

time and again that they can be better stewards of the land than federal bureaucrats.

I understand that Senator CRAIG agreed to the Domenici substitute in part because this matter of FACA violations will be considered by the courts this August. I trust that the Congress will have an opportunity to review this matter this session if the courts fail to do so, and I praise Senator CRAIG for his continued leadership on this important issue.

With that said, I wanted to add my voice to those who spoke earlier in favor of the Domenici substitute amendment that seeks to address the growing threat of catastrophic wildfire in areas of urban-wildland interface. A century of fire suppression followed by years of inactive forest management under this administration have left our National Forest system overstocked with underbrush and unnaturally dense tree stands that are now at risk of catastrophic wildfire. The GAO recently found that at least 39 million acres of the National Forest system are at high risk for catastrophic fire. According to the Forest Service, twenty-six million acres are at risk from insects and disease infestations as well. The built up fuel loads in these forests create abnormally hot wildfires that are extremely difficult to control. To prevent catastrophic fire and widespread insect infestation and disease outbreaks, these forests need to be treated. The underbrush needs to be removed. The forests must be thinned to allow the remaining trees to grow more rapidly and more naturally. This year's fires in New Mexico have given us a preview of what is to come throughout our National Forest system if we continue this administration's policy of passive forest management.

I believe the Domenici amendment will help this reluctant administration to face up to this growing threat to homes, wildlife, and watersheds. I commend Senator DOMENICI and the bipartisan group of Senators who worked very hard to craft this compromise.

Mr. DOMENICI. Mr. President, I am pleased to rise today in strong support of H.R. 4578, the Interior and related agencies appropriations bill for FY 2001.

As a member of the Interior Appropriations Subcommittee and the full Appropriations Committee, I appreciate the difficult task before the distinguished subcommittee chairman and ranking member to balance the diverse priorities funded in this bill—from our public lands, to major Indian programs and agencies, energy conservation and research, and the Smithsonian and federal arts agencies. They have done a masterful job meeting important program needs within existing spending caps.

The pending bill provides \$15.6 billion in new budget authority and \$10.1 billion in new outlays to fund Department of Interior and related agencies. When outlays from prior-year budget author-

ity and other completed actions are taken into account the Senate bill totals \$15.5 billion in BA and \$15.6 billion in outlays for FY 2001. The Senate bill is at its Section 302(b) allocation for BA and \$2 million under the Subcommittee's revised 302(b) allocation in outlays.

I would particularly like to thank Senator GORTON and Senator BYRD for their commitment to Indian programs in this year's Interior and Related Agencies appropriation bill. They have included increases of \$144 million for Bureau of Indian Affairs construction, \$110 million for the Indian Health service and \$65 million for the operation of Indian programs.

I commend the subcommittee chairman and ranking member for bringing this important measure to the floor within the 302(b) allocation. I urge the adoption of the bill, and ask for unanimous consent that the Budget Committee scoring of the bill be printed in the RECORD at this point.

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

H.R. 4578, INTERIOR APPROPRIATIONS, 2001, SPENDING COMPARISONS—SENATE-REPORTED BILL
(Fiscal year 2001, in millions of dollars)

	General Purpose	Mandatory	Total
Senate-reported bill:			
Budget authority	15,474	59	15,533
Outlays	15,509	70	15,579
Senate 302(b) allocation:			
Budget authority	15,474	59	15,533
Outlays	15,511	70	15,581
2000 level:			
Budget authority	14,769	59	14,828
Outlays	14,833	83	14,916
President's request:			
Budget authority	16,286	59	16,345
Outlays	15,982	70	16,052
House-passed bill:			
Budget authority	14,723	59	14,782
Outlays	15,224	70	15,294
SENATE-REPORTED BILL COMPARED TO			
Senate 302(b) allocation:			
Budget authority	-2		-2
Outlays			
2000 level:			
Budget authority	705		705
Outlays	676	-13	663
President's request:			
Budget authority	-812		-812
Outlays	-473		-473
House-passed bill:			
Budget authority	751		751
Outlays	285		285

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001—Continued

The PRESIDING OFFICER. The clerk will report the Defense authorization bill.

The legislative clerk read as follows:

A bill (S. 2549) to authorize appropriations for fiscal year 2001 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Mr. WARNER. Mr. President, I have in mind, and I think other Members do at this juncture, operating under the unanimous consent agreement reached

last night. I amend that unanimous consent to the extent that the senior Senator from West Virginia very graciously is willing to withhold the presentation of his amendment until such time that the distinguished Senator from Massachusetts and the Senator from Alaska bring up their amendments, which is sequenced, and they indicate to this manager that it will not take more than 10 or 12 minutes. Therefore, I ask that.

I further request, following the disposition of the Byrd amendment, Mr. FEINGOLD be recognized; following the completion of his amendment, the Senator from Illinois, Mr. DURBIN, be recognized.

Mr. LEVIN. I understand the Senator from Wisconsin is willing to have 30 minutes equally divided instead of 40 minutes on his amendment. I ask that the unanimous consent agreement be so modified.

Mr. WARNER. I have no objection.

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

The Senator from Alaska.

AMENDMENT NO. 3815

(Purpose: To provide that the limitation on payment of fines and penalties for environmental compliance violations applies only to fines and penalties imposed by Federal agencies)

Mr. STEVENS. Mr. President, the Senator from Massachusetts had an amendment pending concerning section 342 of this bill. We have discussed this. That was an amendment that would change the existing text that came from an amendment I suggested. I will offer an amendment to strike the existing section 342 and insert language we agreed upon. I do believe the Senator from Massachusetts wants to be heard on this. I want a word after his comments.

Mr. KERRY. I suggest the Senator from Alaska go first, since he wants to frame the change, and I will be happy to respond.

Mr. STEVENS. The Senator is very gracious. I have become increasingly concerned about the fines that EPA has been assessing against military reservations or elements of the Department of Defense, and had requested this provision in the bill to curtail that activity. In fact, it would have originally applied to similar fines from State and local agencies also.

We have now agreed on a version of this section 342 that will limit the fines that can be assessed against military entities by the EPA to \$1.5 million unless the amount in excess of that is approved by Congress. It will be a provision, if accepted, which will be in effect for 3 years. My feeling is that there are many things that go into the operation of the Department of Defense that are subject to review by EPA, and it is my opinion that they have been excessive in terms of applying fines against the military departments. I do believe it results in an alteration of the lands we have for particular installations and it reduces the amount of money available

to operate those installations when they face these fines.

This amendment does not prohibit the fines. It only says they cannot assess any and have them paid to the EPA in excess of \$1.5 million unless that fine is approved by an act of Congress.

I thank the Senator for working this out.

THE PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank my good friend from Alaska for his efforts to try to reach an accommodation. I listened carefully to the arguments of the Senator from Alaska who made it clear that he had a very strong belief that certain facilities in the State of Alaska had been treated in a way that he believed very deeply was inappropriate and resulted in fines that were excessive and, in his judgment, wrought with some bureaucratic issues that he had no recourse to resolve.

The initial section in the bill reported by the committee would regretfully have prohibited the EPA entirely from being able to enforce. A number of Members felt very strongly that was an overreaction in how we cure the problem that the Senator from Alaska was bringing to our attention without destroying the ability of the EPA to be able to enforce across the country.

So we reached an agreement where 98 percent of all those enforcement actions in the country which are under \$1.5 million, the EPA will continue to be able to enforce as it currently does. It is appropriate for this 3-year period only to review what the impact may be of some larger level over that period of time.

To have proceeded down the road we were going to proceed, in my and other people's judgment, would have created a terrible double standard. Under current law, a DOD facility that violates the Resource Conservation and Recovery Act or the Safe Drinking Water Act or the Toxic Substances Control Act or the Clean Air Act is subject to the same kinds of penalties as a private facility. By waiving sovereign immunity and subjecting Federal facilities to fines, we created the financial hammer to be able to force a sometimes reluctant Government and a Government bureaucracy to comply.

Congress recognized this principle in 1992 when we passed the law. The bill was sponsored by majority leader Mitchell. He said at the time that a waiver of sovereign immunity would move us from the disorder of Federal noncompliance to a forum in which all entities were subject to the same law and to full enforcement action. I am pleased to say it passed the Senate by a vote of 94-3, and it passed the House by a vote of 403-3. It was signed into law by President Bush, who at the time said it would bring all Federal facilities into compliance with applicable Federal and State hazardous waste laws.

I think that very much is our purpose today—to protect our capacity to be

able to secure that kind of enforcement. I thank the Senator from Alaska for his very reasonable approach to this. I think we have been able to resolve the most egregious situations about which he has expressed appropriate concern, but at the same time we have been able to preserve the principle of Federal compliance and the principle of all people being treated equally.

I thank the Chair and I thank the distinguished Senator from West Virginia for his courtesy in allowing us to deal with this issue.

Mr. STEVENS. Mr. President, I thank the Senator from West Virginia for his courtesy and the Senator from Massachusetts. I ask unanimous consent that the amendment I have at the desk be accepted in lieu of the amendment offered by the Senator from Massachusetts, Senator KERRY.

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

Mr. STEVENS. I thank the Chair.

THE PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 3815.

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

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

The amendment is as follows:

Section 342 is amended by striking the provisions therein and inserting:

SEC. 342. PAYMENT OF FINES AND PENALTIES FOR ENVIRONMENTAL COMPLIANCE VIOLATIONS.

(a) PAYMENT OF FINES AND PENALTIES.—(1) Chapter 160 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2710. Environmental compliance: payment of fines and penalties for violations

“(a) IN GENERAL.—The Secretary of Defense or the Secretary of a military department may not pay a fine or penalty for an environmental compliance violation that is imposed by a Federal agency against the Department of Defense or such military department, as the case may be, unless the payment of the fine or penalty is specifically authorized by law, if the amount of the fine or penalty (including any supplemental environmental projects carried out as part of such penalty) is \$1,500,000 or more.

“(b) DEFINITIONS.—In this section:

“(1)(A) Except as provided in subparagraph (B), the term ‘environmental compliance’, in the case of on-going operations, functions, or activities at a Department of Defense facility, means the activities necessary to ensure that such operations, functions, or activities meet requirements under applicable environmental law.

“(B) The term does not include operations, functions, or activities relating to environmental restoration under this chapter that are conducted using funds in an environmental restoration account under section 2703(a) of this title.

“(2) The term ‘violation’, in the case of environmental compliance, means an act or omission resulting in the failure to ensure the compliance.

“(c) EXPIRATION OF PROHIBITION.—This section does not apply to any part of a violation

described in subsection (a) that occurs on or after the date that is three years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2001.”

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2710. Environmental compliance: payment of fines and penalties for violations.”

(b) APPLICABILITY.—(1) Section 2710 of title 10, United States Code (as added by subsection (a)), shall take effect on the date of the enactment of this Act.

(2) Subsection (a)(1) of that section, as so added, shall not apply with respect to any supplemental environmental projects referred to in that subsection that were agreed to before the date of the enactment of this Act.

Mr. STEVENS. Mr. President, regarding the Fort Wainwright central heat and powerplant, on March 5, 1999, the EPA Region 10 issued a notice of violation against the U.S. Army Alaska claiming they had violated the Clean Air Act with their central heat and powerplant.

After several meetings between regulators and Army officials, the EPA sent them a settlement offer proposing that the Army pay a \$16 million penalty to resolve the alleged clean air violations.

In the offer, the EPA advised the Army that it would file a formal complaint if the Army failed to make a good-faith counteroffer within one month. The EPA also indicated that the size of fine sought will likely increase if a complaint was filed.

This \$16 million penalty is the largest single fine ever sought from the Department of the Army or against any installation within the Department of Defense. It also exceeds the combined total of all other fines previously sought from the Army.

While U.S. Army Alaska had been aware for some time that the 50-year old central heat and powerplant required numerous upgrades, significant progress had been made toward bringing the plant into compliance.

The Army also had been working closely with the Alaska Department of Environmental Conservation—which had been delegated Clean Air Act enforcement authority from the EPA—regarding the timetable for compliance.

That same year, in fiscal year 1999, the Army sought and received authorization and appropriations from the Congress to build a \$16 million baghouse to control emissions from the plant.

In addition, an additional \$22 million had been budgeted for fiscal year 2000 for plant upgrades.

The Army and the Department of Defense were surprised by the basis for the proposed penalty.

In EPA's settlement letter, EPA stated that it was seeking to recover the “economic benefit” the Army received by not constructing the baghouse sooner.

Over \$15.8 million of the proposed fine, roughly 98 percent, is directly tied to the “saved” cost that U.S. Army Alaska purportedly enjoyed.

This is also the first time the EPA proposed a fine whose economic benefit components dwarf the assessed penalty based on the seriousness of the alleged violations.

Regarding the EPA visit to Shemya Air Force Base, the Air Force had a 50-year problem of waste and drum accumulation at Shemya Island—complicated by the large quantity generator status at Shemya AFB. This status required processing of accumulated hazardous wastes from the island within 90 days of generation. To meet the 90-day requirement, airlift had to be used as the primary method of disposal of the accumulated hazardous wastes. Also, the airlift crews had to have special qualifications to handle and process hazardous wastes.

From 1989 through 1991, 13,781 gallons of hazardous waste were shipped off Shemya Island. Following the 1991 Gulf War, airlift outside of the Middle East was impossible to get.

Complicating matters, Elmendorf AFB in Alaska could not handle the amounts of hazardous waste being returned from remote Alaskan defense sites. Movement of hazardous waste from remote sites came to a standstill due to strained airlift requirements and limited hazardous waste storage and processing capabilities.

In January of 1993, the Air Force started airlifting and removing 100 waste drums every week vice 100 per month.

Two months later, in March, the EPA gave the Air Force a 10-day notice of inspection. During the inspection, the Air Force had 660 barrels on the Shemya airfield processed awaiting air transportation.

During the out-briefing with senior Air Force personnel, the inspectors commented that the Air Force was making good progress in reducing the backlog of waste drums.

A long period of time ensued between the inspection and the publicly announced result and proposed fine by EPA.

EPA assessed the Air Force a fine of \$483,000—this was the largest environmental noncompliance fine levied against the Air Force at that point in time.

Mr. KERRY. Mr. President, tonight, Senator STEVENS offered an amendment to the National Defense Authorization Act for Fiscal Year 2001 to amend Section 342. The amendment reflects a compromise reached between Senator STEVENS, BAUCUS, LAUTENBERG and myself. I want to thank Senator STEVENS for working with us to address grave concerns we had with Section 342 of the bill.

Mr. President, I would like to make a few comments about Section 342 and discuss why I had such great concerns over the impact it would have had on environmental compliance. Section 342, as it was passed out of the Armed Services Committee, would have weakened a fundamental environmental principle that protects the environment and pub-

lic health in communities across the nation. It is the principle that national environmental laws should apply to the federal government in the same manner as they apply to state and local governments and to private facilities, including companies, universities, hospitals, and nonprofit entities.

Section 342 would have created a double standard by subjecting corporations, state and local facilities to one legal standard and Department of Defense facilities to a second, weaker standard. More importantly, it had the great potential to undermine compliance with national environmental and public health protections at military facilities across the nation—putting the environment and citizens at risk.

Specifically, the provision amended existing law to require Congressional authorization before the DOD pays environmental and public health penalties assessed by state and federal authorities in excess of \$1.5 million or based on “economic benefit” or “size-of-business” criteria. As a result, it provided DOD a congressional reprieve not provided to any other entity.

It created a double standard. Under current law, a DOD facility that violates the Resource Conservation and Recovery Act, the Safe Drinking Water Act, Toxic Substances Control Act, or the Clean Air Act is subject to the same kind of penalties as a private facility. By waiving sovereign immunity—and subjecting federal facilities to fines—we create the financial hammer that forces sometimes reluctant government bureaucracies to comply. And we apply the law equally to all.

Congress recognized this principle in 1992 with the enactment of the Federal Facilities Compliance Act, which waived sovereign immunity under the Resource Conservation and Recovery Act. The bill was sponsored by Majority Leader George Mitchell, who said in floor debate that, “A waiver of sovereign immunity moves us from the disorder of Federal noncompliance to a forum in which all entities are subject to the same law and to full enforcement action.” He added that: “The principle [of waving sovereign immunity] is important because, without it, there is only voluntary compliance. History demonstrates that voluntary compliance does not work.”

The Federal Facilities Compliance Act had 33 cosponsors in the Senate—myself included. It was a bipartisan effort that passed the Senate with a vote of 94-3 and the House by a vote of 403-3. It was signed into law by President George Bush, who said that, “The objective of the bill is to bring all Federal facilities into compliance with applicable Federal and State hazardous waste laws, to waive Federal Sovereign immunity under those laws, and to allow the imposition of fines and penalties.” He added, “Four years ago I promised the American people that I would make the federal government live up to the same environmental standards that apply to private citi-

zens. By signing this bill, we take another step toward fulfillment of that promise.”

It was an important step for the states coping with federal agencies that were immune to enforcement and that refused to comply. The California Secretary of Environmental Protection, James M. Strock, said that in passing the Act, Congress took “an important step in restoring the link between environmental responsibility and remediation of environmental damage at federal facilities.” He continued, “The Act provides an essential tool to states and localities which seek compliance with hazardous waste laws.”

The National Association of Attorneys General applauded the passage of the Act. Their statement read that, “The [legislation] has been among the Association’s highest priorities on Capitol Hill for the past five years. . . . [The] Attorneys General have repeatedly called upon Congress to clarify the waiver of federal sovereign immunity, which has thus far prevented the states from ensuring compliance at contaminated facilities through assessment of fines and penalties.”

I feel that Section 342 would have rolled back the progress we’ve made with the Federal Facilities Compliance Act and other laws. It would have been a mistake. We should allow our law enforcement agencies to do their job. Section 342 of the DOD bill was opposed by the National Governors’ Association, the National Association of Attorneys General, and the National Conference of State Legislatures. In a joint letter they write that, “States report that the federal government is the nation’s largest polluter and military installations are a major contributor to that pollution. Section 342 is a step backward from the progress we have made in changing the attitude of military installations toward compliance with the nation’s environmental laws. We urge you to support efforts to strike the provisions.” This letter is signed by Governor Kenny Guinn of Nevada, Attorney General Christine Gregoire of Washington, and Senator Beverly Gard of Indiana.

Section 342 was also opposed by the Environmental Council of the States. It writes that, “The state environmental commissioners, along with governors, state legislators, attorneys general and other officials of state government have insisted that the federal government live by exactly the same standards and requirements that it imposes on all other parties, and we all oppose this provision in S. 2549. Exempting military installations from one of the basic tools of environmental enforcement is bad policy, and would seriously erode our capacity to ensure our citizens the protection of federal and state laws.” The letter is signed by R. Lewis Shaw, Deputy Commissioner, South Carolina Department of Health and Environmental Control and President of the Council.

Mr. President, even Governor George W. Bush of Texas recognizes the important principle of treating federal facilities as we treat state and local governments and private facilities. On Governor Bush's website—georgebush.com—the Governor has posted his environmental platform. The sixth plank in that platform reads as follows: "Direct active federal facilities to comply with the environmental protection laws and hold them accountable." It continues, "Governor Bush will expect the federal government to lead by example. He believes it is time to end the double standard that has federal government acting as enforcer of the nation's environmental laws, while at the same time causing pollution that violates those laws."

