph (B) in exceptional circumstances that further the mission of the Economic Development Administration.

''(ii) LIMITATION.—If the Secretary waives subparagraph (B) for a project, the cost of the incidental remediation at the project shall not exceed $200,000.

''(D) STANDARDS.—A recipient of a grant under this section that is used for incidental remediation shall—

''(i) obtain written approval or clearance from the appropriate Federal and State regulatory authority for the hazardous waste remediation; and

''(ii) comply with all applicable Federal and State laws.

''(4) EFFECT ON FEDERAL AND STATE LAWS.—Nothing in this section affects any liability, obligation, or response authority under Federal or State law.

''(d) ADDITIONAL LIMITATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a grant made under this section shall be subject to section 104(k)(4)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)(4)(B)).

''(2) EXCEPTIONS.—

''(A) ADMINISTRATIVE COSTS.—A recipient of a grant made under this section may use grant funds for the administrative costs of economic development activities.

''(B) COMPLIANCE COSTS.—A recipient of a grant made under this section may use grant funds for the compliance costs of economic development activities.

''(C) BONA FIDE PROSPECTIVE PURCHASER.—For purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), a recipient of a grant under this section that otherwise satisfies the definition of 'bona fide prospective purchaser' under section 101(40) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(40)) shall be considered to be within that definition regardless of the date on which the grant recipient acquires ownership of a facility.

''(e) ASSISTANCE AT OTHER SITES.—Nothing in this section affects the authority of the Secretary to provide assistance to eligible recipients under this Act for economic development projects at a site other than a brownfield site.''.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 217 the following:

''Sec. 218. Brownfields redevelopment.''.

TITLE III—COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

SEC. 301. ELIGIBILITY OF AREAS.

Section 301(c)(1) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161(c)(1)) is amended by inserting after ''most recent Federal data available'' the following: ''(including data available from the Bureau of Economic Analysis, the Bureau of Labor Statistics, the Census Bureau, the Bureau of Indian Affairs, or any other Federal source determined by the Secretary to be appropriate)''.

SEC. 302. COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES.

(a) IN GENERAL.—Section 302(a)(3)(A) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3162(a)(3)(A)) is amended by inserting ''maximizes effective development and use of the workforce consistent with any applicable State or local workforce investment strategy, promotes the use of technology in economic development (including access to high-speed telecommunications),'' after ''access,''.

(b) APPROVAL OF OTHER PLAN.—Section 302(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3162(c)) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary''; and

(2) by adding at the end the following:

''(2) EXISTING STRATEGY.—To the maximum extent practicable, a plan submitted under this paragraph shall be consistent and coordinated with any existing comprehensive economic development strategy for the area.''.

TITLE IV—ECONOMIC DEVELOPMENT DISTRICTS

SEC. 401. INCENTIVES.

(a) IN GENERAL.—Section 403 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3173) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 403.

SEC. 402. PROVISION OF COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES TO REGIONAL COMMISSIONS.

(a) IN GENERAL.—Section 404 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3174) is amended to read as follows:

''SEC. 404. PROVISION OF COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES TO REGIONAL COMMISSIONS.

''If any part of an economic development district is in a region covered by 1 or more of the Regional Commissions, the economic development district shall ensure that a copy of the comprehensive economic development strategy of the district is provided to the affected Regional Commission.''.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 404 and inserting the following:

''Sec. 404. Provision of comprehensive economic development strategies to Regional Commissions.''.

TITLE V—ADMINISTRATION

SEC. 501. ECONOMIC DEVELOPMENT INFORMATION CLEARINGHOUSE.

Section 502 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3192) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) maintain a central information clearinghouse on the Internet with—

''(A) information on economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal Government;

''(B) links to State economic development organizations; and

''(C) links to other appropriate economic development resources;'';

(2) by striking paragraph (2) and inserting the following:

''(2) assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal and State laws in locating and applying for the assistance;'';

(3) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(4) by adding at the end the following:

''(4) obtain appropriate information from other Federal agencies needed to carry out the duties under this Act.''.

SEC. 502. BUSINESSES DESIRING FEDERAL CONTRACTS.

(a) IN GENERAL.—Section 505 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3195) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 505.

SEC. 503. PERFORMANCE EVALUATIONS OF GRANT RECIPIENTS.

(a) IN GENERAL.—Section 506(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3196(c)) is amended by striking ''after the effective date of the Economic Development Administration Reform Act of 1998''.

(b) EVALUATION CRITERIA.—Section 506(d)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3196(d)(2)) is amended by inserting ''program performance,'' after ''applied research,''.

SEC. 504. CONFORMING AMENDMENTS.

Section 602 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3212) is amended—

(1) in the first sentence, by striking ''in accordance with'' and all that follows before the period at the end and inserting ''in accordance with subchapter IV of chapter 31 of title 40, United States Code''; and

(2) in the third sentence, by striking ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'' and inserting ''section 3145 of title 40, United States Code''.

TITLE VI—MISCELLANEOUS

SEC. 601. ANNUAL REPORT TO CONGRESS.

Section 603 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3213) is amended—

(1) by striking ''Not later'' and inserting the following:

''(a) IN GENERAL.—Not later''; and

(2) by adding at the end the following:

''(b) INCLUSIONS.—Each report required under subsection (a) shall—

''(1) include a list of the waivers issued under section 218(c)(3)(C);

''(2) include a list of all grant recipients by State, including the projected private sector dollar to Federal dollar investment ratio for each grant recipient;

''(3) include a discussion of any private sector leveraging goal with respect to grants awarded to—

''(A) rural and urban economically distressed areas; and

''(B) highly distressed areas; and

''(4) after the completion of a project, include the realized private sector dollar to Federal dollar investment ratio for the project.''.

SEC. 602. RELATIONSHIP TO ASSISTANCE UNDER OTHER LAW.

Section 609 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3219) is amended—

(1) by striking subsection (a); and

(2) by striking ''(b) ASSISTANCE UNDER OTHER ACTS.—''.

SEC. 603. SENSE OF CONGRESS REGARDING ECONOMIC DEVELOPMENT REPRESENTATIVES.

(a) FINDINGS.—Congress finds that—

(1) planning and coordination among Federal agencies, State and local governments, Indian tribes, and economic development districts is vital to the success of an economic development program;

(2) economic development representatives of the Economic Development Administration provide distressed communities with the technical assistance necessary to foster this planning and coordination; and

(3) in the 5 years preceding the date of enactment of this Act, the number of economic development representatives has declined by almost 25 percent.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should maintain a sufficient number of economic development representatives to ensure that the Economic Development Administration is able to provide effective assistance to distressed communities and foster economic growth and development among the States.

TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 701 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3231) is amended to read as follows:

''SEC. 701. GENERAL AUTHORIZATION OF APPROPRIATIONS.

''(a) ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS.—There are authorized to be appropriated for economic development assistance programs to carry out this Act, to remain available until expended—

''(1) $400,000,000 for fiscal year 2004;

''(2) $425,000,000 for fiscal year 2005;

''(3) $450,000,000 for fiscal year 2006;

''(4) $475,000,000 for fiscal year 2007; and

''(5) $500,000,000 for fiscal year 2008.''

''(b) SALARIES AND EXPENSES.—There are authorized to be appropriated for salaries and expenses of administering this Act, to remain available until expended—

''(1) $33,377,000 for fiscal year 2004; and

''(2) such sums as are necessary for each fiscal year thereafter.''.

SEC. 702. FUNDING FOR GRANTS FOR PLANNING AND GRANTS FOR ADMINISTRATIVE EXPENSES.

(a) IN GENERAL.—Title VII of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3231 et seq.) is amended by adding at the end the following:

''SEC. 704. FUNDING FOR GRANTS FOR PLANNING AND GRANTS FOR ADMINISTRATIVE EXPENSES.

''(a) IN GENERAL.—Of the amounts made available under section 701 for each fiscal year, not less than $27,000,000 shall be made available for grants provided under section 203.

''(b) WAIVER.—Subsection (a) shall not apply in any case in which the total amount made available for a fiscal year for all programs under this Act (excluding programs described in paragraphs (1) and (2) of section 209(c)) is less than $255,000,000.''.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 703 the following:

''Sec. 704. Funding for grants for planning and grants for administrative expenses.''.

Mr. JEFFORDS. Mr. President, I am pleased that today we are about to enact S. 1134, the Economic Development Administration Reauthorization Act of 2004. This bipartisan bill, which I helped craft, will strengthen the agency's ability to assist economically distressed communities in Vermont and across the Nation by providing approximately $1.3 billion in economic development grants over the next 5 years.

Since its establishment in 1965, the Economic Development Administration, EDA, has invested more than $18.4 billion in more than 52,000 projects in all 50 States and in U.S. territories. These EDA investments have been supplemented by approximately $8.3 billion in matching funds from investment partners and have leveraged approximately $90.6 billion in private sector investment. In total, these investments have created more than 2.9 million jobs and saved more than 830,000 jobs.

In Vermont, for example, EDA funds have been used to develop a business incubator in Randolph and will soon be used to provide high-speed Internet access to the states most rural region of Caledonia, Essex, Orleans, Lamoille, Franklin, and Grand Isle Counties. My goal with this legislation has been to increase the investment of EDA dollars

in Vermont, and 5 years from now I believe that will be demonstrated.

The bill we are considering today is slightly altered from the one that we passed out of the Environment and Public Works Committee last June. In an effort to speed eventual enactment into law, this substitute bill is not only supported by myself, Senator INHOFE, the Chairman of the Environment and Public Works Committee, Senators BOND and REID, the Chairman and Ranking Member of the Environment Committee's Transportation and Infrastructure Subcommittee, but it is also supported by our House counterparts on the Transportation and Infrastructure Committee.

I am pleased we were able to increase funding for planning in this bill. EDA has an important role to play in supporting planning at the local level. EDA has an important role as well to encourage the leveraging of federal funds. However, there is language in this bill that ensures that rural and urban economically distressed areas are not adversely impacted by internal EDA leveraging goals.

Turning to brownfields, I am pleased this bill encourages EDA to promote the redevelopment of abandoned industrial facilities and brownfields. The economic and social benefits of brownfields redevelopment are well documented. For example, in June 2003, the U.S. Conference of Mayors estimated that brownfields redevelopment could generate more than 575,000 additional jobs and up to $1.9 billion annually in new tax revenues for cities. In addition, according to EPA, every acre of reused brownfields preserves an estimated 4.5 acres of unused open space. Estimates of the number of brownfields sites nationwide range from 450,000 to as many as a million.

This bill complements the 2002 Environmental Protection Agency brownfields cleanup law by encouraging EDA to make economic redevelopment of brownfields a priority. In other words, EPA's focus is to facilitate the environmental assessment and cleanup of abandoned sites, whereas EDA's role is to encourage the economic reuse of the property.

I agree with EDA Administrator David Sampson, who in response to a question from the EPW Committee, wrote, ''cleanup activities are most appropriately handled by state and federal environmental regulatory agencies with the background and technical expertise to address complex remediation issues.'' As such, I expect that EDA would only fund redevelopment projects at sites that have been certified as ''clean'' by EPA or the State environmental agency. In the rare circumstance that an EDA grant recipient discovers minimal contamination as part of a redevelopment project, this bill would require any remediation activities be conducted in compliance with all Federal, State, and local laws and standards. EDA grantees should obtain the prior written approval of EPA or the State environmental agency to ensure that the remediation is protective of human health and the environment.

Of course, EDA also must uphold the ''polluter pays'' principle by ensuring that Federal dollars are never given to the polluter to clean up contamination that they caused in the first place. Likewise, nothing in this bill in any way affects the liability of any party under Superfund, RCRA or any other federal or state law.

The final brownfields-related aspect of the bill requires a General Auditing Office study of EDA's brownfield grants. This study should provide valuable data on the extent to which EDA brownfield redevelopment grants involve remediation activities, the environmental standards applied and the role of Federal, State and local environmental agencies and public participation in the cleanup process. It is my hope that such information will enable future Congresses to revisit these issues to ensure more explicitly that any remediation performed is truly incidental to the larger economic redevelopment project and that cleanups performed using federal dollars are protective of human health and the environment.

In closing I praise the bipartisan member and staff effort that went into crafting this important bill. In particular, I acknowledge the work of Geoffrey Brown and Malcolm Woolf on my staff; Angie Giancarlo and Frank Fannon on Senator INHOFE's staff; David Montes on Senator REID's staff; and Nick Karellas and Ellen Stein on Senator BOND's staff.

Mrs. BOXER. Mr. President, the Economic Development Administration provides critical support to distressed communities. Included in this reauthorization bill is assistance for the productive reuse of abandoned industrial facilities and the redevelopment of brownfields. I support that effort.

Unfortunately, the bill also includes new language allowing EDA to do site assessment and remediation. This is, and should remain, the job of the Environmental Protection Agency. As is evident in the manager's amendment to the bill, it is Congress's intent that EDA abide by the same site assessment and remediation standards and protocols as does EPA.

Furthermore, under this bill, Federal funds provided by EDA for assessment or cleanup will only be provided consistent with the ''Polluter Pays'' principle. That is, funds will not be provided to those who are responsible for the pollution.

Specifically, EDA shall not provide funds for response costs to parties potentially responsible for those costs under section 107 of CERCLA, or to owners or operators responsible for corrective action under the Leaking Underground Storage Tank program pursuant to the Solid Waste Disposal Act, or to any other party responsible for the pollution.

Mr. President, EDA agrees with Congress's intent. On April 28, 2004, David Sampson, Assistant Secretary of Commerce for Economic Development, told the Senate Environment and Public Works Committee, ''EDA is not seeking to in any way relieve a responsible party from liability under CERCLA nor to provide funds to a party to undertake clean-ups required under CERCLA, since to do so would undercut the 'Polluter Pays' principle on which CERCLA was founded.''

Under any Federal program, when Federal funds are used for cleanup, it is very important to ensure that assessment and cleanup costs not be shifted away from the polluter and onto taxpayers. To the limited extent EDA is involved in funding cleanups, Congress's intent in this bill and EDA's policy is that polluters remain responsible for their own cleanup costs. Polluters must pay to clean up their own messes.

Mr. LAUTENBERG. Mr. President, I rise to speak on the bill to reauthorize the Economic Development Administration, EDA, which provides critical support to needed communities. Since its establishment, the Economic Development Administration has invested over $18 billion in more than 50,000 projects in all parts of the United States. These investments have been supplemented by matching funds from investment partners, and have leveraged a great deal of investment by the private sector.

The reauthorization bill before us today includes assistance for the productive use of abandoned industrial facilities and the redevelopment of brownfields. I support that effort. While the Environmental Protection Agency's role under the 2002 law is to facilitate the environmental assessment and cleanup of abandoned brownfield sites, EDA's role is to encourage the economic reuse of the property.

Under this bill, Federal funds provided by EDA for assessment or cleanup will only be provided consistent with the ''Polluter Pays'' principle. That is, funds will not be provided to those who are responsible for the pollution. They are responsible for cleaning up the mess they made. That is, funds will not be provided to those who are responsible for the pollution. They are responsible for cleaning up the mess they made.

Specifically, EDA shall not provide funds for response costs to parties potentially responsible for those costs under section 107 of CERCLA, or to owners or operators responsible for corrective action under the Leaking Underground Storage Tank program pursuant to the Solid Waste Disposal Act, or to any other party responsible for the pollution.

It is very important to ensure that assessment and clean-up costs are not shifted from the polluter to the taxpayers. To the extent that EDA is involved in funding cleanups, Congress'

intent in this bill and EDA's policy must be the same: polluters are responsible for paying to clean up their own messes.

Mr. INHOFE. Mr. President, I rise to discuss S. 1134, the Economic Development Administration reauthorization bill, that was approved by the Senate today. This is an important piece of legislation for our Nation's economically distressed communities. These areas count on EDA to help create favorable environments for long-term economic growth. Studies have shown that EDA uses Federal dollars efficiently and effectively—creating and retaining long-term jobs at an average cost that is among the lowest in government. The bill emphasizes coordination, flexibility and performance. These tools will allow the Secretary to continue and even improve and increase the good work done by the agency.

In particular, I would like to highlight the performance award program and the reforms to the revolving loan fund, RLF, program included in the bill. The performance award program will allow the Secretary to reward those grant recipients who meet or exceed expectations regarding performance measures such as jobs created and private sector investment.

The reforms to the RLF program are needed to ensure the agency can continue to capitalize new and recapitalize existing RLFs. The current administrative burden of these funds is large. This bill will allow the Secretary to reduce that burden, both for the agency and for the local RLF managers, while providing appropriate oversight.

Enactment of this legislation will be good for my home State of Oklahoma in several ways as well. First, it will ensure that the communities of Elgin and Durant are able to move forward with infrastructure improvements that will support the attraction of private sector investment and the creation of jobs. Enactment will also result in much needed investment in Ottawa County, providing funding for the city of Miami—a city that has suffered economic hardship due to its proximity to a Superfund site.

Additionally, the bill preserves the ability of Economic Development Districts to use planning funds to provide technical assistance and cover administrative costs. This is especially important for the small, rural communities of Oklahoma that do not have the resources to maintain the professional and technical capacity needed to develop and implement comprehensive economic development strategies. Economic Development Districts work to fill this hole and should not be prevented from doing so.

I would like to thank my colleagues here in the Senate, in the House of Representatives and in the administration for working so diligently and cooperatively with me to complete work on this very important legislation. I would also like to thank the staff for their hard work—from my staff: Angie Giancarlo and Frank Fannon; from Senator JEFFORDS' staff: Geoff Brown and Malcolm Woolf; from Senator BOND's staff: Nick Karellas and Ellen Stein; from Senator REID's staff: David Montes; and from EDA: Nat Wienecke, Paul Pisano, Ben Erulkar and Dennis Alvord.

Mr. JEFFORDS. Mr. President, the Economic Development Administration Reauthorization Act of 2004, S. 1134, contains important provisions relating to the redevelopment of brownfields. As the ranking member of the Environment and Public Works Committee, I want to take the opportunity to explain these provisions. Before I begin, let me acknowledge the contributions of Senator CHAFEE, chair of the Superfund and Waste Management subcommittee, in developing these provisions and note that he supports my comments today.

S. 1134 encourages EDA to promote the redevelopment of abandoned industrial facilities and brownfields. The economic and social benefits of brownfields redevelopment are well documented. For example, in June 2003, the U.S. Conference of Mayors estimated that brownfields redevelopment could generate more than 575,000 additional jobs and up to $1.9 billion annually in new tax revenues for cities. In addition, according to EPA, every acre of reused brownfields preserves an estimated 4.5 acres of unused open space. Estimates of the number of brownfields sites nationwide range from 450,000 to as many as a million.

This bill complements the 2002 Environmental Protection Agency brownfields cleanup law by encouraging EDA to make economic redevelopment of brownfields a priority. In other words, EPA's focus is to facilitate the environmental assessment and cleanup of abandoned sites, whereas EDA's role is to encourage the economic reuse of the property.

I agree with EDA Administrator David Sampson, who in response to a question from the EPW Committee, wrote, ''cleanup activities are most appropriately handled by state and federal environmental regulatory agencies with the background and technical expertise to address complex remediation issues.'' As such, I expect that EDA would only fund redevelopment projects at sites that have been certified as ''clean'' by EPA or the State environmental agency. In the rare circumstance that an EDA grant recipient discovers minimal contamination as part of a redevelopment project, this bill would require any remediation activities be conducted in compliance with all Federal, State, and local laws and standards. EDA grantees should obtain the prior written approval of EPA or the State environmental agency to ensure that the remediation is protective of human health the environment.

Of course, EDA also must uphold the ''polluter pays'' principle by ensuring that Federal dollars are never given to the polluter to clean up contamination that they caused in the first place. Likewise, nothing in this bill in any way affects the liability of any party under Superfund, RCRA or any other Federal or State law.

The final brownfields-related aspect of the bill requires a General Auditing Office study of EDA's brownfield grants. This study should provide valuable data on the extent to which EDA brownfield redevelopment grants involve remediation activities, the environmental standards applied and the role of Federal, State and local environmental agencies and public participation in the cleanup process. It is my hope that such information will enable future Congresses to revisit these issues to ensure more explicitly that any remediation performed is truly incidental to the larger economic redevelopment project and that cleanups performed using Federal dollars are protective of human health and the environment.

In closing I would like to praise the bipartisan Member and staff work that went into crafting this important bill and urge swift passage by the other body.

Ms. COLLINS. Madam President, I ask unanimous consent that the substitute amendment that is at the desk be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 3976) was agreed to.

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

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The bill (S. 1134), as amended, was read the third time and passed.

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

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

NATIONAL INTELLIGENCE REFORM ACT OF 2004—Continued

Mr. BYRD. Mr. President, the Senate has voted overwhelmingly to invoke cloture on the national intelligence reform bill. I voted against cloture on the bill. The Senate leadership, in supporting cloture on this bill—I speak most respectfully—argued that this debate has gone on long enough. In essence, that is what has been stated.

I will soon begin my 47th year in this body. I never thought I would see the demise of the Senate as a debating institution. I am very sorry about that. I have seen the demise of the Senate as a debating institution. I have been here when debate on a bill went over 100 days.

Today's situation is eerily reminiscent of the autumn of 2002. A few years ago, the hue and cry went up for all Senators to support a massive bureaucratic reshuffling of our homeland security agencies and a war resolution—I will refer to in that way—against Iraq just weeks before election day.

Like a whipped dog fearing his master, the Senate obediently complied with the demands of the White House, to which our leadership said: let us get this matter behind us; let us get it behind us.

I know many of the Members who come to this body in this day and time are from the other body, and I speak most respectfully of the other body. I came from the other body likewise. But I can remember when I was in the other body I often said, Thank God for the Senate of the United States. That is when I was still in the other body. Thank God for the Senate of the United States. They take their time over there to debate. In this day and time, we do not take time to debate.

Hindsight reveals the mistakes that the Senate made 2 years ago. Today, the Department of Homeland Security finds itself bogged down by bureaucratic infighting, unresolved turf wars, and insufficient funding. The central argument for the war resolution against Iraq, the threat of weapons of mass destruction, has disintegrated into a mess of lies and hot air. The calls for Congress to act quickly were revealed to be ill-advised, misguided, misinformed.

The 108th Congress has an opportunity to learn from the mistakes of the 107th Congress. Yet the repeated calls by Senators for immediate action on this bill suggests we have learned very little.

Most of the hundreds of amendments offered to this bill, or certainly scores of amendments, have focused on trying to speed up reforms that we already do not understand. Apparently, few Senators have dared to speak about the need for caution in arranging a massive, secretive bureaucracy. It would be the most secretive around.

The risk that this bill will grow into a hydra-headed monster increases exponentially as election day nears. Many believe the House bill will include a number of provisions unrelated to intelligence reform, all the way from amendments on immigration to reauthorization of the PATRIOT Act. I hear lately the House has no intention of adding that last mentioned measure. In the rush to pass this bill on a political timetable, what type of Faustian bargains will be struck to jam this bill through the Congress? We have had it happen before. We have been jammed on these important bills. We have had our backs against the wall because of some nearing date, perhaps of a recess, and so forth. What kind of deals with the devil will be made in order to get this bill done in time for election day? That is the big rush—get this bill through in time for election day.

Even one Republican Member of the House of Representatives is concerned that a slam-dunk conference would open the door to politically motivated poison pills. Why is there such a clamor to vote on a bill that is increasingly viewed as a way to make political hay in the hours before a Presidential election? Will Senators even get to read the conference report on this bill before we are expected to vote on it? If we pass this bill, who knows what may be lurking in the walls surrounding that conference between the two Houses unless the House should decide to accept the Senate-passed bill, making it all the more important for the Senate to take our time and thoroughly debate the bill.

The mistake of how the Senate is choosing to consider this bill is not the fault of the 9/11 Commission. That panel is a group of experienced and dedicated public servants. Their research went straight to the heart of the question that has burned in the minds of millions of Americans for 3 years: Namely, how did such a powerful Nation fail to defend itself from those attacks?

In chilling detail, the panel's report lays out the facts about how the U.S. Government failed to stop 19 hijackers—not from Iraq—19 hijackers armed with box cutters; 19 hijackers, not from Iraq, not a one. Not even one of those 19 hijackers came from Iraq. Yet some have attempted to tie the hijackers with Iraq.

''The document is an improbable literary triumph,'' declared U.S. Circuit Judge Richard Posner in the New York Times Book Review. ''However, the commission's analysis and recommendations are unimpressive,'' he said, ''not sustained by the report's narrative,'' he said, ''come to very little . . . [and more] of the same.''

That is pretty harsh criticism. And contrary to what some believe about the critics of intelligence reform, Judge Posner is not protecting his turf, and he does not have an ax to grind.

The Senate Appropriations Committee held hearings 2 weeks ago on the September 11 recommendations. A bipartisan array of national security experts pleaded with the Congress as they gave testimony to the Appropriations Committee, pleaded with the Congress not to rush these reforms.

My, what an impressive list of names: The former chairman of the Senate Intelligence Committee, David Boren; former Senator Bill Bradley; former Secretary of Defense Frank Carlucci; former Secretary of Defense William Cohen—we all remember him. He has been an outstanding Secretary of Defense. He was a Republican—former CIA Director Robert Gates; former Deputy Secretary of Defense John Hamre; former Senator Gary Hart; former Secretary of State Henry Kissinger—he indicated we ought to take several months on this bill—former chairman of the Senate Armed Services Committee Sam Nunn—there is a good one for you. I served in the Senate with Sam Nunn. I served on the Armed Services Committee when he was chairman. Here is a man who is a careful, careful legislator—former Senator Warren Rudman, Republican from New Hampshire; former Secretary of State George Shultz, another Republican.

Among them they have decades of knowledge and experience, and the Congress stands ready to dismiss their concerns out of hand.

I pointed out that several of these distinguished persons are Republicans just to emphasize there are several preeminent Republicans who have had great experience in government who say: Wait, take your time. What is the hurry here? Why the big hurry?

This group of 11 experienced public servants who urged the Congress to stop, look, and listen, they have no turf to protect. They have long since left the service of the executive and legislative branches. Why does the Senate not take their advice? Why does the Senate not pause to listen to their sage advice?

Let us remember that 2 years ago Members of Congress fell all over themselves in a mad frenzy to adopt the advice of Senator Hart and Senator Rudman to create a Department of Homeland Security. Anyone who did not agree with the Hart-Rudman report was viewed as being obstructionist or out of touch. But today, the Senate sloughs off the counsel of those same two men to slow down—slow down. That is what the Senate is all about.

The Senate is not a second House of Representatives with a 6-year term. Thank God for that. As I said many years ago when I was a Member of the other body, the body that is closest to the people, I said thank God for the Senate. So I did not come to this body with any idea of changing the rules to make it a second House of Representatives with a 6-year term. I never thought that about it. I have thought that it is meant to be a place where men and women could argue as long as their feet would hold them erect. I have said time and again that as long as we have a forum in which elected representatives of the people can speak out, speak out without fear and speak out as long as they want to speak on a matter they feel very deeply about, thank God, the people's liberties will be secure.

But today, as I say, the Senate sloughs off the counsel of these eminent luminaries to slow down. How quickly we turn on the advice of our friends.

I fear the Senate wants change, in some instances, merely for the sake of

change, and that we do not yet possess an adequate understanding of why we are doing what we are doing. It is not even clear why or how the 9/11 Commissioners arrived at all of their recommendations. The Commission's report does not explain it. What recommendations did the Commission consider and reject, and why did they reject the recommendations? Did the 9/11 panel receive any independent assessments of their ideas before they were published? Will the Commission's proposals prevent intelligence failures in other areas, such as stopping a repeat of the Iraq weapons of mass destruction fiasco? Even as the Senate rushes to pass this intelligence reform bill, with one eye on the public opinion polls, of course, and the other on the adjournment date, we do not know the answer to these questions.

Given the Senate's failure to ask more questions about the creation of a Department of Homeland Security and the need for war in Iraq, I would hope this Chamber would be more circumspect about rushing to restructure our intelligence agencies on the eve of a Presidential election.

These agencies are very secretive—very secretive. And look at the power Congress is about to give the national intelligence director. Look at the power. He is not an elected individual. I would hope that the Senate would pause to consider the powers that may be shifted to the executive branch in this legislation. I also hope that Senators will consider if such a timid Congress could possibly exercise proper oversight over a powerful and secretive bureaucracy.

We are being naive about these intelligence reforms. It may be comforting to embrace the 9/11 report, and I hold in the highest regard the members, as I say, of that Commission and for its work. It may be comforting to embrace the 9/11 report, but its reforms ignore more fundamental intelligence problems.

At the Appropriations Committee hearing on September 21, 2004, I asked Henry Kissinger: If the 9/11 Commission's recommendations had been implemented in 2002, would our intelligence agencies have come to a different conclusion about Iraq's nonexistent weapons of mass destruction? His answer was no, nothing would have been different. There still would have been false claims of huge stockpiles of WMD in Iraq.

Mr. President, we are all too focused just on the failings of 9/11. The Senate has not focused enough attention on the intelligence failures leading to war in Iraq, in which, as of the last reading of the news reports, we have lost 1,061 men and women. For what? For what did they give their lives? I would wonder, if I had a grandchild who had gone and lost his life in this war, for what did he give his life? Was it worth it? Was it worth it to invade a country under the new doctrine of preemption, which flies right into the face of the Constitution of the United States?

I did not hear the Constitution mentioned last night in the debate. I am not sure, maybe I had my back turned at the moment. I have a sick wife and maybe, perhaps, I did not hear it. But I certainly did not hear it in the first debate between Mr. Bush and Mr. KERRY; not one time did I hear the Constitution mentioned. And I did not hear it mentioned last night. Yet it is mentioned every day throughout this country in the courtrooms of this Nation, the Constitution of the United States. Here we have these Presidential debates and nobody—if I find I am mistaken about last night's debate, I will certainly amend my words in this respect, but I do not believe I missed something there.

The Senate has not focused enough attention on the intelligence failures leading to the war in Iraq. We have not focused enough attention on the nuclear threat posed by Iran and North Korea. We have not focused enough attention on China. We have not focused enough attention on the proliferation of deadly germs and gases.

Any of these challenges could be responsible for the next catastrophic attack on our country or our interests, and they are conspicuously ignored by this bill. Congress is showing myopic vision in failing to see the universe of threats to this country. Terrorism may be the most immediate threat to our country, but it is not the only threat.

As a Member of the Senate and as the then-chairman of the Appropriations Committee in the Senate, I and my committee responded quickly to the attack of 9/11. Within 3 days, Congress passed an appropriations bill, appropriating $40 billion—within 3 days, $40 billion. Congress, both Houses, passed an appropriations bill appropriating $40 billion. In other words, $40 for every minute since Jesus Christ was born, $40 for every minute since Jesus Christ was born—$40 billion. So Congress acted quickly.

We all are concerned. There is no monopoly of concern on either side of the aisle here. I support the effort to reform our intelligence agencies. I support the creation of a national intelligence director. But I do not support this hurry in which we are engaged. We need to stop, look, and listen, debate, offer amendments, answer questions, hold more hearings, like TED STEVENS and I holding hearings in the Appropriations Committee.

I have been one of the harshest critics of the status quo. Intelligence agencies are expected to uncover terrorists plots against our country and produce unbiased, accurate intelligence, free from political interference. The CIA and other agencies have fallen tragically short on both marks. However, I am not convinced that the Congress fully understands the implications of the reforms proposed by the 9/11 Commission, and the rush to vote on these issues before the Presidential elections means it will not have that opportunity. Henry Kissinger called attention to that fact.

We are legislating in an atmosphere, just before a Presidential election, that is not conducive to thoughtful reform of these intelligence agencies. But the greatest contribution the Senate can make to the cause of the 9/11 families is to take the time to get those reforms right. Prematurely cutting off debate on this bill only succeeds in further politicizing a process that is more mindful of election day than it is the result of this debate.

Like 2 years ago, the Senate is being stampeded into voting on major, far-reaching legislation. The result of this ill-considered course is easily seen: Any reforms the Congress enacts will be the product of rush and haste rather than thoughtful deliberation. We owe more to the memories of those who lost their lives on September 11.

Mr. President, a little earlier I made the statement to the effect that I heard no one in last night's debate on either side mention the Constitution of the United States. My press has since called me and told me I was wrong. That, indeed, one of the candidates—and he said Senator EDWARDS—did mention the Constitution of the United States. Thank God for that.

Mr. LEVIN. Mr. President, I ask unanimous consent that following the remarks of the Senator from Virginia and I be recognized to offer a Warner-Levin amendment which which has now been worked out and cleared. I think Senator WARNER is somewhere nearby. If there is no objection, I ask unanimous consent to put us next in line with that amendment, which is a modified amendment and has been agreed to.

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

The Senator from Pennsylvania.

HEALTH CARE

Mr. SANTORUM. Mr. President, I rise to talk about an issue that is getting quite a bit of play in the press, other than the security issue having to do with our intelligence community and homeland security. This is a different kind of security issue. It is an issue having to do with health care. I wanted to discuss with Members today the two approaches that the candidates for President have about health care and what the consequences are to the consumer, to the patient, as well as to the taxpayer and to our health care system in general.

This is a very important debate we are having about health care because there is an acute problem. It is a problem that, candidly, this Congress has not dealt with. We saw in the debates last night and other conversations about the importance of a Patients' Bill of Rights, which would have done nothing but add more cost to the health care system. It would have caused more uninsured, and that is the term I want to focus on today, ''the uninsured.''

As I travel around Pennsylvania—and I am sure this is true for my colleagues as they travel in their States—

what we hear repeatedly is the problem of the spiraling cost of health care. A Patients' Bill of Rights would have done nothing but add more cost to that system and add more to the uninsured problem. What we don't hear are answers from Congress on how to deal with the problem of the uninsured.

We have two Presidential candidates who have laid out a plan to deal with this very complex problem. I will say that Senator JUDD GREGG chaired a task force on our side of the aisle that put forth a variety of different proposals to deal with the uninsured because it is a very complicated group of people in the sense that there isn't one reason people are uninsured. Senator GREGG has given eloquent talks about the approach we have offered. But, candidly, we have not moved forward on this on either side of the aisle to try to bring it to fruition.

The Presidential candidates have put forward some ideas. I wanted to talk about both of those plans.