Mr. President, last year, a provision similar to Section 342 was incorporated into the FY 2000 DOD appropriations bill. The Congressional Budget Office evaluated that provision and concluded that, "Based on information from DOD and on conversations with representatives of state governments, CBO believes that requiring DOD to seek specific authorization from the Congress before paying each fine . . . will likely delay the payment of some fines. To the extent the Congress fails to authorize fines in the future, it is possible that the section would make it more difficult for states and local governments to negotiate for compliance with environmental laws." The letter is signed by Dan. L. Crippen, Director of the CBO.

Plain and simple, if we had passed Section 342 we would have rolled back environmental and public health protections for thousands of Americans who live near DOD facilities and for generations who will face the costs of cleanup. Our state attorneys—the people in the field enforcing our laws—our governors and our state environmental commissioners—and even the likely Republican nominee for President are telling us it is a mistake to do so.

Mr. President, the principle is not just rhetoric—it is supported by the record. In 1993, compliance by federal facilities with the Resources Conservation and Restoration Act was 55.4 percent. Almost half of all federal facilities operated out of compliance. Why? Because the law was unclear as to whether or not environmental fines could be assessed against federal facilities. But with the passage of the Federal Facilities Compliance Act in 1992—when DOD and other federal facilities faced fines and penalties for the first time—compliance started to climb. By 1998, compliance at federal facilities had reached 88.2 percent. And the opposite has also proven true. Federal compliance under the Clean Water Act, which does not have a clear waiver, has dropped at federal facilities. In 1993, more than 94 percent of federal facilities were in compliance, and by 1998 that number had dropped to just 61.5 percent. According to enforcement officials at EPA and state government,

that decline coincided with court decisions that interpreted the Clean Water Act as having only a limited waiver of sovereign immunity. To reverse that trend, I understand that Senator COVERDELL has introduced legislation to waive sovereign immunity for federal facilities. That Republican-led initiative now has now been cosponsored by Senators BREAUX, CHAFEE, DEWINE, GRAMS, and VOINOVICH.

Some argued that last year's provision wouldn't impact enforcement because, like Section 342, Congress can authorize the fine. But the numbers don't bear out that prediction. Why? Because investigators and attorneys knew full well that DOD was about to get a "Get Out Of Jail Free Card" from Congress. Even the best legal work can be overturned if Congress simply decides not to act on an authorization. As a result, enforcement actions have dropped off. As with any law, without strong enforcement, compliance will fall.

The principle is simple, Mr. President. If you want people, companies, institutions, and the government to comply with the law you must be tough on crime—including environmental crime. The way to ensure that all facilities comply with the law is to make sure that pollution does not pay. If the threat of a large fine is on the horizon—if the laws have teeth—everyone will be far more inclined to comply.

Mr. President, I want to focus some on the issue of "economic benefit" and "size-of-business" criteria and what it means to limit the federal and state authority to impose a fine based on those criteria. There seems to be some confusion as to why a federal or state authority would seek a penalty based on economic benefits at a DOD facility. The Report language accompanying Section 342 notes that the DOD, in the Committee's view, has no economic competitors in regard to the Clean Air Act. Therefore, the principle of economic benefit or size-of-business should not apply. Mr. President, I believe that is an incorrect reading of the Clean Air Act and other relevant statutes.

Foremost, an economic benefit provision prevents a facility, whether it's private or federal, from benefitting financially from noncompliance. Federal and state authorities need the power to make noncompliance economically unviable. We cannot have a system that rewards people for breaking the law. The Report language accompanying Section 342 argues that economic benefit is tied to "competition" among businesses and intended to prevent economic advantage through noncompliance. That is a narrow, misreading of the Clean Air Act. For example, all across the country, electric utilities—including municipal facilities—operate without "competitors" as the report defines the term. Utilities are guaranteed a market in return for providing a set amount of

power. This is changing with competition, but many did and some still do operate as sanctioned monopolies. But they are not exempt from fines and penalties in the Clean Air Act. Further, EPA and the states assess "economic benefit" fines against hospitals, universities, and local and state governments. For example, in a Clean Water Act challenge, the United States versus City of San Diego in 1991, a federal court found that the "plaintiffs' analysis of economic benefit is valid as to municipalities. While it is difficult to quantify precisely the savings realized by the City as a result of its intransigence, plaintiffs have demonstrated by a preponderance of the evidence that the city has saved in excess of \$300 million over approximately the last thirty years by failing to invest in capital improvements." The case shows that economic benefits apply to nonbusiness entities—the City of San Diego and that economic benefit is based on "savings" from noncompliance.

Mr. President, "economic benefit" and "size-of-business" criteria are as applicable to DOD as they are to private companies, non-profits, states, and other federal agencies. We should not rollback protections and create a situation in which a manager within the DOD could rationalize noncompliance because it saves money—we must demand compliance from federal facilities.

Further, Mr. President, the use of these criteria to enforce the law has been endorsed by the states. The Attorneys General, the Governors and the Conference of Legislatures specifically addressed this issue in their letter opposing Section 342. They write that, "The economic benefit analysis, in particular, is important to states because it prevents DOD from considering a fine merely as a cost of doing business . . ." The Environmental Council of the States, which represents our state environmental commissioners, writes, "Section 342 would have severely restricted the ability of states to ensure that facilities do not realize financial gain through noncompliance. Typically, states include in their penalties an amount that offsets these financial benefits. In this way, they significantly reduce economic incentives to avoid environmental and public health requirements." A cursory review of state policy conducted by the Governors, Attorneys General and the State Commissioners at my request, found that most states use economic benefits, including Texas, Montana, South Carolina, Minnesota, Colorado, Indiana, Pennsylvania, North Carolina, Alaska, Connecticut, and California.

The Armed Services Committee Report with S. 2549 states that "[i]t is the committee's view that the application of the economic benefit or size of business penalty assessment criteria to the DOD is inconsistent with the statutory language and the legislative history under the [Clean Air Act.]" Again, I

disagree and suggest that is narrow and incorrect reading of the Act. I believe a plain reading of the Clean Air Act makes it clear that all fines and sanctions apply to DOD. Section 118(a) of the Act reads as follows: "Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any record keeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner." In addition, the managers report for the 1990 amendments regarding Section 118(a) reads that, "the new language is intended to refute the argument [DOD is not subject to fee requirements] and to affirm the obligation of federal agencies to comply with all requirements, including such fees or charges." I add that Section 118(b) of the Clean Air Act is titled "Exemptions" and it specifically delineates under what circumstances the DOD can be exempted from enforcement action—and it makes no reference to the size of a fine or the criteria set forth in the penalty section. The Clean Air Act is very clear on this point.

Mr. President, Section 342 reached beyond the Clean Air Act. It also applies to the Resources Conservation and Restoration Act, Toxic Substances Control Act and the Safe Drinking Water Act. I believe that a plain reading of RCRA and the Federal Facilities Compliance Act makes clear that DOD should be treated the same as private facilities. There is no ambiguity in the law or the legislative history. In the floor debate Senator Mitchell said, "A waiver of sovereign immunity moves us from the disorder of Federal noncompliance to a forum in which all entities are subject to the same law and to full enforcement action." At the bill signing Bush said, "The objective of the bill is to bring all Federal facilities into compliance with applicable Federal and State hazardous waste laws, to waive Federal Sovereign immunity under those laws, and to allow the imposition of fines and penalties." Section 102 of RCRA reads, "The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative or-

ders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations." In regard to EPA actions against DOD, the Act reads that, "The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this Act. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person." Mr. President, I believe the law is clear. The Report language with S. 2549 offers us an inaccurate reading of the Clean Air Act and fails to address other environmental law statutes it impacts.

Some have suggested that Section 342 would have almost no impact on enforcement because few cases exceed \$1.5 million. As a result, we will rarely—if ever—need a congressional authorization to impose a fine. That's simply wrong. Section 342 reads that congressional authorization is needed if the fine exceeds \$1.5 million or if it is based on "economic benefit" or "size of business" criteria. In theory, Mr. President, all fines originating with the Environmental Protection Agency would have been caught by Section 342, regardless of their size. It is EPA's policy and that of many states that all fines should incorporate the economic benefit gained from noncompliance. It is difficult to know how many fines will need to pass through the new process created by Section 342 and how many will not be authorized or authorized at a lower amount. But, we do know that it could be a fine of any size, no matter how small.

Moreover, the threat of a large fine will be gone if Section 342 passed. This alone will deter compliance. The Congressional Budget Office specifically noted in its letter from last year that, "the States, local governments, and federal agencies often use the threat of these fines as part of the negotiation with facilities to achieve compliance with environmental laws." The Attorneys General—the people in the field doing the work—write of Section 342 that, "The threat of a significant fine or penalty is one of the more effective ways state officials have for encouraging violators, including military installations, to take responsibility for the environmental consequences of their operations." Any prosecutor, whether they are involved in a criminal action, or civil environmental compliance, will tell you that the threat of long jail term or a large fine is critical to enforcing the law. Finally and most importantly, Mr. President, by giving the largest violators, those fined over \$1.5 million, a chance for congressional

reprieve, Section 342 created a perverse system where only the most egregious violators get a special legal loophole unavailable to less egregious violators. It is a bad precedent.

Mr. President, the compromise we have reached does not resolve all of my concerns, but it addresses many of them. Under the agreement reached tonight, offered by Senator STEVENS and passed, all fines of \$1.5 million or more, assessed against DOD by a federal agency for environmental noncompliance, over the next three years, must be approved by Congress. State enforcement actions are not impacted by this agreement and our state Attorneys General can continue to enforce the law as they now do. The concepts of economic benefits and size of business remain in place in our environmental enforcement at the state and federal level. Only fines equal to or in excess of \$1.5 million will require a congressional authorization and that result in only a small percentage of fines needing authorization. And it expires in three years. I do have some concerns with the agreement. By requiring a congressional authorization on fines of \$1.5 million or more, we provide the most egregious violators a congressional reprieve and, therefore, it will limit our ability to deter noncompliance because the threat of a large fine will be reduced. However, I want to note and recognize the concerns Senator STEVENS has raised. Enforcement power, whether it sits with the EPA or the states, can be abused. The agreement expires in three years. In that time, Congress will have a close look at EPA's actions in assessing large fines.

Again, I want to thank Senators STEVENS, BAUCUS and LAUTENBERG.

Mr. LAUTENBERG. Mr. President, I rise in strong support of Senator KERRY's effort to make sure the Federal government plays by the same environmental rules that the private sector lives by. The Defense Department, in carrying out its military mission operates a vast, sprawling industrial complex with a potentially huge impact on the environment.

I think I'm only stating the obvious when I say it's absolutely crucial to make sure that the Defense Department and all federal agencies are held to the same environmental standards that apply to the private sector.

Under most current environmental laws, that's already the case. Federal facilities, including military installations, are subject to civil penalties for violating the Resource Conservation and Recovery Act, certain provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, and the Clean Air Act. Congress specifically recognized the importance of these penalties when it passed the Federal Facility Compliance Act of 1992.

During the past several months I've received letters on this issue from environmental and state organizations, as

well as the Statement of the Administration's strong opposition to this provision. I ask unanimous consent that copies of these letters be printed in the RECORD.

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

June 6, 2000.

DEAR SENATOR: On behalf of millions of our members nationwide, we urge you to support the Kerry amendment to strip an extremely damaging legislative provision included in the National Defense Authorization bill for fiscal year 2001 (sec. 342 of S. 2549). This provision would make a permanent change in the law that could delay and even block DOD from having to pay civil penalties for environmental violations occurring at DOD facilities. We strongly urge you to support this effort to remove it from the authorization bill this year.

Section 342 of the authorization bill would require specific congressional authorization for the payment of environmental fines and penalties that exceed \$1.5 million, or those that are based on the application of economic benefit or size-of-business criteria. This provision also would block the use of funds to implement supplemental environmental projects that may be required as part of, or in lieu of, a proposed civil penalty. Section 342 would negate the current law that requires that the DOD pay fines and penalties assessed by state and federal regulatory agencies for violations of environmental laws just like every other federal agency or private party that violates the law. This provision has far-reaching ramifications and yet has not had the benefit of any public hearings to allow the Congress to examine the full impacts of the action.

This provision was added specifically in response to a large environmental fine proposed by the U.S. Environmental Protection Agency at Fort Wainwright, Alaska. At Fort Wainwright, the Army operates the largest coal burning power plant owned by the U.S. military. According to EPA documents, violations at this facility appear to be more extensive than any found to date in private coal-fired power plants. The Fort Wainwright facility clearly should pay state and federal penalties for at least 11 years of continual and serious violations of clean air standards (which may have even given rise to at least one criminal investigation by the Army). The Kerry amendment would also require a General Accounting Office report to Congress on the circumstances surrounding the Fort Wainwright facility.

Section 342 would undermine years of progress at federal, state and local levels towards improved environmental compliance by federal agencies. Congress has repeatedly declared that both state and federal environmental regulators should have the clear authority to enforce most environmental laws at federal facilities, including Defense Department installations. For example, in 1992 Congress enacted the Federal Facilities Compliance Act, clarifying regulatory agencies' authority to enforce laws governing the treatment, storage, disposal, and cleanup of hazardous wastes. In signing that law, President Bush noted that it represented a step towards fulfilling his promise to the American people that "the Federal Government live up to the same environmental standards that apply to private citizens." Implementation of Section 342 could severely undermine this trend towards better compliance and likely will result in increased violations.

This provision could create a perverse incentive for the military to incur large fines so that it can seek respite from Congress.

Additionally, without the threat of economic benefit fines, DOD would have less incentive to comply with state and federal environmental laws and be more likely to divert resources that should be spent on environmental compliance to other military projects. Military facilities will be above the law—eroding public confidence in government. Dan L. Crippen, the Director of the Congressional Budget Office (CBO), found that since 1994 the DOD has paid over \$14 million in fines—most of which have been paid to state and local governments. The CBO also found that this program "will likely delay payment of some fines" and could "make it more difficult for state and local governments to negotiate for compliance with environmental laws."

This provisions impairs a valuable tool that states have used to improve environmental protection and derails the current trend toward federal facility accountability. Creating a special exemption for DOD from penalties for environmental violations sends the message that this federal agency can ignore and discount the laws by which everyone else must abide. Because of the serious ramifications for federal accountability and protection of the environment and public health, we strongly urge you to oppose Section 342 of the FY 2001 National Defense Authorization bill and support the Kerry amendment to strike it.

Sincerely,

Robert Dewey, Vice President of Government Relations and External Affairs, Defenders of Wildlife; Courtney Cuff, Legislative Director, Friends of the Earth; Faith Weiss, Legislative Counsel, Natural Resources Defense Council; James K. Wyerman, Executive Director, 20/20 Vision; Aimee R. Houghton, Associate Director, Center for Public Environmental Oversight; Joan Mulhern, Legislative Counsel, Earthjustice Legal Defense Fund; Betsy Loyless, Political Director, League of Conservation Voters; Anna Aurilio, Staff Scientist, U.S. Public Interest Research Group; Cindy Shogan, Alaskan Wilderness League; Dan L. Astott, President, AMAC; The AuSable Manistee Action Council; Craig Williams, Director, Chemical Weapons Working Group, Berea, KY; Peter Hille, Chairman, Kentucky Environmental Foundation, Berea, KY; Theresa Freeman, Executive Director, Military Toxics Project; Elizabeth Crowe, Director, Non-Stockpile Chemical Weapons, Citizens Coalition, Berea, KY; Carol Jahnkow, Executive Director, Peace Resource Center of San Diego; Marylia Kelly, Executive Director, Tri-Valley CAREs (Communities Against a Radioactive Environment), Livermore, CA; Naomi Shultz, Steering Committee, Common Ground, Berea, KY; DelMar Callaway, Community Co-Chair, McClellan AFB RAB; Walter R. Stochel, Jr., Edison, NJ; Richard Hugus, Otis Conversion Project, Falmouth, MA; Peter Strauss, President, PM Strauss & Associates, San Francisco, CA.

NATIONAL GOVERNORS' ASSOCIATION
NATIONAL ASSOCIATION OF ATTORNEYS
GENERAL
NATIONAL CONFERENCE OF STATE
LEGISLATURES

May 18, 2000.

Hon. TED STEVENS,
U.S. Senate, Washington, DC.
Hon. ROBERT C. BYRD,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR BYRD: We, the undersigned, are writing in opposi-

tion to a proposal we understand might be offered for inclusion in the FY 2001 Defense Appropriations bill and which would require Congressional approval for payment of large environmental penalties issued against the Department of Defense. This proposal would be similar to the language in the FY 2001 defense authorization bill. Section 342 of Subtitle E. This provision would, if enacted, limit the waiver of sovereign immunity enacted by Congress in the 1992 Federal Facilities Compliance Act and the 1996 Safe Drinking Water Act Amendments, among other laws and continues an unfortunate policy created in last year's Appropriations law.

The language proposed would prohibit payment of large fines or penalties for violations of environmental laws at military installations from funds appropriated in the bill unless authorized by Congress. Such a proposal has the unfortunate effect of intersecting the legislature into what should be an independent system of law enforcement operated by the states and other environmental regulators. This approach to environmental regulation undermines the ability of states to use the threat of penalties as a means of forcing federal facilities to take responsibility for the environmental consequences of their operations.

The fact that this language applies only to large penalties is of little comfort. The federal government is the nation's largest polluter and military installations are a major contributor to that pollution. The threat of significant penalties can only be an effective deterrent to environmental violations where the penalty may be potentially proportional to the cost of compliance. A requirement for Congressional approval of penalties of a certain size unduly limits the ability of states to use this threat to effectively regulate the Department of Defense.

Congress recognized the importance of penalties in 1992 when it enacted the Federal Facilities Compliance Act clarifying the waiver of sovereign immunity in the Resource Conservation and Recovery Act. With the aid of the Federal Facilities Compliance Act and vigilance by states and other environmental regulators, we are finally making progress toward changing the attitude toward environmental compliance at federal facilities. We urge you to oppose any proposal that weakens the ability of states to continue to assess fines and penalties in whatever levels are determined by the states as necessary to ensure compliance.

Sincerely,

CHRISTINE GREGORIE,
Attorney General of
Washington, Presi-
dent, NAAG.

KEN SALAZAR,
Attorney General of
Colorado, Co-Chair,
NAAG Environ-
mental Committee.

GOVERNOR KENNY C. GUINN,
State of Nevada, NGA
Chair, Committee on
Natural Resources.

SENATOR BEVERLY GARD,
Indiana State Senate,
Chair, NCSL Envi-
ronment Committee.

EXECUTIVE OFFICE OF THE PRESI-
DENT, OFFICE OF MANAGEMENT
AND BUDGET,

Washington, DC, June 6, 2000.

STATEMENT OF ADMINISTRATION POLICY

S. 2549—NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2001

The Administration supports prompt congressional action on the national defense authorization bill for FY 2001 and appreciates

the Armed Services Committee's support for many of the President's national defense priorities. S. 2549, however, raises serious budget, policy, and constitutional concerns as outlined below in the SAP and in the attachment.

ENVIRONMENTAL PROVISIONS

The Administration strongly opposes section 342, which would require DOD to obtain specific authorization to comply with environmental fines and penalties assessed against the Department. The Administration is opposed to any limitation on the ability of DOD to pay fines or penalties it is liable for under law. This provision could erode public confidence in the commitment of DOD to comply with environmental laws. The Administration also believes that all Federal agencies should be held fully accountable for environmental violations and should be held to the same standards as the private sector.

Mr. LAUTENBERG. Mr. President, these letters are opposed to authorization or appropriation language that limits the importance of penalties in deterring environmental violations.

In fact, the letter signed by twenty-one environmental groups states "Creating a special exemption for DoD from penalties for environmental violations sends the message that this federal agency can ignore and discount the laws by which everyone else must abide."

My final point is that every time the Senate Environmental and Public Works Committee has raised this topic in hearings, the Committee has leaned toward expanding the role of fines and penalties in enforcing environmental laws at federal facilities. They did that so federal, state, and local governments would have all the tools they need to make sure all federal facilities comply with health and environmental laws.

Finally, as the Administration pointed out, "all federal agencies should be held fully accountable for environmental violations and should be held to the same standards as the private sector."

That is precisely what the Kerry amendment would do and I urge my colleagues to support it.

Mr. STEVENS. I urge the adoption of the amendment.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 3815) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

AMENDMENT NO. 3794

Mr. BYRD. Mr. President, the China trade measure which passed the House eliminates the annual congressional renewal of most-favored-nation treatment of China, and gives China permanent normal trade relations with the United States. This legislation has not

yet been scheduled for action on the Senate floor, yet there is already a concerted effort to defeat any amendments by Senators which might deviate from the provisions of the bill as passed by the House. The fear is that a different Senate version would require a conference committee, and another House vote, both of which may make it more uncertain that the legislation will be enacted this session.

Given this situation, which is an obvious egregious deviation from the traditional role of the Senate in foreign affairs, those of us who believe that the House bill can be improved must find a way to pass separate legislation which still addresses matters of importance in the burgeoning U.S.-Chinese trade relationship. There is one particular area, in which I believe the House bill and the amendments passed to it, are silent, and cry out for some adequate treatment, and that is in the area of national security. The administration argued in getting enough votes for its China trade bill in the House, that it is in the national security interest of the United States to pass the bill. I do not believe that for one moment. That is quite an assertion given the brutal Communist dictatorship in China, which systematically violates the agreements it has signed with us, and which routinely pressures U.S. firms to hand over key technologies as the price for doing business in China. This is the same Chinese dictatorship which talks about financial war with the United States, and which periodically intimidates Taiwan with threats of invasion. This is the same Chinese dictatorship which hunts down dissenters, hunts down free expression, and religious organizations with a club.

Despite this assertion, there is no mechanism to thoroughly and regularly assess the national security impacts on, and implications of, the developing trading relationship with China. The huge trade and dollar surpluses that are amassed by the Chinese Government and the tensions between the United States and China on trade and national security issues, as well as on human and labor rights, need informed and periodic review. There are those who argue that our annual debate over renewal of most-favored-nation treatment of China did not amount to much because we never failed to renew MFN. However, annual MFN review was of great importance to the Chinese Government, since it certainly provided a regular open window to expose questionable Chinese trading, human rights, military, and other policies to a wide audience.

Such monitoring and regular reporting to Congress from a reliable source is particularly important in an era where massive and unbalanced trade flows are certain to continue, and where, because of China's membership in the WTO, U.S. bilateral leverage and congressional authority under the commerce clause have been severely reduced. I would contend that the U.S.-

Chinese relationship is likely to be of enduring concern to this body. Surely, the national security implications of that relationship, the impacts of massive trade deficits which now approach some \$70 billion a year, the voracious appetite of the Chinese Government for military technologies, and the pressures it brings on our Asian allies are important to us. The implications of systematic unfair trade practices by the Chinese Government, of dumping into our markets, of not enforcing and not complying with agreements they have signed with us, and of pressuring Western companies to hand over important technologies as a price for doing business in China and as a quid pro quo for being able to relocate and invest in China, should be of concern to the elected representatives of the American people.

The chief Chinese imports from the United States are primarily sophisticated manufactured products, like aircraft, telecommunications equipment, and semiconductors. Many of these technologies have multiple uses, both civilian and military. China's development effort is heavily dependent on Western companies as sources of capital and technology. There are some who contend that the large surpluses, as well as the capital, and many technologies are being funneled to a concerted effort to fuel a military buildup which the Chinese could not otherwise muster. There are those who contend that we are unwittingly giving the Chinese the tools to intimidate Taiwan, our democratic friend, and our other Asian allies, such as Thailand, South Korea, Japan, and the Philippines.

Chinese military officers have recently written about the need to practice financial war, cyber war, and other economic and technologically sophisticated means of affecting the security relationship with the United States. Given the technological prowess of the United States in prosecuting the Gulf War and the Kosovo conflict, the Chinese have been reportedly alarmed regarding the obsolescence of their military machine and their military practices. The standing armies, upon which they have traditionally relied, cannot perform effectively against the new weaponry demonstrated by the United States in those conflicts. There are those in China who believe that their long-term interests lie in competition and possibly confrontation with the United States, and thus in order to compete they must rapidly acquire a range of technologies and expertise that is only available from Western firms. Are we unwittingly supplying those factions in China with the means to confront us? Certainly our own self-interest would dictate that we need to monitor these trends systematically and periodically and that is the purpose of the Byrd-Warner amendment.

I think that it is only prudent that we provide for an annual systematic review and a report to the Congress on the full range of national security implications engendered by the increased

trade and investment relationship with China. The House has a commission in its China trade bill, an executive-legislative commission to monitor a staggering range of human rights and democracy-building reforms in China. It has a full plate of responsibilities. While this sort of monitoring is certainly important, no less important should be the existence of a congressional commission to focus on the national security relationship between our two nations. The President has argued that it is in our national security interest to further open and widen our trading relations with China. That proposition should be regularly tested by an independent commission, which has the narrow mandate of monitoring our growing bilateral relationship with an eye toward United States security concerns.

The Congress last year created a 12-person commission, equally divided between Republicans and Democrats, to examine our growing negative trade balance. The Trade Deficit Review Commission will likely finish its work in a few months, with a report to the Congress and the President, on the implications of our global deficits, recommending new practices, institutions and policies. It has already conducted hearings and studies on the Chinese relationship. Mr. WARNER and I suggest that this same commission is an appropriate tool, extended and refocused, to conduct an annual Chinese assessment and review. Such a refocused commission would serve as a good companion to the one proposed by the House bill on human rights and democratic reforms in China. Its existence and assessments would certainly help to repair the dangerous erosion of congressional involvement in, and leverage over, foreign commerce envisioned as essential to our national well being by the framers. It would help to replace congressional monitoring of China resulting from her accession to the World Trade Organization, in an area critical to the deeply rooted constitutional responsibilities of this body.

That is the purpose of the amendment which Senator WARNER and I and other Senators have offered. In summary, the commission would review the national security implications of our trade and investment relations with China, including the following elements:

One, the portion of trade in goods and services dedicated by the Chinese Government to military systems;

Two, an analysis of the statements and writings of Chinese officials bearing on the intentions of the Chinese Government regarding military competition with and leverage over the United States and its Asian allies;

Three, the military actions taken by the Chinese Government over the preceding years bearing on the national security of the United States and its Asian allies;

Four, the acquisition by the Chinese Government of advanced military tech-

nologies and systems through U.S. trade and Chinese procurement policies;

Five, the use of financial transactions, capital flows, and currency manipulations to affect the national security of the United States;

Six, actions taken by the Chinese Government in the context of the WTO which are adverse to U.S. national security interests;

Seven, an overall assessment of the state of any security challenges to the U.S. by the Chinese Government and whether the trend from previous years is increasing or declining; and finally, the commission would also provide recommendations for action, including any use of the national defense waiver provision that already exists in the GATT Treaty, and applies to the WTO. This article, article 21 of the GATT, has never been used by any nation state, but remains available to be triggered if the Congress finds some aspect of our growing relationship with China on the trade account which adversely affects our national security and needs to be stopped or somehow moderated.

In addition to these matters, there is also growing concern over the activities of China in transferring missile technologies to other nations, affecting the security of the United States and, also, our Asian allies. The proliferation of such technologies to Pakistan is the subject of ongoing discussions between the United States and the Government of China. Unfortunately, the Chinese have given no sign that they intend to halt their highly dangerous trade in missile technologies and components.

Many Senators have expressed their concern over this practice, including the distinguished Senator from Tennessee, Mr. THOMPSON, and the distinguished Senator from New Jersey, Mr. TORRICELLI. It is my intention, and my expectation, and it is the intention of my very close and dear colleague, Senator WARNER—it is our intention and expectation that the U.S.-China Security Review Commission will investigate, report and make recommendations on Chinese trade in missile components, which affects our long-term security and that of our Asian allies. In this amendment by Mr. WARNER and myself, both paragraphs (E), dealing with military actions taken by the Chinese Government, and (J), requiring an overall assessment of the state of the security challenges presented by China to the United States provide ample mandate to the commission to conduct such investigations on a regular basis.

I will be happy to yield the floor to my colleague, Mr. WARNER.

I cannot yield the floor to another Senator. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I am, indeed, very honored to be a principal cosponsor with my friend and fellow member of the Armed Services Committee on this piece of legislation. This is a very important step. China should

not perceive this as a threat. China should not perceive this in any other way than a positive step by the Congress to establish or keep in place this ongoing commission for the purpose of advising the Congress from time to time.

We do not have as individual Members—of course, our committees perform oversight, but we do not have an opportunity, on a daily or weekly basis, to monitor the various criteria as set forth in the Byrd-Warner legislation. This commission will, again, be established by the Congress with six Members appointed by the Senate and six Members appointed by the House in a bipartisan manner, and it will be the watchdog to inform us from time to time.

China in this millennium will compete with the United States, the world's only superpower, on a broad range of fronts—not just foreign affairs, not just national security, not just trade and economics, but in areas which we cannot even envision tonight, as this new millennium unfolds and this cyberspace in which we are all involved engulfs us day after day. The distinguished Senator from West Virginia pointed out some representations by certain individuals in China about their desire to get more involved in cyberspace for national security reasons. That is one of the important functions of this commission.

I am very pleased to join with him because China will be the competitor. The Senate and the House—the Congress collectively—needs its own resource, and I underline that. I commend my distinguished colleague and friend from West Virginia.

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

Mr. WARNER. Yes.

Mr. BYRD. Otherwise, the Congress is at the mercy of an administration—the administration—for information.

Mr. WARNER. That is correct.

Mr. BYRD. In this case, this commission will report to the Congress, so we do not have to depend upon information from the Executive; we have our own.

Mr. WARNER. Of course, Mr. President, from time to time, committees of this body—indeed, the Committee on Foreign Relations, the Committee on Armed Services, the Governmental Affairs Committee—take active roles, but they do not do it every single day as this commission will monitor, together with the chairman and members and the staff.

Mr. BYRD. Yes.

Mr. WARNER. I yield the floor.

Mr. ROTH. Mr. President, I rise today in opposition to the amendment offered by my distinguished colleague from West Virginia, Mr. BYRD. I do so because the commission created by this legislation is, in my view, flawed. That is why I tried to work with my good friend from West Virginia to address the concerns that I am raising. Unfortunately, we were unable to come to an

agreement. For the following reasons, I must oppose this amendment and I urge my colleagues to do the same.

First, let me say that if my colleague's intent is to establish a commission to provide sound advice to Congress regarding our broader relationship with China and its effect on our national security, then there are ways to create a meaningful mechanism for doing just that. One, for example, would have been to build the Senator's concerns into the quadrennial defense review required under previous versions of the National Defense Authorization Act. By giving the responsibility to a standing body like the National Defense Panel that already conducts the quadrennial defense review, we would have saved the taxpayers' money, while getting the benefit of the unchallenged expertise of many of the foremost authorities on our national security and on military matters. And, we would have put the report in Congress' hands by next spring.

Instead, my colleague has adopted an approach I have not seen in my years in the Senate. He wants to take the commissioners, staff and clerical personnel of a commission constructed for very different purposes and employ it to look at our security relationship with China. That commission—the Trade Deficit Review Commission—is staffed with commissioners and staff appointed due to their expertise in economic policy. Frankly, this is simply the wrong group to undertake a serious review of the impact on our national security of our relationship with China. And, there is absolutely no benefit in terms of accelerating the progress toward a final report when compared to giving the responsibility to the National Defense Panel.

I must say that I do not understand my friend's interest in perpetuating the life of the Trade Deficit Review Commission for this task. The Trade Deficit Review Commission is already overdue in providing us its report on the trade deficit. My expectation when we created that commission was that we would have had its work product by now. Instead, my colleague recently supported a three-month extension so the Trade Deficit Review Commission could complete its now amply-delayed report. In my view, we should let the Trade Deficit Commission complete its existing work, rather than burdening it with new responsibilities, even if only administrative in nature, before it has completed its primary task.

Second, I am concerned that the way the issues as stated in my friend's bill could be read to imply that the United States already considers China an enemy and a threat to our national security. China clearly is an emerging force in the international arena. In many ways, China's emergence could be beneficial to the United States. There are, nonetheless, concerns, which I share, regarding the PRC's behavior on security-related matters. Those issues bear careful scrutiny.

Having said that, it should also be clear that the shape and direction of the relationship between our countries is evolving and remains to be shaped. What that suggests is the need for a thoughtful, comprehensive and, most importantly, balanced review of the security implications of our bilateral relationship with China. That is, in fact, what I suggested to my colleague we should do.

Third, I offered my friend my thoughts on the technical changes needed to make the commission's job clear. I worry, however, that, as it stands now, the commission's duties will be extremely difficult for any commissioner to decipher. For example, the proposed commission is supposed to examine the "portion of trade in goods and services that the People's Republic of China dedicates to military systems or systems of a dual nature that could be used for military purposes." The problem is no country dedicates its trade to military systems. That is simply not a meaningful concept. I am not even sure what a "system of a dual nature" is? It is, furthermore, literally impossible for a country to dedicate a portion of a trade surplus to its military budget because a trade surplus is not cash in hand, as the proposal implies.

Similarly, the proposal simply misunderstands the nature of the World Trade Organization and particularly Article XXI if it asks for recommendations as to how China's participation there would harm us or whether Article XXI should be more frequently invoked. What the WTO provides is a forum in which to negotiate the reduction of tariffs and other trade barriers. What do we have to fear from China lowering its trade barriers in national security terms? As to Article XXI, that provision is invoked when we do something to China in trade terms, not when China does something to us.

That leads me to my final point. What the statement of the proposed commission's duties makes clear, and what I object to most strongly to, is its premise. There are many issues that I could conceive of addressing in a serious, comprehensive and balanced review of our security relationship with China. Issues related to regional stability and weapons proliferation to name just two. But, what this amendment suggests is that our commercial engagement with China somehow threatens our national security interests—that in some way, the fact that we buy toys and appliances from the Chinese, and the fact that they buy agricultural products and heavy equipment from us endangers the American people. That is simply not the case.

Nor is there anything about China's upcoming accession to the World Trade Organization that makes such a review any more relevant. After all, China has committed to open its market to our goods and services to gain entry to the WTO. China's accession to the WTO does nothing to reduce our security. If

anything, it reduces a point of friction in our relationship with China in a way that is only positive.

Under the circumstances, I cannot support the creation of a permanent commission with an uncertain mission that would not reach many of the fundamental issues that should be addressed in our relationship with China. I urge my colleagues to oppose the amendment as well.

Mr. BYRD. Mr. President, will the clerk read the other cosponsors of the amendment, in addition to Mr. WARNER and myself.

The PRESIDING OFFICER. The clerk will read the names.

The assistant legislative clerk read as follows:

Mr. BYRD, for himself, Mr. WARNER, Mr. LEVIN, Mr. HOLLINGS, Mr. HELMS, Mr. BREAUX, Mr. HATCH, Mr. CAMPBELL, Mrs. LINCOLN, and Mr. WELLSTONE.

Mr. BYRD. I thank the Chair, and I thank the clerk.

Mr. President, I ask for a vote on the amendment.

Mr. WARNER. Mr. President, with the concurrence of my distinguished senior colleagues, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3794.

The amendment (No. 3794) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3767, as amended.

The amendment (No. 3767), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. WARNER. I thank the Chair.

Mr. BYRD. Do we not wish to proceed on the vote on the amendment in the first degree, as amended?

The PRESIDING OFFICER. We have agreed to the first and the second-degree amendments.

Mr. BYRD. I thank the Chair. I thank all Senators. And I thank my colleague, Mr. WARNER.

Mr. WARNER. I thank my colleague, the senior Senator from West Virginia.

Now, from the unanimous consent agreement, the distinguished Senator from Wisconsin is to be recognized.

AMENDMENT NO. 3759

(Purpose: To terminate production under the D5 submarine-launched ballistic missile program)

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I call up amendment No. 3759 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself, Mr. HARKIN, Mr. WELLSTONE, and Mr. WYDEN, proposes an amendment numbered 3759.

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

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

The amendment is as follows:

On page 31, between lines 18 and 19, insert the following:

SEC. 126. D5 SUBMARINE-LAUNCHED BALLISTIC MISSILE PROGRAM.

(a) **REDUCTION OF AMOUNT FOR PROGRAM.**—Notwithstanding any other provision of this Act, the total amount authorized to be appropriated by this Act is reduced by \$462,733,000.

(b) **PROHIBITION.**—None of the remaining funds authorized to be appropriated by this Act after the reduction made by subsection (a) may be used for the procurement of D5 submarine-launched ballistic missiles or components for D5 missiles.

(c) **TERMINATION OF PROGRAM.**—The Secretary of Defense shall terminate production of D5 submarine ballistic missiles under the D5 submarine-launched ballistic missile program after fiscal year 2001.

(d) **PAYMENT OF TERMINATION COSTS.**—Funds available on or after the date of the enactment of this Act for obligation for the D5 submarine-launched ballistic missile program may be obligated for production under that program only for payment of the costs associated with the termination of production under this Act.

(e) **INAPPLICABILITY TO MISSILES IN PRODUCTION.**—Subsections (c) and (d) do not apply to missiles in production on the date of the enactment of this Act.

Mr. FEINGOLD. Mr. President, quite simply, this amendment will terminate the future production of the Navy's Trident II missile. I am pleased to be joined in this effort by the Senator from Iowa, Mr. HARKIN, the Senator from Minnesota, Mr. WELLSTONE, and the Senator from Oregon, Mr. WYDEN.

I have made it a priority to seek to eliminate unnecessary Government spending. To the occasional consternation of some in this Chamber and elsewhere, I have come to the floor time and time again to try to scale back or terminate costly Federal programs, many of which have outlived their usefulness.

In my view, the Trident II program is just the kind of cold war relic that we can and should eliminate.

The Trident II, also called the D-5, is the Navy's submarine-launched ballistic missile. It was designed specifically to be a first-strike strategic missile that would attack targets inside the Soviet Union from waters off the continental United States.

By halting further production of the Trident II missile, we would save American taxpayers more than \$460 million in fiscal year 2001 alone, and according to the CBO, we would save \$2.6 billion over the next 10 years, from 2001 to 2010.

The Navy now has in its arsenal 372 Trident II missiles, and has requested

funding this year for an additional 12. The legislation currently before this body includes more than \$430 million for those additional 12 missiles.

It also authorizes an additional \$28.8 million for advanced procurement for still more Trident II missiles that the Navy hopes to purchase in future years.