Let me first talk about Senator KERRY's plan. Senator KERRY has proposed a plan which, according to the revenue estimates, runs in the area of about $1.5 trillion over the next 10 years, $1.5 trillion in new spending for tax breaks to provide for the uninsured. What the Senator from Massachusetts has suggested is that this $1.5 trillion will cover roughly 27 million people who are currently uninsured, which would make up a little over half of the uninsured in America. But at a cost of $1.5 trillion over 10 years to get someone insured in America, one person under his proposal is $5,500 per insured per year—not per family, per insured per year, $5,500 in Government subsidies to provide for insurance per year. That is a very high-cost way of trying to provide insurance.

On top of that, not only is it a high-cost way, but as you will see in a moment, it is a very bureaucratic way. It is a very inefficient way, and it is a further Government takeover of the private health care system. It federalizes under Medicaid a dramatic expansion of Medicaid for a lot of the people who currently are either uninsured or in many cases insured by private sector employers.

I want to talk about the fiscal voodoo that is going on as to how this program is going to be paid for, which is one of the many proposals that Senator KERRY has put forth in the election. But this is by far the most expensive, $1.5 trillion. He says he is going to pay for it by repealing the Bush tax cuts.

As you can see from this chart, the Bush tax cuts, scored over the next 10 years, will cost the Treasury $1 trillion. So there is still an unaccounted for half a trillion dollars, if we repeal all of them.

Now, what he has said is he only wants to repeal the ones that are on those who make over $200,000. Well, if we go down here and look at what is the tax cut for those who make $200,000, it is roughly $612 billion over the next 10 years, which is less than half of this $1.5 trillion. There is still almost $900 billion in unaccounted-for new spending or tax incentives in the Kerry plan that are not paid for. He could add an additional $400 billion, roughly, in getting rid of the 10-percent bracket and the marriage penalty, the child credit, and the middle-class rate reductions. We can do that, too. We are still half a trillion dollars short.

The plan doesn't add up. It adds up to a fiscal disaster. As many know, the biggest group of people, as far as percentage, who pay in this bracket for which the Senator from Massachusetts wants to eliminate this tax reduction is small businesses. These are the job creators. He wants to eliminate tax incentives for people in small business who are the job creators. He wants to get rid of, I assume, or add other taxes on to pay for the additional $900 billion it is going to take to pay for this new proposal which spends $5,500 per person to provide insurance for them. I would just suggest that that is a very costly way.

Let me contrast that with the President's approach, which does not, as Senator KERRY's plan does through his program, displace private insurance. What do I mean by that? The reason this costs so much is because he is going to be insuring more people than the 27 million in his new program, but a lot of those people he is insuring are already insured.

He is going to take them from the private sector and move them to the public sector. That is why it costs so much. It is a new publicly borne cost that is now a privately borne cost. The taxpayers are going to pay for this, as opposed to employers and employees.

What the President has done is a much smarter, more targeted approach. He put together a plan that does not cost $1.5 trillion but $129 billion. It spends $1,900 to attract someone who is currently uninsured into the new insurance pool that will be created, and it does so in a way that doesn't take someone who has insurance and displaces them into a public pool, which is what the Kerry plan does. So this is a much more commonsense approach, leaving the private insurance market, which has served our country so well, in place and not replacing it with a public sector plan, but creating incentives through low-income tax credits, small employer tax credits, above-the-line deductions, some private market reforms, like AHPs and other things, to broaden the pool for people to be able to purchase health insurance.

This will add almost 7 million people to the ranks of the insured from the ranks of the uninsured. It does so at a responsible cost, something we can likely afford over the next 10 years, as opposed to blowing a hole through the deficit. I find it remarkable that we hear over and over again from the Senator from Massachusetts about how this President has very high deficits, yet we look at a plan here that, under the current scenario he proposes, is a $600 billion repeal of taxes to pay for a $1.5 trillion program. If you are talking about blowing a hole in the deficit, this will do so, and then some; it will add about $100 billion in new deficits every year as a result of this proposal.

This is only part of the problem. The other part of the problem is how the Kerry plan works. Unlike the Bush plan which, again, doesn't displace people from the private sector to the public sector, does not cost $5,500 per person to get them into the insured category, Senator KERRY's plan is incredibly complicated and promises things he cannot deliver. For example, he talks about how he is going to provide the same health plan that Members of Congress have, by participating in the Federal Employees Health Benefit system. He said that, and then the Federal Employees Union got to him and said, whoa, whoa, whoa, you are not going to do that; you are not going to put everybody into our insurance pools. That is going to drive up the cost of our health care dramatically. You can say you are going to give everybody what Members of Congress have, but we are going to set up a separate pool.

So he sets up a separate insurance pool. It is not what Members of Congress have. It is something completely different. It sets up this insurance pool that people can participate in, but the cost of that pool is going to be based on who enrolls in it. So I don't understand how that will save any money, because all insurance pools are based on who is enrolled in the plan. So there is this idea that somehow or other we are going to give you a congressional health care benefit—which, by the way, is the same as every other Federal employee—for nothing, when in fact they are going to get something like a congressional health care plan. Let me assure you, it won't be for nothing; it will be for a lot of money, in a very complicated way.

This is a chart that tries to describe how the Kerry plan works from the standpoint of the Medicare portion over here, including schools, by the way. Schools are going to be responsible for being a social service agency and signing up people for Medicaid. Now we talk so much about how schools are being asked to do so much more when it comes to education. Senator KERRY has another idea for them. They are going to take the responsibility for enrolling children into Medicaid as part of their responsibilities.

Over here, you have sort of how we interact with the doctors and the hospitals. You have this new agency, the premium rebate pool agency—not a particularly creative acronym. We have this agency that is going to determine what is covered, how much we pay. So you are going to have, in a sense, the Federal Government making these decisions as to what doctors you see, how much they are going to pay these doctors, what is going to be covered by these plans.

Again, it is not just an expansion of Medicaid, which is very costly, and bringing a lot of new people into the Medicaid Program, many of whom already have insurance, not only setting up this other plan to deal with how we are going to handle the ''private market reforms'' Senator KERRY wants to impose to help, in this case, those who are high-cost patients in the health care system. So here is the congressional health plan, and you have all these different organizations, or different functions with new organizations, and some are going to be organizations that will have increased responsibility to offer this new congressional health plan, which isn't a congressional health care plan.

You have a tax credit idea. It is not simple. In fact, Senator KERRY has not been particularly clear about how these tax credits will work. He has several of them, not just one. There are four different tax credits Senator KERRY is going to put in place here. Here they are. This is a very complicated system, and it is an extremely costly system, and one that puts more people into Government, less in the private sector, and when private sector reforms happen, puts more oversight into the Government over the private sector—all at the cost of $1.7 trillion.

This is not the direction we want to take in health care. We don't want more Government oversight of the private sector to drive up costs in the private sector. We don't want more people from the private markets going into the Government pools, and we don't want to create the shell game that Senator KERRY is in the area of the new congressional health plan, which isn't a congressional health plan.

The idea of tax credits has some appeal to me. The President's proposal is to try to provide tax credits. But this is a very complicated plan, and it has not been well spelled out. We worked very hard to try to understand it. It is not a very well thought out, planned out approach. I suggest this is bad policy. This is complicated policy. It is very costly policy. It doesn't deliver to people what has been promised. What it does deliver is a big tax bill, or very big deficits in the future, neither of which is something we should be desirous of here in the Senate.

With that, I think we have done a pretty good comparison of where the President wants to go, which is responsible reform and the encouragement of people who do not have insurance to be insured, without disrupting the private markets, without increasing the size of the Government-run health care plans, and doing so at a responsible cost, as opposed to Senator KERRY, who wants to dramatically increase Government's role in health care, increase the Government's role in overseeing private health care, and play a shell game because it sounds good that you are getting congressional health care for nothing, when in fact you are not, and for a lot. Again, I will give Senator KERRY credit for the tax credit idea, but it is very foggy and not particularly well thought out, in my opinion. So I think it is a failure on all fronts. It is very complicated and will not serve the best interests of the patients in America and will not serve the interests of taxpayers in America.

With that, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I am joined by my colleague, the ranking member of the Armed Services Committee, the Senator from Michigan. This is an amendment which we have jointly worked out together.

AMENDMENT NO. 3875, AS MODIFIED

Mr. WARNER. Mr. President, from a parliamentary standpoint, I now send a modification to amendment No. 3875 to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 3875), as modified, is as follows:

On page 210, strike line 23 and insert the following:

SEC. 336. COMPONENTS OF NATIONAL INTELLIGENCE PROGRAM.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, the National Intelligence Program shall consist of all programs, projects, and activities that are part of the National Foreign Intelligence Program as of the effective date of this section.

(b) JOINT REVIEW OF CERTAIN PROGRAMS.—(1) The National Intelligence Director and the Secretary of Defense shall jointly review the programs, projects, and activities as follows:

(A) The programs, projects, and activities within the Joint Military Intelligence Program as of the effective date of this section.

(B) The programs, projects, and activities within the Tactical Intelligence and Related Activities program as of the effective date of this section.

(C) The programs, projects, and activities of the Defense Intelligence Agency as of the effective date of this section that support the intelligence staff of the Chairman of the Joint Chiefs of Staff, the intelligence staffs of the unified combatant commands, and the portions of the sensitive compartmented communications systems that support components of the Department of Defense.

(2) As part of the review under paragraph (1), the Director shall consult with the head of each element of the intelligence community.

(3)(A) The review under paragraph (1) with respect to the programs, projects, and activities referred to in paragraph (1)(C) shall be completed not later than 60 days after the date on which the first individual nominated as National Intelligence Director after the date of the enactment of this Act is confirmed by the Senate.

(B) Upon completion of the review under paragraph (1) of the programs, projects, and activities referred to in paragraph (1)(C), the Director shall submit to the President recommendations regarding the programs, projects, or activities, if any, referred to in paragraph (1)(C) to be included in the National Intelligence Program, together with any comments that the Secretary of Defense considers appropriate.

(C) During the period of the review under paragraph (1) of the programs, projects, and activities referred to in paragraph (1)(C), no action shall be taken that would have the effect of prejudicing the outcome of such review.

(4)(A) The review under paragraph (1) with respect to the programs, projects, and activities referred to in subparagraphs (A) and (B) of paragraph (1) shall be completed not later than one year after the effective date of this section.

(B) Upon completion of the review under paragraph (1) of the programs, projects, and activities referred to in subparagraphs (A) and (B) of paragraph (1), the Director shall submit to the President recommendations regarding the programs, projects, or activities, if any, referred to in such subparagraphs to be included in the National Intelligence Program, together with any comments that the Secretary of Defense considers appropriate.

SEC. 337. GENERAL REFERENCES.

Mr. WARNER. I thank the Presiding Officer. I shall be very brief on this matter.

The distinguished manager and comanager have worked with my staff and Senator LEVIN and myself, and we have come to an agreement on this issue.

Again, it is an amendment by myself, Mr. LEVIN, Mr. STEVENS, Mr. INOUYE, Mr. ALLARD, Mr. SESSIONS, Mr. CORNYN, and Mr. CHAMBLISS.

I start by referring to the 9/11 report. This is a very important report which has been a roadmap for so many of the provisions and it is a roadmap I have used for this provision.

I read from page 412:

The Defense Department's military intelligence programs—the joint military intelligence program (JMIP) and the tactical intelligence and related activities programs (TIARA)—would remain part of that department's responsibility.

That is the purpose of this amendment. It is to clarify. I think it was the intent of the managers all along. They made statements comparable to what is in the 9/11 report from which I just quoted and, therefore, this amendment would leave in place those programs being performed by what we call the combat agencies, largely under a contractual relationship, and they would remain in place, but with the understanding that upon completion of a review, to be conducted by the national intelligence director and the Secretary of Defense, if they reach, as is specified under the bill, a joint opinion as to the desirability to move them into the national intelligence program, in all likelihood that can be achieved.

I thank the managers. I yield the floor to my distinguished colleague from Michigan. I thank my distinguished colleague, Senator LEVIN, for his work on this very important amendment, an aspect of which is tailored to meet a concern that the Senator from Michigan has.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, my concern about the definition of intelligence programs that the budget execution authority would be transferred to relates to the definition in the bill

that, in turn, relates to the Defense Intelligence Agency.

There are a number of Defense Intelligence Agency programs which, in my judgment, should not have their budget execution authority transferred to the new national intelligence program. Specifically, there are three programs. These are a small set of DIA programs but, nonetheless, there are three in particular to which I refer.

First is the intelligence staff of the Joint Chiefs of Staff. Second is the intelligence staff of the combatant commanders. Third is certain sensitive communications systems which support the Department of Defense command structure.

The principal purpose of those programs is to support joint or tactical military operations, and I think it would be a mistake to transfer the budget execution authority for those three programs to the national intelligence director. They are just simply too deeply embedded in supporting joint or tactical military operations for that to make sense.

However, rather than trying to resolve that debate here and rather than having the bill transfer the budget execution to the national intelligence program, what we have arrived at is a compromise which does the same thing relative to these programs, as Senator WARNER just outlined, relative to a number of other programs; that is, we assign and task the new national intelligence director and the Secretary of Defense to review these DIA programs, then to make a recommendation as to where the budget execution ought to rest, whether it should be in the national intelligence program or in the Department of Defense, and then to make a recommendation to the Office of Management and Budget and then to the President who would make the decision on this issue.

The review would be an expedited review. It would not take more than 60 days. But it would make it possible to have this decision in review based on the facts relating to this program rather than to make an abstract judgment about all programs in the Defense Intelligence Agency in this bill.

During this period of review, we have agreed that nothing would be done to prejudice the outcome of this review. With the adoption of this amendment, assuming it is adopted, then my amendment No. 3810 will be withdrawn because that is the purpose of this amendment.

Again, as I did with another amendment earlier today, I thank the managers of the bill for working with us to make this possible. It is a very rational approach, as well as a good compromise to a very complicated situation. We want to avoid—we want lines to be clear, but we do not want them to be arbitrary in a way which will force budget execution of programs to be where they logically should not be.

I also thank Senator WARNER for his leadership on a very related issue. The way in which we have addressed these two issues is similar but not exactly the same. It just makes a lot of sense.

I thank the managers for their willingness to work with us on this matter.

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

Mr. WARNER. Mr. President, I thank my distinguished colleague and ranking member. Given that the two of us are about to start a hearing in 10 minutes, I guess it is best we go to the adoption of the amendment, but I yield for any comments the distinguished chairman may like to make.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, first, I thank the distinguished chairman and ranking member of the Armed Services Committee for working so closely with Mr. LIEBERMAN and me on this very important issue to set forth a process for determining what intelligence assets belong in the NIP, the national intelligence program, versus the joint military intelligence program and the tactical program.

The Collins-Lieberman bill gives the national intelligence director strong budgetary authority over the national intelligence program. Senator LIEBERMAN and I envision that his program will be composed of the intelligence assets that serve national purposes, meaning those that pertain to the interests of more than one department.

In the long run, I strongly believe the budgets for the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office should be wholly within the national intelligence program.

Currently, these agencies have split budgets, and the heads of these agencies tell us that leads to a great deal of administrative inefficiency. Now, it is possible that some intelligence assets from the Department of Defense's Joint Military Intelligence Program may ultimately be moved to the national intelligence program, but, of course, military intelligence assets that principally serve joint or tactical military needs should stay within the Department of Defense, and I think the language is very clear on this point.

Through this amendment, we have tried to address concerns that both Senators have raised. I think the compromise language does address and alleviate those concerns. The reviews that are underway will help us better define the parts of the intelligence budget that will be completed within 1 year after the effective date, in one case 60 days, in the case that Senator LEVIN is concerned with the three activities in the Defense Intelligence Agency.

The reviews mandated in this compromise amendment will provide a rational process for determining which assets belong in the national intelligence program and which do not. I very much appreciate the cooperation of our colleagues, and I do urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to support the amendment as modified. In fact, I know that the chairman and ranking member of the Armed Services Committee have to go to a hearing, so that may only shorten the praise that I want to offer to them.

Mr. LEVIN. The Senator can take his time.

Mr. LIEBERMAN. Take my time?

Mr. LEVIN. Yes.

Mr. LIEBERMAN. I truly thank them for their extraordinary service on behalf of our national security generally but also for their work on this amendment. We had some very good discussions about this, and I never had a moment where I felt they were doing this just to protect turf. I know they were pursuing these questions with a genuine interest in what would work best for our national security, both the intelligence and the military sides of it.

This is not an uncomplicated problem. We are setting up a national intelligence director. We want that person to coordinate the intelligence community, and budget authority is a critical part of that. Senator WARNER is quite right, obviously, in the section that he read from the 9/11 Commission Report.

Interestingly, as my colleagues on the Governmental Affairs Committee may remember, when Dr. Zelikow, the chief of staff of the Commission, came before our committee, he said they had changed their mind a bit on putting the Joint Military Intelligence Program into the Department of Defense budget control because of the Commissioners' concern that the national intelligence assets—the National Security Agency, Geospatial Agency, and Reconnaissance—all have a single budgetary accountability, in this case to the national intelligence budget. I believe in the long run that is the way it ought to go.

I must say in my own mind, perhaps simplistically, I always believed that what we wanted to do was to say that the national intelligence director should have control over the national intelligence budget; that the Secretary of Defense should have clear control over TIARA, the tactical intelligence budget; and that the Joint Military Intelligence Program was somewhere in between. We had to find a rational way to decide where authority went.

I think in some sense what we are saying in this legislation is we are not quite ready to make those decisions. So this amendment that we agreed to essentially freezes the status quo with regard to the JMIP and the particular programs that we discussed in the Defense Intelligence Agency, subjects them to review, consideration of all of the factors—effectiveness, budgetary authority, all the rest, military effectiveness—and then has a decision made ultimately by the Office of Management and Budget on recommendation from the national intelligence director.

It is a very strong, balanced, reasonable conclusion which does no damage to the basic purpose of this legislation and provides for, ultimately, a rational allocation of budget authority in the shared interest of our national security, which is, after all, what this is all about.

So this is really what legislating is supposed to be about. I thank my colleagues for all the work they and our staffs have done, and I move adoption of the modified amendment.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, the yeas and nays had been ordered. I ask unanimous consent that the order for the yeas and nays on this amendment be vitiated and that we have a voice vote.

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

The question is on agreeing to the amendment.

The amendment (No. 3875), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I want to thank our colleagues and managers of the bill and, as always, thank Senator WARNER. The managers have worked so well with us, and I want to thank them for that, and also thank them for the way they worked with each other.

AMENDMENT NO. 3810, WITHDRAWN

Mr. LEVIN. I ask unanimous consent that amendment No. 3810 now be withdrawn since that was covered in the amendment which was just adopted.

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

The Senator from Alaska.

AMENDMENT NO. 3827, AS MODIFIED

Mr. STEVENS. I call up amendment No. 3827, and I send to the desk a modified version of that amendment.

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

Mr. STEVENS. I think it is already before the Senate.

The PRESIDING OFFICER. The amendment has now been modified.

The amendment (No. 3827), as modified, is as follows:

(Purpose: To strike section 206, relating to information sharing)

On page 126, strike lines 23 through 25.

On page 127, line 1, strike ''(2)'' and insert ''(1)''.

On page 127, line 4, strike ''(3)'' and insert ''(2)''.

On page 128, strike lines 1 through 3 and insert the following:

(3) ENVIRONMENT.—The term ''Environment'' means the Information Sharing Environment as described under subsection (c).

On page 130, strike line 10 and insert the following:

(c) INFORMATION SHARING ENVIRONMENT.—

On page 130, line 20, strike ''Network'' and insert ''Environment''.

On page 133, lines 5 and 6, delete ''Director of the Office of Management and Budget'' and insert ''principal officer as designated in subsection 206(g)''.

On page 133, line 10, strike ''Network'' and insert ''Environment''.

On page 134, line 2, strike ''Network'' and insert ''Environment''.

On page 134, line 22, strike ''Network'' and insert ''Environment''.

On page 135, beginning on line 16, strike ''the Director of Management and Budget shall submit to the President and'' and insert ''the President shall submit''.

On page 135 strike lines 19 through 22 and insert ''Environment. The enterprise architecture and implementation plan shall be prepared by the principal officer in consultation with the Executive Council and shall include—''.

On page 135, line 24, strike ''Network'' and insert ''Environment''.

On page 136, line 3, strike ''Network'' and insert ''Environment''.

On page 136, line 5, strike ''Network'' and insert ''Environment''.

On page 136, line 7, strike ''Network'' and insert ''Environment''.

On page 137, beginning on line 4, strike ''Network'' and insert ''Environment''.

On page 137, line 8, strike ''Network'' and insert ''Environment''.

On page 137, line 11, strike ''Network'' and insert ''Environment''.

On page 137, line 14, strike ''Network'' and insert ''Environment''.

On page 137, line 16, strike ''Network;'' and insert ''Environment; and''.

On page 137, line 18, strike ''Network'' and insert ''Environment''.

On page 137, line 21, strike ''that the Director of Management and Budget determines'' and insert ''determined'' and insert a period.

On page 138, strike lines 1 through 3 and insert the following:

(g) RESPONSIBILITIES OF EXECUTIVE COUNCIL FOR INFORMATION SHARING ENVIRONMENT.—

On page 138, beginning on line 4, insert ''(1) Not later than 120 days after the date of enactment, with notification to Congress, the President shall designate an individual as the principal officer responsible for information sharing across the Federal government. That individual shall have and exercise governmentwide authority and have management expertise in enterprise architecture, information sharing, and interoperability.''

On page 138, beginning on line 6, strike ''The Director of Management and Budget'' and insert ''The principal officer designated under this subsection''.

On page 138, beginning on line 9, strike ''Network'' and insert ''Environment''.

On page 138, line 14, strike ''Network'' and insert ''Environment''.

On page 138, line 17, strike ''Network'' and insert ''Environment''.

On page 138, line 21, strike ''to the President and''.

On page 139, line 5, strike ''Network'' and insert ''Environment''.

On page 140, strike lines 5 through 17.

On page 140, strike lines 18 and 19 and insert the following:

(h) ESTABLISHMENT OF EXECUTIVE COUNCIL.—

On page 140, strike line 20 through line 24 and insert ''There is established an Executive Council on information sharing that shall assist the principal officer as designated under subsection 206(g) in the execution of the duties under this Act concerning information sharing.''.

On page 141, line 1, insert ''The Executive Council shall be chaired by the principal officer as designated in subsection 206(g).''

On page 141, beginning on line 4, strike '', who shall serve as the Chairman of the Executive Council''.

On page 142, beginning on line 2, strike ''assist the Director of Management and Budget in—'' and insert ''assist the President in—''.

On page 142, beginning on line 4, strike ''Network'' and insert ''Environment''.

On page 142, line 8, strike ''Network'' and insert ''Environment''.

On page 142, line 11, strike ''Network'' and insert ''Environment''.

On page 142, line 12, strike ''Network'' and insert ''Environment''.

On page 142, beginning on line 15, strike ''Network;'' and insert ''Environment; and''.

On page 142, strike lines 22 through 24, and insert ''(F) considering input provided by persons from outside the federal government with significant experience and expertise in policy, technical, and operational matters, including issues of security, privacy, or civil liberties.

On page 143, beginning on line 7, strike ''the Director of Management and Budget, in the capacity as Chair of the Executive Council,'' and insert ''the principal officer as designated in section 206(g)''.

On page 144, strike line 3 and all that follows through page 145, line 10.

On page 145 line 11, strike ''(j)'' and insert ''(i)''.

On page 145, beginning on line 14, strike ''through the Director of Management and Budget'' and insert ''principal officer as designated in section 206(g)''.

On page 145, line 16, strike ''Network'' and insert ''Environment''.

On page 145, line 21, strike ''Network'' and insert ''Environment''.

On page 145, line 22, strike ''Network'' and insert ''Environment''.

On page 146, line 4, strike ''Network'' and insert ''Environment''.

On page 146, line 7, strike ''Network'' and insert ''Environment''.

On page 146, line 9, strike ''Network'' and insert ''Environment''.

On page 146, line 13, strike ''Network'' and insert ''Environment''.

On page 147, line 2, strike ''Network'' and insert ''Environment''.

On page 147, line 6, strike ''Network'' and insert ''Environment''.

On page 147, line 8, strike ''Network'' and insert ''Environment''.

On page 147, line 11, strike ''Network'' and insert ''Environment''.

On page 147, line 17, strike ''Network'' and insert ''Environment''.

On page 147, line 22, strike ''Network'' and insert ''Environment''.

On page 148, line 6, strike ''Network'' and insert ''Environment''.

On page 148, line 8, strike ''Network'' and insert ''Environment''.

On page 148, line 16, strike ''Network'' and insert ''Environment''.

On page 148, line 17, strike ''(k)'' and insert ''(j)''.

On page 148, line 20, strike ''Network'' and insert ''Environment''.

On page 148, line 24, strike ''Network'' and insert ''Environment''.

On page 149, line 3, strike ''Network'' and insert ''Environment''.

On page 149, line 5, strike ''Network'' and insert ''Environment''.

On page 149, line 10, strike ''(l)'' and insert ''(k)''.

On page 149, line 13, strike ''Network'' and insert ''Environment''.

On page 149, line 14, strike ''Network'' and insert ''Environment''.

On page 149, beginning on line 14, strike ''the Director of Management and Budget'' and insert ''the principal officer as designated in section 206(g)''.

On page 149, line 19, strike ''Network'' and insert ''Environment''.
On page 150, line 2, strike ''Network'' and insert ''Environment''.
On page 150, line 9, strike ''Network'' and insert ''Environment''.
On page 150, line 13, strike ''Network'' and insert ''Environment''.
On page 150, line 16, strike ''Network'' and insert ''Environment''.
On page 150, line 18, strike ''(m)'' and insert ''(l)''.
On page 150, beginning on line 23, strike ''Network'' and insert ''Environment''.
On page 151, line 2, strike ''Network'' and insert ''Environment''.
On page 151, line 3, strike ''Network'' and insert ''Environment''.
On page 152, line 7, strike ''Network'' and insert ''Environment''.
On page 152, line 11, strike ''Network'' and insert ''Environment''.
On page 152, line 19, strike ''(n)'' and insert ''(m)''.
On page 152, beginning on line 21, strike ''to the Director of Management and Budget''.
On page 153, line 1, strike ''Network'' and insert ''Environment''.

Mr. STEVENS. Mr. President, I again thank the managers of the bill, Senator COLLINS and Senator LIEBERMAN and their staffs, for working with us on this amendment. That amendment has now been modified, and I think it meets the objections or the reservations that were set forth by the administration Statement of Position, the so-called SAP, that we received on this bill.

It has been modified to make certain that the President will have the authority to designate an entity. We all agree, we hope, that he will not delegate this matter to the national intelligence director. I think it is a function that is essential to carry out the purposes of this bill. Therefore, I am offering the modified amendment.

I ask unanimous consent that the amendment, as modified, be considered and adopted, and the motion to reconsider be laid upon the table.

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

The amendment (No. 3827), as modified, was agreed to.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3839, WITHDRAWN

Mr. STEVENS. I ask unanimous consent that amendment No. 3839 be withdrawn from consideration. I am still sad about the vote that was against the position I supported with regard to disclosing the aggregated top line of intelligence. I hope before we are through with this bill that we will find some way to accommodate some of the reservations I have about that process, but in any event I withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. STEVENS. Mr. President, I say to the two Senators, it is my intention now to support this bill. I congratulate them for listening to us. Sometimes I have raised my voice. One newspaper said I shouted at the distinguished Senator from Maine. That is just my trial lawyer voice, and I apologize for it.

I do thank the Senator for her courtesy and apologize if I have been mistaken in terms of the tone of my voice, but that is my voice. I cannot do much about it.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the senior Senator from Alaska for his cooperation and his many helpful suggestions for improving this bill. I have great affection and respect for the senior Senator. I very much appreciate the fact that he is going to support this bill on final passage. That means a great deal to me and will certainly assist us. I look forward to continuing to consult with him as we move through the conference process, and I will tell the senior Senator from Alaska that I am very relieved today to see that he is not wearing his ''Incredible Hulk'' tie but, rather, a very restrained tie from some national museum, I believe. I know that bodes well for the day ending well. Again, I thank the Senator. I very much enjoy working with him.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I am delighted that we have reached a meeting of the minds on the information-sharing part of the bill, which preserves intact the considerable reforms that are called for which will protect our national security, as advanced by Senator DURBIN, but also quite appropriately embrace the concerns that Senator STEVENS and the administration had as to who would be in charge of this transformation.

Second, I grew up in a family where if you were not passionate and didn't raise your voice about things that mattered to you, it was thought that something was wrong. I also want to make clear that when you raised your voice the other day, I did not think you were only shouting at the Senator from Maine, I thought that I was also included as a recipient.

Look, it reminds me of the old Teddy Roosevelt line about being in the arena, not standing on the side reading a newspaper but getting into the arena and fighting with all your heart for what you believe in. I admire the Senator greatly for doing that. I would much rather have him on my side rather than against me, and that is why I am particularly thrilled to hear the announcement of the Senator from Alaska that he will support this measure as amended.

I thank him and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I have spoken just now with the two managers of the bill. There is not going to be a vote in the immediate future. As the record indicates, this legislation has to be completed by 4:30, so final passage certainly will take place at 4:30. There may be an amendment or two before that time, but there is nothing right now. If people are on their way over, they should turn around and go back. There probably won't be anything, probably within the next hour.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded call the roll.

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

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

Ms. COLLINS. Mr. President, of all the testimony presented to the Committee on Governmental Affairs during our eight hearings on the recommendations of the 9/11 Commission perhaps none was more powerful than that of Mary Fetchet. Her son, Brad, died in the World Trade Center on September 11. Here are a few of her words.

She said:

When American lives are at stake, indifference or inertia is unacceptable. When critical reforms are implemented to make our country safer, I will know that neither Brad's life nor the lives of nearly 3,000 others who perished on September 11 were lost in vain.

Throughout this debate it has been the families of the victims of 9/11 who have reminded us of why we are here and why these reforms are so important.

In passing the National Intelligence Reform Act of 2004—as I believe we will later this afternoon—the Senate will reject indifference and inertia. We will endure critical reforms to make our country safer. We will declare that the lives lost to terrorism were not lost in vain. The action we take in their memory will benefit people of good will in this country and throughout the world today and for many years to come.

This legislation will make the most sweeping changes in our intelligence structures in more than 50 years. It is the result of enormous effort. The issues are complex and many. The timetable was tight, but the stakes were so high and the times so dangerous that we simply could not delay this urgent task. Now we are on the threshold of getting the job done and getting it done right.

I am deeply grateful to my good friend Senator LIEBERMAN. This legislation would not have been possible without his tireless effort and his bipartisan spirit. From the moment we were first assigned the task of developing this legislation on July 22nd, our fellow members of the Governmental Affairs Committee dug in with energy and intellect. I am grateful to the Presiding Officer as one of the committee

members for his contributions. It was an August recess we will never forget.

We are very grateful to the leaders of the Senate. Senator FRIST and Senator DASCHLE had the confidence in our committee that they felt they could charge us with this enormous and critical undertaking.

Our whips, Senator REID and Senator MCCONNELL, have also been very helpful. Senator REID has been a constant presence in the Chamber throughout this debate.

We could not have accomplished all that we did without our dedicated staff, led by Michael Bopp and Joyce Rechtschaffen. We have worked so closely with them. We have worked arm in arm. They have literally worked day and night to produce this bill. I am so proud of their extraordinary efforts.

Our staffs were supplemented by hard-working detailees from the CIA, the DIA, and other agencies, as well as by members of the Commission staff who, rather than going back to their previous jobs and lives, worked with us on the committee to help give the benefit of their expertise. Without the efforts of all these staff members we never could have gotten the job done. I am very grateful to all of them.

This legislation, however, is not merely the result of months of extraordinary effort by our committee or of the expert and insightful testimony we heard from more than two dozen witnesses at eight hearings. Rather, it builds upon a rock-solid foundation laid by the 9/11 Commission and the investigation that it conducted over 20 months, including 19 days of hearings with 160 witnesses. I thank all Commission members for all of their extraordinary effort.

The need for reform in our intelligence system was not, however, suddenly revealed in hearings spurred by one catastrophic failure 3 years ago. The failures that led to that day are numerous and reach back many years. They were overlooked in terrorist attack after terrorist attack for more than a decade. The call for reform was made in studies, commission reports, and legislation going back half a century. It is a call we can no longer ignore.

Our committee was guided by clear principles. An intelligence community designed for the Cold War must be transformed into one designed to win the war against global terrorism and future national security threats. The new structure must build upon the strengths of the old and recognize the considerable improvements made since September 11.

The unique experience, expertise, and viewpoints of the 15 agencies that comprise our intelligence community are assets that must be preserved. The barriers to information sharing, cooperation, and coordination within the community, what the 9/11 Commission calls stovepipes, must be demolished. In their place must come a structure with the agility the times and the threats demand—not another layer of bureaucracy.

We were determined, in crafting this new structure, that we not infringe upon the freedoms that define us as Americans. The legislation that came out of our committee by a unanimous vote adhered to these important principles and it has been strengthened by the vigorous debate we have had in the Senate during the past week. The debate has not merely been vigorous but also highly informed. Throughout these proceedings, it has been clear the commitment that drove our committee to act is shared by the full Senate. From the authorities of the national intelligence director to the structure of our transformed intelligence community to the protection of civil liberties, many critical issues have been raised, debated, and resolved. I particularly thank the members of the Committee on Armed Services, the Select Committee on Intelligence, and the Appropriations Committee, particularly their chairs and ranking members. Their knowledge and their input have been invaluable.

Many important issues have been raised and will be resolved as this transformation continues. One of the most remarkable aspects of this debate has been the widespread recognition that intelligence reform is not a single act but an ongoing process.

The fundamental obligation of government is to protect its citizens and those protections must evolve to meet new threats. This legislation brings about much-needed reforms and it creates an environment in which this ongoing process can continue.

I began these remarks with a quote from a mother who has suffered the worst loss any parent can endure. She turned her loss into positive advocacy. It is Senator BYRD, however, who inspires me to end these remarks with a quote from the Constitution.

To form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our Posterity . . .

The opening lines of our Constitution provide, in some ways, a job description of America's Government that is a miracle of clarity as well as an awesome challenge. Rarely does one piece of legislation encompass all of its elements or do we have the opportunity to do so in a way that clearly demonstrates the spirit that animates it. This is one of those rare times. Let us do what the times demand. Let us act to approve this legislation this afternoon and by doing so make our country safer.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Has the Senator from Maine completed her statement?

Ms. COLLINS. Yes.

AMENDMENT NO. 3915, AS MODIFIED

Mr. LEAHY. Mr. President, after 9/11, there was broad agreement that the absence of an accurate, reliable, and comprehensive terrorist watch list was a serious deficiency. Unfortunately, 3 years later, we still have not accomplished this important task.