Let me be clear. My amendment would halt production of additional Trident II missiles. It does not in any way prevent the Navy from operating or maintaining its current arsenal of 372 Trident II missiles.

I would like to take a moment to talk about the Trident II, its predecessor, the Trident I, and the reasons why I believe this Trident II program should be terminated.

The Trident II is deployed aboard the Navy's fleet of 18 Ohio-class submarines. Ten of these subs are equipped with Trident II missiles. The oldest eight subs in the fleet are equipped with the older Trident I, or C-4, missile.

The Navy is already moving toward downsizing its Trident fleet from 18 to 14 in order to comply with the provisions of the START II treaty. Some observers suggest simply retiring the four oldest Ohio-class submarines in order to achieve that goal. Others support converting those subs, which carry the older Trident I missile, to carry conventional missiles. The CBO estimates that this conversion alone would cost about \$3.3 billion over 10 years.

That leaves four other submarines that are equipped with the older Trident I missiles. The Navy wants to backfit those four subs to carry newer Trident II missiles.

The Navy's current goal is to have 14 submarines with 24 Trident II missiles each, for a total of 336 missiles, with a number of additional missiles for testing purposes. The CBO estimates that a total of 425 missiles would be required to fully arm 14 submarines and have sufficient missiles also for testing. That would mean the purchase of at least 53 more missiles.

We already have 372 Trident II missiles—more than enough to fully arm the 10 existing Trident II submarines and to maintain an inventory for testing. So why do we need 12 more?

Why do we need to spend the taxpayers' money on advanced procurement to buy even more missiles in future years?

And why do we need to backfit the aging remains of the Trident I fleet at all? Ten fully-equipped Trident II submarines are more than capable of being an effective deterrent against the moth-balled Russian submarine fleet and against the ballistic missile aspirations of rogue states, including China and North Korea.

And the aging Trident I subs won't outlast the Trident I missiles they currently carry, let alone the additional Trident II missiles the Navy wants to build for them to the tune of about \$40 million per missile.

The CBO has recommended terminating the further production of the Trident II missile, which would save \$2.6 billion over the next 10 years, and retiring all eight of the Trident I submarines, which would save an additional \$2.3 billion over the next 10 years, for a total savings of \$4.9 billion.

I do recognize that there is still a potential threat from rogue states and from independent operators who seek to acquire ballistic missiles and other weapons of mass destruction. I also recognize that our submarine fleet and our arsenal of strategic nuclear weapons still have an important role to play in warding off these threats. Their role, however, has diminished dramatically from what it was at the time of the cold war. Our missile procurement decisions should really reflect that change and it should reflect the realities of the post-cold-war world.

Our existing inventory of 372 Trident II missiles is far superior to any other country on the globe. And each of these missiles contains eight independently targetable nuclear warheads, for a total of 192 warheads per submarine. The 372 missiles currently in the Navy's inventory contain 2,976 warheads. Each warhead packs between 300 to 450 kilotons of explosive power.

For a comparison—which is really quite striking—the first atomic bomb that the United States dropped on Hiroshima generated 15 kilotons of force. Let's do the math for just one fully-equipped Trident II submarine.

Each warhead can generate up to 450 kilotons of force. Each missile has eight warheads, and each submarine has 24 missiles. That equals 86.4 megatons of force per submarine. That is the equivalent of 5,760 Hiroshimas. Let me say that again: the power of 5,760 Hiroshimas on just one submarine.

The Navy currently has 10 such submarines, and they want to backfit another four with these devastating weapons. It is hard to imagine why we need to procure more of these weapons when those we already have could destroy the Earth many times over.

And it is especially hard to comprehend why we need more Trident II missiles when we take into account the fact that the Trident II is only one of the several types of ballistic missiles the Department of Defense has in its arsenal.

The world is changing. Earlier this year, the Russian Duma ratified the START II treaty, a move that seemed highly unlikely just 1 year ago. And Russia has also ratified the Comprehensive Nuclear Test Ban Treaty, something that this body regrettably failed to do last fall.

I cannot understand the need for more Trident II missiles at a time when the Governments of the United States and Russia are in negotiations to implement START II and are also discussing a framework for START III. These agreements call for reductions in our nuclear arsenal, not increases. To spend scarce resources on building

more missiles now is short sighted and could seriously undermine our efforts to negotiate further arms reductions with Russia.

The debate on the underlying legislation is one about priorities. We should stop spending taxpayer dollars on defense programs that have unfortunately survived the cold war and should instead concentrate on military readiness and better pay and benefits for our men and women in uniform.

So I urge my colleagues to support this sensible amendment, which has been endorsed by Taxpayers for Common Sense, the Center for Defense Information, the Peace Action Education Fund, the Union of Concerned Scientists, the Council for a Liveable World, Physicians for Social Responsibility, and the 20/20 Vision Education Fund.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. FEINGOLD. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise in opposition to the Feingold amendment. I happen to believe we need a strong national defense. I think an important ingredient in having a strong national defense is that we have a defense system that is technologically advanced over any opposition we may face in the world; that we have a versatile defense system; and that we have some mobility so we can avoid duplication.

A key ingredient of a strong national defense is our submarine program, which includes the submarine-launched ballistic missile. An important part of a submarine-launched ballistic missile is the D-5.

The Feingold amendment would cut \$462.7 million in funds to procure the Trident D-5 missiles and, in effect, would terminate the D-5 production program. For that reason, I strongly oppose this amendment.

The Department of Defense also happens to oppose this amendment. That was not an easy decision. There was a lot of consideration on what should be the proper level of defense and how submarine defenses should be a part of that. The Navy, after a considerable amount of thought, decided they needed to outfit a total of 14 Trident submarines with the D-5 missile. This will require a total inventory of 425 Trident missiles. With the fiscal year 2000 budget, the Navy will have 53 missiles left to procure to meet this inventory objective. We have gone through most of the program. We are not going to have much left, as far as funding missiles, after this fiscal year.

In 1994, there was a nuclear posture review. This review was done by the Department of Defense and it has been persistently evaluated. The conclusion

is that the U.S. needs 14 Trident submarines at a minimum to be able to maintain a two-ocean SLBM force that is stabilizing, operationally effective, and which enhances deterrence.

The Department of Defense is planning on maintaining 14 Trident submarines for the foreseeable future regardless of arms control developments. Current plans are to maintain 14 boats under START II as well as under START III. Terminating the D-5 program, after fiscal year 2000, would mean the Navy would only have enough missiles to outfit 11 boats. Over time, as operational flight testing uses up an already inadequate missile inventory, you begin to reduce the number of submarines you would be able to maintain on operational status even further. We would decidedly have a lack of missiles to meet the goal for a two-ocean SLBM force.

The Feingold amendment cuts the entire fiscal year 2001 budget request for D-5 production. However, even if the Congress wanted to terminate the D-5 program following the fiscal year 2001 procurement, the Navy would still need to spend over \$330 million in procurement funds to terminate the production program. Hence, the Feingold amendment would not only prematurely stop production, but it would also preclude orderly termination of the program.

Way back in January of this year, in a report to Congress, the Secretary of Defense stated that the impact of procuring less than 425 of the D-5 missiles would be very severe. Specifically, the Secretary of Defense indicated that such a decision would have adverse impacts on the effectiveness of the U.S. strategic deterrent, severely weaken reliability, accuracy, and safety assessments associated with the D-5 operational flight test program, and would undermine the strategic missile industrial and production base of the United States at a time when the D-5 missile is the only strategic missile still in production.

The Secretary's report also indicated that termination of the D-5 missile before the planned completion of 425 missiles would result in a unilateral reduction of deployed U.S. strategic warheads in both the START I and the START II regimes and is not consistent with U.S. START III plans.

The Navy also looked at retaining older C-4 missiles to fill in the lack of the D-5 missiles. It concluded that this would be even more costly and inefficient than simply completing the D-5 production run.

With only 53 missiles to procure, termination at this point will produce only marginal savings and will have a severe operational impact on our ability to maintain a stable deterrent force.

It is based on these factors that I strongly urge my colleagues to oppose the amendment by the Senator from Wisconsin.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I appreciate the opportunity to debate this with the Senator from Colorado. I will clear up a couple of factual points before I make a few general statements.

First, as I understand it, the question of termination costs will not be a problem that will be absorbed because of this amendment, because any unexpended funds can be used for purposes of the termination costs. I don't think that is a major objection.

Secondly, I believe the Senator suggested this would have some impact on missiles already in production. That is not the case. That is not the way our amendment is drafted. That is not what it will do.

The most important point is that the Senator from Colorado indicates that these missiles are a key ingredient in our national defense. Let's assume that is the case. The fact is, we already have 372 of these missiles. I believe the burden is on those asking for this additional funding to show that that is not enough.

Assuming it is a key ingredient, do we really need more than 372? Do we really need these additional 53 missiles? As I indicated earlier, we have 2,976 warheads based on our current 372 missiles, and that is the equivalent of 25,760 Hiroshimas per submarine. I think the burden is on those wanting to spend this additional money to show that we need a stronger deterrent than that.

The Senator from Colorado suggested adverse impacts on deterrence if we don't do these additional 12. After 25,760 Hiroshimas per submarine, we need additional deterrence? I didn't hear a single statement from the Senator from Colorado suggesting exactly what the real adverse impacts are of just not doing these additional missiles.

I suggest the money is desperately needed not only in general but, even within the defense budget, for the people who serve our country, their pay, their conditions, their housing, readiness, including that of the National Guard, for example. In my State, the people in the National Guard desperately need these resources, for example, for inventory, for training. They are very strapped. They are now taking a great deal of responsibility for our standing Army. To me, the priorities are wrong. We have more than adequate deterrence with these 372 missiles.

I suggest the case has not been made, as it must be, by those who want to make the expenditure for these additional missiles.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I will respond, if I may.

The amendment cuts funds which would require termination of the program, plain and simple. DOD has repeatedly reviewed that very question.

Each time they have concluded we need 53 additional missiles.

Keep in mind, the goal originally was set up that we needed to maintain a submarine force in the Pacific Ocean as well as the Atlantic Ocean. It was determined that, at a minimum, we had to have 14 submarines, and we needed to have them adequately armed in order to provide the defenses we need.

The Trident submarine is the core of the U.S. strategic deterrent force, and the Trident force is the most survivable leg of our strategic triad.

I think it is important we go ahead and complete this program, recognizing that we are towards the end of manufacturing of the missiles.

I think it only makes sense that we complete it and maintain a strong defense. I believe a strong defense does serve as a deterrent, and it helps assure world peace. For that reason, I strongly oppose the amendment of the Senator from Wisconsin.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin has 3 minutes 25 seconds.

Mr. FEINGOLD. Mr. President, I don't know how much more I will debate this. I want to respond to the point about the study and analysis that the Senator from Colorado appears to rely on most exclusively. That analysis was done prior to the time the Russian Duma approved START II. This is an example. It is not looking at the present relationship we have and our goals with regard to Russia and the future negotiations, not only with regard to what is going on now, but with START III.

The whole point is that we have to look at current realities, look at what we have—372 missiles—and their capacity, and our goals as to what message we want to send to Russia as we negotiate what is hoped to be a reduction in the nuclear arsenals. I think it is simply not only an unwise expenditure, but also an attitude that does not reflect what we are trying to accomplish with regard to our negotiations with Russia.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I believe I need to respond again. We have had a report as late as January of this year, and it is that we should maintain 14 Trident submarines not only through START I and II, but also START III. So I think this is forward looking. I think it helps us assure our goals of a strong defense. It maintains a versatile force and keeps us technologically advanced, with the mobility we need. I think it is an essential aspect of our defense, and I think it would be foolhardy for us to cut the funds necessary to fully develop the 425 D-5 missiles for the Trident submarine.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I yield back the remainder of my time.

Mr. ALLARD. Mr. President, I yield back the remainder of our time on this side.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, might I inquire? I was off the floor. Have the yeas and nays been ordered for tomorrow?

The PRESIDING OFFICER. Yes, that is correct.

Mr. WARNER. It is ready to be sequenced tomorrow for the purpose of voting?

The PRESIDING OFFICER. Yes.

Mr. WARNER. I thank the Senators. We are now ready to hear from our distinguished colleague from Illinois, if he is ready.

I will ask our colleague from Illinois two questions. One, on the assumption that Mr. LEVIN will soon return to the floor, I ask if we could interrupt for the purpose of clearing some en bloc amendments, which will enable the staff who otherwise would be here to return to their offices and use their time productively. We will ask for that at the appropriate time. Has the Senator indicated the amount of time he might seek for purposes of debate?

Mr. DURBIN. Mr. President, there are three Members on the floor who will be seeking recognition, and we anticipate a maximum of 60 minutes on this side. I don't know how much is needed on the other side.

Mr. WARNER. I thank the Senator. In looking this over, I am inclined to think that we can, in the course of the conference, gain some support. I hope it remains in a factual manner and that the legislative history you are about to make in terms of your remarks, together with your colleagues, support what is in this amendment.

Mr. DURBIN. Mr. President, I thank the chairman for his forbearance in scheduling this debate. I don't think any of us had hoped it would occur at 8:30 at night, but that is the situation we are in. This is a very important debate.

AMENDMENT NO. 3732

(Purpose: To provide for operationally realistic testing of National Missile Defense systems against countermeasures, and to establish an independent panel to review the testing)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Mr. WELLSTONE, Mr. BINGAMAN, Mr. JOHNSON, Mr. KERRY, Mr. KENNEDY, Mr. HARKIN, and Mr. WYDEN, proposes an amendment numbered 3732.

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

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

The amendment is as follows:

On page 53, after line 23, insert the following:

SEC. 243. OPERATIONALLY-REALISTIC TESTING AGAINST COUNTERMEASURES FOR NATIONAL MISSILE DEFENSE.

(a) TESTING REQUIREMENTS.—The Secretary of Defense shall direct the Ballistic Missile Defense Organization—

(1) to include in the ground and flight testing of the National Missile Defense system that is conducted before the system becomes operational any countermeasures (including decoys) that—

(A) are likely, or at least realistically possible, to be used against the system; and

(B) are chosen for testing on the basis of what countermeasure capabilities a long-range missile could have and is likely to have, taking into consideration the technology that the country deploying the missile would have or could likely acquire; and

(2) to determine the extent to which the exoatmospheric kill vehicle and the National Missile Defense system can reliably discriminate between warheads and such countermeasures.

(b) FUTURE FUNDING REQUIREMENTS.—The Secretary, in consultation with the Director of the Ballistic Missile Defense Organization shall—

(1) determine what additional funding, if any, may be necessary for fulfilling the testing requirements set forth in subsection (a) in fiscal years after fiscal year 2001; and

(2) submit the determination to the congressional defense committees at the same time that the President submits the budget for fiscal year 2002 to Congress under section 1105(a) of title 31, United States Code.

(c) REPORT BY SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall, except as provided in paragraph (4), submit to Congress an annual report on the Department's efforts to establish a program for operationally realistic testing of the National Missile Defense system against countermeasures. The report shall be in both classified and unclassified forms.

(2) The report shall include the Secretary's assessment of the following:

(A) The countermeasures available to foreign countries with ballistic missiles that the National Missile Defense system could encounter in a launch of such missiles against the United States.

(B) The ability of the National Missile Defense system to defeat such countermeasures, including the ability of the system to discriminate between countermeasures and reentry vehicles.

(C) The plans to demonstrate the capability of the National Missile Defense system to defeat such countermeasures and the adequacy of the ground and flight testing to demonstrate that capability.

(3) The report shall be submitted not later than January 15 of each year. The first report shall be submitted not later than January 15, 2001.

(4) No annual report is required under this section after the National Missile Defense system becomes operational.

(d) INDEPENDENT REVIEW PANEL.—(1) The Secretary of Defense shall reconvene the Panel on Reducing Risk in Ballistic Missile Defense Flight Test Programs.

(2) The Panel shall assess the following:

(A) The countermeasures available for use against the United States National Missile Defense system.

(B) The operational effectiveness of that system against those countermeasures.

(C) The adequacy of the National Missile Defense flight testing program to demonstrate the capability of the system to defeat the countermeasures.

(3) After conducting the assessment required under paragraph (2), the Panel shall evaluate—

(A) whether sufficient ground and flight testing of the system will have been conducted before the system becomes operational to support the making of a determination, with a justifiably high level of confidence, regarding the operational effectiveness of the system;

(B) whether adequate ground and flight testing of the system will have been conducted, before the system becomes operational, against the countermeasures that are likely, or at least realistically possible, to be used against the system and that other countries have or likely could acquire; and

(C) whether the exoatmospheric kill vehicle and the rest of the National Missile Defense system can reliably discriminate between warheads and such countermeasures.

(4) Not later than March 15, 2001, the Panel shall submit a report on its assessments and evaluations to the Secretary of Defense and to Congress. The report shall include any recommendations for improving the flight testing program for the National Missile Defense system or the operational capability of the system to defeat countermeasures that the Panel determines appropriate.

(e) COUNTERMEASURE DEFINED.—In this section, the term "countermeasure"—

(1) means any deliberate action taken by a country with long-range ballistic missiles to defeat or otherwise counter a United States National Missile Defense system; and

(2) includes, among other actions—

(A) use of a submunition released by a ballistic missile soon after the boost phase of the missile;

(B) use of anti-simulation, together with such decoys as Mylar balloons, to disguise the signature of the warhead; and

(C) use of a shroud cooled with liquid nitrogen to reduce the infrared signature of the warhead.

Mr. DURBIN. Mr. President, what we are going to discuss this evening is one of the most expensive, and perhaps one of the most important, elements in our Nation's national defense. We are going to discuss the national missile defense system.

The reason for its importance, I guess, could be summarized in several ways. First, it is an extraordinary expenditure of money. It is anticipated that if we are going to meet our first goal by 2005, we will spend up to \$60 billion. That is an exceptional expenditure, even by Federal standards, even by the standards of the Department of Defense.

Second, those who support this system are telling us that our goal is to basically protect America from attack by rogue missiles, by those enemies of the United States who might launch a missile at us and threaten our cities and population. So the importance of the system we are talking about cannot be overstated.

Third, we know that if we go forward with this, we run the risk of complicating our negotiations with other countries in the world—particularly Russia and China—about the reduction in their nuclear arsenals. So this is high-stakes poker. We are talking about a decision, in terms of our national defense, which may be one of the most important in history.

I have a very straightforward amendment that will require that the national missile defense system test realistic countermeasures before becoming

operational, and that an independent review panel—the Welch panel—assess the testing program in light of these countermeasure problems. The President is slated to decide soon whether to deploy a national missile defense system. This bill we are debating authorizes spending almost \$5 billion in the next fiscal year for this program.

The Congressional Budget Office has estimated the contemplated national missile defense total cost at \$60 billion, when all components are considered. Whether one thinks that deciding to deploy a national missile defense system at this moment is a good idea or not, I hope we can all agree that once that system becomes operational, it should work. If we are going to spend \$60 billion, we ought to have a high level of confidence that it will in fact protect us from rogue states firing a missile. If the fate of America will truly hang in the balance, we owe this Nation and every family and every mother, father, and child our very best effort in building a credible, effective deterrence.

Such a high level of confidence is not possible until this system is tested against likely responses from emerging missile states, known as countermeasures or decoys. If the missile system cannot discriminate between warheads and decoys, it is, as a practical matter, useless because enemies will simply be able to overwhelm it with cheap decoys.