My amendment, which has been modified to reach an agreement with Senators COLLINS and LIEBERMAN, addresses this deficiency. It requires a report to Congress on the watch list, specifically on the standards in place to ensure we have a list that is reliable and accurate, and that we have procedures for determining threat levels and the consequences to listed individuals. It also mandates a process for individuals erroneously listed on the ''Automatic Selectee'' and ''No-Fly'' lists to have their names removed. Finally, it would require an assessment of the privacy and civil liberty implications of using these lists. It is critical that we have a complete, accurate and consolidated watch list, but we also need to be mindful of our liberties in the process.

We know that one of the most senior and respected Members of this Senate who for decades has taken the same flight was told he could not board because he was, apparently, on some kind of terrorist list. They said: Of course, it is an obvious error, and we will get it cleared up. But repeatedly when he tried to get on the same plane, he was continually stopped.

Now, as a Member of the Senate, after six or seven times of this happening, and after calls from the White House, the head of Homeland Security and others, the problem was finally corrected. Can you imagine what it is like if you are Jane Smith or John Jones from a small town somewhere in this country, but you have to travel on business and your name is there, and you lose important clients, you lose important business, or you are unable to get home to visit a friend or a family member, and you probably cannot pick up the phone and call the White House and say, ''Look, this is the sixth or seventh time I have been mistakenly barred from traveling. Please fix it''?

Now, there are other concerns I would like to have addressed, but this modified version reflects the agreement with Senators COLLINS and LIEBERMAN.

Mr. President, I believe the modified amendment is at the desk, and I ask unanimous consent it be in order to call up my amendment No. 3915 and that it be so modified.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, (No. 3915) as modified, is as follows:

At the appropriate place, insert the following:

SEC. ___. TERRORIST WATCH LISTS

(a) CRITERIA FOR WATCH LIST.—The National Intelligence Director of the United States, in consultation with the Secretary of Homeland Security, the Secretary of State, and the Attorney General, shall report to Congress on the criteria for placing individuals on the Terrorist Screening Center consolidated screening watch list, including

minimum standards for reliability and accuracy of identifying information, the degree of information certainty and the range of threat levels that the individual poses, and the range of applicable consequences that apply to the person if located. To the greatest extent consistent with the protection of law enforcement sensitive information, classified information, and applicable law, the report shall be in unclassified form and available to the public, with a classified annex where necessary.

(b) SAFEGUARDS AGAINST ERRONEOUS LISTINGS.—The Secretary of Homeland Security shall establish a process for individuals to challenge ''Automatic Selectee'' or ''No Fly'' designations on the applicable lists as maintained by the Transportation Security Administration and have their names removed from such lists, if erroneously present.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Department of Homeland Security Privacy Officer shall submit a report assessing the impact of the ''No Fly'' and ''Automatic Selectee'' lists on privacy and civil liberties to the Committee on the Judiciary, the Committee on Governmental Affairs, and the Committee on Commerce, Science and Transportation of the Senate, and the Committee on the Judiciary, the Committee on Government Reform, the Committee on Transportation and Infrastructure, and the Select Committee on Homeland Security of the House of Representatives. The report shall include any recommendations for practices, procedures, regulations, or legislation to eliminate or minimize adverse effects of such lists on privacy, discrimination, due process and other civil liberties, as well as the implications of applying those lists to other modes of transportation. In its analysis, the report shall also consider the effect these recommendations would have on the ability of such lists to protect the United States against terrorist attacks. To the greatest extent consistent with the protection of law enforcement sensitive information, classified information, and applicable law, the report shall be in unclassified form and available to the public, with a classified annex where necessary.

(d) EFFECTIVE DATE.—Notwithstanding section 341 or any other provision of this Act, this section shall become effective on the date of enactment of this Act.

Mr. LEAHY. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank Senator LEAHY for working with Senator LIEBERMAN and me on his amendment. It requires two reports related to watch lists: one on the criteria for listing a name on the Terrorist Screening Center's consolidated watch list, and another on the effect of the ''automatic selectee'' and ''no-fly'' lists on privacy and civil liberties.

We worked with him to incorporate some modifications that make the amendment acceptable to the two managers and incorporate some recommendations from the administration.

I am well aware of some of the problems with the watch list. A constituent of mine from Camden, ME, a retired physician, has the misfortune to have a name that is identical to a name that is on the watch list. Every time he flies, he encounters great difficulties. I believe the Senator's amendment will help to address that.

It is important to ensure we are safe and that those who want to do us harm do not have access to aircraft. But at the same time we want to make sure that law-abiding travelers are not impeded from conducting their travels simply because they have the misfortune to share a name with someone on the watch list.

The process required by the Senator, I think, will be helpful. I urge adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment, as modified.

The amendment (No. 3915), as modified, was agreed to.

Mr. LEAHY. 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 Vermont.

Mr. LEAHY. Mr. President, first, I thank the distinguished chair of the committee for her cooperation and help, and also commend her and her distinguished ranking member for moving this far along.

AMENDMENT NO. 3916, AS MODIFIED

Mr. President, a major weakness uncovered after 9/11 was the failure of Government agencies to share information with one another. The 9/11 Commission recommended a government-wide information system to ensure that we connect the dots. The Commission also recommended that the ''[p]rotection of privacy rights should be one key element'' of implementing the system. Given the sweeping powers that Congress is about to grant for building an information sharing system, we have to protect the privacy and civil liberties of the American people.

After all, we fought a Revolution to guarantee our privacy. The distinguished Presiding Officer and the distinguished chair know, because they come from New England, that the Revolution was fought on our soil.

We all agree we must maximize this information, but we must also maximize the protection of personal information. And we need assurances that private information will be protected before we build the system, not after. We certainly do not want to repeat what happened with CAPPS II, when $100 million of taxpayer money was spent on deploying a system that then subsequently collapsed because we failed to adequately account for civil liberties and privacy concerns.

My amendment, which has been modified to reach an agreement with Senators COLLINS and LIEBERMAN, would require that we take advantage of available privacy-enhancing technology that would prevent unauthorized dissemination of information. It also requires the Administration to fulfill its obligations to report to Congress on plans for the network before spending funds to build it. This oversight is critical to ensuring the network maximizes security while balancing civil liberties and privacy.

Senators COLLINS and LIEBERMAN have agreed to accept this important amendment.

Mr. President, I ask unanimous consent that it be in order to call up amendment No. 3916, and that it be modified.

The PRESIDING OFFICER. The amendment is pending.

Without objection, the amendment is so modified.

The amendment, No. 3916, as modified, is as follows:

On page 132, line 23, strike ''and''.

On page 133, line 3, strike the period and insert ''; and''.

On page 133, between lines 3 and 4, insert the following:

(L) utilizing privacy-enhancing technologies that minimize the inappropriate dissemination and disclosure of personally identifiable information.

On page 153, between lines 2 and 3, insert the following:

(o) LIMITATION ON FUNDS.—Notwithstanding any other provision of this section, none of the funds provided pursuant to subsection (n) may be obligated for deployment or implementation of the Network unless the guidelines and requirements under subsection (e) are submitted to Congress.

Mr. LEAHY. Mr. President, I understand there is no objection to this amendment from the managers of the bill.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, again, I thank Senator LEAHY for modifying his amendment to address concerns that the manager raised. I have no objection to the modified amendment, and I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 3916), as modified, was agreed to.

Mr. LEAHY. 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.

AMENDMENT NO. 3913 WITHDRAWN

Mr. LEAHY. Mr. President, I have an amendment No. 3913, which I will soon withdraw. It is on the subpoena powers of the civil liberties board created in this bill.

We have worked hard to strengthen the powers of the board both at the committee level and then here on the floor, and I believe we have made great progress. We added teeth to this oversight body and fought against efforts to weaken it.

I think the goal of this amendment, which is to give the board enforcement power for its subpoena authority, is an important one. However, in order to expedite the passage of this bill, I will withdraw the amendment now. I look forward to working with my colleagues on this important issue next year. But I also understand the need to expedite

the passage of this bill. There may be another time to bring this up. I will withdraw the amendment now, though I look forward to working with my colleagues on the issue next year.

I withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the Senator from Vermont for his cooperation on that last issue. As I have explained to my colleagues, the bill strikes a very delicate balance on the civil liberties board's power, and there were amendments to strengthen it as well as amendments to weaken it. I appreciate my colleagues' cooperation on both sides of the aisle. I am sure there will be more discussion of this issue as we go along.

I thank the Senator from Vermont and 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.

CONSOLIDATION OF AMENDMENTS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that it be in order for previously agreed upon amendments, which I will list, to be consolidated into one title under the heading: ''9/11 Commission Report Implementation Act,'' with a short title section (a), short title: This act may be cited as the ''9/11 Commission Report Implementation Act of 2004.''

The amendments should be included in this order: No. 3942, No. 3807, No. 3702, No. 3774, No. 3705, No. 3766, No. 3806.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The legislative clerk proceeded to call the roll.

Ms. STABENOW. 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. STABENOW. Mr. President, I ask unanimous consent that I be permitted to speak for up to 30 minutes and have that time allotted against my 1 hour postcloture.

The PRESIDING OFFICER. Is there objection? The Senator from Maine.

Ms. COLLINS. Mr. President, reserving the right to object, will the Senator from Michigan inform me whether her statement is going to be germane to the bill as is required in the postcloture situation?

Ms. STABENOW. Mr. President, I will ask to speak as in morning business using this time.

The PRESIDING OFFICER. Is there objection?

Ms. COLLINS. Mr. President, I will not object because I am aware that the Senator could speak for up to an hour under the cloture rules, although I remind the Senator that she could not speak on the subject about which she appears to be ready to speak. But in the interest of moving forward, and since there have been others today who have also spoken as in morning business, I will not object. I do think it is unfortunate, however.

(The remarks of Mrs. STABENOW are printed in today's RECORD under ''Morning Business.'')

Mr. REID. 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 the order for the quorum call be rescinded.

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

Mr. AKAKA. Mr. President, I rise today to commend my colleagues on the adoption of amendment No. 3765 to S. 2845, the National Intelligence Reform Act of 2004, which will create an Office of Geospatial Management within the Department of Homeland Security, DHS.

This amendment originated as a stand alone bill, S. 1230, which was introduced by Senator ALLARD and amended by Senators COLLINS, LIEBERMAN, and myself in a Governmental Affairs Committee business meeting. I thank Senator ALLARD, who shares my interest in geospatial information sharing, for offering this amendment, as well as Senators COLLINS and LIEBERMAN for their continued support on this issue.

Much of the discussion that has grown from the 9/11 Commission report has centered around the institutional stovepipes that impede information sharing within the Government, which is why this amendment is so important. While the term ''geospatial'' is foreign to many, the tools it describes are relied upon by all. The 9/11 Commission recommended that the President ''lead a government-wide effort to bring major national security institutions into the information revolution.'' Geospatial coordination is a critical component of that effort.

Geospatial technologies, such as satellite imagery and aerial photography, provide data that create the maps and charts that can help prevent a disaster from occurring or lessen the impact of an unforeseeable event by equipping first responders with up-to-date information. In the event of a terrorist chemical attack, knowing which way a contaminated plume will travel can save lives. Similarly, the damage of a natural disaster, such as a wildfire, can be lessened by maps that help predict which areas will be in the path of the blaze.

All levels of government are more effective and efficient when employing geospatial technology, especially in the area of homeland security. According to DHS, geospatial information is used for intelligence, law enforcement, first response, disaster recovery, and agency management—virtually every function of the Department.

When the Department was created in 2003, it brought together components from 22 separate agencies, each of which managed its geospatial needs independently. In the past year, the Department has encountered significant difficulties integrating personnel, financial systems, and computer systems from the legacy agencies. Geospatial information has been no different.

A September 2004 Government Accountability Office, GAO, report entitled ''Maritime Security: Better Planning Needed to Help Ensure Effective Port Security Assessment Program,'' found that the development of a geographic information system, GIS—GIS is often used as a synonym for geospatial to map the Nation's most strategic ports would greatly benefit the Coast Guard as it implements the Port Security Assessment Program. A GIS would integrate all security information pertaining to one port into a single database so that it is easily accessible and can be frequently updated. In addition, it would give the Coast Guard the ability to visually map a port so that it can quickly identify the location and surrounding environment of an at-risk container before deploying a response team, for example.

However, GAO also found that:

> The Coast Guard lacks a strategy that clearly defines how the (GIS) program will be managed, how much it will cost, or what activities will continue over the long term.

The legacy agencies that make up DHS had traditionally managed their own geospatial procurement. But many of the homeland and non-homeland security missions of DHS complement each other. Sharing maps and data reduces redundancy, provides savings, and ensures better information for disaster response.

Currently, the DHS Chief Information Officer, CIO, is working to break down this geospatial stovepiping within the Department by naming a Geospatial Information Officer. However, there is no single office in DHS officially responsible for geospatial management and, therefore, no corresponding budget. In the present structure, the Geospatial Information Officer does not have the authority to compel the five DHS directorates to cooperate with his efforts. The entire agency should make geospatial coordination a priority.

A geospatial management office needs to be created and codified within DHS. A congressionally mandated office would give the Geospatial Information Officer more authority with which to do this job.

The Office of Geospatial Management has the potential to significantly increase the quality of the resources homeland security officials rely on by reducing redundancy and improving the quality of geospatial procurement. But in order to do this it needs authority and funding.

This office would also serve as a mechanism for coordinating with State and local authorities. Much of the geospatial information available today is created at the State and local levels. Centralizing this information will make it more widely available to first responders and other homeland security officials.

In order to facilitate this process, it is also important that local governments initiate their own coordination efforts. In June 2003, the city of Honolulu conducted a pilot program to foster geospatial coordination and collaboration among public and private stakeholders in critical infrastructure protection. Representatives from local and State government, utility companies, and other private organizations came together to identify potential impediments to geospatial information sharing in Honolulu and to develop a plan to circumvent those impediments. I commend the government of the City and County of Honolulu for hosting such an exemplary event. This sort of commitment at a local level is crucial to breaking down the geospatial stovepipes that exist at all levels of government. I hope other cities will follow suit.

This amendment will help DHS to better coordinate its activities, and will ultimately make our Nation safer and prevent duplicative spending. I appreciate my colleagues' endorsement of this important issue, and urge that this language be maintained in the final version of the intelligence reorganization bill that is sent to the President.

Mrs. MURRAY. Mr. President, I strongly support the intelligence reform bill now before the Senate, and I will vote for it.

The 9–11 Commission worked incredibly hard in a bipartisan manner to identify how to better protect our country from terrorism. They have given us a roadmap to protect our people, and we should move forward with it promptly.

In their report, the commissioners said we need clear direction for our country's intelligence community. They stressed better coordination as a key area where we can make the greatest difference. The bill on the floor does that, it has bipartisan support, and we should move it forward.

As a member of both the Homeland Security Appropriations Subcommittee and the Senate's 9/11 Working Group, I have looked closely at these challenges. And over the past few years, I have worked closely with the Department of Homeland Security, including the Coast Guard, FBI, TSA, Border Patrol, as well as the National Guard and local law enforcement throughout Washington State. Through our work together, I have learned first hand the difficulties they face every day in defending our country.

I especially want to commend the September 11 families who bravely stood up and spoke out. They forced our government to fully examine the terrorist attacks and to find ways to make our people safer. Their brave advocacy has made a difference.

Mr. President, this is an important step toward achieving a truly integrated national effort in the global war on terror. I am proud to support it.

Mr. KOHL. Mr. President, I rise today in support of S.2845, the National Intelligence Reform Act of 2004. The bill before us today is the result of tireless work by the Government Affairs Committee and its able chair and ranking member. It also reflects intensive consideration by other committees with jurisdiction over issues addressed in the bill, including the Judiciary and Appropriations Committees of which I am a member. The bill makes some important changes in the way our intelligence community is managed. It is a bipartisan bill which strikes a balance between ensuring that we have a strong national intelligence director, on the one hand, and that we meet the intelligence needs of the agencies which house our intelligence collection systems, on the other.

The 9/11 Commission threw down the gauntlet when it released its final report, calling on Congress and the President to enact meaningful reforms that will help prevent future catastrophic terrorist acts. In painstaking detail, the commission made clear how the attacks of September 11, 2001, took place and how our government struggled to respond. They then made 41 distinct recommendations across a wide range of policy areas creating a framework for our efforts. We have a responsibility to enact as many of these recommendations as feasible. With the threat of terrorism still high, we must have the best intelligence at our fingertips, a robust law enforcement effort, and an effective homeland defense if we are to foil future catastrophic terror attacks.

S. 2845 is an important first step. I believe the reforms in this bill fully implement the commission's recommendations on the need for a more unified intelligence effort. They address the lack of intelligence sharing among the 15 agencies which make up our intelligence community. Recognizing the limitations of the Director of Central Intelligence, who technically has the authority to manage all our intelligence resources, the bill centralizes the management and coordination of intelligence agencies by creating a national intelligence director or NID who has strong budgetary and personnel powers. The NID will also have the authority to create uniform classification standards and to set collection priorities. Yet the bill leaves the intelligence resources of each agency within their existing organizations so those agencies can effectively and efficiently meet their intelligence collection needs, so military operations and readiness are not compromised, and so we can maintain the diversity of views critical to sound intelligence analysis.

Beyond a more unified approach to intelligence collection and analysis, the Commission called for a more integrated response to our enemies. As the Commission noted, our bulky national security institutions are still structured to respond to the Cold War. In retrospect, it is no surprise that they were unable to respond to a non-state terrorist network. By unifying the intelligence resources dispersed across the government, we are striving to create a more nimble intelligence apparatus that can lead our response to these non-traditional threats. To that end, this bill enacts the Commission's recommendation to establish a civilian-led joint command for counterterrorism—a National counterterrorism Center—to act on joint intelligence by integrating civilian and military counterterrorism efforts across the government and to serve as the President's principal advisor on joint operations. The NCTC will help address many of the operational shortcomings identified in the 9/11 Commission report.

Intelligence reform is an important bulwark in the war on terror but it is not our only line of defense. Even if the intelligence reforms in this bill were in place before 9/11, they would not guarantee that the events of that fateful day could have been averted. That is why I supported the McCain transportation security and the Hutchison cargo security amendments. These amendments direct TSA to produce a national transportation strategy, to implement a system for comparing names of air passengers against the consolidated terrorist watch lists, to screen all air passengers and their carry-on bags for explosives, and to set up a system to screen air cargo. And I am pleased that we have accepted amendments that address the role of diplomacy, foreign aid, and the military in the war on terrorism. The 9/11 Commission recommendations in these areas have not received nearly as much attention as the recommendations relating to intelligence reform. I hope that we address these recommendations more fully in the next Congress. We must act broadly and on many fronts to put an end to the threat posed by al-Qaida and those who subscribe to its ideology.

As we work to bolster our national preparedness in areas of border security and emergency preparedness, we must balance the privacy and civil liberties of individuals against our national security requirements. While some have suggested otherwise, these principles are not mutually exclusive, and I strongly believe that we can preserve both. S.2485 recognizes the importance of individual rights by creating a

Privacy and Civil Liberties Oversight Board. By providing the Civil Liberties Board with appropriate authority, the legislation ensures that its members will have access to the information they need to provide informed advice to the Executive Branch, Congress, and the American public as to how we can best protect privacy without compromising security.

As we complete action on this bill, we are reminded of the deep sense of urgency that pervades our work. I appreciate that there are some in this body who wish we had taken a slower approach. Last month, the Senate Appropriations Committee held hearings on the 9/11 Commission recommendations with a particular focus on intelligence reform. Witnesses, including Dr. Henry Kissinger, raised concerns, some of which have been addressed in amendments. The general sentiment of those hearings, however, was that we should approach intelligence reform much more gingerly. Unfortunately, we do not have the luxury of time. Many of the reforms we enact today are based on recommendations that were made by previous commissions. These are not new ideas that require more study. The 9/11 Commission did us a tremendous service by creating a framework for action and by galvanizing the political will to enact these needed reforms.

Finally, Mr. President, I want to hail the bipartisan spirit in which this bill was crafted. For too long, Congress has ignored the views of the minority at its peril. We have budget resolutions that represent the priorities of just one party and conference committees that do the same. It is impossible to address the problems of the day unless we put our differences aside to work on real solutions that have broad support. This intelligence reform bill is an important reminder of how much more we could accomplish if we would just work together. I want to urge my colleagues who will serve on the conference committee to maintain the bipartisan spirit in which this bill has been considered in the Senate. When the final version of this bill comes before the Senate, it should not go beyond the recommendations of the 9/11 Commission in its scope, and it should not include partisan provisions that jeopardize passing meaningful reform in this Congress.

Mr. KYL. Mr. President, I rise today to discuss this body's efforts to reform the U.S. intelligence community.

My distinguished colleagues from Maine and Connecticut have worked hard to develop legislation to address some of the executive branch structural reforms recommended by the 9/11 Commission. To be sure, there is a need to change, the way we do business if we are to effectively battle terrorist organizations, like al-Qaida, and protect the American people from another devastating terrorist attack. But I believe that many provisions of the bill before us are tackling the problem from the wrong angle.

I think it is important that we move forward with deliberate speed. Past efforts, like the Goldwater-Nichols Act of 1986, should set an example. That overhaul of the Defense Department took several years from start to finish. It was a huge undertaking, as is our current effort to reform the intelligence community. The 9/11 Commission did a good job of cataloguing and critiquing the failures of 9/11—I believe it spent some 18 months on that effort. But it spent far less time developing the recommendations to solve the problems. We are now acting on those recommendations over a period of less than 2 weeks on the Senate floor. It is important to ask whether, in the middle of a war, it is wise to attempt such a fundamental reorganization with a deadline of October 8 for Senate consideration, a conference and then adoption of a conference report.

Nevertheless, I will support moving this legislation forward, as the President has strongly urged us to do, so that we may try to resolve outstanding issues in the Senate-House conference committee. As Congress prepares its final intelligence reform bill to be sent to the President, we must be especially careful to do no harm. I will continue to press the issues about which I am concerned during the conference.

Today I plan to discuss: No. 1, how the 9/11 Commission recommendations fail to thoroughly address the problems it identified; No. 2, deficiencies in the Governmental Affairs Committee proposal; and No. 3, what I think we should be doing instead—focusing on intelligence community reform, instead of just reorganization. I will also touch very briefly on two additional areas in which I had proposed amendments: visa reform, and tools and resources for fighting terror.

Former Secretary of Defense James Schlesinger identified one of the key problems with the 9/11 Commission recommendations:

> [The Commission] has . . . proposed a substantial reorganization of the intelligence community—changes that do not logically flow from the problems that the Commission identified in its narrative.

The Commission identified four categories of failures by the U.S. Government that ultimately led to the attacks of September 11, 2001: imagination, policy, capabilities, and management. After reviewing the 9/11 Commission's narrative of these failures and studying its 41 recommendations to prevent future such failures, I am hard pressed to see what most of the recommendations have to do with the problems identified.

I will briefly touch on each of these broad problems identified by the Commission and assess how they will be addressed by both the Commission and later the Senate's legislation.

First, lack of imagination. I agree that this problem was a significant contributor not only to the failure of intelligence community to predict the 9/11 attacks, but also the vast majority of the intelligence failures that have plagued our intelligence community over the past 20 years. A lack of imagination is simply an extension of the much broader and more pervasive cultural problems such as risk aversion, group think and a lack of competitive analysis that continue to hamper our intelligence and law enforcement agencies. I will deal with these problems in more detail later; but it is clear that none of the Commission's recommendations or this bill's provisions begin to address this culture problem; and, in fact, one recommendation could substantially increase risk aversion, a problem exacerbated by the bill's redundant provisions piling on layers of civil liberties and privacy review.

The Commission itself notes that ''Imagination is not a gift usually associated with bureaucracies,'' and so it is ironic that Commission proposes to create an even more bureaucratic intelligence structure. Chairman Kean and Vice Chairman Hamilton contend that an empowered NID will foster competitive analysis and quash group think because that individual will draw on the perspectives of all the intelligence agencies, rather than just the CIA, as the DCI is now more likely to do.

But a convincing case can be made that the creation of national intelligence director with budgetary authority over most of the intelligence community could actually exacerbate the community's lack of imagination. Under such a centralized system, it is far more likely that agencies, like DHS's Information Analysis office, will be inclined to provide a commonly accepted view because the NID will control their budgets. As such, they will lack the protection that their previous patron—the Department of Homeland Security, in this case—provided them. Risk aversion and group think are, therefore, likely to become even more widespread problems.

The second failure identified by the Commission is one of policy. Here the report faults not the intelligence community, but political leaders, including Members of Congress, for failing to act even when there was a clear threat. Terrorists had demonstrated time and time again that they were at war with us: in 1993 at the World Trade Center; in 1995 at a U.S. military barracks in Saudi Arabia; in 1998 at the U.S. Embassies in Kenya and Tanzania; and in 2000 with the bombing of the *USS Cole*. Almost a decade of attacks resulted in little more than a single cruise missile strike that destroyed a pharmaceutical plant.

This failure of decisionmaking really calls for a fix that can't be legislated—good leadership.

The Commission makes a number of related recommendations on how to fight the war on terror, with the goal of making another attack less likely. These range from the obvious, ''make a long-term commitment to Afghanistan,'' to the irrelevant and unwise, declassifying the overall intelligence

budget. On the whole, however, most of recommendations are already being implemented in some fashion, and have been underway since shortly after the attacks. I commend to my colleagues a fact sheet prepared by the White House detailing its implementation of the majority of the 9/11 Commission's recommendation.

On a more specific level, one area where not enough work has been done is that of terrorists' travel. The Commission correctly identifies the importance of the problem arguing, ''[f]or terrorists, travel documents are as important as weapons,'' and I am, therefore, surprised that the Commission and the committee have decided to put that issue on the backburner. I will return to this issue in more detail shortly, but it is one area where Congress can make an important contribution to U.S. security and we should not abdicate that responsibility.

The third failure is one of capabilities. It is here that the 9/11 Commission highlights numerous glaring weaknesses in how the intelligence community shared information, prepared for potential attacks and planned for U.S. responses. The Commission recommends improvements in information sharing and the parts of this legislation that seek to implement these are important.

Regardless of how we ultimately decide to organize the intelligence community, it is important that we improve and streamline information sharing. Congress has already taken some important steps toward that objective. For example, the PATRIOT Act, enacted shortly after the September 11 attacks, improved information sharing by breaking down legal barriers between intelligence and law enforcement, but it is clear we will not be able to make the PATRIOT Act provisions permanent in this bill.

Unfortunately, the 9/11 Commission overlooks the fact that solving the capabilities problem requires far more than just improving the sharing of information. The problem extends beyond what intelligence is available to an analyst at any given time. The 9/11 Commission, the Joint House-Senate Inquiry into the 9/11 attacks, and the recently completed Senate Select Committee on Intelligence investigation into pre-war intelligence on Iraq all point to far deeper deficiencies. They identify core cultural problems. Indeed, too often the right information is not collected due to, among other things, excessive risk aversion, and analysis of the information is not adequately questioned to ensure that group think has not replaced sound judgment.

The Commission focused on only one recommendation for fixing a laundry list of problems with the CIA's collection and analysis, and only one recommendation on improvements to the FBI's intelligence capabilities. On the other hand, the Commission devoted three recommendations to protecting civil liberties, though none is designed to prevent a future attack.

The last failure identified by the Commission is one of management. It is this failure that leads the Commission to recommend the creation of the National Intelligence Director. The report highlights the inability of then-DCI George Tenet to mobilize the entire intelligence community after he issued a memo stating, ''We are at war'' with terrorists. However, the 9/11 Commission's report states that the DCI's memo had ''little overall effect on mobilizing the CIA.'' If even the CIA, where the Director has complete budgetary and line control, did not respond to the DCI's memo, we should not be confident that simply putting someone at the top of a new organizational chart is the panacea that some claim.

It warrants noting that the 9/11 Commission details an example, from before 9/11 and the changes that followed, where the intelligence and law enforcement communities were able to mobilize, break down stovepipes and information was shared ''widely and abundantly.'' This example—termed the ''Millennium Exception'' by the Commission—focuses on the last weeks of December 1999, when the government ''acted in concert to deal with terrorism.'' The Government's approach to this threat, demonstrate the power of strong leadership and commitment, despite what some call a disjointed intelligence organization.

Too often problems of management have less to do with organizational structure, and more to do with the managers themselves. I fear that we are rushing to implement sweeping organizational changes because it is the easy thing to do, not because it is necessarily the right thing to do. In the meantime, the hard work of changing the culture of the community seems to have been pushed to the side.

The Senate is currently considering a reorganization package that contains a number of the 9/11 Commission's 41 recommendations. Among the most significant, the bill establishes a Senate-confirmed national intelligence director with strong budget, personnel, security, and other authorities; creates a national counterterrorism center, NCTC, to integrate intelligence capabilities and develop joint counterterrorism plans; redefines the National Foreign Intelligence Program as the National Intelligence Program—which includes the national collection agencies within the Defense Department, NSA, NGA, and NRO; and contains provisions that require the establishment of an information sharing network.

The bill is called the National Intelligence Reform Act of 2004. But it does not reform the intelligence community; it reorganizes it. It does not get at the fundamental problems in the intelligence community identified by the 9/11 Commission and the other intelligence investigations and inquiries over the last several years. And, unfortunately, in at least one glaring respect, it violates the first rule of medicine and legislating in that it does do harm. Moreover, even if the reshuffling of bureaucracy can ultimately be made to work, doing so now, while our country is at war, makes it very hard to supply our strategists, planners, and warfighters the information they need, when they need it.

I have taken under careful advisement the cautious tone of many former and current officials. For example, in his testimony to the Senate Armed Services Committee on August 17, 2004, Secretary of Defense Donald Rumsfeld stated:

> In pursuit of strengthening our nation's intelligence capabilities, I would offer a cautionary note. It is important that we move with all deliberate speed; however, moving too quickly risks enormous error . . . And we are considering these important matters while waging a war.

The Center for Strategic and International Studies, CSIS, recently released a statement, signed by an experienced group of former officials, urging similar caution. The statement was endorsed by: former Senators David Boren, Bill Bradley, Gary Hart, Sam Nunn, and Warren Rudman; former Secretaries of Defense Frank Carlucci and William Cohen; former Deputy Secretary of Defense John Hamre; former Director of Central Intelligence Robert Gates; former Secretary of State and National Security Advisor Henry Kissinger; and former Secretary of State George Shultz. It said:

> Rushing in with solutions before we understand all of the problems is a recipe for failure.

In his testimony, Secretary Rumsfeld discussed in detail his concerns about how intelligence community reorganization could potentially adversely affect the Defense Department. He expressed his strong reservations about the national collection agencies—the NSA, NGA, and NRO—being removed from the Defense Department, where they are now located, and aligned under the direct leadership of the national intelligence director. He stated:

> ''We wouldn't want to place new barriers or filters between the military Combatant Commanders and those agencies when they perform as combat support agencies. It would be a major step to separate these key agencies from the military Combatant Commanders, which are the major users of such capabilities.

The Defense Department worked tirelessly in the decade after the first gulf war to ensure that the speed and scope of intelligence support to military operations would be improved for future conflicts. It was General Schwartzkopf's view that the national intelligence support during Desert Storm was not adequate. Now, as we have seen from the success of our military operations in Afghanistan, Iraq, and the broader War on Terror, ''gaps and seams,'' as Secretary Rumsfeld refers to them, have been drastically reduced.

General Myers, Chairman of the Joint Chiefs of Staff, also expressed his

concerns on the subject during his testimony to the Senate Armed Services Committee, stating:

. . . for the warfighter, from the combatant commander down to the private on patrol, timely, accurate intelligence is literally a life and death matter every day. . . . As we move forward, we cannot create any institutional barriers between intelligence agencies—and of course that would include the National Security Agency, the National Geospacial-Intelligence Agency, and the National Reconnaissance office and the rest of the warfighting team.

I am concerned that the reorganization package before the Senate places this effective system in jeopardy.

In S. 2485, the NSA, NGA, and NRO remain within DOD; but this is somewhat deceiving. These national collection agencies will also be within the newly defined National Intelligence Program. The Committee-reported bill would essentially remove the Secretary of Defense from any meaningful management role over these agencies.

First, the national intelligence director would have the authority to appoint the heads of these agencies, albeit with the concurrence of the Secretary of Defense. What makes this unusual and potentially problematic? Well, consider the fact that the Director of the National Security Agency, a general officer, is dual-hatted as the Deputy Commander for Network Attack, Planning, and Integration at Strategic Command, or that the Director of the National Reconnaissance Office also serves as an Under Secretary of the Air Force. These positions truly support the mission of the Defense Department

Second, the national intelligence director would have the authority to execute the budgets of these agencies. It is one thing to say that the NID should manage the entire budget for the National Intelligence Program, and, therefore, to help develop agencies' budgets and even receive their appropriation. It is quite another to altogether remove the Secretary of Defense from the loop by requiring that the NID suballocate funding directly back to the agencies. This effectively removes the Secretary from the management loop.

I have studied the Defense Secretary's testimony to the Senate Armed Services Committee, as well as the testimony of other experts. I am also aware that there were some good amendments in the committee markup to help preserve the Defense Department's equities. But I am still not convinced that we are doing no harm. As General Myers commented during the course of the Senate Armed Services Committee's discussion on the subject, ''[T]he devil's in the details.''

I recognize that during the course of the Senate's debate on this bill, several of my colleagues have offered amendments to ensure that the equities of the Defense Department are protected, and I applaud them for their efforts.

So, while I am not convinced we are doing no harm—particularly with respect to ensuring our warfighters have the intelligence support they need—I am also not convinced that we are necessarily doing much good. Again, the solutions of the 9/11 Commission, and, in turn, the Senate bill, don't seem to match the problems.

I would like to discuss an example of what I believe we could do to help minimize our chances of another catastrophic terrorist attack—by addressing cultural problems in the intelligence community, including risk aversion, group think, and a failure of leadership.

I was a member of the Senate Intelligence Committee for 8 years and participated in the first of the post-9/11 evaluations—the joint Senate-House inquiry, formally named the Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001. Along with the current Intelligence Committee chairman, I offered additional views to that report which, had I been part of the 9/11 Commission, I would similarly have submitted. Those additional views describe the core cultural problems in the intelligence community that can't simply be solved by reorganizing agencies. On this, the Commission report and the bill before us missed the mark in many respects.