At this point, I will yield time to my colleagues who have gathered here to be part of this debate. At the end of their statements, I will reclaim my time and conclude.

Mr. WARNER. Mr. President, I ask at this time if I may clear some amendments and ask unanimous consent that the time consumed by the two managers not in any way be counted against the time for the Senator from Illinois.

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

AMENDMENTS NOS. 3733, 3734, 3737, AND 3762, AS MODIFIED, EN BLOC

Mr. WARNER. Mr. President, Senator LEVIN and I have several amendments cleared by myself and the ranking member, some of which have been modified. I call up amendments Nos. 3733, 3737, 3734, and I send to the desk a modified version of amendment No. 3762. I ask unanimous consent that these amendments be considered en bloc, that the Senate agree to the amendments, and that the motions to reconsider be laid on the table.

Finally, I ask unanimous consent that statements relating to individual amendments be printed at the appropriate place in the RECORD.

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

The amendments (Nos. 3733, 3734, 3737, and 3762, as modified) were agreed to, as follows:

AMENDMENT NO. 3733

(Purpose: To authorize grants for the maintenance, repair, and renovation of school facilities that serve dependents of members of the Armed Forces and Department of Defense employees)

On page 123, between lines 12 and 13, insert the following:

SEC. 377. ASSISTANCE FOR MAINTENANCE, REPAIR, AND RENOVATION OF SCHOOL FACILITIES THAT SERVE DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) GRANTS AUTHORIZED.—Chapter 111 of title 10, United States Code, is amended—

(1) by redesignating section 2199 as section 2199a; and

(2) by inserting after section 2198 the following new section:

“§2199. Quality of life education facilities grants

“(a) REPAIR AND RENOVATION ASSISTANCE.—

(1) The Secretary of Defense may make a grant to an eligible local educational agency to assist the agency to repair and renovate—

“(A) an impacted school facility that is used by significant numbers of military dependent students; or

“(B) a school facility that was a former Department of Defense domestic dependent elementary or secondary school.

“(2) Authorized repair and renovation projects may include repairs and improvements to an impacted school facility (including the grounds of the facility) designed to ensure compliance with the requirements of the Americans with Disabilities Act or local health and safety ordinances, to meet classroom size requirements, or to accommodate school population increases.

“(3) The total amount of assistance provided under this subsection to an eligible local educational agency may not exceed \$5,000,000 during any period of two fiscal years.

“(b) MAINTENANCE ASSISTANCE.—(1) The Secretary of Defense may make a grant to an eligible local educational agency whose boundaries are the same as a military installation to assist the agency to maintain an impacted school facility, including the grounds of such a facility.

“(2) The total amount of assistance provided under this subsection to an eligible local educational agency may not exceed \$250,000 during any fiscal year.

“(c) DETERMINATION OF ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—(1) A local educational agency is an eligible local educational agency under this section only if the Secretary of Defense determines that the local educational agency has—

“(A) one or more federally impacted school facilities and satisfies at least one of the additional eligibility requirements specified in paragraph (2); or

“(B) a school facility that was a former Department of Defense domestic dependent elementary or secondary school, but assistance provided under this subparagraph may only be used to repair and renovate that facility.

“(2) The additional eligibility requirements referred to in paragraph (1) are the following:

“(A) The local educational agency is eligible to receive assistance under subsection (f) of section 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703) and at least 10 percent of the students who were in average daily attendance in the schools of such agency during the preceding school year were students described under paragraph (1)(A) or (1)(B) of section 8003(a) of the Elementary and Secondary Education Act of 1965.

“(B) At least 35 percent of the students who were in average daily attendance in the

schools of the local educational agency during the preceding school year were students described under paragraph (1)(A) or (1)(B) of section 8003(a) of the Elementary and Secondary Education Act of 1965.

“(C) The State education system and the local educational agency are one and the same.

“(d) NOTIFICATION OF ELIGIBILITY.—Not later than June 30 of each fiscal year, the Secretary of Defense shall notify each local educational agency identified under subsection (c) that the local educational agency is eligible during that fiscal year to apply for a grant under subsection (a), subsection (b), or both subsections.

“(e) RELATION TO IMPACT AID CONSTRUCTION ASSISTANCE.—A local education agency that receives a grant under subsection (a) to repair and renovate a school facility may not also receive a payment for school construction under section 8007 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707) for the same fiscal year.

“(f) GRANT CONSIDERATIONS.—In determining which eligible local educational agencies will receive a grant under this section for a fiscal year, the Secretary of Defense shall take into consideration the following conditions and needs at impacted school facilities of eligible local educational agencies:

“(1) The repair or renovation of facilities is needed to meet State mandated class size requirements, including student-teacher ratios and instructional space size requirements.

“(2) There is an increase in the number of military dependent students in facilities of the agency due to increases in unit strength as part of military readiness.

“(3) There are unhouseed students on a military installation due to other strength adjustments at military installations.

“(4) The repair or renovation of facilities is needed to address any of the following conditions:

“(A) The condition of the facility poses a threat to the safety and well-being of students.

“(B) The requirements of the Americans with Disabilities Act.

“(C) The cost associated with asbestos removal, energy conservation, or technology upgrades.

“(D) Overcrowding conditions as evidenced by the use of trailers and portable buildings and the potential for future overcrowding because of increased enrollment.

“(5) The repair or renovation of facilities is needed to meet any other Federal or State mandate.

“(6) The number of military dependent students as a percentage of the total student population in the particular school facility.

“(7) The age of facility to be repaired or renovated.

“(g) DEFINITIONS.—In this section:

“(1) LOCAL EDUCATIONAL AGENCY.—The term ‘local educational agency’ has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

“(2) IMPACTED SCHOOL FACILITY.—The term ‘impacted school facility’ means a facility of a local educational agency—

“(A) that is used to provide elementary or secondary education at or near a military installation; and

“(B) at which the average annual enrollment of military dependent students is a high percentage of the total student enrollment at the facility, as determined by the Secretary of Defense.

“(3) MILITARY DEPENDENT STUDENTS.—The term ‘military dependent students’ means students who are dependents of members of the armed forces or Department of Defense civilian employees.

“(4) MILITARY INSTALLATION.—The term ‘military installation’ has the meaning given that term in section 2687(e) of this title.”.

(b) AMENDMENTS TO CHAPTER HEADING AND TABLES OF CONTENTS.—(1) The heading of chapter 111 of title 10, United States Code, is amended to read as follows:

“CHAPTER 111—SUPPORT OF EDUCATION”.

(2) The table of sections at the beginning of such chapter is amended by striking the item relating to section 2199 and inserting the following new items:

“2199. Quality of life education facilities grants.

“2199a. Definitions.”.

(3) The tables of chapters at the beginning of subtitle A, and at the beginning of part III of subtitle A, of such title are amended by striking the item relating to chapter 111 and inserting the following:

“111. Support of Education 2191”.

(c) FUNDING FOR FISCAL YEAR 2001.—Amounts appropriated in the Department of Defense Appropriations Act, 2001, under the heading “QUALITY OF LIFE ENHANCEMENTS, DEFENSE” may be used by the Secretary of Defense to make grants under section 2199 of title 10, United States Code, as added by subsection (a).

AMENDMENT NO. 3734

(Purpose: To postpone implementation of the Defense Joint Accounting System (DJAS) pending an analysis of the system)

On page 123, between lines 12 and 13, insert the following:

SEC. 377. POSTPONEMENT OF IMPLEMENTATION OF DEFENSE JOINT ACCOUNTING SYSTEM (DJAS) PENDING ANALYSIS OF THE SYSTEM.

(a) POSTPONEMENT.—The Secretary of Defense may not grant a Milestone III decision for the Defense Joint Accounting System (DJAS) until the Secretary—

(1) conducts, with the participation of the Inspector General of the Department of Defense and the inspectors general of the military departments, an analysis of alternatives to the system to determine whether the system warrants deployment; and

(2) if the Secretary determines that the system warrants deployment, submits to the congressional defense committees a report certifying that the system meets Milestone I and Milestone II requirements and applicable requirements of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106).

(b) DEADLINE FOR REPORT.—The report referred to in subsection (a)(2) shall be submitted, if at all, not later than March 30, 2001.

AMENDMENT NO. 3737

(Purpose: To repeal the prohibition on use of Department of Defense funds for the procurement of a nuclear-capable shipyard crane from a foreign source)

On page 32, after line 24, add the following:

SEC. 142. REPEAL OF PROHIBITION ON USE OF DEPARTMENT OF DEFENSE FUNDS FOR PROCUREMENT OF NUCLEAR-CAPABLE SHIPYARD CRANE FROM A FOREIGN SOURCE.

Section 8093 of the Department of Defense Appropriations Act, 2000 (Public Law 106-79; 113 Stat. 1253) is amended by striking subsection (d), relating to a prohibition on the use of Department of Defense funds to procure a nuclear-capable shipyard crane from a foreign source.

AMENDMENT NO. 3762, AS MODIFIED

(Purpose: To provide for the humane administration of Department of Defense secrecy oaths and policies, consistent with national security needs, where workers and communities at nuclear weapons facilities may have had their health compromised by exposure to radioactive and other hazardous substances)

On page 415; between lines 2 and 3, insert the following:

SEC. 1061. SECRECY POLICIES AND WORKER HEALTH.

(a) REVIEW OF SECRECY POLICIES.—The Secretary of Defense in consultation with the Secretary of Energy shall review classification and security policies and; within appropriate national security constraints, ensure that such policies do not prevent or discourage employees at former nuclear weapons facilities who may have been exposed to radioactive or other hazardous substances associated with nuclear weapons from discussing such exposures with appropriate health care providers and with other appropriate officials. The policies reviewed should include the policy to neither confirm nor deny the presence of nuclear weapons as it is applied to former U.S. nuclear weapons facilities that no longer contain nuclear weapons or materials.

(c) NOTIFICATION OF AFFECTED EMPLOYEES.—(1) The Secretary of Defense in consultation with the Secretary of Energy shall seek to identify individuals who are or were employed at Department of Defense sites that no longer store, assemble, disassemble, or maintain nuclear weapons.

(2) Upon determination that such employees may have been exposed to radioactive or hazardous substances associated with nuclear weapons at such sites, such employees shall be notified of any such exposures to radiation, or hazardous substances associated with nuclear weapons.

(3) Such notification shall include an explanation of how such employees can discuss any such exposures with health care providers who do not possess security clearances without violating security or classification procedures or, if necessary, provide guidance to facilitate the ability of such individuals to contact health care providers with appropriate security clearances or discuss such exposures with other officials who are determined by the Secretary of Defense to be appropriate.

(d) The Secretary of Defense in consultation with the Secretary of Energy shall, no later than May 1, 2001, submit a report to the Congressional Defense Committees setting forth:

(1) the results of the review in paragraph (a) including any changes made or recommendations for legislation; and

(2) the status of the notification in paragraph (b) and an anticipated date on which such notification will be completed.

AMENDMENT NO. 3733

Mrs. HUTCHISON. Mr. President, I am deeply concerned about the condition of the classrooms within our military dependent schools. A number of our classrooms contain asbestos, roofs leak, classes are overcrowded, three or four teachers have to share the same desk, science labs are 30 plus years old and potentially unsafe, and some schools are not in compliance with the American with Disabilities Act.

I am ashamed that military families who live on base are forced to send their kids to school facilities in these conditions. I was even more disturbed when I found out the many other

school districts that teach large numbers of military dependents have similar infrastructure problems.

Amazingly most kids have done well despite this environment but I worry about the impact the deteriorating school facilities has on declining military retention and recruitment. The condition of these schools is clearly a quality of life issue for military families.

Mr. President, I offer an amendment today to help alleviate these problems and ensure a safe and comfortable learning environment for more than 80,000 children of members of our armed forces.

My amendment establishes a grant program within the Department of Defense to assist school districts with repair and renovation costs for facilities used to educate large numbers of military kids. The program would enable qualified school districts to apply for grants up to \$5 million every two years to help meet health and safety, class size, ADA, asbestos removal, and technology requirements.

The program would also assist school districts faced with significant enrollment increases due to increases in on-base housing or mission changes. Lastly, school districts could seek assistance for repair and renovation costs of Department of Defense owned schools being transferred to a local school district.

For example, at Robins Air Force Base in Georgia a DOD owned elementary school is being transferred to the local school district but \$4 million in repairs is needed to bring the school up to the local district's safety and fire standards.

Why is Department of Defense assistance needed? Most of the school districts serving large numbers of military children have limited bonding ability or no tax base to raise the necessary capital funding.

For example, seven public schools districts that serve military dependents are located solely on the military installation and in turn have no tax base or bonding authority. The seven schools rely on impact aid and state funding and almost all repair or renovation expenditures come at the expense of instructional funding.

The Department of Education is authorized to provide construction funding for impacted schools but only \$10 million is provided for hundreds of impacted schools nationwide. An additional \$5 million is available for school facilities owned by the Department of Education but the needs of those schools far exceed the available funding.

The Department of Education has essentially abdicated its responsibility to ensure a safe and comfortable learning environment at federally impacted schools. We often hear of the need for more federal dollars for school construction but who deserves this more than the children whose parents serve in our armed forces.

Schools that teach large numbers of military dependents receive supplemental impact aid assistance through the Department of Defense, \$30 million in FY 2000 benefitting about 130 schools. However, the funding is not sufficient to meet major repair and renovation costs.

A comprehensive program is needed to address this serious quality of life issue. And, without Department of Defense assistance tens of thousands of military children will continue to learn in inadequate and unsafe facilities.

This amendment would benefit the 30 most heavily impacted school districts that teach military children.

Mr. President, I urge my colleagues to support this important quality of life issue that will benefit more than 80,000 military children.

AMENDMENT NO. 3762, AS MODIFIED

Mr. HARKIN. Mr. President, I have an amendment to correct an absurdity in our application of important secrecy policies. This issue would be a laughable example of bureaucratic intransigence except that it is harming workers who may have gotten sick from working on our nuclear weapons.

I'm sure that by now all my colleagues are aware that many of our citizens were exposed to radioactive and other hazardous materials at nuclear weapons production plants in the United States. While working to protect our national security, workers at places like Paducah, Kentucky, Portsmouth, Ohio, and Oak Ridge, Tennessee were subjected to severe hazards, sometimes without their knowledge or consent. We recently passed an amendment to provide compensation to some of those who became seriously ill because of their dangerous work at nuclear weapons plants.

The dangers at these plants thrived in the darkness of government secrecy. Public oversight was especially weak at a factory for assembling and disassembling nuclear weapons at the Iowa Army Ammunition Plant in Middletown, Iowa. I first found out about the nuclear weapons work there from a constituent letter from a former worker, Robert Anderson. He was concerned that his non-Hodgkins lymphoma was caused by exposures at the plant. But when I asked the Department of Energy about the plant, at first they denied that any nuclear weapons work took place there. The constituent's story was only confirmed when my staff saw a promotional video from the contractor at the site that mentioned the nuclear weapons work.

The nuclear weapons production plants were run not by the Defense Department but by the Atomic Energy Commission, which has since been made part of the Department of Energy. The Department of Energy has since acknowledged what happened, and is now actively trying to help the current and former workers in Iowa and elsewhere by reviewing records, helping them get medical testing and

care, and seeking compensation. I was pleased this past January to host Energy Secretary Richardson at a meeting with former workers and community members near the plant. The Department specifically acknowledges that the Iowa Army Ammunition Plant assembled and disassembled nuclear weapons from 1947-1975. And their work has helped uncover potential health concerns at the plant, such as explosions around depleted uranium that created clouds of radioactive dust, and workers' exposure to high explosives that literally turned their skin yellow.

But at the Iowa nuclear weapons plant the Defense Department was inseparably intertwined with the AEC. The AEC operations were located on the site of an Army ammunition plant. The workers at both sides of the plant actually worked for the same contractor, workers often switched between the plant parts, and workers on both sides of the plant were even exposed to many of the same hazardous materials, including beryllium and depleted uranium. Thus former workers at the plant do not always clearly distinguish the Army from the AEC.

And while the Department of Energy is investigating what happened and seeking solutions, the Army is stuck, still mired in a nonsensical policy. It is the policy of the Department of Defense to "neither confirm nor deny" the presence of nuclear weapons at any place at any time. They could not admit that nuclear weapons were assembled in Iowa without admitting that there were nuclear weapons in Iowa. So they write vaguely about "AEC activities," but don't say what those activities were.

There have been no nuclear weapons at the Iowa site since 1975, but it's well known that weapons were there before that. The DOE says the weapons were there. A promotional video of the Army contractor at the site even says the weapons were there. But the Army can't say it. This makes the Army look ridiculous.

But worse, it sends the wrong signal to the former workers. These workers swore oaths never to reveal what they did at the plant. And many of them are still reluctant to talk. They are worried that their cancers or other health problems were caused by their work at the plant. But they feel that they can't even tell their doctors or site cleanup crews about the materials they worked with or the tasks they did. They don't want to violate the oaths of secrecy they took. One worker at the Iowa plant said recently, "There's still stuff buried out there that we don't know where it is. And we know people who do know, but they will not say anything yet because they are still afraid of repercussions." Instead of helping those workers speak out, the Army is forced to share their silence.

And Mr. President, to make the position even more indefensible for my workers in Iowa, the Pentagon is not even consistently applying the "neither confirm nor deny," or "NCND,"

policy. A document recently released by the Pentagon stated that the U.S. had nuclear weapons in Alaska, Cuba, Guam, Hawaii, the Johnston Islands, Midway, Puerto Rico, the United Kingdom, and West Germany. After the document was released, a Department spokesman said on television that the U.S. never had nuclear weapons in Iceland. Why can the Pentagon talk about nuclear weapons in Iceland but not in Iowa?

Mr. President, for the health of our workers, it's time for the Pentagon to come clean. No one is more concerned with keeping real nuclear secrets than I am. But the Pentagon must not hide behind inconsistent policies when workers' lives may be at risk.

This amendment is narrowly targeted to require the Defense Department and Energy Department to review their classification and secrecy policies and change them if they prevent or discourage workers at nuclear weapons facilities from discussing possible exposures with their health care providers. The amendment specifically recognizes that this must be done within national security constraints. It also directs the Departments to contact people who may have been exposed to radioactive or hazardous substances at former nuclear weapons facilities, including the Iowa plant. The Department is to notify them of any exposures and of how they can discuss the exposures with their health care providers and other appropriate officials without violating secrecy oaths or policies.

I hope all my colleagues will support this common-sense change for government consistency and worker health.

AMENDMENTS NOS. 3816 AND 3817

Mr. WARNER. Mr. President, I send two amendments to the desk which have been cleared by myself and the ranking member. Therefore, I ask unanimous consent that the Senate consider these amendments en bloc, they be agreed to, and the motions to reconsider laid upon the table. Finally, I ask that any statements relating to any of the individual amendments be printed at the appropriate place in the RECORD.

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

The amendments (Nos. 3816 and 3817) were agreed to, as follows:

AMENDMENT NO. 3816

(Purpose: To streamline the requirements for procurement notice when access to notice is provided electronically through the single Governmentwide point of access designated in the Federal Acquisition Regulation.)