First, let's consider risk aversion, which plays out not only in the intelligence community, but also in foreign policy decisionmaking, economics, business investments, and so on. There are many potential reasons for risk aversion—a particular action might have adverse, unintended consequences, might get one into trouble with one's superiors, or might simply draw unwanted attention, just to name a few. When an individual or a government acts, there is always a calculation of risk; but some governments and some individuals are more willing to take chances than others. This is a product of both leadership and environment.

An aversion to taking risks—even when they should be taken—plagues our intelligence community. Indeed, in the course of our congressional inquiry on the 9/11 attacks no intelligence or law-enforcement agency escaped being described by its own officials as hampered by an aversion to thinking critically, exposing their views to others, and being willing to boldly take risks. Time and time again, this has contributed to intelligence failures—most recently, of course, 9/11 and the intelligence communities' claims about Saddam's stockpiles of weapons of mass destruction.

The 9/11 Commission also addressed the issue of risk aversion within the CIA, noting the net result for that agency pre-9/11:

. . . an organization capable of attracting extraordinarily motivated people but institutionally averse to risk, with its capacity for covert action atrophied, predisposed to restrict the distribution of information, having difficulty assimilating new types of personnel, and accustomed to presenting descriptive reportage of the latest intelligence.

One of the most well known examples of the problem of risk aversion in the context of the 9/11 attacks was the FBI's failure to respond to the ''Phoenix Memorandum,'' written by a Phoenix special agent who wanted to alert his superiors about suspicious individuals seeking pilot training. The now-famous electronic communication to FBI headquarters recommended that the FBI consider seeking authority to obtain visa information from the State Department on individuals who obtained visas to attend flight school.

The intelligence operations specialists at headquarters who reviewed the memo told the staff of the congressional joint inquiry that they had decided among themselves that seeking that authority raised profiling concerns. These concerns stemmed at least in part from previous public allegations of racial profiling against FBI agents who had questioned two Middle Eastern men acting suspiciously on a flight from Phoenix to Washington, DC, in 1999.

On a broader—not case-specific—level, the intelligence community's clandestine service has been seriously hampered by an aversion to taking risks. According to the 9/11 Commission's report, James Pavitt, the head of the CIA's Directorate of Operations, recalled that covert action had gotten the clandestine service into trouble in the past, and he had no desire to see it happen again.

It is likely that this ''trouble'' was at least in part a result of congressional actions, for example the 1976 Church Committee investigation, which was set up in the wake of revelations about assassination plots organized by the CIA. The investigation resulted in some 183 recommendations, and subsequent legislative proposals and debate that consumed considerable attention over a number of years. In part, that debate focused on specific, clearly defined limitations and prohibitions on intelligence activities.

Obviously, as we move forward with reforming congressional oversight of the intelligence community, there will be a need to balance strong and effective oversight with not hamstringing the community and creating an even more risk averse environment.

The culture of risk aversion in the clandestine service was also accentuated by executive branch actions during the Clinton administration. For example, risk aversion in the clandestine service was compounded by the 1995 Deutch Guidelines, CIA guidelines promulgated by then-Director of the CIA, John Deutch, which severely limited the ability of CIA case officers to meet with and recruit foreign nationals who may have been involved in dubious activities or have blood on their hands. Incidentally, during his tenure, Mr. Deutch also conducted a CIA-wide ''asset scrub,'' which applied an inflexible reporting standard to all CIA spies

that, if not met, resulted in their automatic firing. How can you effectively penetrate an organization or adversarial regime without dealing with unsavory characters? Thankfully, the Deutch Guidelines were finally repealed by the DCI in July 2002; but, their repercussions had a lasting effect on the culture of the Directorate of Operations.

So, here we have a clandestine service unwilling to take the risks that are, by nature, part of the job. Compound that with the fact that the DO had few resources. Between 1992 and 1998, the Central Intelligence Agency closed one-third of its overseas field stations, lost one-quarter of its clandestine service case officers, lost 40 percent of its recruited spies, and CIA intelligence reports declined by nearly one-half.

The result of this deterioration of a key part of our intelligence community was that, before 9/11, we had not one human source inside al-Qaida's command structure. What did the 9/11 Commission recommend to transform the clandestine service into a unit more effectively able to penetrate al-Qaida.

> The CIA Director should emphasize . . . ''(b) transforming the clandestine service by building its human intelligence capabilities; (c) developing a stronger language program, with high standards and sufficient financial incentives; (d) renewing emphasis on recruiting diversity among operations officers so they can blend more easily in foreign cities; (e) ensuring a seamless relationship between human source collection and signals collection at the operational level; and (f) stressing a better balance between unilateral and liaison operations.

As Reuel Gerecht, American Enterprise Institute scholar, commented in a recent article in the Weekly Standard, ''That's it. In a 447-page report on the intelligence failings of 9/11, the clandestine service gets nine lines. The important bit—'transforming the clandestine service . . .' is a 10-word platitude.'' The intelligence reform bill we are considering this week similarly fails to delve into this central problem. Even if we put the resources back in, we have not figured out how to deal with the mentality now ingrained in our covert officers.

Finally, as I previously noted, I believe the bill currently before the Senate will exacerbate the risk aversion problem in at least one respect: its creation of an excessive, redundant bureaucracy to oversee the protection of privacy and civil liberties. Should there be protections and oversight? Yes. But should there be so many layers of such oversight that intelligence officers are more worried about getting into trouble than about adequately performing their missions? Certainly not.

The provisions in this bill dealing with privacy and civil liberties are quite extensive. In summary, the bill establishes: two officers within the National Intelligence Authority, one responsible for privacy, the other for civil rights and civil liberties; an Inspector General within the National Intelligence Authority, who, in part, monitors and informs the National Intelligence Director of any violations of civil liberties and privacy; an Ombudsman within the National Intelligence Authority to protect against so-called politicization of intelligence; an independent Privacy and Civil Liberties Oversight Board with extensive investigative authorities; and privacy and civil liberties officers within the Departments of Justice, Defense, State, Treasury, Health and Human Services, and Homeland Security, the National Intelligence Authority, the Central Intelligence Agency, and any other department, agency, or element of the Executive Branch designated by the Privacy and Civil Liberties Oversight Board to be appropriate for coverage.

These provisions reach far beyond what the 9/11 Commission recommended—an executive branch board to oversee the protection privacy and civil liberties. The President already created such a board through executive order on August 27.

Under the construct offered in the Governmental Affairs Committee bill there will simply be too many people performing the same task. It will be inefficient; it will be counterproductive; and it will add yet another legal hurdle for our intelligence officers to overcome. Our goal should be to make it easier for them to do their jobs—to detect and prevent future catastrophic terrorist attacks—not more difficult. Let's not forget why we are reforming the intelligence community. It is to prevent another 9/11. The problem is not that we invaded suspects' privacy, but that we didn't know enough about them to prevent the attack.

I offered an amendment to S. 2845, which I discussed several times on the floor of the Senate, to eliminate some of this redundant oversight. I withdrew that amendment reluctantly, but with the understanding that the issue would be resolved in conference. I plan to continue to press my case on this matter because I believe it is central to ensuring that we do not make worse the already existing problem of risk aversion within the intelligence community.

Second, group think. This problem is not unrelated to the problem of risk aversion. The result of analysts' fears of taking risks is often that they are unable to think outside the box, to break free of the generally-accepted assumptions held by their agency or by the rest of the intelligence community.

In his August 16 testimony to the Senate Armed Services Committee, former Secretary of Defense James Schlesinger discussed the problem at length, stating:

> Different organizations will drift gravitate towards different ways of organizing reality—based upon their range of responsibilities and, also, their interests in a narrower sense. Most individuals make themselves comfortable in their own organizations by not challenging a prevailing consensus.Q

Another cause of group think is simply a lack of imagination. In a recent op-ed in the Washington Post, Henry Kissinger raises some important questions about the reforms currently being pursued. He states that the basic premise of the ''current emphasis on centralization'' through the creation of a director of national intelligence ''seems to be that the cause of most intelligence failures is inadequate collection and coordination.'' Kissinger believes, however, that ''the breakdown usually occurs in the assessment stage.'' He attributes that breakdown to a failure of imagination to connect the dots of available knowledge. His op-ed describes in detail how a lack of imagination led to the major intelligence failures of the last 4 decades: the 1973 Middle East War, the Indian nuclear test of 1998, the September 11 attacks, and the failure to find WMD stockpiles in Iraq.

How do we solve this problem? Well, let's take the issue of Iraq's weapons. The Senate concluded in its bipartisan report on the intelligence community's assessment:

> The presumption that Iraq had active WMD programs was so strong that formalized IC mechanisms to challenge assumptions and ''group think,'' such as ''red teams,'' ''devil advocacy,'' and other types of alternative, or competitive analysis, were not utilized.

Former Defense Secretary James Schlesinger recommends precisely what the bipartisan report said was lacking. In his testimony, SASC, August 16, he stated:

> The only solution within an organization is to establish a Devil's Advocacy organization to challenge the prevailing beliefs.

This is an imperfect solution, as Secretary Schlesinger further notes, but, still, if we had had such mechanisms, we would have had a far greater chance of reaching the truth. Yet, neither the Commission nor the Committee recommends such a ''red team'' or ''devil's advocacy'' entity or process. We will have to do it by amendment.

This is one place where we can learn from our past successes and failures. Historically speaking, ''red teams,'' have been helpful inside and outside of the intelligence community. In the 1970s, for example, the intelligence community persisted in underestimating the size and scale of the Soviet arms build-up. In response, Congress created a ''red team'' called Team B to review the IC's analysis. Team B's report, which documented how far off the intelligence community was, laid the foundation for President Reagan to rebuild the U.S. military in the 1980s.

More recently, the Rumsfeld Commission on the ballistic missile threat was created to play devil's advocate with the findings of the intelligence community. Not surprisingly, the Commission found the estimates far off, dramatically underestimating the time it would take for a country to procure or produce a ballistic missile.

The chairmen of the 9/11 Commission, Thomas Kean and Lee Hamilton, recognize the group think problem in their

September 8 Washington Post op-ed, and offer that their proposed reforms ''institutionalize information-sharing, thus guaranteeing a competitive airing of views.'' They further state:

We don't want dissent quashed by groupthink; we want competing analyses to be shared broadly . . .

But as key experts, like Henry Kissinger and Jim Schlesinger, point out, it is valid to question whether centralized intelligence—which we are now pursuing—encourages conformity, making the problem of group think worse. At best, that structural change will do nothing to affect the problem.

Last, but certainly not least, leadership is a problem that simply cannot be solved legislatively. Conversely, good leadership can potentially solve the other cultural issues I have identified.

Al-Qaida's attack on Washington and New York occurred after a long period of poor leadership at the highest levels of the U.S. Government regarding terrorism. Despite repeated assaults on the United States and its interests, the U.S. Government was still unwilling to treat terrorism as a true national security issue until after 9/11.

This was, of course, partly a failure of political leadership. But the intelligence community is not absolved, either. The problem of inadequate allocation of resources in the intelligence community, for example, was at least partly a result of confused leadership in the community. In spite of a 1998 declaration of war on al-Qaida by the Director of Central Intelligence, two key organizations—namely, the Defense Intelligence Agency and the Federal Aviation Administration—were not allowed, though they offered, to throw their support behind the antiterror effort.

Counterterrorism analytic centers were fragmented across the administration at the Pentagon, the CIA, and various FBI locations. Only after 9/11 did various intelligence and law enforcement entities begin to put aside their parochialism and work together in a more productive manner. And certainly reorganization was a partial fix for the problem—in particular, the new Terrorist Threat Integration Center, TTIC, which merges and analyzes all threat information in a single location under the direction of the DCI, has been beneficial. But, with better leadership of the intelligence community, the condition would not have been so prevalent in the first place. It would not have taken a monumental disaster for these entities to cooperate more effectively with one another.

I would now like to briefly discuss visa reform. I am pleased that the Collins-Lieberman bill, with the addition of Kyl amendment No. 3926, will at least tighten up immigration law to require, in statute, that most temporary visa applicants be personally interviewed by State Department consular officers during the application process, and that all such applicants be required to actually complete their visa applications to get a visa. Past misuse of immigration law allowed 15 of the 19 September 11 hijackers to enter the United States without completing their applications or being interviewed.

Some might question why such State Department regulations need to be included as statutory language in the Immigration and Nationality Act. Section 214(b) of the INA governs the admission of nonimmigrants to the United States. It presumes that an alien who applies for a temporary visa actually intends to stay in the United States permanently ''until he establishes to the satisfaction of the consular office'' that he intends to stay temporarily. This means that the burden of proof is on the alien to show that he is eligible to receive a visa and that he will not overstay or otherwise violate the terms of the visa. Had the State Department required its consular affairs officers to implement section 214(b) correctly, and thus to conduct in-person interviews and require that visa applications be completely and accurately filled out, to meet the burden of proof requirement, the tragedy of 9/11 could have been prevented.

The intent of Section 214(b) was not carried out by the State Department consular affairs officers who issued visas to the 9/11 hijackers. Fifteen of the 19 men who flew hijacked airplanes into the World Trade Center, the Pentagon, and the Pennsylvania countryside were Saudi nationals who should have been denied admission to the United States under section 214(b) because their visa applications contained inaccuracies or omissions. These were not trivial mistakes in spelling or punctuation. The applications omitted such fundamental information as: means of financial support, home address, and destination or address while in the United States. According to an October 28, 2002 National Review article by Joel Mowbray under the title and subtitle ''Visas for Terrorists: They were ill-prepared. They were laughable. They were approved,'' only one of the 15 applicants listed an actual destination address for inside the United States. The rest listed locations such as ''California,'' ''New York,'' or simply ''Hotel.''

Section 214(b) should also have been used to require face-to-face interviews of those applying for nonimmigrant visas. Only two of the 15 Saudi hijackers were interviewed by State Department officials. Such laxity by consular officers, however, occurred under guidelines and practices put in place by senior State Department officials. According to cables and other written notices sent over time by Mary Ryan, who was Assistant Secretary for Consular Affairs on September 11, 2001, shortening the visa application process wherever possible was a ''very worthy goal.''

Such top-down guidelines were explored in an October 2002 GAO report, ''Border Security: Visa Process Should Be Strengthened as Antiterrorism Tool.'' The report says the State Department's written guidelines and resulting practices for visa issuance allowed for ''widespread discretionary adherence among consular officers in adhering to the burden of proof requirements included in section 214(b).'' The GAO report also says the State Department's ''Consular Best Practices Handbook'' gave consular managers and staff the discretion to ''waive personal appearance and interviews for certain nonimmigrant visa applicants.''

The 9/11 Commission was provided detailed information about the State Department's use of section 214(b) and its contribution, in my opinion, to the tragedy of 9/11. In a letter to the 9/11 Commission on April 23, 2004, I said how important it was that the 9/11 Commission focus on the State Department's contribution to the dysfunction of the visa-issuance system prior to September 11. In a followup letter on May 13, 2004 to the Commission, I stated that correct use of the statutory law governing nonimmigrant visa issuance could have kept several, if not all, of the 9/11 hijackers from entering the country.

The amendment that the bill managers have accepted is based on the regulations promulgated by the State Department in the Foreign Affairs Manual it issued after September 11. It requires that all aliens who apply for a nonimmigrant visa submit to an in-person interview with a consular affairs officer. Although the primary purpose of the in-person interview is to determine whether an applicant will overstay his or her visa, it is also a prime opportunity for a consular affairs officer to gauge the intent of the applicant to try to make sure that the applicant does not intend to harm the United States. I recognize that not every person may have to be interviewed, so my amendment allows applicants under the age of 12, individuals over the age of 65, diplomats, and certain other individuals to be exempt from the in-person interview requirement if the consular affairs officer deems it appropriate.

My amendment also requires that, even if the nonimmigrant visa applicant falls into a category for which an interview is not necessarily required, one will be required if he is not a national of the country in which he is applying for a visa; if he was previously refused a visa; or if he is listed in the Consular Lookout and Support System. CLASS is the State Department's database that lists all applicants about whom the Department has security concerns. Finally, my amendment requires that all applicants for nonimmigrant visas provide complete and accurate information in response to every question on the nonimmigrant visa application. This is to ensure that the application is completely filled out and that the applicant has provided enough information to meet the burden of proof required by section 214(b) of the INA.

The codification of these few provisions will help ensure that terrorists are not able to enter the country using legally issued visas. Provisions to that effect ought to be in any piece of legislation aimed at preventing additional terrorist attacks on this country. I appreciate the willingness of Senators COLLINS and LIEBERMAN to work with me to modify the amendment to make it acceptable.

Before I close, I want to note that I have separately discussed another related area in serious need of attention: making sure we have the legal authorities and resources we need to effectively fight terror. I had prepared several amendments on this topic, which I intended to introduce to this bill, but because some Members erroneously believed that these amendments were highly controversial, I chose not to pursue them.

These amendments, one of which was my Tools for Terrorism, TFTA, bill in its entirety, others of which were parts of that bill, should not have been considered controversial. TFTA is not new—it is composed of bills that have been pending, have been approved by the Justice Department, and have been the subject of nine separate hearings. TFTA consists of all or part of 11 bills currently pending in the House and Senate. Every provision of the bill previously has either been introduced as a bill in the House or Senate or had a committee hearing. Every provision of the bill has the full support of the Justice Department. Collectively, the provisions of this bill have been the subject of nine separate hearings before House and Senate committees and have been the subject of four separate committee reports. Furthermore, collectively, the bills included in TFTA have been pending before Congress for 13 years.

That said, in the interest of allowing the Senate to move forward quickly, and noting that some of the provisions of my TFTA bill are included in the House version of the Intelligence Reform bill, I have decided to continue to try to press my case during the House-Senate conference.

My intention today was not to create a sense of futility in this body's efforts, but rather to express reservations about the proposed solutions and highlight those areas I know need to be resolved if we are to effectively wage the war on terror. A careful reading of the congressional joint inquiry report, the Senate's Iraq intelligence investigation, and the 9/11 Commission's narrative of the failures that led to 9/11 all point to far deeper deficiencies than can be solved by bureaucratic reorganization.

I plan to vote for this bill, but I do so recognizing that it is imperfect, and also with the clear intention of continuing to press my case for various modifications in conference.

Finally, while it is true that, if we do reform right, we will be able to improve our intelligence, it will never be the case that our intelligence is perfect. It is next to impossible to imagine every possibly means by which we might be attacked. As Judge Richard Posner points out in his New York Times Book review:

> The [9/11 Commission] narrative points to something different, banal and deeply disturbing; that it is almost impossible to take effective action to prevent something that hasn't occurred previously.

This does not mean we should not try; it does mean that we have to be realistic about the limitations of intelligence.

Those limitations make solid political leadership all the more important. Intelligence, diplomacy, military, law enforcement—these are all tools in our arsenal to fight the war on terror and whatever other threats may come our way. Decisionmakers must be willing to use them effectively. That is what will offer our greatest protection against another devastating attack.

Mr. DASCHLE. Mr. President, Congress has no more solemn obligation than to ensure our Government can effectively defend the American people. We must put America's security first.

The attacks of September 11 exposed serious weaknesses at every level of our Government's response to terrorism.

Since that awful day, many of us in Congress have resolved to do everything possible to understand how a handful of terrorists could defeat the entire U.S. Government's defenses and then adapt those defenses in order to prevent future attacks and make America safer.

The bill we are about vote on reflects the lessons of our inquiries.

It is thorough, thoughtful, bipartisan, and most important, rooted firmly in the facts behind the greatest failure of American intelligence in our lifetime.

When enacted, this legislation will improve our Government's ability to disrupt and prevent the kind of devastating attacks we witnessed that fateful day 3 years ago. In short, it will make America and Americans more secure.

I can think of no more important action this Senate can take in the remaining days of this session than to pass this legislation and move it to a conference with the House.

Immediately following the attack of the World Trade Center and Pentagon, Congress began a thorough investigation to uncover precisely what went wrong in the days leading up to September 11.

The House and Senate Intelligence Committees conducted a bipartisan inquiry.

They received thousands of pages of documents, conducted hundreds of hours of hearings, and heard from scores of Government and nongovernment witnesses who offered meaningful insights into what happened and how.

The unanimous, bipartisan recommendations of that report were available in December 2002.

Independent of this effort, President Bush had asked GEN Brent Scowcroft, National Security Advisor to former President Bush, to examine our intelligence community and suggest reforms that could make it function more effectively.

According to press accounts, the recommendations of that investigation were available in March 2002.

In addition, despite opposition from the White House, a strong bipartisan coalition was forged in the Congress to establish an independent, blue ribbon commission to investigate the circumstances surrounding the 9/11 attacks and provide us with a roadmap for how to improve our defenses, specifically those of our intelligence community.

The White House eventually gave the Commission its support and its cooperation. The unanimous, bipartisan recommendations of that commission were released in July 2004.

That is three separate investigations in less than 3 years—three separate investigations that originated in either the Congress or the Bush administration. Each investigation represented different points of view and perspectives. Yet each investigation reached the same conclusion: If our intelligence community is to respond quickly and effectively to terrorism, there must be a single person in charge with the authority to allocate resources and direct personnel. There must be a single person responsible for setting the direction of our intelligence operations.

And there must be a single person accountable for the success or failure of those operations.

The legislation before us reflects the lessons learned from these investigations and it is particularly faithful to the 9/11 Commission's recommendations.

Not only does this legislation establish a national intelligence director with real power, it goes on to make a series of fundamental changes in the intelligence community and related Government agencies.

Just as important as what it does, is what it does not do. It does not stray from the 9/11 Commission's recommendations. It avoids extraneous issues that would have only brought divisiveness and delay to this debate. Time is of the essence.

As Governor Kean said when releasing his commission's report:

> Every day that passes is a day of increased risk if we do not make changes.

America could not wait and the Senate wisely focused on the most urgent challenges at hand.

I am especially grateful to Senators COLLINS and LIEBERMAN, the managers of this important legislation.

Shortly after the 9/11 Commission issued its report, Senator FRIST and I assigned them the difficult task of taking the Commission's recommendations on the executive branch and producing a bill that converts these proposals into legislative language.

They have not only done that, they have managed to grasp the details of this complicated bill and produce strong bipartisan support for their bill.

As I noted above, Senate passage will get this bill to a conference with the House and their version of this legislation. Unfortunately, it appears that some in the other body do not share this goal of swiftly enacting the 9/11 Commission's recommendations. They do not believe we should limit our work to the 9/11 Commission's work. Nor do they believe our top goal should be to defeat terrorists rather than push partisan political agendas.

Many of the people who are apparently willing to pursue this course have fought real reform efforts from the start. They opposed forming the 9/11 Commission. They opposed cooperating with the 9/11 Commission. They opposed giving the Commission the time and funding it needed to do its job. It is not surprising to learn now that they are now opposed to giving the Commission's recommendations a fair hearing.

We can't afford to keep kicking this can down the road. It may seem obvious, but there are some who seem not to understand that American lives are at stake.

This is the best—and perhaps last—opportunity to enact meaningful comprehensive reform legislation to make Americans more secure.

With today's strong bipartisan vote, the Senate can make a clear statement that we are ready to seize this opportunity to protect America and more effectively fight terrorism.

I hope our colleagues in the House who have opposed the Commission's work to this point will be able at long last to set aside their partisan agenda and follow the bipartisan example of the Senate.

The families of the victims of 9/11 and, indeed, all Americans should expect no less from their elected representatives.

Mr. FEINGOLD. Mr. President, I want to voice my strong support for S. 2845, the National Intelligence Reform Act of 2004, and to commend my colleagues on the Governmental Affairs Committee for their careful work in drafting this important legislation. In producing this bill, Senators COLLINS and LIEBERMAN have managed to combine urgent action with careful deliberation. I hope that this difficult balance can be maintained in conference.

While the authors of this bill deserve our thanks, the fact is that we would not be debating desperately needed intelligence reforms today had it not been for the work of the National Commission on Terrorist Attacks upon the United States—and for the work of the many concerned Americans, including families of 9/11 victims, who fought to establish the Commission and to protect its independence and authority. The 9/11 Commission worked hard to produce a thorough account of the facts concerning what the various elements of the U.S. Government knew, what action was taken to address the terrorist threat, and where communication and coordination broke down. All Americans deserve answers to these questions. And we have a duty to act on the Commission's recommendations and to put this country on a firmer, smarter footing to fight the terrorist forces that have attacked this country and wish to attack us again.

At the same time, we know that reorganization for its own sake is simply disruptive and distracting—a smokescreen of busy work and changing flow charts that can obscure serious flaws rather than remedy them. And needlessly trampling on the civil liberties, protected by our Constitution and guarded by generations of Americans, in the name of reform would be a horrible mistake. Hundreds of thousands of brave men and women have died defending our freedoms throughout our history. We cannot fail to guard those precious freedoms now.

The Senate bill creates a civil liberties board to evaluate new policies and ensure that civil liberties concerns are considered as the President and executive agencies propose and implement policies to protect the Nation against terrorism. The Commission specifically recommended the creation of such a board within the executive branch that would have as its primary mission the protection of our citizens' civil liberties. I am pleased that Senator KYL agreed to withdraw an amendment that would have undermined this provision. The supporters of this amendment suggested that efforts to protect our privacy and civil liberties will undermine the work of the intelligence and law enforcement community. I respectfully disagree. Americans reasonably expect their Federal Government to protect them from terrorism while respecting their privacy and civil liberties. We can, and must, do both.

The Collins-Lieberman bill is the right approach. It is important that the privacy and civil liberties oversight provisions in this bill be included in the final legislation that goes to the President's desk.

Similarly, it would be a grave mistake for the conference to add extraneous provisions increasing the power of the Government, such as those contained in another amendment offered by Senator KYL that derive from the so-called PATRIOT II proposal. We have not had the kind of full and informed debate on these proposals that the 9/11 Commission called for. For this bill to remain true to the Commission's recommendations, it cannot be used as a way to bypass the very deliberation that the Commission said is essential.

Even after we finish work on this bill, our work will be far from complete. The Commission's intelligence reform proposals have been the focus of most of the media attention surrounding the 9/11 report, and they are at the heart of the legislative efforts in which we are currently engaged. But the Commission's call for more focused, effective ways to attack the terrorists and their organizations, and, critically, to prevent the continued growth of terrorism, deserve equally intense examination and action.

We need to make a long-term commitment to denying terrorists sanctuaries, and to cultivating new generations of partners, not enemies, overseas. As the ranking member of the Subcommittee on African Affairs, I know that we do not have the intelligence resources or the diplomatic resources that we should around the world. We do not really have any policy at all to deal with Somalia, a failed state in which terrorists have operated and found sanctuary. And there is a great deal of work to be done to help countries in which we know terrorists have operated to improve the basic capacities of border patrols who could stop wanted individuals, and customs agents who could help stop weapons proliferation and auditors who could freeze terrorist assets. And we can do more to help root out the corruption that undermines these safeguards at every turn.

I am pleased that the Senate accepted an amendment that I offered to this bill, which arises from my experience with African affairs. I know many Africanists are concerned about terrorist activity in the Sahel, and the U.S. Government is working with partners in that region to address this issue. Some of these same terrorists are based in north Africa, above the Sahel, which various parts of the U.S. Government and our own congressional committees consider to be a different region of the world, one usually lumped together with the Middle East rather than sub-Saharan Africa. In other words, getting counter-terrorism right in Mali really requires understanding a number of things about Algeria, and getting it right in the Horn of Africa requires an understanding of Yemen as well as Kenya. But the policymakers who specialize in these places don't necessarily work together.

These geographic stovepipes hamper good policy, and cap fragment the picture that our intelligence community is able to piece together. And it is not just Africa, and it is not just terrorism. Where National Intelligence Centers are established with a specific regional focus, the National Intelligence Director needs to ensure that regular contact and cooperation among linked centers is institutionalized, not ad hoc. My amendment strengthens information sharing, and signals Congress's intent to ensure that the centers that are eventually established are as effective as possible.

There is also much more to getting our policies right when it comes to homeland security and emergency preparedness, and that work will continue long after we complete work on this bill. We still lack a comprehensive homeland security plan with clear priorities, deadlines, and accountability.

Without such plans, it is not possible to properly target our homeland security dollars to meet our most pressing needs. We are getting on the right track, however. The Commission recommended that future transportation security budgets be based on a thorough assessment of threats and vulnerabilities, and I am pleased that the Senate adopted my amendment to the fiscal year 2005 Department of Homeland Security bill to require just that. Senator MCCAIN also included a provision to require a national transportation security strategy, and I was pleased to support it. These steps will help, but there is more we must do.

I was also pleased to support the amendment offered by Senator COLLINS to coordinate and simplify the homeland security grant process, which is based on a bill I cosponsored. This important amendment will make it much easier for local first responders to get funding by reducing the many, and often redundant, grant application steps. The amendment also gives local officials far more flexibility in spending homeland security dollars, including paying for overtime costs associated with homeland security tasks and training. Successful programs, such as FIRE Act grants, the COPS program, and the Emergency Management Performance Grant program, are protected in this legislation. The amendment allocates funding based on threat, as recommended by the Commission, but also maintains baseline funding so that States and local officials can have a predictable stream of funding to meet the homeland security needs faced by all jurisdictions. This amendment will help simplify and rationalize the current homeland security grant system. However, I agree with Senator LIEBERMAN that more resources must be allocated to meet our homeland security needs.

I hope that the conference is able to quickly agree upon a final version of this bill that follows the Senate's approach and does not contain extraneous and controversial provisions. And I look forward to continuing to work with my colleagues on both sides of the aisle to ensure that what we have learned from the 9/11 Commission becomes a part of how we do business every day. This intelligence reform bill is a very good start, not the end, of the efforts we must make to bring about real changes that will enhance our security and the security of our children.

Mr. CHAMBLISS. Mr. President, first, let me again thank my colleagues from Maine and Connecticut for their hard work preparing and bringing an intelligence reform bill to the Senate floor. Reforming the intelligence community is serious business, and I appreciate the professional and thoughtful approach taken by the Government Affairs Committee, especially the chairman and ranking member.

I rise today to express some of my concerns on S. 2845, the National Intelligence Reform Act of 2004.

First, it is important to fully understand exactly why we are debating the reformation of our intelligence community in the first place. Our enemy has attacked us in new ways that no one ever thought about or occurred before in the entire history of mankind. The attacks on 9/11 were made on predominately civilian targets, using commercial civilian airlines, loaded with totally innocent, ordinary citizens. No one really planned for an attack of this nature because as a God-fearing nation, it was hard to imagine that some human beings could be so evil, so warped in their interpretation of their own religion that they believe the slaughter of innocent people by the thousands is somehow condoned or even approved by their God. Well, we now know the nature of our enemy, and it is dangerous beyond anything we have known in the past. And we are reminded of our enemy's evil nature every time we see a video of an innocent person pleading for their life or being beheaded in Iraq. These Islamic terrorists have in effect ''hijacked'' the Muslim faith, distorted it to meet their own twisted philosophy of life, and we must stop them.

Let me be absolutely clear on this point: the Islamic terrorists want to frighten us, they want to disrupt our economy and our way of life, and they want to kill us; they will stop at nothing, including suicide attacks to achieve their evil goals. I have said in this chamber many times that effective intelligence is our first line of defense against this enemy and only good intelligence will prevent them from ever again attacking us on our own homeland.

That is why we are here today to put more ''teeth'' into our intelligence community. We are here to debate and vote on legislation that should provide more security for our citizens.

The Collins-Lieberman legislation that we are considering is a good bill in many ways, but it only marks the beginning of a process to rebuild our intelligence capabilities, not the end.

The bill establishes a National Intelligence Director; a position that I view as the ''foundation'' upon which all other intelligence reform measures will be built. However, there are some other measures relative to intelligence reform that will require our attention as soon as possible.

This bill leaves the intelligence community at fifteen members, eight of which are in the Department of Defense. As you know, I had a bipartisan amendment that was co-sponsored by my colleague from Nebraska, Senator BEN NELSON, that would create a unified command for military intelligence giving the new National Intelligence Director a single point of contact for military-related intelligence requirements and collection capabilities instead of eight. This is a major issue that must be addressed soon; otherwise the National Intelligence Director will have an unrealistically large span of control.

Collectively, the eight members of the intelligence community that this bill leaves in the Department of Defense are huge, with tens of thousands of people and multi-billion dollar budgets. How someone outside of the Department of Defense, like the national intelligence director, could adequately and efficiently manage these vast intelligence capabilities by dealing with eight separate military members is beyond me. Senator NELSON and I are committed to fix this shortcoming by introducing a bill to create a unified combatant command for military intelligence this coming January.

The Central Intelligence Agency is left intact in this bill, which is the right decision. But the bill does not adequately address the importance of human intelligence, HUMINT, or emphasize rebuilding this critical capability. HUMINT is a dirty and dangerous occupation, and it, more than any other intelligence discipline, will be the key to eliminating al-Qaida and all other terrorist organizations. We really owe our HUMINT case officers in the Central Intelligence Agency, the Defense Intelligence Agency, and other agencies all our thanks, support, and the resources necessary to get the job done.

The portion of this bill that creates a civil liberties board with broad subpoena power is particularly troubling to me. We need to take more risks in HUMINT and we need to rebuild the morale of our HUMINT collectors. What kind of message are we sending to our intelligence agents in the field who are risking their lives to protect us by creating a board designed to look over their shoulders and, which is redundant to the President's Board on Safeguarding Americans' Civil Liberties? We could create a morale problem throughout our intelligence community that might take years to repair and, I hasten to add, at a time when we need HUMINT more than ever to protect our citizens.

I am voting for S. 2845, the National Intelligence Reform Act of 2004, because it does establish the national intelligence director and gives statutory authority for the newly created National Counterterrorism Center. However, I will continually seek ways to address my concerns with this bill, some of which I have mentioned above. I want to reiterate again, that this bill marks only the beginning of the process to reform our intelligence community, not the end.

I yield the floor.

Mr. ENSIGN. Mr. President, I rise to discuss the recommendations of the 9/11 Commission Report that deal with the integrity of our borders and visitor access to America.

In the decade before 9/11, al-Qaida studied how to exploit gaps and weaknesses in the passport, visa, and entry systems of the United States and other countries. Al-Qaida actually set up its own passport office in Kandahar and developed working relationships with

travel facilitators—travel agents, document forgers, and corrupt government officials.

Since 9/11, some important steps have been taken to strengthen our homeland security. While these efforts have made us safer, we are not safe enough. A real world example was reported this past Saturday by the Washington Post. Peru and the U.S. intercepted a criminal network with possible al-Qaida links that smuggled Arabs into America after receiving false papers in Lima. Keeping Americans secure means being diligent on all fronts, at home and abroad.

The amendment that I am offering ties directly to two important recommendations of the Commission Report prohibiting terrorist travel to our country.

The first is the Commission recommendation that ''Targeting travel is at least as powerful a weapon against terrorists as targeting their money. . . Better technology and training to detect terrorist travel documents are the most important immediate steps to reduce America's vulnerability to clandestine entry.''

Americans need to know that every reasonable step is being taken to ensure that those who would harm our country and our citizens do not travel freely and easily into the United States. This is a task that deserves our full attention when the vast number of travel documents handled in our embassies, consulates, and border stations is considered. Specialists must be developed and deployed in consulates and at the border to detect terrorists through their travel practices, including their documents.

Last year there were about seven hundred consular officers stationed overseas in 211 posts. In addition to processing six million non-immigrant visa applications and nearly 600,000 immigrant visa applications, they provided a full range of services to American citizens. Chronic understaffing has led to an over-reliance on foreign workers to screen and review visa applications, jobs that normally would be handled by American officers. This process leaves too many gray areas; one mistake or intentional oversight in a foreign nationals review of an application could mean the lives of thousands of innocents. My amendment goes a long way to bolster the visa application process by mandating that American consular officials review and approve each and every immigrant and non-immigrant visa application.

Over the last 2 years the State Department has hired an average of 65 new consular officials. That number has not proven enough. My amendment provides the State Department the authority to increase the number of consular officials by 150 each year for 4 years, ensuring that trusted American resources are responsible for reviewing all visa applications.

Currently, consular officers only receive an overview in fraudulent document training. My amendment mandates that these consular officers are suitably trained in detecting fraudulent documents and document forensics, prior to beginning their service.

Our due diligence cannot stop here.

The second Commission recommendation that relates to my amendment states that we should ''. . . raise U.S. and border security standards for travel and border crossing over the medium and long term . . .'' The Commission goes on to say that ''It is elemental to border security to know who is coming into the country. Today more than 9 million people are in the United States outside the legal immigration system.''

Pre-9/11 the INS had only about 2,000 agents for interior enforcement and only 9,800 border patrol agents. With the priorities of the agency concentrated on immigration and narcotics, our northern border was often neglected and no major counterterrorism effort was underway. These gaps in our security created a weakness that allowed the loss of over 3,000 innocent citizens. More robust enforcement of routine immigration laws could have made a difference.

We must have the resources to be able to detect and, if need be, detain terrorists who seek entry through our borders. My amendment makes providing the necessary personnel for border security and immigration enforcement a top priority. It provides authority to increase the number of border patrol agents by 1,000 each year for a 5-year period. It also increases the number Immigration and Customs Enforcement investigators by 800 per year for a period of 5 years.

The Commission found that many of the 19 9/11 hijackers, including known operatives, could have been watchlisted and were vulnerable to detection by border authorities; however, without adequate staff and coordinated efforts, the evildoers were allowed unhampered entry.

The world has changed dramatically since 9/11 when the evil doers used our open and trusting society against us. We can not allow a repeat of that tragedy. This amendment will allow those who guard our frontiers the tools they need to ensure the safety of the citizens of the United States of America.

Ms. SNOWE. Mr President, I rise to address a very specific but invaluable component of the intelligence reform package before us today.

As many may know, before the release of the 9/11 Commission report earlier this year, I introduced stand-alone legislation—cosponsored by Senator MIKULSKI—creating an Inspector General for Intelligence. The ''Intelligence Community Accountability Act of 2004'' proposed an independent inspector general for the entire intelligence community—all fifteen agencies and department members. I introduced this legislation largely as a result of my experience as a member of the Senate Intelligence Committee which undertook a year-long investigation on the pre-war intelligence of Iraq.

I commend the efforts and tremendous work of the authors of the underlying bill—they have embraced the concept and spirit of my earlier bill and have included language in their legislation creating an Inspector General for the National Intelligence Director. I would also like to thank Senators ROBERTS, MIKULSKI and FEINSTEIN for their support in being original cosponsors of an amendment I was prepared to offer on this subject. I will not offer that amendment but I want to make clear my intentions to continue working for better and more comprehensive accountability in our intelligence community.

In that vein, I want to express my strong opposition to any amendment or proposal that would weaken the language on the authorities and powers of the NID's inspector general. Any such amendment, if accepted or approved, would be a grave step backward in an area that is in critical need of a step forward. . . . I am of course talking about accountability in the intelligence community.

Any amendment to scale back the IG provisions of the bill would fly in the face of the 521-page report that followed the committee's investigation on Iraq pre-war intelligence and would ignore vital problems of information sharing that have been found throughout the community.

Any inspector general who is to serve the National Intelligence Director must have the power and authority to access employees and information in the agencies that lie in the national intelligence program. How can an IG be effective if his hands are tied because of turf battles and arguments over jurisdiction?

My preference would be to enhance some of the authorities of the NID's inspector general as proposed by the underlying bill, but I would rather work to preserve the bill's language as it exists now than to gut it through the passage of any proposal that rescinds the abilities of the IG to delve into the coordination and communication between and among the various entities of the intelligence community.

Issues of accountability have often been central to the work we as Senators do in seeking to bring better government to our constituents—particularly when matters of national security are at stake.

I saw firsthand the consequences of serious inadequacies in accountability during my 12 years as a member of the House Foreign Affairs International Operations Subcommittee and as Chair of the International Operations Subcommittee of the Senate Foreign Relations Committee. During the 99th Congress, I worked to bring the State Department Accountability Review Board into fruition as part of the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986.

Among other issues, it was a lack of accountability that permitted the radical Egyptian Sheik Rahman, the mastermind of the first World Trade Center bombing in 1993, to enter and exit the U.S. five times totally unimpeded even after he was put on the State Department's Lookout List in 1987, and allowed him to get permanent residence status by the INS even after the State Department issued a certification of visa revocation. In 1995 and again after the terrorist attacks of 9/11, I introduced legislation establishing Terrorist Lookout Committees in our embassies and consulates abroad—all in an effort to create more accountability in the protection of our homeland.

In this same vein, my membership on the Senate Select Committee on Intelligence has allowed me to realize that the need for greater levels of accountability in our intelligence community is and must be a priority. It is all too evident that in addressing the key concerns and problems seen in the management of our intelligence agencies, accountability is an area unquestionably in need of dramatic improvement.

I am pleased that as intelligence community reform has gained momentum, the concept of an inspector general has been very much a part of the debate. Indeed, an inspector general is included in the broad and comprehensive intelligence reform legislation authored by Senator FEINSTEIN—legislation that I was proud to co-sponsor earlier this year.

An inspector general for the whole intelligence community was also included in reform legislation offered by Senator GRAHAM, the former chairman of the Senate intelligence community. Language creating a community-wide inspector general was contained in the proposal by current Intelligence Committee Chairman ROBERTS as well as the recent bill offered by Senators MCCAIN and LIEBERMAN.

And as I indicated, an inspector general is included in the underlying bill crafted by the Senate Governmental Affairs Committee. I commend and, once again, thank all of my colleagues for including this key component in their proposals. This bill takes a step forward in addressing the key issue of intelligence community accountability and it should not be weakened by any additional amendments or modifications.

The belief that any new Director of National Intelligence should have an independent inspector general is one that few seriously dispute. In testimony before the intelligence committee in July, former Deputy Secretary of Defense John Hamre stated that an inspector general ''will help far more in driving and shaping the quality of outputs from this community.'' And Secretary of State Colin Powell called an inspector general a ''good idea'' while speaking before the Governmental Affairs Committee.

When I first drafted and then introduced my stand-alone legislation in early June, I had certainly envisioned that the inspector general the bill would establish would reside within a newly re-organized intelligence community. When I introduced my bill, I stated then that it was intended to be part of a larger initiative to overhaul the entire intelligence community's organizational structure. We have reached that point, and I am here today to continue my efforts to ensure that the final product the Senate approves contains the best possible mechanisms to bring accountability to the community.

As I indicated earlier, I have participated in this national debate on bettering our diplomatic, intelligence and national security services on many fronts and for many years. But it was as a member of the Senate Intelligence Committee, which spent a year reviewing the pre-war intelligence on Iraq's weapons of mass destruction programs, the regime's ties to terrorism, Saddam Hussein's human rights abuses and his regime's impact on regional stability that I realized the real and dire need for intelligence community change.

In looking at the intelligence community, we must remember that it is an amorphous entity made of up fifteen agencies, parts of departments, and independent bodies all spread out within our Federal Government. They each have their own mission, chain of command, procedures, history and institutional paradigms. The necessity for a stronger, independent head of the intelligence community became obvious to me and that measures must be legislated and instituted to hold the community and its amalgamation of agencies more accountable for the failures and shortcomings we had discovered.

The committee's report on the pre-war intelligence on Iraq revealed systemic flaws in the intelligence community, perhaps, most notably in many instances, a stunning lack of accountability and sound, ''hands-on'' management practices. These poor management practices contributed to the mischaracterization of intelligence reporting on Iraq's WMD programs.

I recognize that intelligence analysis is an imprecise art, with rarely—if ever—any absolutes; however, our report revealed that many judgements regarding Iraq's weapons of mass destruction programs and capabilities were based on old assumptions allowed to be carried over year after year, virtually unchecked and unchallenged, without any critical re-examination of the issue.

In short, there was a lack of analytic rigor performed on one of the most critical and defining issues spanning more than a decade—that of the preponderance of weapons of mass destruction within Iraq and the looming threat they posed to Iraq's neighbors and to the U.S.

Intelligence community managers, collectors and analysts believed that Iraq had WMDs, a notion that dates back to Iraq's pre-1991 efforts to retain, build and hide those programs. In many cases, the committee's report showed that the intelligence community made intelligence information fit into its preconceived notions about Iraq's WMD programs.

From our review, we know the intelligence community relied on sources that supported its predetermined ideas, and we also know that there was no alternative analysis or ''red teaming'' performed on such a critical issue, allowing assessments to go unchallenged. This loss of objectivity or unbiased approach to intelligence collection and analysis led to erroneous assumptions about Iraq's WMD program.

For example, the committee's review showed that analysts minimized reporting from a biological weapons source because the source reported information that did not fit with their beliefs about the existence of mobile biological weapons facilities.

We also know that the key judgment in the National Intelligence Estimate that Iraq was developing an unmanned aerial vehicle ''probably intended to deliver biological warfare agents'' overstated what was in the intelligence reporting. This review revealed that some intelligence community UAV analysts failed to objectively assess significant evidence that clearly indicated that non-biological weapons delivery missions were more likely.

In addition, the committee's report revealed that, despite overwhelming evidence suggesting that the aluminum tubes Iraq was trying to procure were for artillery rockets, some intelligence community analysts rejected information and analysis from experts, including the International Atomic Energy Agency and the Department of Energy, who refuted the claim that the tubes were being procured for use in Iraq's nuclear weapons program. This information was rejected because it did not fit into some analysts' notion that Iraq was procuring these tubes as part of its nuclear reconstitution effort.

Clearly stated, the intelligence community failed to ''think outside the box,'' a phrase often used by the community's analytic cadre to describe more innovative approaches to examining a problem set.

Critical thinking and objectivity are crucial elements in both the collection and analytic trade crafts and ought to be ingrained, by appropriate training and effective oversight by management, in every collector and analyst entering the ranks of the intelligence community. Management has the responsibility to ensure analysts are trained to produce—and actually produce—the best, most objective, unvarnished assessments, and both management and the analysts and collectors have the responsibility to ensure that their trade-craft is practiced properly.

Along this same line of accountability, our report revealed how poor leadership and management resulted in the intelligence community's failure to convey the uncertainties in many of

the assessments in the National Intelligence Estimate on Iraq's Continuing Programs for Weapons of Mass Destruction.

For example, the intelligence community assessed that Iraq had mobile transportable facilities for producing biological warfare agents but failed to alert intelligence consumers that this assessment was based primarily on reporting from a single human intelligence source to whom the intelligence community never had direct access and with whom there were credibility problems.

In the analysis on Iraq's chemical weapons activities, the intelligence community failed to explain that several assessments were based on layers of analysis of a single stream of intelligence reporting regarding the presence of a tanker truck that was assessed to be involved in the possible transshipment of chemical munitions.

Finally, during coordination sessions with Secretary Powell in preparation for his speech before the United Nations in February 2003, the intelligence community was instructed to include in the presentation only corroborated, solid intelligence.

In fact, from our review we learned that the DCI told a national intelligence officer who was also working on the speech to ''back up the material and make sure we had good stuff to support everything.'' When Secretary Powell spoke before the UN, he said that every statement he was about to make would be ''backed up by sources, solid sources . . . based on solid intelligence.''

Incredibly, from our review, we know that much of the intelligence provided or cleared by the CIA for inclusion in Secretary Powell's speech was incorrect and uncorroborated. For example, the IC never alerted Secretary Powell that most of the intelligence regarding Iraq's mobile biological warfare program came from one source with questionable credibility nor did anyone alert Secretary Powell to the fact one of the sources cited in his speech was deemed to be a fabricator—something known by IC analysts since the May 2002 issuance of a ''fabrication notice.''

An independent, over-arching community-level inspector general who can delve into the communication between and among agencies, or the lack thereof, can assist in bridging the disconnects that lead to such failures. This IG should be properly empowered to reach into and across the bureaucratic and organization lines that separate each community agency so that next time, if the Department of Energy's assessments about the intended use of aluminum tubes by a dangerous regime are ignored or cast aside, someone can be held accountable.

There is no question that the intelligence community requires systemic changes. We are here today to do just that. Americans have a right to know that their intelligence services are doing the best job possible in protecting their security. I say this even while I must recognize the dedication and professionalism of the thousands of Americans who make up our intelligence community.

Each day across this country and around the world, they labor, mostly without recognition, to keep this country safe from harm. Our intelligence employees work under very demanding conditions and in environments that are extremely dangerous and can often shift without notice.

It is their vigilance upon which we rely to give us the forewarning necessary to counter the many dangers present in our world. Although it is impossible to directly express our deep appreciation for their efforts, we have an obligation to express our eternal gratitude to those who serve America so well.

Yet, however appreciative we are of the service done by those who work in the fifteen agencies that make up our nation's intelligence community, we as a Congress have a responsibility to continue to work to find ways to help them do an even better job, and more importantly, to ensure that any failures are not repeated and that we learn from past mistakes. At the same time, we have an obligation to the people of this country to ensure that both pride and comfort in our intelligence services exist. The people of this Nation, and those of us elected to represent them, have a right to know that when mistakes are made, corrections soon follow. That is what brings us here today.

I ask unanimous consent that a chart entitled ''Decades of Terrorism'' be printed in the RECORD.

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

DECADES OF TERRORISM

Oct. 23, 1983—Beirut Barracks bombing; Dec. 12, 1983—US Embassy bombing, Kuwait; Sept. 20, 1984—East Beirut bombing; Dec. 3, 1984—Kuwait Airways hijacking; April 12, 1985—Madrid restaurant bombing.

June 14, 1985—TWA flight 847 hijacking; Oct. 7, 1985—Achille Lauro attack; Dec. 18, 1985—Rome and Vienna bombings; April 2, 1986—TWA flight 840 bombing; April 5, 1986—Germany disco bombing.

Dec. 21, 1988—Pan-Am Flight 103 bombing; Feb. 26, 1993—World Trade Center bombing; Nov. 13, 1995—US Military HQ attack, Saudi Arabia; June 5, 1996—Khobar Towers bombing; Aug. 7, 1998—US Embassy bombings in Africa.

Oct. 12, 2000—USS Cole attack; Sept. 11, 2001—9/11; May 12, 2003—Housing compound bombing in Saudi Arabia; May 29–31, 2004—Saudi oil company attacks; June 11–19, 2004—Paul Johnson kidnaping/execution.

9/11 COMMISSION REPORT

''The massive departments and agencies that prevailed in the great struggles of the twentieth century must work together in new ways, so that all the instruments of national power can be combined.''

Ms. SNOWE. This chart beside me illustrates in the starkest of terms, what we are dealing with. . . ..and what this legislation is all about. I call the contents of this chart to the attention of my colleagues to serve as a reminder of ''the big picture.'' The goal of this reform movement is and has always been to make sure our intelligence agencies are better equipped, organized and managed so that we are in a greater position to detect threats and stop attacks. We want an intelligence community that is better prepared to ensure we don't keep adding to this list.

I also refer my colleagues to a quote from the preface of the 9/11 Commission Report: ''The massive departments and agencies that prevailed in the greatest struggles of the twentieth century mush work together in new ways, so that all the instruments of national power can be combined.'' This bill we are debating today speaks directly to this charge. And it is my view that a strong Inspector general is a vital component of that effort.

An inspector general will help to enhance the authorities of the National Intelligence Director that we will shortly create, assisting this person in instituting better management accountability, and helping him/her to resolve problems within the intelligence community systematically.

Ideally, the inspector general for intelligence should have the ability to investigate current issues within the intelligence community, not just conduct ''lessons learned'' studies. The IG should have the abilities to seek to identify problem areas and identify the most efficient and effective business practices required to ensure that critical deficiencies can be addressed before it is too late, before we have another intelligence failure, before lives are lost.

In short, an inspector general for intelligence that can look across the entire intelligence community will help improve management, coordination, cooperation and information sharing among the intelligence agencies. A strong, effective IG will help break down the barriers that have perpetuated the parochial, stove-pipe approaches to intelligence community management and operations.

As I stated earlier, I was prepared to offer an amendment that would have expanded on the language already included in the underlying bill—but let me be clear, there are many positive aspects of the inspector general as contained in this bill.

I am pleased, for example, that the bill ensures independence of the IG by including a separate budget account for his office. I also welcome the language pertaining to staffing, reports, subpoena powers and complaint procedures.

I have no doubt that the authors of the underlying bill and I share the same goal—an independent IG with proper authorities to assist in preventing some of the failures I've detailed here today.

As the Chairman of the intelligence committee stated last week on the Senate floor, members of the committee received a frightening briefing

last week in closed session where we were told that despite the current terrorist threat we face, and the high state of alert we live under, information sharing between the intelligence agencies is still not taking place and no one is holding anyone accountable for their failure to do so.

Too many incidents of failure to prevent attacks, failure to properly collect the needed intelligence, failure to adequately analyze that intelligence and failure to share information within the community beg for better accountability in the entirety of the community. Who better to do this than a single IG, who can reach across the community, work with the existing individual agency IG's, and confront any problem with a macro, overarching view? It is my hope that the new inspector general for the NID, as authorized in this bill, will take great strides to guarantee that information sharing and accountability are woven into the fabric of the intelligence community. Mr. President, this is the whole reason we are here today.

Mr. LIEBERMAN. Mr. President, I thought I would take this moment of quiet on the floor—we are just about a half hour away from voting final passage of this bill—to thank my staff and the staff of Senator COLLINS, which is led by Michael Bopp. My staff is led by Joyce Rechtschaffen and Kevin Landy, who has been a team leader on this effort. It has been a mighty team. They worked very hard to help Senator COLLINS and me put the hearings together on the 9/11 Commission Report; to work, many of them, over August in addition to working on the hearings, to draft the legislation I introduced with Senator MCCAIN to adopt the nonintelligence parts of the Commission report, and then to work in the week and a half—this being the eighth day of consideration on the floor—to see this bill at the point it is now.

I am very proud that the committee, in the first instance, and now the Senate itself, has responded to the challenge of the 9/11 Commission Report. But, more to the point, it has responded to the deficiencies in our current systems of intelligence and homeland security generally and brought forth a bill that I am convinced, if we can hold it through conference, which we certainly intend to do, will make the American people a lot safer in an age of terrorism.

I want to list the names of all the members of my staff who have worked so hard to bring this legislation to the edge of adoption: Mike Alexander, David Barten, Rajesh De, Chistine Healey, Larry Novey, Holly Idelson, Beth Grossman, Mary Beth Shultz, Andrew Weinschenk, Fred Downey, Kathy Sedden, Donny Williams, Jason Yanussi, Dave Berick, Adam Sedgewick, Megan Finlayson, Rachel Sotsky, Tim Profeta, William Bonvillian, Laurie Rubenstein, Leslie Phillips, Chuck Ludlam, and Janet Burrell.

Mr. REID. Mr. President, while the distinguished comanager of the bill is on the floor—I am sorry Senator COLLINS is not on the floor—on behalf of the whole Senate, we need to extend to you our congratulations. We all applaud and commend the great work done. This has been a very difficult job. While those of us who were home in August, doing the things we do—having townhall meetings and doing campaign events—you and SUSAN were here doing work to get us in a position so when we came back here there would be an instrument that you could recommend to the other members of your committee who worked with you during this downtime in August—most of it down. This vehicle is now about to be completed. It is a sea change. It is the first part of what the 9/11 Commission recommended, and it is good work. The Senator from Connecticut and Senator COLLINS should feel very good about their accomplishment. I think it is not only a significant improvement from what we had, it is a sea change in what we had before. The American people are going to be safer as a result of this. Congress is going to be more responsible as a result.

Mr. LIEBERMAN. Mr. President, I thank my friend from Nevada for his kind words. I thank him for his characteristic presence and support on the floor.

This has been an extraordinary chapter in my own legislative career here and one that I am very grateful to have had. It has been a real honor to work with Senator COLLINS. I think from the beginning she and I went into this process having had a good relationship working on the committee as Chair and ranking member. This was a moment where we should be working together without any regard to party liabilities or party caucuses; this was an urgent matter of national security.

America was attacked on 9/11, 2001. The 9/11 Commission report was an indictment of various parts of our intelligence and security systems—border security, for instance—and an appeal for urgent action to close those gaps, to strengthen where we are vulnerable; again, an enemy to cause us harm and death, the likes of which we have never faced before; as someone else wrote, ''an enemy who hates us more than they love their own lives.''

Senator COLLINS and I from the beginning went forward on not only a bipartisan basis but on a nonpartisan basis—which turned out to be the case in our committee as well—and with the strong support of the bipartisan leadership of Senator FRIST and Senator DASCHLE. That has been the case on the floor of the Senate.

I am proud to say that I believe the proposal came from the Governmental Affairs Committee as a strong proposal. I feel that within a half hour of moving to final passage it has grown stronger as a result of action taken by the full Senate on the floor.

There is work yet to be done. Obviously, passing the Senate doesn't make it law; we have to go to conference and present something to the President which he can sign. But I think everyone here has caught the moment of urgency and responded to it in the national interest. This is a great way for us to end this session. I am speaking now apart from the national security implications—just what service in the Senate is all about and what message we send to the American people.

The message here is not just in the content of this law proposal but in the way we have done it, which is we are capable still in an increasingly political or partisan time, particularly prior to a national election, to put all that aside and do what is best for the American people.

I note the presence on the floor of my friend and colleague from Arizona. He and I have worked very hard together.

We thank our colleagues on both sides. In addition to the core parts of the Governmental Affairs Committee bill which adopted the critical intelligence recommendations of the 9/11 Commission establishing a national intelligence director, a national counterterrorism center, Senator MCCAIN and I offered amendments which accomplish and respond to all of the other major recommendations of the 9/11 Commission with regard to border security, for instance, and foreign policy; outreach to the Muslim world so that this bill, as we are ready to vote on it, really meets the challenges of the 9/11 Commission and responds to the pleas of the families who lost loved ones on 9/11 to do whatever we humanly could to make sure nothing like 9/11 ever happens again in the United States of America. I believe the product we are about to vote on does exactly that.

I thank the Chair and note the presence of other colleagues on the floor. I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise at this time as we head toward a vote on final passage to voice my strong support for this legislation. But equally important, I wish to pay tribute to the work of Senator LIEBERMAN and Senator COLLINS in fashioning this legislation in a bipartisan way. I am pleased to serve on the Governmental Affairs Committee with both of them.

This has been put together in a way that reflects the core recommendations of the September 11 Commission. It takes our intelligence-gathering system and creates a strong intelligence director but gives that director the kind of budget and personnel responsibility that will enable him to be effective as we continue to fight a long war on terrorism—a global fight the length of which we can't determine right now but whose priority and importance is undisputed. It takes all of the assets of our intelligence-gathering network—the assets that serve our national intelligence operation but puts them

under the national intelligence director—and gives that director the authority and the flexibility that is going to be necessary to be effective.

It deals with important issues such as border security and transportation today under the responsibility of the Commerce Committee. It creates a counterterrorism center—something that has already been done. But it is important that we authorize the counterterrorism center which is going to be responsible for putting together all of our efforts in dealing with terrorist threats, collecting and distributing that to law enforcement officials, and making sure that our objective of identifying threats to this country, whether it is through financing or the movement of personnel and materials, is done effectively.

While this legislation responds to the September 11 Commission recommendations, I think it is also important to recognize that the September 11 Commission report dealt with the weaknesses that led to the attacks in New York City and Washington and the downing of the plane in Pennsylvania. In order for this legislation to be effective, we need to continue to make sure all of our intelligence assets are focused on the future. There are going to be new threats and new challenges in what will be an evolving fight. The counterterrorism center is going to have to evolve over time to deal with new threats from different parts of the world.

We are going to have to improve our techniques for information sharing. We are going to have to develop new technologies for information gathering around the world. We will have to continue to improve our human intelligence system—something that was, unfortunately, lacking in the years which led up to September 11. This is going to be a continuing process of change.

I think it is most important that this legislation creates the infrastructure and a culture and a leadership structure that can respond to these changes which can evolve with the times and that can deal with the unexpected.

If there is one thing we can be sure of, it is that the fighting of terrorism around the world will include many unexpected, unpredictable events. But if we are to succeed, we want to make sure our intelligence-gathering operation has all the tools and the support that is necessary.

This is a very strong piece of legislation. It was put together in a bipartisan way, but it is not strong because it is bipartisan. I think it is receiving the bipartisan support because it is a strong, thoughtful piece of legislation.

We have a lot of work left to do. We are going to go to a conference with the House, and that in and of itself will be a long process to overcome any differences in the legislation. But I hope in the end and I believe in the end this will be a bill that makes our intelligence-gathering capability and our ability to fight terrorism around the world stronger and which will meet with the core and the thrust of the September 11 Commission report.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, later this afternoon the Senate is expected to adopt an amendment by the majority leader that establishes a national counterproliferation center. Establishing such a center now is premature and prejudges the ongoing work of the WMD Commission on which I have the honor of serving.

I am one who said we have to get this done, and have done everything under my power to be of some small assistance to the managers of the bill to complete our work on the 9/11 Commission's recommendations. So I find myself in kind of an interesting position saying that we ought to slow down on this one, but I am saying it because this issue was not addressed by the 9/11 Commission.

The President asked the WMD Commission to examine whether the U.S. Government should establish a national counterproliferation center and to offer our recommendation. If I may quote from the President's remarks on the day that he announced the establishment of the WMD Commission:

> Given the growing threat of weapons and missile proliferation in our world, it may also be necessary to create a similar center in our government to bring together our intelligence analysis planning and operations to track and prevent the spread of weapons of mass destruction. I asked the committee commission headed by Judge Laurence Silberman and Senator Chuck Robb to determine the merits of creating such a center.

In other words, the WMD Commission has been chartered to determine the creation of such a center. I have to tell my colleagues, as a member of that Commission, we have not yet reached a point where we could either recommend or not recommend. The Commission and its staff have held a number of discussions on the desirability of establishing a counterproliferation center, and we will soon examine the structure and responsibilities that such a center might entail, if it should be established at all. In response to the President's specific request, we will issue a formal recommendation in our final report in March.

This amendment could seriously undermine the work of the WMD Commission. The amendment would establish a national counterproliferation center before the Commission has even had a chance to fully study the issue. Rather than waiting for an in-depth review of the pros and cons of moving ahead with such a center—a review that will be fully completed in March—this amendment goes ahead and does it anyway. The proponents of this amendment, and I understand that, have argued that the center would not be established for a year after enactment of the underlying bill and the structures and responsibilities could be changed later. But if we are planning to delay establishing the center for a year and if we are open to changes which would presumably require changes in law, then why are we passing this amendment? Why interrupt the work of the WMD Commission when we could have the benefit of their assessment in a few months?

If the WMD Commission concludes no center is needed, or something different is more appropriate, then it would be very hard to find an opportunity to take this recommendation into account, short of passing legislation that will rescind this amendment if it is enacted.

I don't believe we should interfere with the WMD Commission's work. What we should do is allow all of the facts to be considered and debated, and then we can take the appropriate actions at that time.

Let's make no mistake, establishing this center would be a very significant action by the Congress. It cuts to the heart of the security issues that we all agree are critical to our Nation. We need to make sure that if we are going to do this, we do it right. We should await the WMD Commission's report, hear a variety of opinions, and structure the center, if it is needed, in a way that makes the most sense of the task at hand. We should not take the shortcuts on an issue of such importance, but I am afraid we are on the verge of doing just that.

We owe it to the American people to fully assess the implications of building a national counterproliferation center. This will be far reaching. I don't believe any Members have had a chance to examine this in any detail. The amendment puts the cart before the horse and I strongly oppose it.

I repeat again, the 9/11 Commission did not address the issue of counterproliferation. They addressed a broad variety of issues but counterproliferation was not one of them. And weapons of mass destruction, in the sense of the charter of the WMD Commission, was not part of their deliberations.

I have strongly supported the 9/11 Commission recommendations. I am proud of the work Senator COLLINS and Senator LIEBERMAN have done in addressing every single one of the 9/11 Commission recommendations with the exception of two that have to do with the congressional reorganization.

Having said that, this amendment is out of the purview of the September 11 Commission and, frankly, out of the purview of this pending legislation.

The majority leader has assured me there will be language, certain caveats about how it could be changed, et cetera, and I appreciate that. We have had a significant dialog on the issue. But the difference I have with the amendment and the majority leader is basically that we have said we are going to establish this national counterproliferation center, period.

This is not an issue of national emergency. I think it does a disservice to the WMD Commission on which I serve, which would report out in March their recommendations and conclusions, and we would be acting, then, on far firmer ground.

Maybe we can talk about it more after this bill is passed. I know the White House has severe reservations about this amendment. Maybe we could continue a dialog on it and at least make this amendment significantly more palatable so that the Weapons of Mass Destruction Commission recommendations that come out in March can be fully and completely considered.

I thank the majority leader for his commitment to maintaining a dialog on this issue. I may not be able to speak again in the Senate, but I again express my profound and deep appreciation to Senator COLLINS and Senator LIEBERMAN who have displayed adequately for all Americans as well as Members of this body that if there is a cause great enough and people good enough that we will act in a bipartisan fashion for the good of this Nation.

I have been in this body for only 18 years, but this is one of my prouder moments because of the way this entire body has acted in the national interest.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

AMENDMENT NO. 3895, AS FURTHER MODIFIED

Mr. FRIST. Mr. President, I rise to comment on the amendment we will be voting on in a bit. It does center on the establishment of a counterproliferation center.

I appreciate the comments of my distinguished colleague from Arizona. We have had the opportunity to talk over the course of today about this amendment and we have a modification. I have talked to the White House and, based on that conversation, made further modifications.

The reason we should vote on this amendment and it should be a part of this package that we can all be very proud of passing here in 10, 15, or 20 minutes is that the greatest threat facing our country is not a terrorist. We all know it is not just the terrorists. The greatest threat is a terrorist armed with some sort of weapon of mass destruction.

In debate the other night before 60 million people, President Bush and Senator KERRY cited the nexus between proliferation and terrorism being their single greatest concern and the most significant challenge our country faces. This whole concept of counterproliferation—talk about a counterproliferation center is not a new idea, but it is a new component of U.S. policy and has been looking at the safety and security of the American people and an overhaul of our intelligence gathering and intelligence system. The counterproliferation is an important component to be addressed.

Counterproliferation is a broad topic and it includes everything the United States and its allies do to halt, to deter, to stop, to roll back the trafficking of weapons of mass destruction, their delivery systems and related materials.

It means interdicting these dangerous materials before they get into the hands of the world's most dangerous terrorists. It means stopping these items before terrorist groups can assemble them into weapons and deliver them to our homeland.

Again, we are talking about counterproliferation, not just counterterrorism. But counterproliferation also means unraveling those proliferation networks that supply, sustain, finance, and enable proliferation suppliers and customers. They are the linkages and supply chains between countries that proliferate, firms that proliferate, middlemen, and their customers around the globe.

The most famous network unraveled by the U.S. and its partners was the AQ Khan network. It was this network that supplied Libya, Iran, and possibly others, with nuclear equipment, materials, and know-how. Counterproliferation works, but it takes close cooperation, it takes close coordination, and it takes teamwork within the United States, and with our friends and allies around the world.

The most famous interdiction of recent times was the stopping of the BBC China, a ship that was delivering nuclear parts and components to Libya before being interdicted at a friendly port by some of our European allies. This interdiction had a major effect on prompting Colonel Qadhafi to come clean and to give up his programs.

With more and more countries possibly pursuing weapons of mass destruction programs, and with those same proliferators skirting international laws, treaties, and export control regimes, counterproliferation can help fill the gap and slow or stop this dangerous trade.

The President's Proliferation Security Initiative was a positive step in this direction, but there is more that we can do and we should do. This amendment directs what we can and should do.

The President's Proliferation Security Initiative is supported by over 60 countries, and nearly two dozen are active participants. As we expand globally, however, we, at the same time, need to develop internally. Indeed, the 9/11 Commission called for strengthening the Proliferation Security Initiative in its report and its recommendations.

Establishing a National Counterterrorism Center is necessary. We are doing that. But the National Counterterrorism Center will be focusing on terrorists and terrorist groups. The Nation needs a similar center that, working closely with the National counterterrorism Center, will focus, clarify, and coordinate our country's counterproliferation efforts.

In other words, as the counterterrorism center focuses on the customers, the end users of these dangerous weapons—the terrorists—the national counterproliferation center will be focusing on the suppliers and brokers and distributors of these weapons. This separate center will endeavor to stop these activities before they ever reach the terrorists, before they ever reach the bad guys.

That is what my amendment does. Establishing a national counterproliferation center not only promotes this critical function called counterproliferation that is so necessary to defend our country, it also breaks down the stovepipes that currently exist within the executive branch.

This amendment tracks very closely to the structure, authorities, and roles established for the National Counterterrorism Center. Further, we have made changes to this amendment as amendments to the National Counterterrorism Center have been offered on the floor.

This amendment has also been modified to make clear that counterproliferation does not include programs such as the Cooperative Threat Reduction Program and other threat reduction programs; that our traditional nonproliferation efforts as they pertain to treaties and regimes are not included; and that it does not apply to programs that provide protective gear, clothing, and other items that protect our troops on the battlefield from weapons of mass destruction attacks.

Finally, as my distinguished colleague from Arizona said, I am well aware—we all are—that the President has a Commission studying this issue. That is why this amendment sets the parameters for a national counterproliferation center without getting into the explicit detail. It also does not call for any existing agencies or efforts to be disestablished.