On page 303, between lines 6 and 7, insert the following:

SEC. 814. PROCUREMENT NOTICE THROUGH ELECTRONIC ACCESS TO CONTRACTING OPPORTUNITIES.

(a) PUBLICATION BY ELECTRONIC ACCESSIBILITY.—Subsection (a) of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended—

(1) in paragraph (1)(A), by striking “furnish for publication by the Secretary of Commerce” and inserting “publish”;

(2) by striking paragraph (2) and inserting the following:

“(2)(A) A notice of solicitation required to be published under paragraph (1) may be published by means of—

“(i) electronic accessibility that meets the requirements of paragraph (7); or

“(ii) publication in the Commerce Business Daily.

“(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.”; and

(3) by adding at the end the following:

“(7) A publication of a notice of solicitation by means of electronic accessibility meets the requirements of this paragraph for electronic accessibility if the notice is electronically accessible in a form that allows convenient and universal user access through the single Governmentwide point of entry designated in the Federal Acquisition Regulation.”.

(b) WAITING PERIOD FOR ISSUANCE OF SOLICITATION.—Paragraph (3) of such subsection is amended—

(1) in the matter preceding subparagraph (A), by striking “furnish a notice to the Secretary of Commerce” and inserting “publish a notice of solicitation”; and

(2) in subparagraph (A), by striking “by the Secretary of Commerce”.

(c) CONFORMING AMENDMENTS FOR SMALL BUSINESS ACT.—Subsection (e) of section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(1) in paragraph (1)(A), by striking “furnish for publication by the Secretary of Commerce” and inserting “publish”; and

(2) by striking paragraph (2) and inserting the following:

“(2)(A) A notice of solicitation required to be published under paragraph (1) may be published by means of—

“(i) electronic accessibility that meets the requirements of section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)); or

“(ii) publication in the Commerce Business Daily.

“(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.”; and

(3) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by striking “furnish a notice to the Secretary of Commerce” and inserting “publish a notice of solicitation”; and

(B) in subparagraph (A), by striking “by the Secretary of Commerce”.

(d) PERIODIC REPORTS ON IMPLEMENTATION OF ELECTRONIC COMMERCE IN FEDERAL PROCUREMENT.—Section 30(e) of the Office of Federal Procurement Policy Act (41 U.S.C. 426(e)) is amended—

(1) in the first sentence, by striking “Not later than March 1, 1998, and every year afterward through 2003” and inserting “Not later than March 1 of each even-numbered year through 2004”; and

(2) in paragraph (4)—

(A) by striking “Beginning with the report submitted on March 1, 1999,”; and

(B) by striking “calendar year” and inserting “two fiscal years”.

(e) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect on October 1, 2000. The amendments made by subsections (a), (b) and (c) shall apply with respect to solicitations issued on or after that date.

AMENDMENT NO. 3817

(Purpose: To authorize a land conveyance, Mukilteo Tank Farm, Everett, Washington)

On page 543, strike line 20 and insert the following:

Part III—Air Force Conveyances

SEC. 2861. LAND CONVEYANCE, MUKILTEO TANK FARM, EVERETT, WASHINGTON.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey, without consideration, to the Port of Everett, Washington (in this section referred to as the “Port”), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 22 acres and known as the Mukilteo Tank Farm for the purposes of permitting the Port to use the parcel for the development and operation of a port facility and for other public purposes.

(b) PERSONAL PROPERTY.—The Secretary of the Air Force may include as part of the conveyance authorized by subsection (a) any personal property at the Mukilteo Tank Farm that is excess to the needs of the Air Force if the Secretary of Transportation determines that such personal property is appropriate for the development or operation of the Mukilteo Tank Farm as a port facility.

(c) INTERIM LEASE.—(1) Until such time as the real property described in subsection (a) is conveyed by deed, the Secretary of the Air Force may lease all or part of the real property to the Port if the Secretary determines that the real property is suitable for lease and the lease of the property under this subsection will not interfere with any environmental remediation activities or schedules under applicable law or agreements.

(2) The determination under paragraph (1) whether the lease of the real property will interfere with environmental remediation activities or schedules referred to in that paragraph shall be based upon an environmental baseline survey conducted in accordance with applicable Air Force regulations and policy.

(3) Except as provided by paragraph (4), as consideration for the lease under this subsection, the Port shall pay the Secretary an amount equal to the fair market value of the lease, as determined by the Secretary.

(4) The amount of consideration paid by the Port for the lease under this subsection may be an amount, as determined by the Secretary, less than the fair market value of the lease if the Secretary determines that—

(A) the public interest will be served by an amount of consideration for the lease that is less than the fair market value of the lease; and

(B) payment of an amount equal to the fair market value of the lease is unobtainable.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Air Force and the Port.

(e) ADDITIONAL TERMS.—The Secretary of the Air Force, in consultation with the Secretary of Transportation, may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary of the Air Force considers appropriate to protect the interests of the United States.

Part IV—Defense Agencies Conveyances

Mr. WARNER. Mr. President, I yield the floor.

Mr. DURBIN. Mr. President, for the time allotted in debate in support of the amendment, I would like to yield 10 minutes to the Senator from Minnesota, Senator WELLSTONE.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President. I am very proud to have worked with Senator DURBIN to be a cosponsor and have Senator KERRY here on the floor as well.

I think this important amendment requiring more realistic testing of the national missile system is an extremely important step for us to take. First of all, it requires more realistic testing. Second, it calls for the reconvening of the Welch commission to independently evaluate the testing program. Third, it requires a report to the Congress on the adequacy of the program.

This is the fourth time since the late fifties that we have talked about a missile defense program. Each time there is a tremendous amount of enthusiasm. Then scientists and independent observers do a careful analysis. After that, the enthusiasm wanes. I do not believe this time will be any different.

I am sure every Senator read on Sunday morning that this past Saturday's test was an utter failure. What you may not know is that an earlier test was unsuccessful as well. But regardless of the actual successes and failures of the tests, the fact is, the current testing program does not test the feasibility of the system in the real world. Current testing determines whether or not the system works against cooperative targets on a test range. This methodology is insufficient to determine the technological feasibility of the system against likely threats. At present, even if the tests had been hailed as total successes, they would have proved nothing more than the system is unproven against real threats. At present, we know that this system might work if the other side is not making it hard to detect its weapons. This hardly seems a reason to move forward to deployment.

Some might argue that this amendment demands too much. Some might argue that today's testing program is a first step in a long process towards full deployment. But demanding an adequate testing program, which is what this amendment calls for, certainly does not put the bar too far. It sets it where any reasonable person or scientist would put it. We must stick to development and work within the confines of a realistic test before even considering moving to deployment.

The aim of the national missile defense is to defend the United States from limited attacks by intercontinental-range ballistic missiles armed with nuclear, chemical, or biological weapons. However, biological or chemical weapons can be divided into many small warheads called submunitions. These submunitions could overwhelm the planned defense, and more importantly, because some munitions allow for more effective dispersal of biological and chemical agents, an attacker would have a strong incentive to use them even in the absence of missile de-

fenses. When it comes to biological warfare and these biological and chemical agents, the greater likelihood is that they will be carried by suitcase into this country. I pray that doesn't happen.

Current testing does not take countermeasures into account. An attack could overwhelm the system by using something as simple as ballooned decoys, for example, by deploying nuclear weapons inside balloons and releasing numerous empty balloons along with them. Or an attacker could cover its nuclear warheads with cooled shrouds which would prevent the interceptor from detecting it. We are talking about testing which takes into account these countermeasures. That is what we would have to deal with.

Current testing does not take these countermeasures into account. The Pentagon assessment will consider only whether the first phase of the system would be effective against a threat with no credible countermeasures. It will not consider whether the full system would be effective against a threat with realistic countermeasures. Any decision on whether or not the United States should deploy a national missile defense should take into account how effective that system is likely to be in the real world, not just whether or not it works against cooperative targets on a test range.

Unfortunately, the technological feasibility of the proposed national defense system, which will be determined in the Pentagon's upcoming deployment readiness review, will be assessed precisely on the basis of such test results. Even worse, it will be based upon only a few tests.

The administration requested that the Pentagon provide an estimate of whether a national missile defense can be deployed in 5 year's time. General Kadish, the head of the Pentagon's ballistic missile defense program, has described the 2005 timetable as "high risk." He has made it clear that the timetable is much faster than military planners would like. The recommendation of the Pentagon's own Office of the Operational and Test Evaluation Program stated clearly that the deployment readiness review "is a strongly 'schedule driven' approach" rather than one based upon results.

Is it too much to ask that we be certain that this system works before we move ahead with deployment?

That is what this amendment is about.

If the proposed national missile defense system is to have any possibility of enhancing U.S. security, it must work, and it must work well. At present, the evidence isn't there to prove that it does, and the tests underway to establish that proof are simplified and unrealistic. We must demand that any deployment decision on national missile defense be postponed until the system has been tested successfully against real-world realistic threats.

Last year, I voted against a resolution urging the administration to make a decision to deploy a national missile defense system. I believed then, as I do now, that a decision to deploy before a decision is made there needs to be a careful evaluation of the effectiveness of the system.

I also believe that we need to look at this in the context of overall U.S. security needs. The goal should be to increase U.S. security—not to undermine it. Deploying a system now, I fear, does the opposite. It threatens to disrupt the current arms control regimen and undermine the credibility of our commitment to nonproliferation.

Deployment of a national missile defense system would be a violation of the ABM Treaty. Are we prepared to discard this arms control regimen? I worry—and I think every Senator, Democrat and Republican alike, worries—about proliferation of these weapons of mass destruction. If this regimen of arms control breaks down with Russia—and, perhaps even more importantly, breaks down with China, then there is India, then there is Pakistan, then there is South Korea, then there is Japan—I fear the direction in which we are moving.

Colleagues, for 40 years the United States of America has led international efforts to reduce and contain the danger from nuclear weapons. We must not now renounce the responsibilities of that leadership with a hasty and short-sighted decision that will have lasting consequences. We must answer a number of questions before we proceed:

Does it make sense to unilaterally deploy a system now if the result might be to put the American people at even greater risk?

Should we take the time to work with allies and others to find a mutually acceptable nonthreatening way of proceeding?

Have the threats to which we are responding been exaggerated and more driven by politics than accurate threat assessments and hard science?

Is the technology there to deploy a system that would actually work in the real world?

This amendment speaks directly to that last question.

I urge my colleagues to demand to know more about the complexities of a national missile defense system prior to deploying that system. I don't think that is an unreasonable request.

The failure of Saturday's test is only a fraction of the real story. Even a successful test would prove nothing given the current testing conditions.

I urge my colleagues to support this amendment requiring a more realistic testing of the national missile defense system, reconvening the Welch panel to independently evaluate a testing program, and requiring a report to the Congress on the adequacy of the program.

We should not commit ourselves blindly to a program that can cost billions of dollars and could very well decrease our overall security rather than

to enhance it. Our future and our children's children's future could depend on the decision we make on this amendment. Let's do the right thing. I hope we can have a strong vote on this amendment.

Mr. WARNER. Mr. President, I ask my colleague a question and the time allocated to the Senator from Virginia be charged for the portion of the colloquy I use.

The Senator makes a fairly strong statement indirectly at our former colleague, Senator Cohen, now Secretary of Defense, that he would proceed blindly on this program which is so vital to the security of the United States, assuming, as you say, under the full criteria that the President addressed goes forward—that he would go blindly. Is that a purposeful choice of words directed at this distinguished former colleague who, in my judgment, having been on the Armed Services Committee 22 years and having served 18 or 19 of those years with him, I cannot imagine undertaking the responsibility to oversee a program of this importance and proceeding, as the Senator said, "blindly."

Mr. WELLSTONE. Mr. President, I say to my colleague I can't imagine the Secretary of Defense doing that, either. My plea was to Senators. I said we must not proceed blindly and I urge all Members to understand the complexity of this testing and to at least call for a thorough evaluation to make sure that this system will really work. My comments were not directed to Secretary Cohen.

I also say to my colleague, I don't believe the Secretary of Defense has made a final recommendation to the President.

Mr. WARNER. I certainly agree.

Mr. WELLSTONE. In light of the failure of this past week, I don't know what the Secretary's decision will be.

I think all Members are just making the reasonable request that before we go forward with deployment, let's have the kind of operational testing that will prove that this system will work in the real world against credible threats, and let's have an independent evaluation by the Welch commission and have at least a report to the Congress.

That is what I am referring to, I say to my colleague from Virginia. I am glad he asked the question. In no way would I direct these comments toward the Secretary of Defense.

Mr. WARNER. I have to say with all due respect to our three colleagues, opponents on this amendment, indirectly this amendment is suggesting that the Department is not proceeding in a prudent way towards their responsibilities on this program. I have to state that.

I do not find any specific fault with some of the requests made but momentarily when I take the floor in my own right, I will have documentation to show that the Welch panel is doing the very things for which the Senator asked. I will point to the fact that the

Secretary of Defense has said in previous testimony what he is doing on this program. In fact, I say to the Presiding Officer, being a member of the Armed Services Committee and indeed the chairman of the strategic subcommittee, I asked the Secretary of Defense to come up at his earliest opportunity and report to the Committee on Armed Services. He has agreed to do so shortly after his return from his trip currently in Asia. I thought he addressed the test program, which did, regrettably, end in a failure. I thought in a very courageous and forthright way he addressed that failure to the American public and, indeed, the world.

Mr. WELLSTONE. I probably need not respond. I appreciate my colleague's comments.

One final comment in response to his comments. One of the things I have liked best about preparing for this amendment for me as a Senator has been the way I imagined Senate work to be. I tried to immerse myself on this issue and get the best security briefings from the Pentagon, get other briefings from other people in the Pentagon, and talked to a whole range of experts. The Welch Commission report is a very interesting report.

This amendment certainly says we need to make absolutely sure that we are involved in the kind of testing that will show this system will work before we move forward. That is true. That is certainly the premise of this amendment. I think this is a reasonable premise. Senators ought to raise these kinds of questions. That is why we are here. That is why I think this amendment is important.

Mr. WARNER. The Welch panel was before the Armed Services Committee just last week and testified.

Mr. KERRY. Will the Senator yield?

Mr. WARNER. Yes.

Mr. KERRY. It is my understanding, and I ask the Senator from Virginia, that the testing that has been laid out in the protocols that I have seen contemplates testing almost exclusively from off the coast of California and Kwajalein Island, which by their own admission, the military has said are less than ideal in representing the multiple different sources from which a legitimate attack could come.

There is nothing in any protocol that I have seen to date suggesting that the testing that will take place meets the kind of testing that the Senator from Illinois is looking for.

Mr. WARNER. Mr. President, I will look into that. I recognize the military had indicated that this perhaps doesn't give them the diversity of tests they desire.

Certainly, I am interested in the comment that this Nation is faced with a multiple of sources, and that confirms my concern about the overall threat posed to this Nation by the rogue or accidental firing of a missile. That is why we need this national missile defense program.

Mr. KERRY. If the Senator will yield further for a question, when we talk

about multiple sources, it is possible for a so-called rogue state—and the term itself is one that is perhaps questionable today, but the so-called rogue state could take a rusty tanker, fit it out with the capacity to shoot, drive it out of a harbor to almost any location in an ocean in the world, and decide to shoot from there. Is that accurate?

Mr. WARNER. The Senator is correct.

Mr. KERRY. If we are strictly testing between one location, one direction, and our radar system is specifically positioned to anticipate an attack from a certain location, if that were to be the case, we would face a completely different situation, would we not?

Mr. WARNER. The Senator is correct. There is a diversity of scenarios we have to protect this Nation against. This test program was designed in large measure to prioritize those sources from whence an attack might emanate.

Mr. KERRY. Finally, I ask the Senator, the entire program is currently driven by a date essentially arrived at by the national intelligence estimate, that suggested that 2005 is the first date there might be a possibility of a missile being fired; is that correct?

Mr. WARNER. That is correct, as a result of the national intelligence estimate.

Mr. LEVIN. If the Senator will yield.

Mr. KERRY. We are on the time of the Senator from Virginia or I wouldn't be doing this.

Mr. WARNER. Let's make it clear. I think in my request I said the time that I consumed would be chargeable to my side.

Mr. KERRY. I thought it was the entire colloquy.

The PRESIDING OFFICER (Mr. AL-LARD). That was the exchange with the Senator from Minnesota. The Senator has been yielding for questions on his time.

Mr. WARNER. Let's make it clear for purposes of future colloquies. The time consumed by Mr. LEVIN and myself will be charged to our side, and the time for response will be charged to the other side.

Mr. KERRY. With that understanding, I am afraid I have to refrain from this colloquy.

Mr. LEVIN. I say to my good friend from Massachusetts, I happen to agree with his thoughts on this subject. We are very close in terms of our views. However, there is a complete misunderstanding about the year 2005. That is not the year when the intelligence estimates say North Korea will be able to pose a threat to us.

Mr. KERRY. Correct; they can do it today.

Mr. LEVIN. They can do it today. But 2005 is the year which the Secretary of Defense thought at the time he was making an assessment some time ago would be the earliest time that we would be able to field the national missile defense.

So everybody—in the media, on this floor and just about everywhere—has

now taken the common wisdom that the 2005 date is when the national intelligence estimate says the threat will arrive.

That is not what the national intelligence estimate is. The threat is any time when a three-stage Taepo Dong II could deliver a several-hundred-kilogram payload anywhere in the United States. And that day is when they next test it.

With the general point my good friend from Massachusetts is making, I happen to agree with what he is saying. I certainly support the good Senator from Illinois on his amendment, but I think we ought to try to change the wisdom which has evolved around that date or the assumption or the press coverage of that date.

Everybody uses that date for the wrong reason. Whether it is possible to reverse it, correct it, I don't know. But I think it would help the debate a great deal if we were able to look at that date for what it is, which is the first date that the Secretary of Defense thought, at the time he made the assessment some months ago, that a national missile defense could possibly be deployed.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I ask for a clarification now of the time that has been allocated to each side and how much is remaining. I have requests from several of my colleagues, and I want to give them all a chance.

The PRESIDING OFFICER. The Senator from Virginia has 51 minutes, 41 seconds. The Senator from Illinois has 44 minutes, 43 seconds.

Mr. DURBIN. I yield 10 minutes to the Senator from Massachusetts, Mr. KERRY.

Mr. KERRY. Mr. President, I thank the distinguished Senator from Illinois for his leadership, and I thank also the Senator from Minnesota for his common sense, leadership, and eloquence on it.

This is really a matter of—I guess the best word to summarize it—common sense. My prayer is that we in the Senate are not going to become prisoners of politics on an issue that is as critical to the national security interests of our country—indeed, of the world. This is the most important arms decision we will make in years. I am not going to get into the comparisons of when the last one was, but certainly in the last 10 or 15 years. I think what the Senator from Illinois is asking for ought to fit into the political philosophy of every single member of the Republican Party. I would have hoped the Senator, the distinguished chairman of the Armed Services Committee, would say we should accept this amendment. How is it that we could be talking about deploying a weapons system?

Mr. WARNER. What did the Senator say?

Mr. KERRY. I said to the distinguished chairman of the committee, I don't understand why he would not

want to accept this, because, as a matter of common sense, every Member of the Senate ought to be interested in knowing that if we are going to spend \$10 billion, \$20 billion, \$40 billion, \$60 billion, \$100 billion to create a weapons system, a defensive or offensive system, we ought to know that it works. We ought to know it can accomplish its goal.