The amendment is also consistent with the framework and authorities for the NID that have been established in the underlying bill.

I have also modified the implementation date so that this center does not have to be established until late next year.

All of this gives the President the flexibility to fine-tune the center based on the findings of his Commission. It also gives him time to establish the center, particularly since the administration will be busy in the coming months setting up the counterterrorism center.

The bottom line is this: Just as we take the offensive in the global war on terrorism, we must similarly take the offensive in stopping the proliferation of weapons of mass destruction. Our nonproliferation efforts are a good defense, but they are not sufficient. We need a good offense, and counterproliferation is just the answer.

The role of the national counterproliferation center, therefore, is to coordinate, plan, and manage

those efforts. It is to break down the stovepipes that exist in this nascent effort. It is to deny the terrorists and others access to weapons of mass destruction and their materials while the National Counterterrorism Center works to dismantle terrorist groups and bring terrorists to justice.

Mr. President, establishing a national counterproliferation center is not only the smart thing to do, it is something we must do. I encourage my colleagues to give this amendment their full support. Doing so will make the country and the American people much safer.

Let me also add, in response to the Senator from Arizona, we have received input from the White House on how to improve this amendment. We have incorporated their ideas. The White House, at this point, does not oppose this amendment.

I am confident this amendment does strike the proper balance between establishing the national counterproliferation center and, at the same time, leaving the President more than sufficient time—a year—and flexibility to modify it as he sees fit or as the Commission recommends.

This amendment is crafted in a manner so as to leave the whole range of details for the President and the Commission to flush out as they see fit.

Finally, the modified amendment also includes a provision we worked on with a number of Senators, including Senator MCCAIN's staff, that makes clear that the intent of this amendment is not to undermine or override the Commission.

Mr. President, I yield the floor and do appreciate the consideration of my colleagues in supporting this amendment.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. 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 know of no further debate on the leader's amendment. The modification has been sent to the desk. Mr. President, this is the Frist amendment No. 3895, as further modified.

The PRESIDING OFFICER. The amendment is further modified.

The amendment, as further modified, is as follows:

On page 94, strike line 5 and insert the following:

SEC. 144. NATIONAL COUNTERPROLIFERATION CENTER.

(a) NATIONAL COUNTERPROLIFERATION CENTER.—(1) Within one year of enactment of this Act there shall be established within the National Intelligence Authority a National Counterproliferation Center.

(2) The purpose of the Center is to develop, direct, and coordinate the efforts and activities of the United States Government to interdict the trafficking of weapons of mass destruction, related materials and technologies, and their delivery systems to terrorists, terrorist organizations, other nonstate actors of concern, and state actors of concern.

(b) DIRECTOR OF NATIONAL COUNTERPROLIFERATION CENTER.—(1) There is a Director of the National Counterproliferation Center, who shall be the head of the National Counterproliferation Center, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Any individual nominated for appointment as the Director of the National Counterproliferation Center shall have significant expertise in matters relating to the national security of the United States and matters relating to the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies that threaten the national security of the United States, its interests, and allies.

(3) The individual serving as the Director of the National Counterproliferation Center may not, while so serving, serve in any capacity in any other element of the intelligence community, except to the extent that the individual serving as Director of the National Counterproliferation Center is doing so in an acting capacity.

(c) SUPERVISION.—(1) The Director of the National Counterproliferation Center shall report to the National Intelligence Director on the budget, personnel, activities, and programs of the National Counterproliferation Center.

(2) The Director of the National Counterproliferation Center shall report to the National Intelligence Director on the activities of the Directorate of Intelligence of the National Counterproliferation Center under subsection (g).

(3) The Director of the National Counterproliferation Center shall report to the President and the National Intelligence Director on the planning and progress of Counterproliferation operations.

(d) PRIMARY MISSIONS.—The primary missions of the National Counterproliferation Center shall be as follows:

(1) To develop and unify strategy for the Counterproliferation efforts of the United States Government.

(2) To make recommendations to the National Intelligence Director with regard to the collection and analysis requirements and priorities of the National Counterproliferation Center.

(3) To integrate Counterproliferation intelligence activities of the United States Government, both inside and outside the United States, and with other governments.

(4) To conduct stgrategic planning and develop recommended courses of action for multilateral and United States Government Counterproliferation activities, which—

(A) involve more than one department, agency, or element of the executive branch (unless otherwise directed by the President) of the United States Government; and

(B) include the mission, objectives to be achieved, courses of action, parameters for such courses of action, coordination of agency operational activities, recommendations for operational activities, and assignment of national, departmental, or agency responsibilities.

(5) To ensure that the collection, analysis, and utilization of Counterproliferation intelligence, and the conduct of Counterproliferation operations, by the United States Government are informed by the analysis of all-source intelligence.

(e) DUTIES AND RESPONSIBILITIES OF DIRECTOR OF NATIONAL COUNTERPROLIFERATION CENTER.—Notwithstanding any other provision of law, at the direction of the President and the National Intelligence Director, the Director of the National Counterproliferation Center shall—

(1) serve as a principal adviser to the President and the National Intelligence Director on operations relating to interagency Counterproliferation planning and activities;

(2) provide unified strategic direction for the Counterproliferation efforts of the United States Government and for the effective integration and deconfliction of counterproliferation intelligence and operations across agency boundaries, both inside and outside the United States, and with foreign governments;

(3) advise the President and the National Intelligence Director on the extent to which the Counterproliferation program recommendations and budget proposals of the departments, agencies, and elements of the United States Government conform to the policies and priorities established by the President and the National Security Council;

(4) advise the President on, the selections of personnel to head the nonmilitary operating entities of the United States Government with principal missions relating to Counterproliferation;

(5) advise the President and the National Intelligence Director on the science and technology research and development requirements and priorities of the Counterproliferation programs and activities of the United States Government; and

(6) perform such other duties as the National Intelligence Director may prescribe or are prescribed by law;

(f) DIRECTORATE OF INTELLIGENCE.—(1) The Director of the National Counterproliferation Center shall establish and maintain within the National Counterproliferation Center a Directorate of Intelligence.

(2) The Directorate shall have primary responsibility within the United States Government for the analysis of information regarding proliferators (including individuals, entities, organizations, companies, and states) and their networks, from all sources of intelligence, whether collected inside or outside the United States.

(3) The Directorate shall—

(A) be the principal repository within the United States Government for all-source information on suspected proliferators, their networks, their activities, and their capabilities;

(B) propose intelligence collection and analysis requirements and priorities for action by elements of the intelligence community inside and outside the United States;

(C) have primary responsibility within the United States Government for net assessments and warnings about weapons of mass destruction proliferation threats, which assessments and warnings shall be based on a comparison of the intentions and capabilities of proliferators with assessed national vulnerabilities and countermeasures;

(D) conduct through a separate office independent analyses (commonly referred to as ''red teaming'') of intelligence collected and analyzed with respect to proliferation; and

(E) perform such other duties and functions as the Director of the National Counterproliferation Center may prescribe.

(g) DIRECTORATE OF PLANNING.—(1) The Director of the National Counterproliferation Center shall establish and maintain within the National Counterproliferation Center a Directorate of Planning.

(2) The Directorate shall have primary responsibility for conducting strategic planning and developing courses of action for Counterproliferation activities, as described in subsection (d)(4).

(3) The Directorate shall—

(A) provide guidance, and develop strategy and interagency plans, to counter proliferation activities based on policy objectives and priorities established by the National Security Council;

(B) develop plans under subparagraph (A) utilizing input from personnel in other departments, agencies, and elements of the United States Government who have expertise in the priorities, functions, assets, programs, capabilities, and operations of such departments, agencies, and elements with respect to Counterproliferation;

(C) assign responsibilities and propose courses of action for Counterproliferation operations to the departments and agencies of the United States Government (including the Department of Defense, the Department of State, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Homeland Security, and other departments and agencies of the United States Government), consistent with the authorities of such departments and agencies;

(D) monitor the implementation of operations assigned under subparagraph (C) and update interagency plans for such operations as necessary;

(E) report to the President and the National Intelligence Director on the performance of the departments, agencies, and elements of the United States with regard to the plans developed under subparagraph (A); and

(F) perform such other duties and functions as the Director of the National Counterproliferation Center may prescribe.

(4) The Directorate may not direct the execution of operations assigned under paragraph (3).

(h) STAFF.—(1) The National Intelligence Director may appoint deputy directors of the National Counterproliferation Center to oversee such portions of the operations of the Center as the National Intelligence Director considers appropriate.

(2) To assist the Director of the National Counterproliferation Center in fulfilling the duties and responsibilities of the Director of the National Counterproliferation Center under this section, the National Intelligence Director shall employ in the National Counterproliferation Center a professional staff having an expertise in matters relating to such duties and responsibilities.

(3) In providing for a professional staff for the National Counterproliferation Center under paragraph (2), the National Intelligence Director may establish as positions in the excepted service such positions in the Center as the National Intelligence Director considers appropriate.

(4) The National Intelligence Director shall ensure that the analytical staff of the National Counterproliferation Center is comprised primarily of experts from elements in the intelligence community and from such other personnel in the United States Government as the National Intelligence Director considers appropriate.

(5)(A) In order to meet the requirements in paragraph (4), the National Intelligence Director shall, from time to time—

(i) specify the transfers, assignments, and details of personnel funded within the National Intelligence Program to the National Counterproliferation Center from any element of the intelligence community that the National Intelligence Director considers appropriate; and

(ii) in the case of personnel from a department, agency, or element of the United States Government and not funded within the National Intelligence Program, request the transfer, assignment, or detail of such personnel from the department, agency, or other element concerned.

(B)(i) The head of an element of the intelligence community shall promptly effect any transfer, assignment, or detail of personnel specified by the National Intelligence Director under subparagraph (A)(i).

(ii) The head of a department, agency, or element of the United States Government receiving a request for transfer, assignment, or detail of personnel under subparagraph (A)(ii) shall, to the extent practicable, approve the request.

(6) Personnel employed in or assigned or detailed to the National Counterproliferation Center under this subsection shall be under the authority, direction, and control of the Director of the National Counterproliferation Center on all matters for which the Center has been assigned responsibility and for all matters related to the accomplishment of the missions of the Center.

(7) Performance evaluations of personnel assigned or detailed to the National Counterproliferation Center under this subsection shall be undertaken by the supervisors of such personnel at the Center.

(8) The supervisors of the staff of the National Counterproliferation Center may, with the approval of the National Intelligence Director, reward the staff of the Center for meritorious performance by the provision of such performance awards as the National Intelligence Director shall prescribe.

(9) The National Intelligence Director may delegate to the Director of the National Counterproliferation Center any responsibility, power, or authority of the National Intelligence Director under paragraphs (1) through (8).

(10) The National Intelligence Director shall ensure that the staff of the National Counterproliferation Center has access to all databases and information maintained by the elements of the intelligence community that are relevant to the duties of the Center.

(i) SUPPORT AND COOPERATION OF OTHER AGENCIES.—(1) The elements of the intelligence community and the other departments, agencies, and elements of the United States Government shall support, assist, and cooperate with the National Counterproliferation Center in carrying out its missions under this section.

(2) The support, assistance, and cooperation of a department, agency, or element of the United States Government under this subsection shall include, but not be limited to—

(A) the implementation of interagency plans for operations, whether foreign or domestic, that are developed by the National Counterproliferation Center in a manner consistent with the laws and regulations of the United States and consistent with the limitation in subsection (h)(4);

(B) cooperative work with the Director of the National Counterproliferation Center to ensure that ongoing operations of such department, agency, or element do not conflict with operations planned by the Center;

(C) reports, upon request, to the Director of the National Counterproliferation Center on the performance of such department, agency, or element in implementing responsibilities assigned to such department, agency, or element through joint operations plans; and

(D) the provision to the analysts of the National Counterproliferation Center electronic access in real time to information and intelligence collected by such department, agency, or element that is relevant to the missions of the Center.

(3) In the event of a disagreement between the National Intelligence Director and the head of a department, agency, or element of the United States Government on a plan developed or responsibility assigned by the National Counterproliferation Center under this subsection, the National Intelligence Director may either accede to the head of the department, agency, or element concerned or notify the President of the necessity of resolving the disagreement.

(j) DEFINITIONS.—In this section:

(1) The term ''Counterproliferation'' means—

(A) activities, programs and measures for interdicting (including deterring, preventing, halting, and rolling back) the transfer or transport (whether by air, land or sea) of weapons of mass destruction, their delivery systems, and related materials and technologies to and from states and non-state actors (especially terrorists and terrorist organizations) of proliferation concern;

(B) enhanced law enforcement activities and cooperation to deter, prevent, halt, and rollback proliferation-related networks, activities, organizations, and individuals, and bring those involved to justice; and

(C) activities, programs, and measures for identifying, collecting, and analyzing information and intelligence related to the transfer or transport of weapons, systems, materials, and technologies as described in subparagraph (A).

(2) ''Counterproliferation'' does not include—

(A) the Cooperative Threat Reduction and other threat reduction programs run or administered by the Department of Defense, Department of Energy and Department of State;

(B) the nonproliferation efforts and activities of the United States Government as they apply to the implementation and management of nonproliferation treaties, conventions, and regimes; or,

(C) programs designated to protect members of the Armed Forces from the employment of weapons of mass destruction by developing and fielding protective equipment, gear and clothing, and other means to enhance the survivability of Armed Forces personnel on the battlefield.

(3) The term ''states and non-state actors of proliferation concern'' refers to countries or entities (including individuals, entities, organizations, companies, and networks) that should be subject to counterproliferation activities because of their actions or intent to engage in proliferation through—

(A) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or

(B) transfers (either selling, receiving, or facilitating) of weapons of mass destruction, their delivery systems, or related materials.

(k) REPORTS ON EESTABLISHMENT.—(1)(A) The President shall submit to Congress a report on the plans of the President to establish the National Counterproliferation Center as required by this section.

(B) The report shall be submitted not later than six months after the date of the enactment of this Act, and not later than 30 days before the date of the establishment of the National Counterproliferation Center.

(2) The President shall submit to Congress from time to time such updates of the plans under paragraph (1)(a) as the President considers appropriate. Each update shall include such recommendations for legislative or administrative action as the President considers appropriate to improve the effectiveness of the National Counterproliferation Center consistent with its mission.

(m) CONSTRUCTION WITH CERTAIN CONDITIONS.—Nothing in this section shall override recommendations contained in the forthcoming final report of the President's Commission on Weapons of Mass Destruction, established by Executive Order in February 2004, that will improve the effectiveness of the National Counterproliferation Center:

Provided further, That in the case of a conflict between the WMD Commission's final report and the National Counterproliferation Center as established in this section, the Congress and the President shall consider the Commission's recommendations and act as soon as practicable thereafter to make such modifications to statute as deemed necessary.

SEC. 145. NATIONAL INTELLIGENCE CENTERS.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as further modified.

The amendment (No. 3895), as further modified, was agreed to.

Ms. COLLINS. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Ms. COLLINS. Mr. President, I have a series of cleared amendments at the desk. Some of them are modifications of previously submitted amendments. Therefore, I ask unanimous consent that the amendments be considered en bloc, modified as necessary, agreed to en bloc, with the motions to reconsider laid upon the table.

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. 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. 3896

Ms. COLLINS. Mr. President, I ask unanimous consent that the Frist amendment No. 3896 be considered at this point.

The PRESIDING OFFICER. Without objection, the amendment is now pending.

Ms. COLLINS. Mr. President, I know of no further debate on this amendment.

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

The amendment (No. 3896) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3876, WITHDRAWN

Mr. WARNER. Mr. President, I have worked with the distinguished managers. Like so many things in the course of our legislative process, we have worked out a very large number of items, and they have been accepted. One remains and, in my judgment, the various good-faith proposals simply do not meet the criteria that I feel has to be established. So I have two courses of action. One, which I intend to follow, is to withdraw the amendment. The second, of course, would be to press this on with a vote. Frankly, given the structure of the vote—I don't say this as criticism—it does not allow the time in which to get sufficient information and viewpoints to my colleagues to prevail on such a vote. So I think the better course of action for this Senator is to continue to press my concerns in the course of the conference.

At this time, I call up amendment No. 3876.

The PRESIDING OFFICER. The amendment is pending.

Mr. WARNER. Mr. President, I ask that the amendment be withdrawn.

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

Mr. WARNER. For a little expression of the explanation of the amendment, I go back to two very important documents. The first is a letter dated September 28, 2004, Statement of Administration Policy. I ask unanimous consent that the following paragraph be printed 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 performanceof the Executive's constitutional duties; to recommend for congressional consideration such measures as the President may judge necessary or expedient; and to supervise the unitary executive.

Mr. WARNER. That paragraph states that:

The Administration opposes the Committee's attempt to define in statute programs that should be included in the National Intelligence Program.

I believe we have to work this out in a clearer fashion. It is also more clear than what is in the amendment structure today, so I will put that aside and then go to the subject of this amendment.

The last paragraph of the September 28 letter reads:

The Administration notes that the Committee did not include Section 6, (''Preservation of Authority and Accountability'') of the Administration's proposal; the Administration supports the inclusion of this provision in the Senate bill.

That was the basic intent of my amendment; therefore, I will take the opportunity to work on that during the course of conference in the hopes of achieving that goal.

I thank the managers for their effort to work on it, and we will hopefully work on it further to achieve this administration goal.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I very much appreciate the cooperation of the chairman of the Armed Services Committee. We have incorporated many of his suggestions into the bill. I appreciate his advice.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MODIFICATION TO NO. 3807

Ms. COLLINS. Mr. President, I ask unanimous consent to modify amendment No. 3807, with the changes at the desk, notwithstanding its prior adoption.

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

The modification is as follows:

hold driver's licenses and personal identification cards.

(4) NEGOTIATED RULEMAKING.—

(A) IN GENERAL.—Before publishing the proposed regulations required by paragraph (2) to carry out this title, the Secretary of Transportation shall establish a negotiated rulemaking process pursuant to subchapter IV of chapter 5 of title 5, United States Code (5 U.S.C. 561 et seq.).

(B) REPRESENTATION ON NEGOTIATED RULEMAKING COMMITTEE.—Any negotiated rulemaking committee established by the Secretary of Transportation pursuant to subparagraph (A) shall include representatives from—

(i) among State offices that issue driver's licenses or personal identification cards;

(ii) among State elected officials;

(iii) the Department of Homeland Security; and

(iv) among interested parties, including organizations with technological and operational expertise in document security and organizations that represent the interests 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

(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 licenses and personal identification cards issued by a State applying for a grant bears to the average annual number of such documents issued by all States.

(3) MINIMUM ALLOCATION.—Notwithstanding paragraph (2), each State shall receive not less than 0.5 percent of the grant funds made available under this subsection.

(d) EXTENSION OF EFFECTIVE DATE.—The Secretary of Transportation may extend the date specified under subsection (b)(1)(A) for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under such subsection but was unable to do so.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

SEC. ___08. SOCIAL SECURITY CARDS.

(a) SECURITY ENHANCEMENTS.—The Commissioner of Social Security shall—

(1) not later than 180 days after the date of enactment of this section, issue regulations to restrict the issuance of multiple replacement social security cards to any individual to minimize fraud;

(2) within 1 year after the date of enactment of this section, require verification of records provided by an applicant for an original social security card, other than for purposes of enumeration at birth; and

(3) within 18 months after the date of enactment of this section, add death, fraud, and work authorization indicators to the social security number verification system.

(b) INTERAGENCY SECURITY TASK FORCE.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall form an interagency task force for the purpose of further improving the security of social security cards and numbers. Not later than 1 year after the date of enactment of this section, the task force shall establish security requirements, including—

(1) standards for safeguarding social security cards from counterfeiting, tampering, alteration, and theft;

(2) requirements for verifying documents submitted for the issuance of replacement cards; and

(3) actions to increase enforcement against the fraudulent use or issuance of social security numbers and cards.

AMENDMENTS NOS. 3733, AS MODIFIED, 3760, 3837, AS MODIFIED, 3861, AS MODIFIED, 3880, AS MODIFIED, 3924, AS MODIFIED, 3977, 3978, 3979, AND 3980

Ms. COLLINS. Mr. President, Senator LIEBERMAN and I have a series of cleared amendments at the desk. Some of these are modifications of previously submitted amendments. Therefore, I ask unanimous consent that the amendments be considered en bloc, modified as necessary, agreed to en bloc, with the motions to reconsider laid upon the table.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 3733, AS MODIFIED

At the appropriate place, insert the following:

SEC. ___. REPORT ON USE OF DATABASES.

(a) DEFINITIONS.—In this section:

(1) DATA-MINING.—The term ''data-mining'' means a query or search or other analysis of 1 or more electronic databases, where—

(A) at least 1 of the databases was obtained from or remains under the control of a non-Federal entity, or the information was acquired initially by another department or agency of the Federal Government;

(B) the search does not use a specific individual's personal identifiers to acquire information concerning that individual; and

(C) a department or agency of the Federal Government or a non-Federal entity acting on behalf of the Federal Government is conducting the query or search or other analysis to find a pattern indicating terrorist, criminal, or other law enforcement related activity.

(2) DATABASE.—The term ''database'' does not include telephone directories, information publicly available via the Internet or available by any other means to any member of the public without payment of a fee, or databases of judicial and administrative opinions.

(b) REPORTS ON DATA-MINING ACTIVITIES.—

(1) REQUIREMENT FOR REPORT.—Beginning one year after the effective date of this section the National Intelligence Director shall submit a report, public to the extent possible with a classified annex, to Congress on all activities of the intelligence community to use or develop data-mining technology.

(2) CONTENT OF REPORT.—A report submitted under paragraph (1) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(A) A thorough description of the data-mining technology, the plans for the use of such technology, the data that will be used, and the target dates for the deployment of the data-mining technology.

(B) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(C) A thorough discussion of the policies, procedures, and guidelines that are to be developed and applied in the use of such technology for data-mining in order to—

(i) protect the privacy and due process rights of individuals; and

(ii) ensure that only accurate information is collected and used.

(D) Any necessary classified information in an annex that shall be available to the Committee on Governmental Affairs, the Committee on the Judiciary, and the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence and Committee on the Judiciary of the House of Representatives.

(3) TIME FOR REPORT.—The report required under paragraph (1) shall be submitted not later than September 30th of each year.

(4) EXPIRATION.—The requirements of this subsection shall expire 4 years after the date of enactment of this Act.

AMENDMENT NO. 3760

(Purpose: To provide that the Privacy and Civil Liberties Oversight Board include in certain reports, any proposal that the Board advised against, but actions were taken to implement)

On page 158, line 5, strike ''and''.

On page 158, line 9, strike the period and insert ''; and''.

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

(C) each proposal reviewed by the Board under subsection (d)(1) that—

(i) the Board advised against implementation; and

(ii) notwithstanding such advice, actions were taken to implement.

AMENDMENT NO. 3837, AS MODIFIED

At the end, add the following:

TITLE IV—ADVANCED TECHNOLOGY NORTHERN BORDER SECURITY PILOT PROGRAM

SEC. 401. ESTABLISHMENT.

The Secretary of Homeland Security may carry out a pilot program to test various advanced technologies that will improve border security between ports of entry along the northern border of the United States.

SEC. 402. PROGRAM REQUIREMENTS.

(a) REQUIRED FEATURES.—The Secretary of Homeland Security shall design the pilot program under this title to have the following features:

(1) Use of advanced technological systems, including sensors, video, and unmanned aerial vehicles, for border surveillance.

(2) Use of advanced computing and decision integration software for—

(A) evaluation of data indicating border incursions;

(B) assessment of threat potential; and

(C) rapid real-time communication, monitoring, intelligence gathering, deployment, and response.

(3) Testing of advanced technology systems and software to determine best and most cost-effective uses of advanced technology to improve border security.

(4) Operation of the program in remote stretches of border lands with long distances between 24-hour ports of entry with a relatively small presence of United States border patrol officers.

(5) Capability to expand the program upon a determination by the Secretary that expansion would be an appropriate and cost-effective means of improving border security.

(b) COORDINATION WITH OTHER AGENCIES.—The Secretary of Homeland Security shall ensure that the operation of the pilot program under this title—

(1) is coordinated among United States, State and local, and Canadian law enforcement and border security agencies; and

(2) includes ongoing communication among such agencies.

SEC. 403. ADMINISTRATIVE PROVISIONS.

(a) PROCUREMENT OF ADVANCED TECHNOLOGY.—The Secretary of Homeland Security may enter into contracts for the procurement or use of such advanced technologies as the Secretary determines appropriate for the pilot program under this title.

(b) PROGRAM PARTNERSHIPS.—In carrying out the pilot program, the Secretary of Homeland Security may provide for the establishment of cooperative arrangements for participation in the pilot program by such participants as law enforcement and border security agencies referred to in section 402(b), institutions of higher education, and private sector entities.

SEC. 404. REPORT.

(a) REQUIREMENT FOR REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report on the pilot program under this title.

(b) CONTENT.—The report under subsection (a) shall include the following matters:

(1) A discussion of the implementation of the pilot program, including the experience under the pilot program.

(2) A recommendation regarding whether to expand the pilot program along the entire northern border of the United States and a timeline for the implementation of the expansion.

SEC. 405. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the pilot program under this title.

AMENDMENT NO. 3861, AS MODIFIED

At the appropriate place, insert the following:

SEC. ___. BORDER SURVEILLANCE.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the President and the appropriate committees of Congress a comprehensive plan for the systematic surveillance of the

Southwest border of the United States by remotely piloted aircraft.

(b) CONTENTS.—The plan submitted under subsection (a) shall include—

(1) recommendations for establishing command and control centers, operations sites, infrastructure, maintenance, and procurement;

(2) cost estimates for the implementation of the plan and ongoing operations;

(3) recommendations for the appropriate agent within the Department of Homeland Security to be the executive agency for remotely piloted aircraft operations;

(4) the number of remotely piloted aircraft required for the plan;

(5) the types of missions the plan would undertake, including—

(A) protecting the lives of people seeking illegal entry into the United States;

(B) interdicting illegal movement of people, weapons, and other contraband across the border;

(C) providing investigative support to assist in the dismantling of smuggling and criminal networks along the border;

(D) using remotely piloted aircraft to serve as platforms for the collection of intelligence against smugglers and criminal networks along the border; and

(E) further validating and testing of remotely piloted aircraft for airspace security missions; and

(6) the equipment necessary to carry out the plan.

(7) A recommendation regarding whether to expand the pilot program along the entire southwestern border.

(c) IMPLEMENTATION.—The Secretary of Homeland Security shall implement the plan submitted under subsection (a) as a pilot program as soon as sufficient funds are appropriated and available for this purpose.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

AMENDMENT NO. 3880, AS MODIFIED

On page 19, between lines 14 and 15, insert the following:

(c) CONSISTENCY OF PERSONNEL POLICIES AND PROGRAMS WITH CERTAIN OTHER PERSONNEL POLICIES AND STANDARDS.—(1) The personnel policies and programs developed and implemented under subsection (a)(8) with respect to members of the uniformed services shall be consistent with any other personnel policies and standards applicable to the members of the uniformed services.

(2) It is the sense of the Senate that the NID shall seek input from the Secretary of Defense, the secretaries of the military departments, and, as appropriate, the Secretary of Homeland Security in developing and implementing such policies and programs.

On page 19, line 15, strike ''(c)'' and insert ''(d)''.

On page 20, line 4, strike ''(d)'' and insert ''(e)''.

AMENDMENT NNO. 3924, AS MODIFIED

At the appropriate place, insert the following:

SEC. ___. ENTERPRISE ARCHITECTURE.

(a) DEFINITION OF ENTERPRISE ARCHITECTURE.—In this section, the term ''enterprise architecture'' means a detailed outline or blueprint of the information technology of the Federal Bureau of Investigation that will satisfy the ongoing mission and goals of the Federal Bureau of Investigation and that sets forth specific and identifiable benchmarks.

(b) ENTERPRISE ARCHITECTURE.—The Federal Bureau of Investigation shall—

(1) continually maintain and update an enterprise architecture; and

(2) maintain a state of the art and up to date information technology infrastructure that is in compliance with the enterprise architecture of the Federal Bureau of Investigation.

(c) REPORT.—Subject to subsection (d), the Director of the Federal Bureau of Investigation shall report to the House and Senate Judiciary Committees, on an annual basis, on whether the major information technology investments of the Federal Bureau of Investigation are in compliance with the enterprise architecture of the Federal Bureau of Investigation and identify any inability or expectation of inability to meet the terms set forth in the enterprise architecture.

(d) FAILURE TO MEET TERMS.—If the Director of the Federal Bureau of Investigation identifies any inability or expectation of inability to meet the terms set forth in the enterprise architecture in a report under subsection (c), the report under subsection (c) shall—

(1) be twice a year until the inability is corrected;

(2) include a statement as to whether the inability or expectation of inability to meet the terms set forth in the enterprise architecture is substantially related to resources; and

(3) if the inability or expectation of inability is substantially related to resources, include a request for additional funding that would resolve the problem or a request to reprogram funds that would resolve the problem.

(e) Federal Bureau of Investigation's Enterprise Architecture, Agency Plans and Reports—This section shall be carried out in compliance with the requirements set forth in Sec. 206(f) and (1).

AMENDMENT NO. 3977

On page 4, beginning on line 10, strike ''information gathered, and activities'' and inserting ''foreign intelligence gathered, and information gathering and other activities''.

On page 4, line 16, insert before the period the following: '', but does not include personnel, physical, document, or communications security programs''.

On page 23, line 8, strike the period and insert ''as it pertains to those programs, projects, and activities within the National Intelligence Program''.

On page 24, line 10, insert ''transactional deposit'' after ''establish''.

On page 181, line 9, insert ''or involving intelligence acquired through clandestine means'' before the period.

AMENDMENT NO. 3978

(Purpose: to authorize 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)

At the end, add the following:

TITLE IV—OTHER MATTERS

SEC. 401. RESPONSIBILITIES AND FUNCTIONS OF CONSULAR OFFICERS.

(a) INCREASED NUMBER OF CONSULAR OFFICERS.—The Secretary of State, in each of fiscal years 2006 through 2009, may increase by 150 the number of positions for consular officers above the number of such positions for which funds were allotted for the preceding fiscal year.

(b) LIMITATION ON USE OF FOREIGN NATIONALS FOR VISA SCREENING.—

(1) IMMIGRANT VISAS.—Subsection (b) of section 222 of the Immigration and Nationality Act (8 U.S.C. 1202) is amended by adding at the end the following: ''All immigrant visa applications shall be reviewed and adjudicated by a consular officer.''.

(2) NONIMMIGRANT VISAS.—Subsection (d) of such section is amended by adding at the end the following: ''All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.''.

(c) TRAINING FOR CONSULAR OFFICERS IN DETECTION OF FRAUDULENT DOCUMENTS.—Section 305(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1734(a)) is amended by adding at the end the following: ''As part of the consular training provided to such officers by the Secretary of State, such officers shall also receive training in detecting fraudulent documents and general document forensics and shall be required as part of such training to work with immigration officers conducting inspections of applicants for admission into the United States at ports of entry.''.

(d) ASSIGNMENT OF ANTI-FRAUD SPECIALISTS.—

(1) SURVEY REGARDING DOCUMENT FRAUD.—The Secretary of State, in coordination with the Secretary of Homeland Security, shall conduct a survey of each diplomatic and consular post at which visas are issued to assess the extent to which fraudulent documents are presented by visa applicants to consular officers at such posts.

(2) REQUIREMENT FOR SPECIALIST.—

(A) IN GENERAL.—Not later than July 31, 2005, the Secretary of State shall, in coordination with the Secretary of Homeland Security, identify the diplomatic and consular posts at which visas are issued that experience the greatest frequency of presentation of fraudulent documents by visa applicants. The Secretary of State shall assign or designate at each such post at least one full-time anti-fraud specialist employed by the Department of State to assist the consular officers at each such post in the detection of such fraud.

(B) EXCEPTIONS.—The Secretary of State is not required to assign or designate a specialist as described in subparagraph (A) at a diplomatic and consular post if an employee of the Department of Homeland Security is assigned on a full-time basis to such post under the authority in section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236).

SEC. 402. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

In each of fiscal years 2006 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not less than 1,000 the number of positions for full-time active duty border patrol agents within the Department of Homeland Security above the number of such positions for which funds were made available during the preceding fiscal year. Of the additional border patrol agents, in each fiscal year not less than 20 percent of such agents shall be assigned to duty stations along the northern border of the United States.

SEC. 403. INCREASE IN FULL-TIME IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.

In each of fiscal years 2006 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not less than 800 the number of positions for full-time active duty investigators within the Department of Homeland Security investigating violations of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) above the number of such positions for which funds were made available during the preceding fiscal year.

AMENDMENT NO. 3979

(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. 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.''.

SEC. 402. 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. 403. 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.

AMENDMENT NO. 3980

(Purpose: To require the establishment of pilot projects relating to the coordination of information among emergency first responders, and for other purposes)

At the appropriate place, insert the following:

SEC. ___. REGIONAL MODEL STRATEGIC PLAN PILOT PROJECTS.

(a) PILOT PROJECTS.—Consistent with sections 302 and 430 of the Homeland Security Act of 2002 (6 U.S.C. 182, 238), not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in coordination with the Executive Director of the Office of State and Local Government Coordination and Preparedness and the Undersecretary for Science and Technology, shall establish not fewer than 2 pilot projects in high threat urban areas or regions that are likely to implement a national model strategic plan.

(b) PURPOSES.—The purposes of the pilot projects required by this section shall be to develop a regional strategic plan to foster interagency communication in the area in which it is established and coordinate the gathering of all Federal, State, and local first responders in that area, consistent with the national strategic plan developed by the Department of Homeland Security.

(c) SELECTION CRITERIA.—In selecting urban areas for the location of pilot projects under this section, the Secretary shall consider—

(1) the level of threat risk to the area, as determined by the Department of Homeland Security;

(2) the number of Federal, State, and local law enforcement agencies located in the area;

(3) the number of potential victims from a large scale terrorist attack in the area; and

(4) such other criteria reflecting a community's risk and vulnerability as the Secretary determines is appropriate.

(d) INTERAGENCY ASSISTANCE.—The Secretary of Defense shall provide assistance to the Secretary of Homeland Security, as necessary for the development of the pilot projects required by this section, including examining relevant standards, equipment, and protocols in order to improve interagency communication among first responders.

(e) REPORTS TO CONGRESS.—The Secretary of Homeland Security shall submit to Congress—

(1) an interim report regarding the progress of the interagency communications pilot projects required by this section 6 months after the date of enactment of this Act; and

(2) a final report 18 months after that date of enactment.

(f) FUNDING.—There are authorized to be made available to the Secretary of Homeland Security, such sums as may be necessary to carry out this section.

Ms. COLLINS. Mr. President, I thank everyone who has worked so hard on this bill, particularly my colleague and partner, Senator LIEBERMAN.

I believe we are ready to move to third reading.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

Ms. COLLINS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

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

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

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 199 Leg.]

YEAS—96

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

NAYS—2

Byrd	Hollings

NOT VOTING—2

Edwards	Kerry

The bill (S. 2845), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

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

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

INTELLIGENCE COMMITTEE REORGANIZATION

The PRESIDING OFFICER (Mr. ALEXANDER). Under the previous order, the Senate will now proceed to the consideration of S. Res. 445, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 445) to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

AMENDMENT NO. 3981

(Purpose: To implement the Congressional oversight recommendations of the 9/11 Commission)

Mr. MCCONNELL. Mr. President, on behalf of Senator REID and myself, I send to the desk an amendment in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE, proposes an amendment numbered 3981.

Mr. MCCONNELL. 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:

Strike all after the resolving clause and insert the following:

SEC. 100. PURPOSE.

It is the purpose of titles I through V of this resolution to improve the effectiveness of the Senate Select Committee on Intelligence, especially with regard to its oversight of the Intelligence Community of the United States Government, and to improve the Senate's oversight of homeland security.

TITLE I—HOMELAND SECURITY OVERSIGHT REFORM

SEC. 101. HOMELAND SECURITY.

(a) COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS.—The Committee on Governmental Affairs is renamed as the Committee on Homeland Security and Governmental Affairs.

(b) JURISDICTION.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following subjects:

(1) Department of Homeland Security, except matters relating to the Coast Guard, to the Transportation Security Administration, to the Federal Law Enforcement Training Center and the revenue functions of the Customs Service.

(2) Archives of the United States.

(3) Budget and accounting measures, other than appropriations, except as provided in the Congressional Budget Act of 1974.

(4) Census and collection of statistics, including economic and social statistics.

(5) Congressional organization, except for any part of the matter that amends the rules or orders of the Senate.

(6) Federal Civil Service.

(7) Government information.

(8) Intergovernmental relations.

(9) Municipal affairs of the District of Columbia, except appropriations therefor.

(10) Organization and management of United States nuclear export policy.

(11) Organization and reorganization of the executive branch of the Government.

(12) Postal Service.

(13) Status of officers and employees of the United States, including their classification, compensation, and benefits.

(c) ADDITIONAL DUTIES.—The committee shall have the duty of—

(1) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

(2) studying the efficiency, economy, and effectiveness of all agencies and departments of the Government;

(3) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(4) studying the intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.

(d) JURISDICTION OF SENATE COMMITTEES.—The jurisdiction of the Committee on Homeland Security and Governmental Affairs provided in subsection (b) shall supersede the jurisdiction of any other committee of the Senate provided in the rules of the Senate.

TITLE II—INTELLIGENCE OVERSIGHT REFORM

SEC. 201. INTELLIGENCE OVERSIGHT.

(a) COMMITTEE ON ARMED SERVICES MEMBERSHIP.—Section 2(a)(3) of Senate Resolution 400, agreed to May 19, 1976 (94th Congress) (referred to in this section as ''S. Res. 400'') is amended by—

(1) inserting ''(A)'' after ''(3)''; and

(2) inserting at the end the following:

''(B) The Chairman and Ranking Member of the Committee on Armed Services (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum.''.

(b) NUMBER OF MEMBERS.—Section 2(a) of S. Res. 400 is amended—

(1) in paragraph (1), by inserting ''not to exceed'' before ''fifteen members'';

(2) in paragraph (1)(E), by inserting ''not to exceed'' before ''seven''; and

(3) in paragraph (2), by striking the second sentence and inserting ''Of any members appointed under paragraph (1)(E), the majority leader shall appoint the majority members and the minority leader shall appoint the minority members, with the majority having a one vote margin.''.

(c) ELIMINATION OF TERM LIMITS.—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).

(d) APPOINTMENT OF CHAIRMAN AND RANKING MEMBER.—Section 2(b) of S. Res. 400, as redesignated by subsection (c) of this section, is amended by striking the first sentence and inserting the following: ''At the beginning of each Congress, the Majority Leader of the Senate shall select a chairman of the select Committee and the Minority Leader shall select a vice chairman for the select Committee.''.

(e) SUBCOMMITTEES.—Section 2 of S. Res. 400, as amended by subsections (a) through (d), is amended by adding at the end the following:

''(c) The select Committee may be organized into subcommittees. Each subcommittee shall have a chairman and a vice chairman who are selected by the Chairman and Vice Chairman of the select Committee, respectively.''.

(f) REPORTS.—Section 4(a) of S. Res. 400 is amended by inserting '', but not less than quarterly,'' after ''periodic''.

(g) STAFF.—Section 15 of S. Res. 400 is amended to read as follows:

''SEC. 15. (a) The select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member's designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

''(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated representative to the select Committee. The designated representative shall have office space and appropriate office equipment in the select Committee spaces, and shall have full access to select Committee staff, information, records, and databases.

''(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee clearance requirements for employment by the select Committee.''.

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

''SEC. 17. (a) The select Committee shall have final responsibility for reviewing, holding hearings, and voting on civilian persons nominated by the President to fill a position within the intelligence community that requires the advice and consent of the Senate.

''(b) Other committees with jurisdiction over the nominees' executive branch department may hold hearings and interviews with that person.''.

TITLE III—COMMITTEE STATUS

SEC. 301. COMMITTEE STATUS.

(a) HOMELAND SECURITY.—The Committee on Homeland Security and Governmental Affairs shall be treated as the Committee on Governmental Affairs listed under paragraph 2 of rule XXV of the Standing Rules of the Senate for purposes of the Standing Rules of the Senate.

(b) INTELLIGENCE.—The Select Committee on Intelligence shall be treated as a committee listed under paragraph 2 of rule XXV of the Standing Rules of the Senate for purposes of the Standing Rules of the Senate.

TITLE IV—INTELLIGENCE-RELATED SUBCOMMITTEES

SEC. 401. SUBCOMMITTEE RELATED TO INTELLIGENCE OVERSIGHT.

(a) ESTABLISHMENT.—There is established in the Select Committee on Intelligence a Subcommittee on Oversight which shall be in addition to any other subcommittee established by the select Committee.

(b) RESPONSIBILITY.—The Subcommittee on Oversight shall be responsible for ongoing oversight of intelligence activities.

SEC. 402. SUBCOMMITTEE RELATED TO INTELLIGENCE APPROPRIATIONS.

(a) ESTABLISHMENT.—There is established in the Committee on Appropriations a Subcommittee on Intelligence. The Subcommittee on Military Construction shall be combined with the Subcommittee on Defense into 1 subcommittee.

(b) JURISDICTION.—The Subcommittee on Intelligence of the Committee on Appropriations shall have jurisdiction over funding for intelligence matters.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This resolution shall take effect on the convening of the 109th Congress.

Mr. MCCONNELL. Mr. President, I rise today to introduce, along with Senator REID and the majority and Democratic leaders, an amendment to a resolution to reform the Senate's oversight of intelligence and homeland security matters. If enacted, it will mark the most significant changes made in this body since the 1970s relating to the way the Senate operates.

Let me speak for a moment about why we must make significant reforms. The world did not change on September 11, 2001, only our perception of it did. In fact, the world had changed long before that particular clear September day. Frankly, we are nearly a decade late realizing it.

The first clue the world had changed and that a new enemy lurked in the shadows occurred on February 26, 1993, when Islamic terrorists bombed the World Trade Center, killing six and injuring hundreds.

These terrorists had ties to al-Qaida, which was busy then building its army of terrorists in the Sudan.

Four years later, on August 7, 1998, al-Qaida attacked two U.S. embassies in Kenya and Tanzania, killing hundreds and injuring thousands.

And on October 12, 2000—nearly 4 years ago today—these same al-Qaida terrorists attacked the USS *Cole* while it was in port in Yemen. These terrorists killed 17 soldiers and injured 40 more.

And yet it took the carnage of September 11 to awaken America, the Congress, our governmental institutions, and our CIA analysts to the magnitude of the threat that Islamic terrorism poses to the American people.

It took September 11 to show us how much the world had changed since the days of the Cold War.

In the wake of those attacks, Congress and the President swung into action—and brought the fight to the enemy.

We in Congress passed the PATRIOT Act, which reformed the FBI and provided our law enforcement agencies with greater tools to combat terrorism. We fast-tracked the procurement of specialized equipment such as the Predator unmanned aerial vehicle for our military forces in Afghanistan.

Congress created the Department of Homeland Security to consolidate and coordinate Government activities that protect America, and to solve some of the problems that contributed to the failure to anticipate September 11.

The administration has issued important executive orders reforming the intelligence community in a way that facilitates coordination of essential information.

Today, the Senate passed the Intelligence Reform Act of 2004, which dramatically reforms our intelligence agencies. These reforms will improve the collection, analysis, and integration of our Nation's most vital intelligence, assuring that red flags are no longer ignored.

What we have not done, however, is reform ourselves.

Congress, as did our intelligence agencies, failed to appreciate the threat prior to September 11. We certainly appreciate it now. And I hope we can reform this institution in a way that allows us to better monitor and influence the executive agencies tasked with keeping America safe.

It is time to put our own house in order.

In August, Senator FRIST and Senator DASCHLE—in response to the 9/11 Commission recommendations—asked the Senate to do just that. They created a working group of 22 senior Members of the Senate, and asked Senator REID and me to chair it.

We worked closely with these Members to discuss the advantages and disadvantages of the 9/11 Commission recommendations, and also to brainstorm new ideas and improvements to our oversight of the intelligence community and Department of Homeland Security.

I want to thank these Members for their many good ideas and for their patience and willingness to work on a bipartisan basis to do something that is very difficult but also very worthwhile.

After convening a number of meetings with our Members, Senator REID and I met frequently to hammer out a list of recommendations that broadly reflects the consensus or majority views of our group.

Not every Senator will be happy with each and every recommendation. But such is the nature of compromise. We have endeavored to be honest brokers, and I hope we have achieved that goal.

Some Members will complain this reform goes too far. Others will complain it does not go far enough.

I hope most Members will agree with me that it is an appropriate balance of reform that improves our ability to conduct oversight of intelligence and homeland security during a very serious time for our country.

Neither Senator REID, nor I, nor the 20 other members of our working group have a monopoly on wisdom. And were our recommendations part of the New Testament, they would not be written in red ink.

The resolution before us today is not a final product. It is a work in progress. And we hope Members who want to improve upon this resolution will come to the floor and offer amendments.

We would like to accept non-controversial amendments, and to allow Members to vote on amendments that may be a bit more contentious. We want the Senate to work its will.

But before ceding control of this resolution to the will of the Senate, let me describe the philosophy behind our recommendations, as well as some of the recommendations themselves.

The most sweeping change we recommend is to consolidate Congressional jurisdiction over the Department of Homeland Security. If you don't think this is major reform, ask the roughly 25 Senate committee or subcommittee chairmen who currently have jurisdiction over Homeland Security agencies or programs.

Trust me. They have made sure Senator REID and I know how significant this reform is.

The current system of homeland security is broken. These 25 different Senate committees or subcomittes can only have a narrow view of part of the department's activities.

Congressional oversight is like a team of blindfolded scientists, each examining a different part of a horse and trying to describe what kind of animal it is. No committee can step back and look at the horse as a whole.

The Department of Homeland Security deserves its own authorization committee. We wouldn't divide jurisdiction over the Department of Defense by creating an Army committee, a Navy/Marine committee, and an Air Force committee. So why have we done so with Homeland Security?

The status quo also hampers the Department's ability to do its primary job: protecting the homeland.

Currently, the department has to report to 88 House and Senate committees or subcommittees.

This year alone, Secretary Ridge or his subordinates have testified at 164 hearings. They have given over 1300 briefings. And the year isn't over yet.

Mr. President, that's almost 40 briefings a week. In fact, there are probably Homeland Security personnel crawling around Capitol Hill right now, when they should be back in their offices working to keep us safe.

We didn't create the Department of Homeland Security so that it can provide us with a gluttony of power point presentations but to keep America safe. We should consolidate jurisdiction so that both Congress and the Department can do their job more effectively, and more efficiently.

To do this, we recommend that jurisdiction over the Department be integrated under the Governmental Affairs Committee, which should be renamed the Homeland Security and Governmental Affairs Committee.

There will be exceptions to this jurisdictional consolidation. And we encourage Members who are concerned about jurisdictional issues to file amendments to work with the chairman and ranking member of Governmental Affairs to reach agreements about appropriate jurisdictional arrangements.

We welcome amendments and debate on these issues.

On Intelligence oversight, the working group believed that our oversight of intelligence must be strengthened.

The task force wanted to work with the committee to help structure it so it was comprised of devoted experts who have the time and expertise in the intelligence field. The members now serving on the committee have done so with great distinction. But they need better tools and fewer competing demands on their time in order to conduct focused and comprehensive oversight.

And so we have recommended the status of the committee be raised from B to A. This may seem like a minor and arcane detail, but it means a great deal. On my side of the aisle, Senators can serve on the committee without having to give up any other assignments. Some Members serve on three or four other committees in addition to intelligence.

Quite simply, they cannot devote the time necessary to conduct effective oversight with so many other obligations.

This elevation in status will require Senators interested in intelligence to make a choice to serve on the committee. But once on the committee, they will not be term limited, and each member of the committee will be able to play an integral role in conducting oversight.

The Intelligence Committee is an important committee, and a popular committee, and I am confident that a good number of members will want to serve on it.

As I have said, we also have removed term limits, in order to allow members to develop the expertise needed to conduct effective oversight. No other Committee in the Senate says after you've spent 8 years becoming an expert that you get the boot. Now the Intelligence Committee won't have to say goodbye to its most experienced members.

We have allowed members to hire personal designated staff, to give them a trusted representative on the committee. There was strong support for this recommendation, which will reinstate previous committee policy.

In addition to the 14 suggested improvements to the Select Committee on Intelligence, we also have recommended the Appropriations Committee create a Subcommittee on Intelligence.

Appropriations jurisdiction over oversight is currently dispersed throughout multiple subcommittees. We propose the creation of an Intelligence Subcommittee of Appropriations that would consolidate the roughly 80 percent of the intelligence budget that will come under the jurisdiction of the national intelligence director.

This subcommittee will improve the Appropriations Committee's ability to live up to its responsibility to exercise oversight over the national intelligence budget. For the same reasons that homeland security jurisdiction should be consolidated, so, too, should intelligence appropriations jurisdiction.

Not all of us agree on this recommendation, and I fully expect that Senators will offer an amendment to implement the 9/11 Commission's recommendation to create a combined authorization and appropriations committee.

These recommendations require us to use a different set of muscles in our oversight. And some of these reforms are not easy. But few things worth doing are.

We have a historic opportunity to reform this Chamber for the better, and I believe we should not shirk our responsibility to do so. We must do it now in order to do all we can to protect the American people from the next major terrorist attack.

This is a partisan body, and we have pointed fingers for 3 years about who was to blame for the failures of our intelligence and homeland security prior to 9/11. Some blamed the Clinton Administration, others blamed the Bush Administration. Some saw fault in the FBI, others in the CIA, and still other in the military's aversion to covert operations. We are good at pointing fingers at others, but we have not pointed them at ourselves.

Just as our CIA analysts failed to piece together the clues about al-Qaida's intention to attack our cities with hijacked airplanes, so, too, did we fail to question their assessments. We failed to question their focus on old threats. We failed to challenge them to take risks. We failed to question the lack of CIA operatives in Iraq, or why our human intelligence capabilities had become so eroded. Despite the numerous attacks on American targets by Islamic radicals, we failed to put more money in the intelligence budget to hire Arabic linguists.

These are not the faults of the Clinton administration or the Bush administration. They are our fault, too, and we have a chance today to correct them.

I say to my colleagues, I believe we have an opportunity to improve our oversight of the arms of Government that keep America safe. Let us not cause some future generation to look back 50 years from this moment and ask the question: Why did they not act?

Now is our opportunity to do just that, and I encourage my fellow Senators to come to the floor and offer amendments so that we can move this package forward as soon as possible.

Mr. President, I yield the floor.

Mr. REID. 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. 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.

Mr. FRIST. Mr. President, about an hour ago, the Senate marked a historical moment with the passage of S. 2845, the National Intelligence Reform Act of 2004. Passage of that act was a major milestone—a major milestone—on the road to the most significant overhaul of our intelligence community in over 50 years.

The Senate bill includes nearly all of the recommendations made by the 9/11 Commission as they centered on intelligence reform within the executive branch—39 recommendations.

It is important to note, however, the Commission said that overhauling the executive branch is not enough and, thus, we are now on the Senate resolution to address the final two recommendations of the 9/11 Commission, and that is the overhaul of how we do business in oversight of intelligence functions.

The Democratic leader and I were just talking about how pleased we were in the fulfillment of the process we set out at the end of July where both arms—one being the one we just completed on the Senate floor in the form of the executive branch intelligence jurisdiction, and the second arm being the overhaul of our Senate oversight—has worked so well to date, but we still have that second arm to address, and that is what we are on today.

The Democratic leader and I have come to the floor to outline to our colleagues, A, the importance of completing that oversight function reform in this body but, B, and equally important, to point out we do not have very much time to address this issue with the range and number of other issues we have to address. We have plenty of time to address these issues, but we need to do so in an expeditious way, in a way that allows people to have their amendments considered, to have them debated, and to have them voted upon, but we need to do so in a timely manner.

We ask our colleagues to bring their amendments to the resolution to the managers so they can be considered.

With that, I turn to the Democratic leader, and then I will have further comments on other legislation we have to address before departing.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I associate myself with the remarks of the majority leader. He made note of the fact that this is a historic day. This is a day when the Senate, with an overwhelmingly bipartisan vote, responded to the recommendations of the 9/11 Commission and other commissions that have urged our Government to take action to make us safer. We made a major step today in creating the infrastructure to make America safer.

I compliment the majority leader for his efforts and also, of course, the two managers. Senator COLLINS and Senator LIEBERMAN deserve great credit for the work product we voted on only moments ago. This is historic not only for its substance, but I would like to think it is also historic for the process that brought us here.

As the majority leader has noted, we have an opportunity to replicate the substance and the process with the second piece of our work. I think in an equally bipartisan fashion, Senator MCCONNELL and Senator REID have worked hand in glove. They deserve great commendation and credit for the work they have done.

They have consulted with every Member of the Senate. They have worked particularly with our chairs and ranking members, and they have now brought us a work product that was amended slightly as a result of that consultative process last night.

After working and laying out the work product, they listened, they responded, and we have the response they put into the RECORD last night. So everybody has had a chance to review their work, and we are now, as the majority leader noted, asking for the

same degree of cooperation and bipartisanship on this legislative work as we have on the bill.

In that context, it will be important for Senators to indicate to us as quickly as possible their intent with regard to amendments. I know both cloakrooms are going to be seeking the response of Senators who may wish to offer amendments.

Based on that response, because of the time of year, we may be required to file cloture just so we can accelerate the consideration of this effort. I will support that effort if it may be required, but, again, as we have done each day during the deliberations of the bill, I hope we could start the day with somewhat of a status report on where we are and what needs to be done and a reiteration of the importance of this work and our efforts in doing it in the same manner.

So I hope we can continue as we have. As I said, this is a historic day, but there is much more history to be made and so much more work to be done.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, while the Democratic leader and I are both on the floor, because it reflects the discussions we have had over the course of today, there is other business that we will be conducting over the course of the week. There has been huge progress made today on a bill in conference, the FSC/ETI manufacturing jobs bill. We expect to address that hopefully very soon—I believe the House will be addressing it tomorrow—maybe tomorrow night or late tomorrow afternoon. It is a bill we are both committed to addressing before we leave.

As everyone knows, we had planned to leave on Friday, October 8. It is a bill that also has been handled in an admirable way in conference by Chairman GRASSLEY, and Chairman THOMAS from the House, with a very open discussion, open debate, and votes in the conference. We plan on addressing that bill as soon as it is available and the plans will be to complete that as well before we depart.

Homeland Security appropriations is currently in conference and we expect to be able to address that as well.

I mention all of those bills because tonight is Wednesday and we have Thursday and Friday. Although our shared goal is that we leave Friday, if it requires being here Saturday or later, it means that we would have to do just that. It should not. The way these bills have been handled over the last several weeks, it simply should not require going into Saturday, but if necessary, we may just have to do that.

I will comment briefly on the resolution as well because I have not had the opportunity to do so. I know the managers want to be able to proceed directly, but I just wanted to outline that in mid-August Senator DASCHLE and I did assemble a task force of 22 Members to look at the recommendations proposed by the 9/11 Commission that deal with reform of the Congress. We charged this task force to look at the range of issues and possibilities and to present the Democratic and Republican leaders with a proposal and their recommendations.

To reflect the leadership's commitment to the importance of this issue of congressional reform, we asked our respective assistant leaders, Senator MCCONNELL and Senator REID, who are managing the bill now, to chair this task force. Over the past several weeks, Senators MCCONNELL and REID have held a series of meetings, collectively and individually. As Senator DASCHLE has said and as I have also said, we have had the opportunity to meet as conferences and caucuses to address these issues.

The managers of the bill have also consulted with the 9/11 Commission and others to solicit their ideas and their reflections and recommendations. The product of their efforts is captured in the Senate resolution today and the amendment that has just been introduced.

Right now, as we talk, the amendment may or may not be a perfect product—it is probably not a perfect product—but it is a very good and very solid product. It does reflect the majority view of the task force as they looked at a whole range of options and alternatives, individual items to improve Senate oversight of intelligence, which is the objective, and that is what will be achieved by this resolution.

There are a number of contentious issues that have not been fully addressed, that we expect to be addressed tonight on the Senate floor.

When the Democratic leader said we are reaching out to people to bring those potential amendments forward, that is exactly what we mean. It was Senator MCCONNELL's and Senator REID's recommendation, rightly I believe, to have the Members decide through debate and through the offering of amendments on the floor how we might make that proposal better. That is about as open and transparent a process as one can have, but it does require Members to come forward and participate in that floor debate.

I will close by saying that I personally thank Senators MCCONNELL and REID for their efforts and to the other Members of the leadership task force and to all the Members for their cooperation and their participation in, once again, a nonpartisan manner.

I reiterate that it is the leadership's desire on both sides of the aisle to complete this before we depart.

I close where I began, and that is, without Senate reform of the way we conduct oversight of intelligence and homeland security, our efforts to overhaul the executive branch, which we took a major step forward just an hour ago in this body, will be incomplete, inadequate, and really inconsistent with our obligations to the American people.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, I, first, extend my appreciation to Senator MCCONNELL. Senator MCCONNELL and I were given a task and we have done the best we can. I have served in the Congress now for 22 years. This is one of the hardest things I have ever had to do, if not the hardest. It has been a very difficult 3 or 4 weeks that Senator MCCONNELL and I have spent working with Members.

I have known MITCH MCCONNELL for many years, the senior Senator from Kentucky, but as happens when one is thrown into a situation of stress, working closely together, one develops a different relationship, and the bond Senator MITCH MCCONNELL and I have formed over this last month is one that will be with us forever.

I appreciate his willingness to allow me to drop in his office unannounced and call on him all times of the night and day. He has a fine staff and he has worked extremely well with my staff. Without belaboring the point, I appreciate all he has done to get us to this point. Without him, we could not be where we are now.

I have five children. My oldest child is a girl. I have one girl, my daughter Lana. I can remember as if it were yesterday, my little girl was going away to school, to college. I can still remember I cried that day, I felt so sad that my little girl was going to go away. I still feel some emotion when I think about it.

The reason I mention that is my daughter leaving to go to college is only an example of how difficult change is. Why did I feel bad? Because of change. I had been with my little girl for 18 years, and suddenly she was going to leave. Change in our lives is always very difficult. Change in the life of the Senate is difficult. What Senator MCCONNELL and I have brought before the Senate is a change. I repeat, I only give the example of my daughter for illustrative purposes. But change here for 98 Senators with whom we have been working is difficult. It is not the same as sending a daughter to school, but it is still a change. Any time you change, it is difficult. That is what this has been about.

We have been considering ways to reform the executive branch of Government for 2 weeks. It is now done. Now it is time to turn the focus on reform of the Senate. A lot of change is taking place here in the waning days of this Congress, important changes brought about as a result of more than 3,000 Americans being killed through a terrorist act. That is why we are doing this.

A commission was appointed, led by long-time Congressman Lee Hamilton and former Governor of New Jersey Thomas Kean. They had members who worked very hard for a year. They had 80 full-time staff. They came to us with recommendations as to how we had to change the executive branch of Government. We have done the best we can in

that regard. We have changed, as far as the Senate sees it, the executive branch of Government. It has been painful. It has been painful for a lot of Senators. But we did it because we had to do it.

I will elaborate on that a little bit later, but the Commission said doing one without the other is doing nothing. If we walked away from this body now, as some have suggested, and said we have done our job, we have done the executive improvement, we may not have done everything, but we have done all we have time to do—we cannot leave here without having done this.

What we do tonight and tomorrow is nothing the President has to sign. The bill that passed here earlier this evening by a vote of 96 to 2 is something the President has to sign. He does not have to sign this. This is something the Senate is doing on its own. We are doing it because the Commission said you cannot have one without the other.

As I said, some have said, Why do this? Some have said, Maybe the House isn't going to do anything; why does the Senate have to tackle this issue?

We can't maintain the status quo after 9/11. We have to look at every facet of our Government. We did this: The homeland security functions, our intelligence functions, and our congressional oversight.

I extend my appreciation to Senators ROBERTS and ROCKEFELLER. They have, during the most difficult times in the history of the Intelligence Committee, been asked to guide this country through these perilous times, and they did it without having much to do it with. The Intelligence Committee, as indicated by the 9/11 Commission, is weak and toothless. So I appreciate very much the work of these two very wise men. Being able to work together—it wasn't easy. They had a difficult time. The members of the Intelligence Committee also worked well.

But, as the 9/11 Commission indicated, we need to give the Intelligence Committee more authority and power. That is what we are in the process of doing. We, in effect, said, Can we do better? Can we do better for ROCKEFELLER and ROBERTS and others, not only today but in the years to come? We have found, under the leadership of the 9/11 Commission, that oversight of the intelligence community is not strong enough—not enough power, not enough resources, not enough muscle.

As my friend Senator MCCONNELL has indicated, the homeland security oversight is now splintered among 88 committees and subcommittees—not 8 in the Senate, not 8 in the House—Governor Ridge and I came together in 1982, each as a Member of Congress. I don't know the exact number of times he has come here, but I think it was 164 times so far this year. Think about it. We can do better.

We do not need these weak and fractionalized subcommittees and committees, all wanting a piece of the Secretary of Homeland Security. We are not going to make a tweak here and a tweak there. As the 9/11 Commission found:

> Tinkering with the existing committee structure is not sufficient. The United States needs a strong, stable and capable committee structure to give America's national intelligence agencies oversight, support and leadership.

We can't make all these changes in the executive branch which we did in this bill we just passed and not put our own house in order. The 9/11 Commission made that point very clear:

> The other reforms suggested, such as the National Counterterrorism Center and a National Intelligence Director, will not work if Congressional oversight does not change too.

It has not been easy. We have taken 10 standing committees and taken jurisdiction from each of the 10 and given them to this new committee that will be formed from the Governmental Affairs Committee. It will now be the Homeland Security/Governmental Affairs.

People have had to give things up. Some have given them up graciously. Some have given them up kicking and screaming. There will be amendments offered here to reverse some of the changes we have recommended in the amendment that is now before the Senate. Senator MCCONNELL and I recognize that should be a fair, open process. We are not infallible. Maybe we made some mistakes, but we certainly tried not to.

The Commission made the point clear that it will not work if congressional oversight does not change also. So here we are, with a resolution encompassing some of the most important recommendations of the 9/11 Commission—no doubt the most difficult. Obviously we would not be here without the fine work of the 9/11 Commission that I boasted about more than once, and without the urging of many brave families whose lives were shaken by the tragedy of 9/11.

I served in the House of Representatives with Lee Hamilton. I served under his leadership on the Foreign Affairs Committee in the House of Representatives. He is a fine man. He was a mentor to me. He and Governor Kean have made their mark upon the country with their excellent report. We are also here on the verge of landmark reform because of the strong partisan interest of our colleagues in reforming this institution. There may be different opinions about some of the details, but I believe the consensus is very strong about bringing much-needed reform to the intelligence and homeland security functions.

As I started my statement using an example of my dear daughter Lana, I said change is hard. I understand that. I am a member of committees. The committees on which I serve have given up things to make this work.

I also want to extend my grudging appreciation to the two leaders, Senators DASCHLE and FRIST. The next time they have one of these nice things to pass out, they will think of someone else. This has been very hard for Senator MCCONNELL and me, but they have stood with us. They are fine leaders. And if we get this done—and I am hopeful and confident we will—it all goes directly to their leadership. Both of these men are so busy that they look to their assistants. I am the assistant Democratic leader, the whip. Senator MCCONNELL is the assistant Republican leader, the whip. We have done our best representing our caucuses. We run separate and apart from our two leaders. I run elected on my own, as does Senator MCCONNELL. But we believe this was the time when without any question the two leaders were doing absolutely the right thing. That is why we have spent so much of our time, energy, and effort in carrying out what they have directed us to do.

I jokingly said I grudgingly send my appreciation. I really don't do that. I am happy Senator DASCHLE had enough confidence in me to allow me to go forward on this noble experiment.

I have spoken to members of the 9/11 Commission on quite a few occasions in conference calls and personal meetings, and I appreciate their time. The time is up for this Commission, but they are still devoting large blocks of time to people like me who come to them for direction, guidance, and understanding. They wanted first of all to know what we were doing was nonpartisan. I think Senator MCCONNELL and I proved to them time and time again that it was.

Let us talk about the specifics.

The so-called task force recommended that the Senate inplement virtually all of the congressional reform recommendations made by the 9/11 Commission. I will go over what we have done. There are three basic areas we looked at. One is to reform the Intelligence Committee process. The other is to create a different, new committee on homeland security, which I have talked about, and the other is to make sure the appropriations process was part of this.

What we have done to strengthen collection of intelligence is eliminate term limits. We have to ensure that the majority has no more than a one-member advantage. This came directly from the 9/11 Commission. We maintain apportioned slots for these committees. The chairman and ranking member of Armed Services. I will offer an amendment because I heard directly from the Intelligence Committee itself that they also wanted in addition to the Armed Services Committee members of the Foreign Relations Committee doing that. In this instance, it will be Senator LUGAR, chairman of the committee, and Senator BIDEN, ranking member, who will serve as ex officio members. I will offer an amendment at a subsequent time, and elevate the status, as I heard Senator MCCONNELL talk about, from B to A.

We have maintained the majority and minority leaders' ability to appoint all committee members. Members not appointed will serve without term limits.

This is so important. Frankly, this is not anything that the 9/11 Commission recommended, but it came from Senator WARNER in meetings we had with Senator MCCONNELL and me. Senator WARNER has been here a long time. I have served with him from the day after I came here as a member of the Environment and Public Works Committee. He has been so easy to work with. If there were ever a stereotype of a southern gentleman, it is JOHN WARNER. And JOHN WARNER in his typical gentlemanly fashion suggested to us that for a committee which is important, the chairman and ranking member should serve at the pleasure of the two leaders.

The reason for this is what I refer to as the ''Wilbur Mills problem.'' Wilbur Mills was a long-time Member of Congress and became chairman of the powerful Ways and Means Committee. This was a man who never had a problem in the world as far as anything dealing with ethics and morality. Suddenly, for whatever reason, Wilbur Mills—this distinguished Member of Congress who served 30 years—started doing a lot of things very publicly that were an embarrassment to this institution. He was there based on seniority and there was no way he could be disposed of. We don't want that. It is something that probably would never happen, but we need that protection. The people who are representing and leading this Intelligence Committee have to be above reproach ethically and morally. The two leaders should have the ability to do that.

That is why Senator MCCONNELL and I, along with Senator WARNER—that is where this came from. We believe that committees around here are too large. One of the things we set out to do was not have more committees. We wanted to do what we could to make the committees smaller. We did this. We reduced the size of the committee from 17 to 15. That may not sound like much, but it was a step forward. We have followed our philosophy and reduced the size of the committee. This is something the 9/11 Commission recommended. The staff positions for each member—maintain nonpartisan professional staff, give the Intelligence Committee a stronger role in reviewing civilian intelligence nominees. This is something else the 9/11 Commission recommended.

That is one of the things they recommended in intelligence. We have done that. But we have gone a step further, and said not only that but the Intelligence Committee should be able to form whatever subcommittee they feel would help that committee perform the functions they have for the country.

Maintain committee subpoena authority; require the committee to make regular reports to the full Senate.

For the purpose of showing how much we did related to the recommendations of the of 9/11 Commission, all we have to do is look right here. We have done what they have recommended, and more.

If you look here, the committee conducts ongoing oversight, checked off; create subcommittee dedicated to oversight, another check; ensure committee has subpoena authority, check that off; ensure majority has not more than one-member advantage, check that off; ensure apportioned members slots for Armed Services, Appropriations, Foreign Relations and Judiciary; one-year term limit; reduce the size of the Intelligence Committee; ensure the Intelligence Committee has a nonpartisan professional staff.

I think we have done that. It is good work. It was not easy, but good.

We have talked about the operations committee, which recommended 14 specific measures to give the committee greater stature and power.

We believe the proposed measures such as elevating the committee from B to A, ending term limits, and creating a subcommittee on oversight will give the committee muscle and that will be oversight of the intelligence agencies.

I have talked about the need for the Appropriations subcommittee to focus on investigations. We have done that.

What I have not talked about is Senator BOB GRAHAM. BOB GRAHAM was chairman of the Intelligence Committee, ranking member, served in a very good way, former Governor of Florida, served in the Senate for 18 years. He is leaving now. He is retiring. When someone suggested to him that you should put the function of the appropriations and authorization all in one committee, he said it would concentrate power in too small a number of people and it would be devastatingly wrong for the intelligence community. So what we came up with, we feel, is something better than that; that is, as one distinguished Senator said, if we can have an Appropriations subcommittee for the District of Columbia, for agriculture, and the legislative branch of Government, we ought to have one for intelligence. It is simply too important, and we agree. Senator MCCONNELL and I agree.