Some of the best scientists in the United States of America are not politicians. They do not come at this as Republicans and Democrats, conservatives and liberals. They are scientists. They win Nobel Prizes for their science. They go to MIT, Stanford, New York University, all over this country.

Mr. WARNER. Will the Senator yield for a moment?

Mr. KERRY. We have a limited time.

Mr. WARNER. You asked me a question.

Mr. KERRY. If we can do it on the Senator's time?

Mr. WARNER. Of course. You asked if I would accept it, as chairman of the committee, one of the managers. The answer is yes. I think our distinguished colleague from Illinois knows that. We have said to him three times: We accept the amendment. Am I not correct? Let the RECORD indicate he is nodding assent to the question. The Senator from Michigan has urged him we would accept it.

So rally on, dear colleague. We will listen to you. I don't mean to deflate your argument as to why we would not do it, because we have offered to do it.

Mr. KERRY. This is the most welcome acceptance of the power of my argument I have ever had on the floor of the Senate. I thank the distinguished chairman. But I am confident what the Senator from Illinois wanted to do—and I share this belief—was to have the Senate talk about this. I think we ought to talk about this. So I do not think taking 1 hour to discuss something which hopefully will pass overwhelmingly, or that we then accept, is inappropriate. I think we need to think about this.

Mr. WARNER. No one is suggesting that.

Mr. KERRY. We face a situation where we are talking about putting together a system that the best scientists in the world tell us could literally be rendered absolutely inoperative, if it is simply deployed; all you have to do is put the system out there, and you have the ability to create decoys with fairly unsophisticated technology. In fact, General Welch himself has said in his report, and he said it before the Armed Services Committee the other day, that they anticipate the C-1 deployment, which is the deployment currently contemplated, with countermeasures by year 2005, is a deployment in which they anticipate current technology, current state-of-the-art technology, has the ability to deploy countermeasures.

They say you could have bomblets. After the stage separates in outer

space and it is in that midstage, you could have bomblets, up to 100 of them, released from 1 single warhead. Strictly speaking, that is not a countermeasure because it is not directed at the entire system. But it is a countermeasure in that it voids the effectiveness of the system or the capacity of the system to work effectively.

I ask my colleagues to look around the wall of this Chamber. I counted earlier, in the great amount of time we had to wait for this debate, 88 lights up there on the outer section. That is fewer than 100 of these bomblets. I ask you to just look at those. We are supposed to talk about a system that would be effective enough to destroy bombs coming at us from outer space, at a spacing far greater than any of those lights, at tens of hundreds of miles an hour, with the capacity to distinguish and break through every single one of them to prevent a chemical weapon or biological weapon, that could be completely lethal to the entire city of New York, Los Angeles, to a whole State, from hitting this country.

Does anybody here really believe we are going to be able to go down that kind of sophisticated, discriminative capacity? Some say maybe we might get there in 10 years, 20 years, 30 years; that we might have that ability if everything worked correctly. Maybe we can develop that kind of system ultimately. But at what cost? Then the question is, What is the next tier of countermeasure that defeats whatever it is we did to defeat their countermeasure?

People sit here and say: Don't worry about that, Senator; we are just going to have a technological superiority.

All you have to do is go back to the cold war, 50 years of point-counterpoint; step-counterstep. We do the atom bomb; they do the atom bomb. We do the hydrogen bomb; they do the hydrogen bomb. We put them on long-range aircraft; they put them on long-range aircraft. We MIRV; they MIRV. They do Sputnik; we do Sputnik.

Out of all of the measures through the entire cold war, the United States of America was the first to do them almost every single time. I think the record is all but once and maybe twice. Every single time we did it, it may have taken them 5 years, it may have taken them 7 years, but they did it. And finally we decided that we were safer by passing the ABM Treaty and beginning to move in the opposite direction, first with SALT and then with START.

Now all we are asking in this amendment is let's be certain, before we spend these billions of dollars. I happen to support this. I want to be very clear about this. I support the notion of developing a limited, capable, mutually deployed system for national defense that could, indeed, strike down a potential rogue missile or accidental firing. No leader of the United States could responsibly suggest we are going

to write off an entire city or State, or half our country. Of course we have an obligation to go down that road, but we have an equal obligation to do it in a way that does not wind up upsetting the entire balance of the arms race, or our current process of diminishing arms, that does not tell all our allies the United States is going to break out, at some point, of their regime at our own will; that we have not established a sufficient level of scrutiny, of transparency, of mutuality, that brings people along with us so they understand where we are going.

I say to my friend, I am all for continuing as rapidly as we can the technological development, the research, the capacity to do this, but don't we want to do it in a way that guarantees we have a system that can do what it sets out to do without inviting a set of unintended consequences that actually wind up making the world not as safe as we were when we began the process? That is all we are asking.

I can envision a world where the Russians and the Chinese and others decide we are all safer if we have a capacity to prevent a terrorist from firing some kind of missile from anywhere, but we are only safer if other countries move along with us and perceive that they are sharing in that safety and that, somehow, it is not a new measure directed by the United States against their current level of perceived security or threat level.

All of this is an ongoing process of perceptions: How they perceive us; how we perceive them. It is important to be sensitive to those perceptions.

I believe what the amendment of the Senator from Illinois will do will actually build on General Welch's recommendations. It will explicitly set out what the BMDO should do. It will require ground and flight testing that will make the system safer and better. It will ultimately guarantee us that we will get the kind of system we want.

General Welch says he intends for the independent review team to address these countermeasure issues. It seems to me what the Senator from Illinois is doing is guaranteeing that the Congress is going on record, just as we did in saying we think we ought to pursue this, just as we did in suggesting that there are certain threshold levels that we ought to respond to with respect to our intelligence.

My final comment is, picking up where the Senator from Michigan closed, the 2005 deadline is exactly what the Senator from Michigan defined it as. It is, in effect, an out-of-the-sky, artificially arrived at deadline. Yet it has been driving this debate and driving the Congress' actions. We have time to pursue this thoughtfully and efficiently. That is what this amendment sets out to do. I congratulate the Senator from Illinois.

THE PRESIDING OFFICER. The Senator's time has expired. The Senator from Virginia.

Mr. WARNER. Mr. President, if I may address my colleague on my time

and his reply can be charged to his time, I wish to associate myself with the response of my distinguished colleague from Michigan with regard to 2005. He is absolutely correct. The threat exists today. The warhead content is a different subject for a different time, but it is a part of this equation in calculation of time.

I am pleased the Senator from Massachusetts said on the floor tonight that he supports going forward with the concept of what we call the Cochran bill which was signed by the President of the United States. That is my understanding of what he said. He did vote for it. But he said collectively, we, and he opened his arms. The record also shows that the other two colleagues on this amendment did not vote for the Cochran bill and were two of the three who voted against it. The "we" I think we want to make a little clearer.

Here is my problem with this amendment, and I find myself in somewhat of an awkward position. I am defending Bill Cohen, my good friend, the Secretary of Defense of the administration with which my colleagues pride themselves with a long-time association. Fine.

Here is what it says on page 4 of the amendment:

Independent Review Panel.— (1) The Secretary of Defense shall reconvene the Panel on Reducing Risk in Ballistic Missile Defense Flight Test Program.

There it is, "shall reconvene."

Here is the panel to which he was speaking which reported to the Nation on June 13 of this year, and on page 3, General Welch and his colleagues said the following:

The IRT believes that design discrimination capabilities are adequate to meet the defined C-1 threat. However, more advanced decoy suites are likely to escalate the discrimination challenge. The mid-course phase BMD concept used in the current NMD program has important architectural advantages. At the same time, that concept requires critical attention to potential countermeasure challenges.

Precisely what my colleague from Massachusetts is saying. Let me finish:

There is extensive potential in the system design to grow discrimination capabilities. The program to more fully understand needs and to exploit and expand this growth potential to meet future threats needs to be well defined, clearly assigned, and funded now.

The concluding sentence:

A panel of the IRT is continuing work in this area.

When you direct the Secretary of Defense to do something the panel is already doing, I say to my good friends and colleagues, what is this about? That is why we will not accept the amendment. It has some constructive parts to it, but you are directing the Secretary of Defense to do something he is already doing. That is my concern.

Mr. KERRY. If I can answer the distinguished Senator, and I know the Senator from Illinois will talk about it more, the truth is, if you read the Senator's amendment in full, the Senator

is very precise about those kinds of tests that he thinks the Congress ought to guarantee take place.

The Secretary of Defense is a friend of mine, too. I went to meet with him 3 weeks ago on this very subject to spend some time talking it through with him, but I find nothing inappropriate, nor do I think he would as a former Member of this Chamber, in this Chamber expressing its will in requiring a certain set of tests with respect to a system.

This is not the first time we will have required the Secretary of Defense to do something. In point of fact, when we pass the DOD authorization bill, we have literally hundreds of directives for the Secretary of Defense with respect to housing, treatment of deployments, recruitments—there are countless numbers of ways we direct him to do things. It is entirely appropriate we direct him—

Mr. WARNER. Mr. President, I agree, but the amendment says clearly you shall do something he is already doing.

Mr. KERRY. I say to my friend from Virginia, I read that report very carefully. There is nothing in it that guarantees to me—there is terminology about further investigation, further evaluation, but that could be on paper; that could be a computer model; that could be in any number of ways that they decide satisfy a fairly strong compulsion, shall we say, within the institution to build.

What we want to guarantee is that compulsion is appropriately measured against a clear empirical standard that we are establishing. I find absolutely nothing inconsistent in that.

Moreover, with respect to the date that is compelling us—I know the chairman of the committee will agree with me on this—the fact is that significant changes have been made in the intelligence estimating process which has also made many people nervous about how people want to push this process a little bit.

The Senator from Michigan talked about the possibility of a missile being fired by North Korea. Until, I think, a year ago or 2 years ago—I will finish very quickly. I am not going to go on long. I want to make this point because it is important.

We used to measure in an intelligence estimate more than mere possibility. We measure intention, and it was only in response to the 1995 Rumsfeld process that suddenly we changed the way we evaluate this. We now no longer contemplate intention; we merely look at possibility. I say to my friend, it may be a possibility that North Korea has one missile that they could fire, but they would have to be beyond insane to do it because they would not last on the face of this planet more than 30 minutes because of our response.

So do they have an intention to do it, particularly when you measure it against the Perry mission, when you

measure it against Kim Dae-jung's recent visit and the entire rapprochement that is currently taking place? Are we to believe this is a legitimate threat we should be responding to with such speed that will not guarantee the kind of testing the Senator from Illinois is asking for?

That is our point. I think this is one where there are suspicions sufficient to raise questions about the guarantees that the testing will be there that we need.

Mr. WARNER. Mr. President, I thank my colleague.

It is important we do have colloquies on this issue. You have hit on a very important point, and that is "contentious." Throughout our long history, through the cold war with the former Soviet Union—indeed, today with Russia—there was always the underlying predicate that the Soviet Union—and now Russia—would handle decision-making as it relates to strategic intercontinental ballistic missiles in a responsible way.

Up until recently, we knew very little about North Korea, we knew very little about the intentions of the deceased leader, and now the new leader. Some ground has been broken. I happen to be on the cautious side.

So let us watch, not just for a month, not just for 2 months, but for over a period of time. It may well be that we can get a different perspective and understanding about the new leadership. But as yet, we cannot, and we have to rely on much in the past.

Mr. KERRY. I thank the Senator from Illinois for his indulgence because he has allowed us to go ahead longer than he gave me. I thank him.

Mr. WARNER. Yes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, what is the status of the time allocation for both sides?

The PRESIDING OFFICER. The Senator from Illinois has 32 minutes 42 seconds; and the Senator from Virginia has 42 minutes 48 seconds.

Mr. DURBIN. I thank the Chair.

Mr. President, I yield myself no more than 3 minutes to make one point.

Let me say, first to the chairman of the committee, who has been kind enough to stay here this evening for this important debate, that I think the level of exchange and dialog here this evening is an indication of the knowledge on the subject of the Members who have stayed and the level of their interest. I hope it adds to the national debate.

I also say to the chairman of the committee, I believe all of us in this Chamber share mutual respect for our current Secretary of Defense. I think he is doing an excellent job. Nothing that any of us have said or will say should bring into question our admiration and respect for his ability and his service to our country.

I also tell my colleagues, I had the good fortune, in preparing for the de-

bate, to go through a classified briefing and also to meet with Director Philip Coyle, who is in charge of Operational Test and Evaluation at the Department of Defense under the leadership of Secretary Cohen.

I asked him to put in common terms, that I can take back to a town meeting in Illinois, what we are talking about when we use the words "technologically feasible."

He said: Well, consider it this way. Is it technologically feasible to hit a hole in one in golf? Yes. Is it technologically feasible to hit a hole in one if the hole you are shooting at is moving? Yes, but it is getting a little more difficult. Is it technologically feasible to hit a hole in one if the hole you are shooting at is moving, as is the flag in that hole, and five or six other flags are moving as well, and you are not sure which one is actually the hole you are shooting at? Yes, I suppose that is technologically feasible, but now it is getting to be very difficult.

But it raises the very question of this debate about countermeasures.

I would like to quote and make part of this RECORD a letter that was sent to me on July 11 by Philip Coyle, director of the Office of Operational Test and Evaluation, in which he said:

This letter is to support your effort to reinforce the need for realistic testing of the National Missile Defense (NMD) system. It is still very early in the developmental testing of NMD. As we move forward, test realism will need to grow with system capability, and it will become more and more important to achieve realistic operational conditions in NMD system tests. This will include realistic countermeasures and engagement conditions.

The very nature of missile defense means that it will not be possible to demonstrate all possible engagements in open air flight intercept tests. Accordingly, it will be necessary to develop realistic ground test simulations including realistic hardware-in-the-loop and scene generation facilities. I especially appreciate your commitment to both ground based and open air flight tests.

If I can provide additional information, please don't hesitate to call me.

I say to the chairman of the committee, it is true that we are giving a directive to the Department of Defense and it is also true that the gentleman in charge of the testing under this program has said to us he believes it is an honest effort to make certain the system works.

Mr. WARNER. Could the distinguished Senator provide us with a copy of that letter?

Mr. DURBIN. I would be happy to.

Mr. WARNER. Perhaps it would be important to put it in the RECORD.

Mr. DURBIN. Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

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

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, DC, July 11, 2000.

Hon. RICHARD J. DURBIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR DURBIN: This letter is to support your effort to reinforce the need for

realistic testing of the National Missile Defense (NMD) system. It is still very early in the developmental testing of NMD. As we move forward, test realism will need to grow with system capability, and it will become more and more important to achieve realistic operational conditions in NMD system tests. This will include realistic countermeasures and engagement conditions.

The very nature of missile defense means that it will not be possible to demonstrate all possible engagements in open air flight intercept tests. Accordingly, it will be necessary to develop realistic ground test simulations, including realistic hardware-in-the-loop and scene generation facilities. I especially appreciate your commitment to both ground based and open air flight tests.

If I can provide additional information, please don't hesitate to call me.

Sincerely,

PHILIP E. COYLE,
Director.

Mr. DURBIN. Mr. President, I yield 6 minutes to the Democratic leader on our Armed Services Committee, Senator LEVIN of Michigan.

Mr. LEVIN. Mr. President, first, I commend the Senator from Illinois for this amendment. It is a very important amendment. It really shows congressional interest in an area which is going to require a great deal of attention. That is the statement of General Welch himself, which my good friend from Virginia just read.

I want to reread one of the lines in the Welch report, which is that: "more advanced decoy suites are likely to escalate the discrimination challenge. The mid-course phase BMD concept used in the current national missile defense program has important architectural advantages. At the same time, that concept requires critical attention to potential countermeasure challenges."

The countermeasures issue requires critical attention.

What the Senator from Illinois is saying is that the Congress should pay some attention to this, not just the executive branch. I have no doubt, and my good friend from Virginia has no doubt, Secretary Cohen will pay attention to this. We do not know if the next Secretary of Defense will be as interested in this issue—we hope he will be—as this Secretary.

But the fact that the executive branch is doing something has never prevented the Congress from putting something into law. We have had Presidents who have had Executive orders that we agree with, that we repeat in law. Why would we hesitate to simply express our own view, show congressional interest, and reinforce something which hopefully the Defense Department will continue to do? So it is not unusual for us to direct something. I think we ought to adopt this amendment overwhelmingly.

This is a very complicated system. The Senator from Virginia pointed out that a few of our colleagues voted against the Cochran bill. Almost all of us voted in favor of it. One part of the

Cochran bill said it should be our national policy—it is our national policy—to deploy a system when “technologically feasible” or words to that effect.

But there is another provision in the Cochran bill which was added by amendment, by the Senator from Louisiana, Ms. LANDRIEU, which I cosponsored, which said that it is also the policy of the United States to seek to continue to reduce, by negotiations, the number of nuclear weapons in this world. That is also the policy of the United States.

We have two policies—a policy to deploy a limited missile defense and a policy to reduce the number of nuclear weapons. What happens when those two policies clash is unresolved in the Cochran bill.

We must continue on both those courses. If there is a conflict between deploying a limited defense, after it is technologically proven—assuming it is—and reducing the number of nuclear weapons through continuing negotiations, if there is a conflict—as there apparently is at the moment, since Russia says she will not reduce further nuclear weapons if we are going to unilaterally deploy a national missile defense—if and when there is such a conflict, that conflict will have to be resolved under the circumstances at that time.

So I think the Senator from Massachusetts was very proper in using the term “we” because many of us supported the Missile Defense Act because of the presence of a number of policies, both to deploy a system when technologically feasible, subject to appropriation, as well as to reduce, through negotiations, the number of nuclear weapons in this world.

This amendment is a commonsense, fly-before-you-buy amendment. It is consistent with the Senate’s traditions. And it is something we have almost always required.

The few times we have deviated from the fly-before-you-buy approach, we have paid heavily for it, at least in a number of those instances. We should test against countermeasures. We are testing against countermeasures. This amendment simply says that it wants the Welch panel to be reauthorized, to continue in existence, to report to the Congress on defenses against countermeasures.

Finally, I will reread the one line which I think is so important from the Welch panel: The national missile defense program requires critical attention to potential countermeasures challenges.

That says it all to me. The current system does not address future countermeasure threats. It only addresses the so-called C-1 threat, as the Senator from Massachusetts pointed out. There are going to be in the future much more sophisticated countermeasures which this system has to be able to address or else it won’t make sense to deploy. That is what we would be going

on record as saying we believe is important. We would be doing what the Welch panel says is important: paying critical attention to potential countermeasures challenges, saying that the Congress cares about this issue, that it makes sense to us that as part of any decision of operational effectiveness, that there be testing against reasonably likely countermeasures that could be faced by a national missile defense.

I am glad my good friend from Virginia believes this is kind of a commonsense amendment, that it reinforces what the Secretary is already doing. I think it is very appropriate for Congress to do exactly that, to show our support when we do support something that is done by the executive branch and to state our opinion on the subject, and to put it in law so the next Secretary of Defense realizes it is in law and that there is congressional interest in the subject.

The PRESIDING OFFICER. The Senator’s 6 minutes have expired.

The Senator from Virginia.

Mr. WARNER. Mr. President, I have no better friend than my distinguished colleague from Michigan. What troubles me is he used the term “reauthorize.” Congress never authorized the Welch panel. It was convened by the Secretary of Defense.