Therefore, we have now merged the Military Construction Subcommittee, which I chaired for a Congress or two, with Defense—again, we don't want to create more subcommittees or more committees—leaving 12 subcommittees for Appropriations. We have created another one on intelligence.

There has been a lot of complaints that the monetary function of the Intelligence Committee was hidden in the Defense Subcommittee on Appropriations. That won't be the case anymore. It will have chairmen selected based on seniority. I am sure it will be one of the senior members of the Senate. That is about all you have on the Appropriations Committee, and I think it would do well. This is a significant development.

We will increase the number of members and staff who oversee the intelligence community spending and finally shed light on programs that have been tucked away far too long.

Governor Kean was asked at a recent Select Committee on Intelligence hearing about the creation of an appropriations subcommittee on intelligence. Governor Kean said:

> I think [an intelligence appropriations subcommittee] would be very much in my mind, be within the spirit of our recommendations.

I have spoken to Congressman Hamilton and indicated to him what we were going to do. He feels the same as Governor Kean about this.

Now, an appropriations subcommittee on intelligence is exactly the kind of conforming change that is required now that we have passed the Collins-Lieberman bill, where centralization and coordination of the intelligence community is achieved through the establishment of a national intelligence director.

Some Members suggest a joint authorizing and appropriating committee, but there are very strong feelings that creates too much power and too much secrecy for a handful of members, so it actually results in fewer checks and balances and much weaker oversight.

There was a broad consensus to consolidate the oversight of the Department of Homeland Security. Without any question, we should not have to have the director or his assistants appear before 88 committees and subcommittees of the Congress. We ought to have a single homeland security authorizing committee. This would match the Homeland Security Appropriations Subcommittee we created last year.

With this we achieve the much-needed consolidation by replacing homeland security oversight in the Governmental Affairs Committee and renaming the committee Homeland Security and Governmental Affairs.

What we have now before the Senate is significant and sweeping reform. This resolution with the amendment we placed therein, though it might not be perfect, and Senator MCCONNELL and I would never say it was, is extremely powerful and makes the required structural changes at the same time it sends a clear message to the American people that the Senate understands the problems, and we are ready to make changes that will help keep our country safe.

Let's end what the Commission calls a ''dysfunctional'' oversight process. It is the right thing to do. This is the right time to do it.

We welcome anyone who wants to offer amendments. We do recognize, however, as the two leaders mentioned earlier, that it is almost 7 o'clock tonight, and we are supposed to leave Friday. We need to finish this legislation. People cannot wait us out. If

Members do not come tonight and tomorrow to offer amendments, we are going to go to third reading. We are not going to wait around while people do other things. This is not January or March or April or May or September. It is just a few days until the leaders have said we are going to go home. At the very best, it will be difficult to get out of here late Friday or even Saturday.

The two leaders are absolutely right in saying we want everyone to have an opportunity to review this resolution. The amendment was filed last night, and everyone has had more than 24 hours to read it, to study it, to prepare their amendments. It is not a 400-page amendment. It is a few pages in length, very simple and direct, and is something we are doing to change this body. It is a significant change, and we recognize that, but a most important change.

Members offering extraneous matters on this—and that is always possible—should understand they are doing it in the face of what the 9/11 Commission said: we have to do this. I hope Members would not come and offer amendments relating to extraneous matters.

If there is something wrong with the amendment Senator MCCONNELL and I sent to the desk, let us know. We have worked with a lot of folks. But we cannot go back to the way things were before. We cannot have a committee called the Department of Homeland Security and not have anything that deals with homeland security. We have to have a committee on homeland security that has the ability to oversee what is going on and have more homeland security for our country.

The time is here. It seems logical that there will not be any votes tonight, but that is up to the leaders to announce. I repeat: This cannot go on forever. There has to come a time when people offer amendments. I hope that would happen before too long. We are here for business, Senator MCCONNELL and I.

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

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

LITTLE ROCK CENTRAL HIGH

Mr. PRYOR. Mr. President, I thank my colleagues for something they have done not just for me or even for the city of Little Rock or the State of Arkansas but for the country. They are trying to help on a project we are working on, Little Rock Central High School.

In 1957, the two biggest stories in the world that year were Sputnik and Little Rock Central High School because Little Rock was the first major southern school district to try to integrate their schools to try to follow the law as laid out in Brown v. Board of Education, Topeka, KS, and to try with all deliberate speed to integrate their schools.

They took that charge seriously and, as we all know, the situation there got chaotic and very difficult. There has been a lot written about it. It is one of the major milestones in the history of the struggle for civil rights in this country.

In September of 2007, Little Rock Central will celebrate the 50th anniversary of the desegregation crisis at Little Rock Central High. We all know the story of the Little Rock Nine—Ernest Green, Elizabeth Eckford, Gloria Ray Karlmark, Carlotta Walls LaNier, Minnijean Brown Trickey, Terrence Roberts, Jefferson Thomas, Thelma Mothershed Wair, and Melba Pattillo Beals.

We all know the story of these brave children who went into the lion's den, so to speak, to strike a blow against the old system of ''separate but equal'' that was not working, and was fair. That was not right.

They showed tremendous courage not just for themselves and their personal safety, but they led by example. It is very important we as a Nation honor them and honor Little Rock for making the effort, and honor the school for all the progress they made since 1957.

Little Rock Central High School now is considered one of the best high schools in America. It has been an amazing success story. It shows how things can work when the community pulls together and tries to put difficulties of the past behind them.

I could talk on and on about how proud I am of the Little Rock Nine and the way Little Rock has handled the situation, but today I thank Members of this Senate for their support of S. 420. It is critical to acknowledge what happened at Little Rock 47 years ago.

I thank two Members of this body specifically who really helped get this on track: first, CONRAD BURNS, who is the Interior Subcommittee chairman; and then the ranking member on that subcommittee, BYRON DORGAN. They have both been fantastic. Their staffs have helped. They have made arrangements for us to get $733,000 in this Interior appropriations bill in order to do the design phase of the new visitor center at Little Rock Central High School.

Our goal is to try to have the visitor center completed and totally constructed and up and running by the September 2007 anniversary. But we could not have done this without Senator BURNS and Senator DORGAN because they have shown a great deal of leadership. Also, I must say, Bruce Evans, Ric Molen, and Peter Kiefhaber, on their staffs, have been great to work with.

Another group that Senator LINCOLN and I both want to thank is the Congressional Black Caucus over on the House side. They have been fantastic. In fact, they have entered a sister resolution to this, and all 38 members of the Black Caucus signed on to the resolution. They have been great. Chairman ELIJAH CUMMINGS has shown some great leadership on this issue, and it has brought hope to the civil rights community for this hopefully very positive celebration they will have in 2007.

The last person I want to thank, who is always there working behind the scenes trying to get things done for his congressional district, is Congressman VIC SNYDER. VIC SNYDER has shown great leadership in this matter, as he does consistently in everything he does. He has worked behind the scenes and he has worked with all sides. He is doing everything he can to make sure this becomes a reality, again not just for his district or the State but really for the Nation.

So, Mr. President, again, I thank everyone for their help and their support in what we are trying to do at Little Rock Central High School. I happen to have gone there. I am very proud of that school. It is a great landmark in the struggle for civil rights. The people in Arkansas decided to make Little Rock Central not stand for a negative but stand for a positive, stand for progress. It is something that certainly the community but also the State has rallied around. We are very proud of what they have done at Little Rock.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a cloture motion to the pending amendment 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 the pending amendment on S. Res. 445, a resolution to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

Bill Frist, Mitch McConnell, Harry Reid, John Cornyn, Craig Thomas, Jim Inhofe, Mike Crapo, Conrad Burns, Norm Coleman, Tom Daschle, Lamar Alexander, Jim Talent, Wayne Allard, Gordon Smith, Larry Craig, Robert F. Bennett, Pete Domenici, Susan Collins.

Mr. MCCONNELL. Mr. President, we have hotlined in both cloakrooms all offices asking for an indication of how many amendments might be offered to the underlying resolution. Regretfully, it is roughly 50.

I am authorized to say on behalf of the majority leader, it is our intention to wrap up business this week. We have

no intention of trying to shut out any Senators who want to offer amendments. We had hoped some might come over tonight and offer them. We will certainly have all day tomorrow to deal with any and all amendments that Senators feel strongly about and on which they would like to have votes. But we really must move the process along, and that is the reason the majority leader wished to file a cloture motion tonight.

Mr. REID. Will the Senator yield?

Mr. MCCONNELL. Yes, I yield to my friend and colleague from Nevada.

Mr. REID. Mr. President, around here, we do not often see cloture motions signed by all four leaders. This cloture motion does have four leaders. We are serious about completing this bill at the earliest possible date. It would be a travesty if, having just completed a very significant piece of legislation led by Senators COLLINS and LIEBERMAN, we not do our share of the legislative reform that needs to be done.

The cloture motion was filed with reluctance. No one wanted to do it. But with the 8th of October staring us in the face literally, we have no choice but to do this. I hope people tomorrow will recognize there will be an effort made to offer these amendments. At 1 o'clock tomorrow, all first-degree amendments must be filed. That is the rule.

I hope people will come and discuss with us what problems they see with this amendment. We will be happy to work with them, but I think people should be ready to offer their amendments.

We have taken what we thought needed to be done from the 10 committees to give this committee, the homeland security committee, some strength. We hope people recognize that.

I understand how people are concerned about maintaining the jurisdiction of what they have, but this is a time when people have to give up a little bit for the good of the country and for the good of the Senate.

I totally support the cloture petition that was filed by the distinguished Senator from Kentucky on behalf of the two leaders because that is basically what happened.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a second cloture motion to the resolution to the desk as well.

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. Res. 445, a resolution to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

Bill Frist, Mitch McConnell, Harry Reid, John Cornyn, Craig Thomas, Jim Inhofe, Mike Crapo, Conrad Burns, Norm Coleman, Tom Daschle, Lamar Alexander, James Talent, Wayne Allard, Gordon Smith, Larry Craig, Robert F. Bennett, Pete Domenici, Susan Collins.

Mr. MCCONNELL. Mr. President, as my good friend from Nevada has indicated, we hope to process all of the amendments that Members of the Senate feel strongly about. We will be open for business on this resolution all day tomorrow, and there should be ample time to deal with all of the amendments that our colleagues feel strongly about and wish to offer.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I think everyone within the sound of our voices should understand the majority leader and minority leader were on the Senate floor and they both said we are going to stay here until we finish this, the Homeland Security conference report and the FSC tax bill. Those matters are going to be finished. If we can finish on Friday, we will be out of here. If we are finished on Saturday, we will be out of here. But the two leaders have said we are going to work to finish this legislation.

We are dealing with Senators who know all the rules just as we do, but I will indicate that this is a little different time. We are trying to bring Congress to a close, at least this part of it. Everyone should understand the determination of the two leaders to move this matter forward and the other things that are going to come before the Senate.

Mr. MCCONNELL. Mr. President, the assistant Democratic leader has clearly outlined what the goal of the two leaders, both Republican and Democrat, are for the balance of this session before we adjourn for the election. We are hoping to complete all of those items no later than Friday.

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

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

MORNING BUSINESS

Mr. MCCONNELL. 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.

HEALTH CARE

Ms. STABENOW. Mr. President, I appreciate those comments. I actually would not be here asking to do this if it were not for the earlier comments of the Senator from Pennsylvania, speaking as in morning business, as it relates to Senator KERRY's health care plan. I felt in fairness, as someone who works extensively on health care, that it was important to come down and speak to the errors that were presented earlier as my colleague spoke on the other side of the aisle.

First, it is important to know that it does not matter who we talk to today, it does not matter who comes into my office or what conversation I have with people throughout the great State of Michigan, the issue of health care always comes up.

Right now the big three automakers, struggling to compete internationally with their business competitors around the world, are talking about the need to address the high cost of health care. They have indicated to me on more than one occasion that this needs to be one of our top priorities of the Congress and the President of the United States: to tackle the explosion in health care costs.

We also know that half of those costs is the explosion in prescription drug prices, and that specifically needs to be addressed. We have proposals we have been consistently bringing to this body and bringing to the President of the United States that will bring prices down. So when we talk to our manufacturers in Michigan, this is a huge issue. If I talk to the workers who work for our manufacturers, it is a huge issue for them. They are being asked to pay more copays, more premiums, to take pay cuts, in some cases layoffs, as a result of the high cost of health care and the fact that there has been no action to address this while premiums and costs continue to go up faster and faster.

I could talk to a group of seniors in Michigan and certainly talk about medicine and the fact that the bill that passed this last year for Medicare is more about helping the prescription drug industry than it is about helping our seniors in this country. They know what we need to be doing. They want to see the pharmacists be able to do business with pharmacists in Canada, be able to bring prices down, cut them in half or, in some cases, 70 percent.

Seniors understand we have a crisis as it relates to the cost of medicine and health care in this country, and they certainly know when we look at the fact that this administration has announced the largest Medicare premium increase—17½ percent—in the history of the program since 1965 when it was instituted even though it is estimated that Social Security will go up possibly only as much as 3 percent. I have a bill that has been introduced with colleagues of mine to cap that Medicare increase at the cost of Social Security increases, and up to now we have not been able to get a vote on this. Yet this will be taking effect in January and taking more out of the pockets of our seniors.

We know that one of the major reasons for the increase—it is not just

normal inflation—is because of the costs that are being rolled into the premium increases relating to privatization that was part of the prescription drug bill. We were told privatization would save money. The reality is, we have the highest Medicare increases in the history of the program.

So we can talk to seniors. We can talk to families who are struggling every day and seeing their costs go up. We see the real household income in 2000 has gone down $1,535. Family health care premiums have gone up, $3,000 on average, to $3,599. This is not what ought to be happening. We have a crisis going on in our country.

I can talk to young people getting out of college who find themselves no longer eligible to be on their parents' insurance, who now go into their first job and maybe do not have health insurance on their first job. This is a very real story for me in my own family. Young people are hoping and praying they remain healthy, that nothing happens to them until they can get into a job that has some health care.

We know that the majority of people, about 80 percent of the people who do not have health insurance in this country, are working. We are not talking about people who are not working; we are talking about people who are working one job, two jobs, three jobs, working for small businesses. I can go to any small business in Michigan and, I would guess, across our great country, and they want to talk to me about what is happening in health care and health insurance, an explosion in pricing. The average premium for small businesses has more than doubled in the last 5 years.

This is a crisis, and I am proud of the fact that JOHN KERRY and JOHN EDWARDS are stepping up to say this will be one of our highest priorities, to address this crisis. Everybody knows we have it. Everybody, from manufacturers to small businesses to seniors to workers to young families to students right out of college, everybody understands that we have a crisis in this country. I believe it is one of the major moral issues of our time. In the last 4 years we have seen this over and over again. Whenever it was a choice between the pharmaceutical lobby and the people of our country, the pharmaceutical lobby has won. Whenever it was a choice between the insurance industry and the people of this country, the insurance industries have won, the HMOs have won.

Frankly, on behalf of the people of my great State, we want somebody fighting for us, for the people of our country. The proposals that are put forward by Senator KERRY and Senator EDWARDS address the costs of health care and the access to health care. It is overdue for families. Again, this chart shows incomes going down, family health care premiums going up. We can do something about this. A big piece of this is the cost of prescription drugs. Frankly, the rest of the premiums that we see going up are because of folks who do not have insurance.

Our Secretary of Health and Human Services said, when asked about why—I believe it was in the context of why our Government is supporting the development of a health care system in Iraq with American tax dollars, but why we did not see the administration having the same sense of passion and urgency about Americans and health care. The Secretary of Health and Human Services said: Well, we kind of have universal health care coverage in our country because if someone is sick and goes into an emergency room, they get treated.

Well, that is true. When folks go into the emergency room and they go in sicker than they should be, go in instead of going to the doctor or instead of getting preventive care, they get treated. And what happens? The hospital then is forced to turn around and put those costs back on folks with insurance, resulting in family health care premiums skyrocketing.

This is not by accident. Part of this is a result of the fact that we have folks walking into the emergency room sicker than they should be or inappropriately getting care that should be in a doctor's office, that should be on the front end where it is more effective, more efficient, costs less.

In Michigan alone, last year my hospitals tell me that they spent over $1 billion in uncompensated care for folks walking into the emergency room. We now see it materializing in requests to expand emergency rooms. I have all kinds of requests from hospitals that are bulging at the seams to expand their emergency rooms. So we are paying for this on the back end. Families are paying through family health care premiums rising more. We all pay because of emergency rooms being expanded. Businesses are paying in loss of competitiveness. Seniors are paying.

What JOHN KERRY and JOHN EDWARDS are saying is we need to face that, we can do better than that, and we need to tackle it on the front end. So what are they suggesting? Well, I will mention just a few things. First, half of the premium increases are prescription drugs. It is very simple. They say Medicare, first, ought to be able to negotiate group discounts. Everybody else can. The VA can on behalf of veterans. Any other insurance system negotiates group discounts, but Medicare is prohibited under the new bill. We know why. The insurance lobby did their job. The prescription drug lobby did their job. So they are going to go back and change that. We negotiate group discounts. We can actually close the gap in coverage so it is a better benefit.

We also have seen from both JOHN KERRY and JOHN EDWARDS a complete commitment to allow us to do, on a bipartisan basis, what we have the votes to do in the Senate if we could ever get this up for a vote, and that is to open the border to Canada and to other countries where it is safe, under strict FDA rules and regulations, to allow our pharmacists to do business with pharmacists in Canada and in other countries to bring back prescription drugs to the local pharmacy at half the price.

I am tired of putting seniors on a bus. Just a week ago I was involved, again with AARP, out at the Ambassador Bridge in Detroit. We had people at the other two bridges in Michigan, talking about and demonstrating the difference in prices. I am, frankly, tired of seeing in my State people who have to drive across the bridge or through the tunnel in order to be able to demonstrate lower prices or be able to purchase at lower prices. The Kerry-Edwards administration will bring back those prices to the local pharmacy. It will make a major difference.

What else are they suggesting? I hear this all the time. We know one of the major problems right now under the insurance system is, particularly for a small business, for example, a small business may have 10 employees, and they may have low rates. Then one person gets very ill—gets cancer, has a car accident, something else happens—and they have a tremendous amount of costs for their care. That one case throws the insurance rates of the business up dramatically. What the Kerry-Edwards administration is talking about is having the Federal Government come in and, when the costs exceed $50,000 for an individual, the Federal Government would serve as reinsurance, to cover those few cases that are very expensive and throw the entire cost off for the business. It makes sense. We can do that.

We have also indicated we need to make a commitment to cover all children in our country—and we do. This is a moral obligation. It is all about priorities. It is always about priorities. It is always about our values and priorities. If we make the right choices, we can make sure every child has the health care they need.

Then they have also said that every person in this country ought to have the same ability to buy into the Federal employee health care system as we do. In our country we have the employer, meaning taxpayers or American citizens, who have less health care than the employees—us or other Federal employees. They want to change that. They can do that through an umbrella, allow people to buy in, businesses to buy in. They can choose either traditional programs or HMOs, but they would have the benefit of sharing administrative costs and bulk purchasing and sharing other efficiencies to bring costs down.

They have a number of very specific proposals that will allow greater access, that will allow costs to come down, and will directly tackle the stranglehold that has been occurring in this country, where a few special interests have been able to stop this body and this administration and others from making choices about what is best for American families.

We know there are folks who benefit by the current system. The pharmaceutical industry and insurance industry do well. They control what the price will be, what the access will be, and they don't want to change. They and their spokespeople will come forward and scare people, that somehow to do any change at all means some big, bureaucratic, top-down government system and socialized medicine, and they use all these other words, but it is used to scare people and to stop us from moving together and doing what needs to be done.

We need to be working together, partnering with business, with communities, with local governments and State and Federal Government to create a system where we make better decisions, provide health care to people on the front end rather than when they are very sick and walking into an emergency room, and bringing prices down by designing a system that works for us.

There is no doubt in my mind that we are capable of doing that. If we have the will, the political will and the right leadership in this country, there is no question that we cannot sit down, figure out a system that provides and maintains the best of what is great about American medicine and American health care, and also create some new opportunities to benefit from what is the best and yet create a better system for everyone.

We can do that. But first we have to have the right leadership, which is why I am supporting JOHN KERRY and JOHN EDWARDS. They understand. Senator KERRY has said his first initiative to come forward to the Congress as President of the United States will be on health care. My biggest concern since coming here, related to health care, has been there is not the sense of urgency we need to sit down and get this done. We need the political will to stand up to folks, the special interests with a lot of money who benefit from the way the system is today. We need to have the courage and the leadership to be able to design a system and tackle this in a way that makes sense for people.

There is absolutely no doubt in my mind that this can be done. There is also absolutely no doubt in my mind that it must be done. If our businesses are going to survive in a global economy, if our families are going to survive, in terms of providing health care for their children and moms and dads and grandpas and grandmas, if we are going to survive in terms of older care and care for the disabled in this country, if we are going to continue to have the quality of life Americans need and deserve, we have to tackle the health care issue and have more than just slogans and scare tactics for people.

We have to do better than the last 4 years. Real household income is down. Family health care premiums are up. This is the wrong direction. We can do better and with a change in administrations, working together in a bipartisan way, we will do better.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On August 25, 2000, in Palm Springs, CA, a judge ordered a U.S. Marine, Lance Horton, to pay $4,300 to a gay couple he admitted beating and to complete charity work as part of his 5-year probation. Horton pleaded guilty to two counts of assault and to two hate crimes.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

NOTICE OF CHANGE IN SENATE PUBLIC TRANSPORTATION SUBSIDY REGULATIONS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I wish to announce that in accordance with Title V of the Rules of Procedure of the Senate Committee on Rules and Administration, the Committee has updated the Senate Public Transportation Subsidy regulations effective October 1, 2004.

Based on the Committee's review of the 1992 regulations which authorize the issuance of tax free ''de minimis fringe benefit'': transit fare media, and a review of the Transportation Equity Act for the 21st Century (P.L. 105–78), the Committee has concluded that its regulations should be updated to reflect statutory changes in the dollar amount allowed to be issued as a ''de minimis fringe benefit.'' In addition, the Committee has streamlined the process for office participation in this program.

PUBLIC TRANSPORTATION SUBSIDY REGULATIONS

Sec. 1. Policy

It is the policy of the Senate to encourage employees to use public mass transportation in commuting to and from Senate offices.

Sec. 2. Authority

The Tax Reform Act of 1986, as amended by the Transportation Equity Act for the 21st Century (P.L. 105–78) allows employers to give employees as a tax free ''de minimis fringe benefit'' transit fare media of a value not exceeding $100 per month. The Fiscal Year 1991 Treasury-Postal Appropriations Act (Pub. L. 101–509) allows Federal agencies to participate in state or local government transit programs that encourage employees to use public transportation.

Sec. 3. Definitions

(a) Public Mass Transportation—A transportation system operated by a State or local government, e.g. bus or rail transit system.

(b) Fare Media—A ticket, pass, or other device, other than cash, used to pay for transportation on a public mass transit system.

(c) Office—Refers to a Senate employee's appointing authority, that is, the Senator, committee chairman, elected officer, or an official of the Senate who appointed the employee. For purposes of these regulations, an employee in the Office of the President pro tempore, Deputy President pro tempore, Majority Leader, Minority Leader, Majority Whip, Minority Whip, Secretary of the Conference of the Majority, or Secretary of the Conference of the Minority shall be considered to be an employee, whose appointing authority is the Senator holding such position.

(d) Qualified Employee—An individual employed in a Senate office whose salary is disbursed by the Secretary of the Senate, whose salary is within the limit set by his or her appointing authority for participation in a transit program under these regulations, and who is not a member of a car pool or the holder of any Senate parking privilege.

(e) Qualified program refers to the program of a public mass transportation system that encourages employees to use public transportation in accordance with the requirements of Pub. L. 101–509 whose participation in the Senate program in accordance with these regulations has been approved by the Committee on Rules and Administration.

Sec. 4. Program requirements

(a) Each office within the Senate is authorized to provide to qualified employees under its supervision a de minimis fringe employment benefit of transit fare media of a value not to exceed the amount authorized by statute currently not to exceed $100 per month.

(b) Each appointing authority may establish a salary limit for participation in this program by his or her employees. If such salary limit is established, all staff paid at or below that limit, and who meet the other criteria established in these regulations, must be permitted to participate in this program.

(c) For purposes of these regulations, an individual employed for a partial month in an office shall be considered employed for the full month in that office.

(d) The fare media purchased by participating offices under this program shall only be used by qualified employees for travel to and from their official duty station.

(e) Any fare media purchased under this program may not be sold or exchanged although exchanges of Metro Card Media for transportation on the Virginia Railway Express (VRE) or the Maryland Transit Administration's MARC trains are permissible.

(f) In addition to any criminal liability, any person misusing, selling, exchanging or obtaining or using a fare media in violation of these regulations shall be required to reimburse the office for the full amount of the fare media involved and may be disqualified from further participation in this program.

Sec. 5. Office administration of program

Each office electing to participate in this program shall be responsible for its administration in accordance with these regulations, shall designate an individual to manage its program, and may adopt rules for its participation consistent with these regulations.

An employee who wishes to participate in this program shall make application with his or her office on a form which shall include a

certification that such person is not a member of a motor pool, does not have any Senate parking privilege (or has relinquished same as a condition of participation), will use the fare media personally for traveling to and from his or her duty station, and will not exchange or sell the fare media provided under this program. The application shall include the following statement:

This certification concerns a matter within the jurisdiction of an agency of the United States and making a false, fictitious, or fraudulent certification may render the maker subject to criminal prosecution under 18 U.S.C.§1001.

Safekeeping and distribution of fare media purchased for an office is the responsibility of the program manager in that office. Participating offices may not refund or replace any damaged, misplaced, lost, or stolen fare media.

Sec. 6. Senate stationery room responsibilities

The only program currently available in the Washington, DC metropolitan area at this time is ''Metro Pool,'' a program established through Metro by the District of Columbia. Transit benefits will be provided through Metro Pool for participating offices in the Washington, D. C. area. The Committee on Rules and Administration shall enter into an agreement with Metro Pool for purchase of fare media by the Senate Stationery Room as required by participating offices on a monthly basis.

A participating office shall purchase the fare media with its authorized appropriated funds from the Senate Stationery Room through its stationery account pursuant to 2 U.S.C.§119.

Each office shall present to the Senate Stationery Room [two copies of] the certification referred to in section 7 of these regulations. A new certification shall be submitted when an employer is added to or deleted from the program. The Stationery Room shall make available to the Senate Rules Committee Audit Section a monthly summary of office participation in this program. In addition, the Stationery Room may not refund or replace any damaged, misplaced, lost, or stolen fare media that has been purchased through the office's stationery account.

Sec. 7. Certification

The certification required by section 6 shall be approved by the appointing authority and shall include the name, and social security number of each participating employee within that office, and the following statements:

(a) Each person included on the list is currently a qualified employee as defined in Section 3.

(b) No person included on the list has any current Senate parking privilege and that no parking privileges will be restored to any person on the list during the period for which the fare media is purchased.

(c) That each month's fare media for each participating employee does not exceed the maximum dollar amount specified in statute (currently $100).

Sec. 8. Other participating programs

Section 6 provides for procedures for participation by Washington offices in the Metro Pool program established through Metro by the District of Columbia. Additional programs in the Washington, D. C. metropolitan area, or programs offered in other locations where Members have offices that meet the requirements of the law and these regulations, may be used for qualified employees, subject to the following requirements:

(A) Authorization—The public transit system shall submit information to the Committee on Rules and Administration that it participates in an established state or local government program to encourage the use of public transportation for employees in accordance with the provisions of Pub. L. 101–509 and these regulations. If the program meets the requirements of the statute and these regulations and is approved by the Committee on Rules and Administration, any Senate office served by such transit system may provide benefits to its employees pursuant to these regulations.

(B) Procedures—

(1) A qualified program operating in the Washington, D.C. metropolitan area that permits purchase arrangements similar to those provided by the Metro Pool program shall participate in the Senate program in accordance with the procedures set forth in Section 6.

(2) A qualified program operating in the Washington, D. C. metropolitan area that does not have purchase arrangements similar to Metro Pool, or a qualified program located outside that metropolitan area, that permits purchases directly by an office, may make arrangements for purchase of media directly with a participating office. Such an office may provide for direct payment to that system and shall submit the certification in accordance with Section 7.

(3) In the case of a qualified program that does not permit purchase arrangements as provided in paragraphs (1) or (2) above, an office may provide for reimbursement to a qualified employee and shall submit a certification in accordance with Section 7.

(C) Documentation—The following documentation must accompany a voucher submitted under paragraph 8(B)(2) or (3):

(1) A copy of the Rules Committee approval, in accordance with section 8(A), with the first voucher submitted for that transit program, provided subsequent vouchers identify the transit program.

(2) The certification.

(3) Proof of purchase of the fare media.

(D) Voucher Guidance—In the case of a Senator's state office, reimbursement for payment to either a qualified transit system, or a qualified employee shall be from the Senators' Official Personnel and Office Expense Account (SOP& OEA) as a home state office expense on a seven part voucher. In the Washington, DC metropolitan area, reimbursement for payment to either a qualified transit system, or a qualified employee shall be as follows:

(1) in the case of a Senator's office from the SOP & OEA as an ''other official expense'' (discretionary expense).

(2) in the case of a Senate committee or administrative office as an ''Other'' expense.

Sec. 9. Special circumstances

Any circumstances not covered under these regulations shall be considered on application to the Committee on Rules and Administration.

Sec. 10. Effective date

These regulations shall take effect on the first day of the month following date of approval.

HONORING OUR ARMED FORCES

LANCE CORPORAL MICHAEL ALLRED, USMC

LANCE CORPORAL QUINN A. KEITH, USMC

LANCE CORPORAL CESAR F. MACHADO-OLMOS, USMC

Mr. HATCH. Mr. President, September was a hard month for the people of Utah. Three more of our sons were called home into the arms of God. Each was a Marine, each a Lance Corporal, each did not live to see their 23rd birthday. I hope that my colleagues will join me in saluting these brave men of honor, who died to defend this nation and to bring freedom to an oppressed people.

Lance Corporal Michael Allred was a young man who knew he wanted to be in the military. His brother Brad said it best, that Lance Corporal Allred ''was happy to serve, and he knew what he was doing was right . . . he died doing something he loved.''

Ironically, Lance Corporal Allred was killed in the same attack that also took the life of another one of Utah's sons, Lance Corporal Quinn A. Keith. His family asked that I write a few words that were shared at his funeral. While I was learning about his life, I will always remember what his uncle Clyde said about Lance Corporal Keith, ''He was scared to be there, but he knew he had to be there.''

The third name to be added to this list of honor is Lance Corporal Cesar F. Machado-Olmos. His life is also extraordinary, since at the time of his death, he had not yet become an American citizen. Imagine, a young man who loved this country so much that before he even became a citizen he entered into a life of service and chose to earn the title of United States Marine.

Our Nation is truly blessed, not because of our material wealth or our influence across the globe. Our Nation is blessed because the ideas of freedom and liberty still echo in the minds of the young men and women of this country, and in the most selfless of acts, they volunteered to defend our Nation. These three men, Lance Corporal Michael Allred, Lance Corporal Quinn A. Keith and Lance Corporal Cesar F. Machado-Olmos epitomized the sacrifice and devotion to duty that is required to earn the noble title of United States Marine. The United States Senate and I stand in humble tribute to these Marines. They will be missed but never forgotten.

N O T I C E

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR THURSDAY, OCTOBER 7, 2004

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Thursday, October 7. I further ask unanimous 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 for morning business for up to 30 minutes with the first 15 minutes under the control of the Democratic leader or his designee, and the second 15 minutes under the control of the majority leader or his designee; provided that following morning business the Senate then resume consideration of S. Res. 445, the Senate intelligence reform resolution.

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

PROGRAM

Mr. MCCONNELL. Mr. President, tomorrow morning the Senate will continue to debate on the Senate intelligence reform resolution. Amendments will be offered and debated throughout the day tomorrow. I reminded all of our colleagues a few moments ago that I filed a cloture motion on the resolution. It is our hope that we can complete action on the resolution without having to take a cloture vote. However, in order to ensure that we can complete the Senate's business by Friday, we are scheduled to vote on cloture on Friday morning, if that is necessary.

In addition to the Senate intelligence resolution, the Senate may begin consideration of the FSC JOBS conference report tomorrow.

Senators should, therefore, expect a very busy day tomorrow with rollcalls possible throughout the day.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. 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 8:01 p.m., adjourned until Thursday, October 7, 2004, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Senate October 6, 2004:

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. BRUCE A. WRIGHT, 0000

DISCHARGED NOMINATIONS

The Senate Committee on Foreign Relations was discharged from further consideration of the following nominations and the nominations were confirmed:

CHRISTOPHER J. LAFLEUR, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO MALAYSIA.

B. LYNN PASCOE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF INDONESIA.

DEPARTMENT OF STATE NOMINATIONS BEGINNING WITH RYAN C. CROCKER AND ENDING WITH JOHNNY YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 13, 2004.

RYAN C. CROCKER, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

MARCIE B. RIES, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ALBANIA.

THE SENATE COMMITTEE ON FOREIGN RELATIONS WAS DISCHARGED FROM FURTHER CONSIDERATION OF THE FOLLOWING NOMINATIONS AND THE NOMINATIONS WERE PLACED ON THE EXECUTIVE CALENDAR:

*CATHERINE TODD BAILEY, OF KENTUCKY, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LATVIA.

*DOUGLAS MENARCHIK, OF TEXAS, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

*HECTOR E. MORALES, OF TEXAS, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTER-AMERICAN DEVELOPMENT BANK FOR A TERM OF THREE YEARS.

*LLOYD O. PIERSON, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

*LLOYD O. PIERSON, AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING SEPTEMBER 22, 2009.

*NOMINEE HAS COMMITTED TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 6, 2004:

DEPARTMENT OF STATE

CHRISTOPHER J. LAFLEUR, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO MALAYSIA.

B. LYNN PASCOE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF INDONESIA.

RYAN C. CROCKER, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

MARCIE B. RIES, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ALBANIA.

DEPARTMENT OF STATE NOMINATIONS BEGINNING RYAN C. CROCKER AND ENDING JOHNNY YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 13, 2004.

WITHDRAWAL

Executive message transmitted by the President to the Senate on October 06, 2004, withdrawing from further Senate consideration the following nomination:

LT. GEN. BRUCE A. WRIGHT, TO BE GENERAL, IN THE UNITED STATES AIR FORCE, WHICH WAS SENT TO THE SENATE ON SEPTEMBER 7, 2004.