Mr. LEVIN. I said the Secretary, not Congress.

Mr. WARNER. My friend used the term this amendment “reauthorizes.” I say to my good friend, Congress had nothing to do with it. This is a panel of the Secretary of Defense. The amendment language says “to reconvene.” It is not necessary to reconvene something which is ongoing. I want accuracy in this debate.

Mr. LEVIN. If my friend will yield, if I said Congress reauthorized instead of urging the Secretary to reconvene and to keep reconvened, I stand corrected and am happy to stand corrected.

I think the intent was clear, however, of what the Senator from Michigan said.

Mr. DURBIN. If the Senator from Virginia is not seeking time, I will continue allocating.

Mr. WARNER. The Senator may go ahead.

Mr. DURBIN. Mr. President, I yield 10 minutes to the Senator from Rhode Island, Mr. REED.

Mr. REED. Mr. President, I rise in support of the Durbin amendment. I commend him for raising this very important issue this evening.

This debate has already illustrated the knowledge of the participants and also the commitment of both sides in this debate to try to reach a very important and principled decision with respect to national missile defense. The obvious fact is that this is the most expensive military program we have contemplated, perhaps, in the history of this country, and there is a great deal riding on it.

It is not only financial, it is also strategic in terms of our increased se-

curity in the world and in terms of the reaction of our allies, reaction of potential adversaries, all of which makes this debate critical.

At the heart of this debate—one of the reasons the Senator from Illinois is contributing mightily to the debate—is the issue of countermeasures. The importance of countermeasures should be obvious to all of us. My colleague from Massachusetts talked about this. In the history of conflict, for every development, there is an attempt to circumvent or to neutralize that development. So it should be no wonder, as we contemplate deploying a national missile defense, our adversaries are at this time thinking of ways they could, in fact, defeat such a national missile defense.

There are two general ways to do that. One is to build more launchers with more warheads so you essentially overwhelm whatever missile defense we have in place. Or—this is probably the most likely response—you develop countermeasures on your missiles to confuse our defense and allow your missiles to penetrate despite our national missile defense.

At the heart of what we should be doing in contemplating the deployment and funding of this system is ensuring that in the testing we pay particular attention to the issue of countermeasures, because that is the most likely response of an adversary to defeat the system we are proposing. That is common sense in many respects. Anyone with a cursory knowledge of history would immediately arrive at that conclusion.

This is not a merely theoretical discussion. Sophisticated countermeasures already exist. They are the penetrating aids which are on most of the Russian missiles. There is the possibility, of course, that these penetrating aids will either be copied by rogue nations or, in fact, be traded or exchanged to these rogue nations.

I found very interesting a report by the intelligence community which was unclassified and issued last September. In their words:

We assess that countries developing ballistic missiles would also develop various responses to U.S. theater and national defenses. Russia and China each have developed numerous countermeasures and probably are willing to sell the requisite technologies.

Many countries, such as North Korea, Iran and Iraq, probably would rely initially on readily available technology—including separating RVs, spin-stabilized RVs, RV reorientation, radar absorbing material, booster fragmentation, low-power jammers, chaff, and simple balloon decoys—to develop penetration aids and countermeasures.

These countries could develop countermeasures based on these technologies by the time they flight test their missiles.

Frankly, what we are testing against today is a very small fraction of these possible countermeasures penetrating aids. We have selected a very discrete set of the most primitive countermeasures, and we have used that as our benchmark to determine whether or

not the proposed national missile defense system will work well enough to fund development and ultimate deployment, when, in fact, our own intelligence community is telling us today there are numerous sophisticated penetrating aids that are readily available.

They are also telling us that as we build up this national missile defense, our potential adversaries, while they build their missiles, are not just waiting around. They are also developing their countermeasures. So countermeasures takes on a very important role in our deliberations.

Senator DURBIN has identified this critical issue and has focused the attention of the Senate on how we will respond to this particular issue. His response is not only principled but is entirely logical.

What he is saying is, let's ensure that in the testing process, we don't test the just rudimentary countermeasures, we test for robust countermeasures. If we can defeat those countermeasures, then we have a system that not only we can deploy, but that system will be much more stable, much more effective over time; in effect, increasing the longevity of the system. When we are going to spend upwards of \$80 billion—I think that was one figure quoted; frankly, I believe whatever figure we have now, it will be much more when we finish paying the price—if we are spending that much money, we don't want to buy something that has a half-life of 1 year, 2 years, 3 years or 4 years. We want something that will justify the expense and defend the country against likely threats for many years.

Senator DURBIN used the analogy of golf. The other analogy that is very popular to try to bring into popular parlance what is going on here is essentially what we are trying to do is hit a bullet with another bullet, small objects flying through space at relatively large speeds. Think about how difficult that is right now.

We have made progress in terms of supercomputers, in terms of large-scale computer capacity. So the problem of identifying a speeding bullet and then calculating instantaneously through billions of calculations its trajectory and then sending that message to another bullet is a daunting physical problem, but we have made progress.

However, the countermeasures takes that daunting task and infinitely increases its complexity because to our system and our kinetic kill vehicle that is hurling through space, it won't be only one target; it could be multiple targets. To differentiate those targets, identify the real targets, and strike it in a matter of seconds is an incredibly complex technological task.

So I believe, once again, that the Senator has identified something that is critical to our responsibilities—not the responsibility of the Secretary of Defense, not the President's responsibility, but our responsibility as the Senate of the United States to super-

vise, to carefully review, and, ultimately, through appropriations and authorization, to give the final say about this system. That is our responsibility, and we would be rejecting that responsibility if we didn't look hard and insist that the executive look hard at this whole issue of countermeasures.

The other issue that has been discussed tonight is, why should we tell the Department of Defense to do something such as this when they are already doing it? Well, the simple answer is: We do it all the time.

Here are a few examples recently: Last December, the F-22, a very sophisticated fighter aircraft, was supposed to start its low-rate initial production; but this decision was delayed because there was dissatisfaction with its progress, with whether or not it was living up to its capabilities. We mandated tests because we were unsatisfied with the deployment schedule and its ability to be brought to the forces in the field. That was done much further along the line than the place we are in developing the national missile defense. In many respects, we are doing the same thing with the Joint Strike Fighter this year.

So it is not unusual to tell the Department of Defense, or to look over the Secretary's shoulder and say, even though you might be doing it, we want to make sure you are doing it, we want to make sure that they are looking specifically at the countermeasures. We want to know more specifically, when he talks about the capacity of this system to grow, will it grow up to all the countermeasures listed by the Intelligence Committee? Will it go from C-1 to C-2? We are not sure whether it will reach that ultimate test of countermeasures. This is a valuable role we must play.

There is another aspect to this whole debate, which I think should be noted. It is a very difficult thing and, in some respects, an intellectual challenge. For years and years, decades and decades, we have relied upon deterrence policy—

The PRESIDING OFFICER. The 10 minutes of the Senator have expired.

Mr. DURBIN. I yield an additional 1 minute to the Senator.

Mr. REED. I will wrap up quickly.

We have relied upon deterrence policy. At the heart of deterrence policy is the notion that the other side is rational, and they will calculate the damage you can do them just as you can calculate the damage that is done by them.

What has changed now? I would say that intellectually why we are even having this debate is we have abandoned this concept of rationality. We don't think North Korea is rational. Again, that is an assumption that we have to look at closely as we look at some of these other things. In some respects, if they are totally irrational, then maybe there is a little hope of deterring them from doing anything, even with the national missile defense.

But that is the difference. That is why my colleague from Massachusetts said we used to think about intentions, and now we don't. We made an intellectual decision we weren't going to look at that because we concluded they were irrational. I suggest that as we pursue this debate, we should look seriously at whether or not that assumption is valid.

I thank the Senator from Illinois. I yield back my time.

Mr. DURBIN. Mr. President, I thank the Senator from Rhode Island. How much time is remaining on our side?

The PRESIDING OFFICER. Eleven and a half minutes remain.

Mr. DURBIN. Unless the Senator from Virginia wants to seek time, I will conclude at this point, as briefly as possible.

Mr. WARNER. I welcome that. We have had a good debate. Having said that, let's wrap it up and pay our respects to the Presiding Officer and the staff who have all indulged us for this period of time.

Mr. DURBIN. Mr. President, why do we test? We test so we can justify the taxpayers of America the expenditure of their hard-earned money in the defense of our country, to make certain that the expenditure is made in a way that we can stand and be proud of it.

Secondly, we test to make sure that whatever we are building in the defense of this country will work. That is all this amendment is about. It is to make certain if the national missile defense is to go forward and to provide assurance to American families not only now but for years to come, it is because we have a missile defense system that will work.

We have heard from a variety of different experts that the question of countermeasures is a critically important question. In the language of this amendment, we are asking the Secretary of Defense to come forward and give us guidance as to what the state of countermeasures might be in the world and to judge whether or not our missile defense system can deal with those countermeasures and whether we are testing to make certain that that happens. That is the bottom line.

The response from the Senator from Virginia, and virtually every Senator who has spoken, is the understanding that what we are asking for in this amendment is reasonably calculated to ensure that any missile defense system, in fact, gives us a real sense of security and not a false sense of security.

This amendment is not intended to derail the national missile defense system. It is intended to make certain that the system, if America comes to rely on it for national defense, actually works.

In years gone by, when we hurried along the testing process, we have had some sorry results. The B-1 bomber went into production in the late 1970s and wasn't fully integrated into flying units for 24 years. There were major problems with avionics, the engines,

and the defensive stealth configuration that costs literally hundreds of millions of dollars. Adequate testing did not take place before money was spent on a system that was not capable of meeting the need of our national defense. Let us not allow that to happen when it comes to something as critical as our national missile defense system.

I thank the Senator from Virginia for his patience this evening. I hope he believes, as I do, that this valuable debate will not only help the Senate but the country on this very important issue in a much more complete fashion. I thank the Senator.

Mr. WARNER. I thank my colleague. I daresay the final conference report in the Armed Services bill will draw on this amendment for certain portions of the law that we will write.

Mr. WELLSTONE. Mr. President, I also thank the chairman for making this a very important substantive debate. I thank the ranking minority member.

Mr. WARNER. I wonder if my colleagues might consider reviewing their position on the COCHRAN bill, while there may be other opportunities to express affirmation.

Mr. DURBIN. I thank the Senator from Virginia. We will.

Mr. WARNER. Mr. President, I believe the regular order would provide that we have concluded the matters in the unanimous consent agreement as it relates to this bill. We can wrap up for the night on this bill. I will yield to my colleague.

Mr. DURBIN. Mr. President, if I might, I don't believe I asked for the yeas and nays on the amendment. I do so now.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. COCHRAN. Mr. President, I believe the proposed amendment on testing of our National Missile defense system is overly broad, unnecessary, and counterproductive.

The amendment asks that we direct the Defense Department to conduct testing of our National Missile Defense system against—and I quote—“any countermeasures (including decoys) that . . . are likely, or at least realistically possible, to be used against the system.” And it defines a countermeasure as “any deliberate action taken by a country with long-range ballistic missiles to defeat or otherwise counter a United States National Missile Defense system.” With language as broad as this, there is virtually no bound to what we would be directing the Ballistic Missile Defense Organization, as a matter of law, to go off and test against. I don't believe it is useful to legislate such broad and open-ended requirements.

Nor is it necessary. There is already a process in place to ensure that the National Missile Defense system—like every other weapon system we have—is properly tested against the likely

threats it faces, including potential countermeasures. Our acquisition system has a methodical process by which requirements for any new weapon system are studied and approved, and National Missile Defense is no different. Moreover, there is an independent operational test and evaluation organization in the Defense Department as a second layer of oversight to make sure new systems are adequately tested. With those processes in place, there is no need for a third layer of requirements, levied in an overly broad statute, to deal with some vague technical notions that someone somewhere has imagined.

There are possible countermeasures to every weapon and those are considered as a matter of course in the design and testing of every system. We don't have legislation directing realistic operational testing against any possible countermeasures for the F-22, for example, and I see no reason to single out this particular weapon system for such treatment.

Most of the recent talk about countermeasures to the NMD system has been generated by wild accusations from some college professors who have long opposed missile defenses of any sort. They would have us believe that countermeasures can become reality for even technologically unsophisticated nations simply because they can be imagined. But in the real world, in which ideas have to be translated to design, and design to hardware, and the hardware tested, the reality is far different.

Those who are building our missile defense system understand this and that is why they have built in to that system the capability to deal with countermeasures as they evolve. The pending amendment would direct a reconvening of the Welsh Commission to examine this issue, but the fact is that General Welsh and his team have already looked at this issue. This is what he told the Senate just a couple weeks ago:

There is very significant potential designed into the C-1 [initial NMD] system to grow to beyond the capability to deal with those countermeasures. The problem with estimates as to what people can give was that—the Chinese will share it, the Russians will share it—it's one thing to share technology, it's something else to incorporate it into your system. And, so unless they share an all-out system ready to launch, there is still a very significant technical challenge to integrating somebody else's countermeasure technology into your offensive weapons system.

Those who believe it will be easy for rogue states to incorporate countermeasures into their long-range ballistic missiles should consider what happened last Friday night in the test of the National Missile Defense system. A Minuteman target missile was launched from Vandenberg Air force Base carrying a dummy warhead and a balloon decoy. No nation except perhaps Russia has more experience than the United States with technically so-

phisticated countermeasures, and those who say such measures will be easy for rogue states to deploy derided this balloon decoy as laughably simple. Well, the decoy didn't deploy properly. As Undersecretary of Defense Jacques Gansler noted following the test, “Others have said how easy it is to put up decoys, by the way. This is the proof that one decoy we were trying to put up didn't go up.”

Mr. President, countermeasures will eventually challenge the National Missile Defense system, just as they have challenged every other weapons system that has ever been deployed. But they aren't anywhere near as easy to perfect as opponents of missile defense would have us believe, and we already have adequate measures in place to ensure the National Missile Defense system is adequately designed and tested to account for potential countermeasures. This legislation is vague, overly broad, and unnecessary. I urge Senators to vote against it.

Mr. BINGAMAN. Mr. President, I rise to support the amendment being offered by my colleague, Senator DURBIN, calling for effective testing of the National Missile Defense (NMD) program now under development by the Department of Defense.

When the President signed H.R. 4, the National Missile Defense Act of 1999, into law a year ago, he made the statement that “any NMD system we deploy must be operationally effective, cost-effective, and enhance our security.” The key word in the President's statement, Mr. President, is “effective.” In other words, before we decide to move ahead with the NMD program, among other important considerations, we must be confident that the system will be an “effective” one.

Last year, when we debated this matter in the Senate, I spoke with my colleague, Senator COCHRAN, who agreed with me that we shouldn't buy the system until we know that it will work. It's common sense, of course, to hold back on a decision to purchase something until we know that it will work as advertised. We know that as private consumers. The same is true for the government as a consumer.

Indeed, that is the policy of the Department of Defense (DoD) with respect to its purchase of ALL major weapon systems. DoD's policy instruction governing acquisition of all major weapon systems, DoD Directive 5000.1, contains a number of provisions intended to ensure that the customer, DoD as well as the nation as a whole, will get what we pay for.

The bottom line for the Department of Defense regarding “effectiveness” is whether a weapon system is tested successfully in realistic operating situations. The DoD instruction states that “before purchasing a weapon system from the production line, the Director of Operational Test and Evaluation must report to the Secretary of Defense that the system is operationally effective and suitable for use in combat.” That should be true for missile

interceptors as well as for conventional guns, tanks, and airplanes.

Mr. President, the Congress has on many occasions expressed its commitment to the taxpayer that the billions spent on weapons will provide the nation with the real military capability we may need. The provision of DoD Instruction 5000.1 that I have cited is one such example. Another was legislation enacted during the 1980's requiring warranties on all major weapon systems and their components.

We also, know, Mr. President, that when we fail to require that a system meet operational standards, we pay a heavy price. In the early 1980's, the Congress appropriated over \$20 billion dollars to purchase 100 B-1B bombers. The problem was that we had never tested them. The B-1B looked like the B-1A, but in fact was a far different weapon. It needed to be tested. We didn't do it and went ahead with the purchase. Mr. President, we now know the unfortunate history of that purchase. It wasn't until recently that the DoD used the B-1B in combat, and even then under very special operational circumstances. In the intervening decade and a half, the Air Force chose other ways to get the job done. I'm convinced that, in part, it was because the Air Force knew that the B-1B would not have been capable of getting the job done. There are other expensive examples I could use to illustrate the price we've paid for inadequate testing. Design flaws in the C-5 and F-18 have ended up costing the taxpayer a bundle. I'm sure you've recently read the news reports about flaws in the protective suits for our troops to use in a chemical or biological warfare environment. They weren't adequately tested either.

The amendment Senator DURBIN is sponsoring today seeks simply to affirm Congressional commitment to the taxpayer, to the men and women in uniform who must operate our weapons, and to the nation that must depend on it for our defense. I am pleased to cosponsor this amendment that would require that the NMD system be tested against possible countermeasures that are likely, or at least realistically possible, to be used to accompany attacking warheads that potential enemies could launch against us. The amendment calls for the Ballistic Missile Defense Organization (BMDO) to plan ground and flight tests to address those threats, to seek funds to support what's needed to meet them, and to report annually on the status and progress of the NMD program regarding countermeasures. In short, Mr. President, the amendment proposes concrete actions to ensure that we know the exact nature of the threat, that we plan appropriate technical responses, and that we test adequately to make sure that those responses work.

We are all aware of the recent outcome of the latest NMD flight test, IFT-5. In that test, a developmental test, the kill vehicle failed to separate

from its booster to engage the incoming target warhead. Mr. President, this was a test designed and conducted under very controlled, hardly realistic, conditions. It was a test in which all the pieces of the complex NMD system were given special capabilities to carry out their job in a controlled, experimental environment.

I think we can all agree that it's appropriate to walk before we run. In "walking" through this test, IFT-5, we have discovered once again how difficult it is to "hit a bullet with a bullet" even though we think we know how each piece of the system will function. I'd like to emphasize, Mr. President, that this was not an operational test under realistic conditions that DoD requires for every other major weapon system before it decides to go ahead and buy it. This was a controlled, laboratory test in which one of the pieces we thought we know most about failed.

I believe that although the NMD test program to date indicates that we are developing some amazing capabilities, we are a very long way from being confident that the NMD system as a whole will work. Indeed, in order for an NMD test to be truly realistic, there are a whole host of variables that must differ significantly from the conditions that were present during the IFT-5 test. In order to be more realistic, for example, future tests should reorient the basic geographic direction of the test from West to East rather than East to West. The flight test envelope would have to be greatly enlarged. Various types of countermeasures, the subject of the amendment, should be used. Actual military personnel who would operate the system should be at the controls. Information from the warning system should reflect likely warning times. We are a very long way from realistic testing the NMD system in those regards and a number of others. This amendment addresses only one of those variables, albeit a very important one. Adopting this amendment will provide us with critical information about the feasibility of the NMD system to get the job done. Committing ourselves to procuring and deploying the NMD system until we know the answers to questions regarding key operational capabilities would be premature and ill-advised.

There are other critical factors that will play important and necessary roles in determining whether the President will commit the nation to deploying NMD. Surely the nature of the threat must be assessed and reassessed to make sure that this program is warranted. Surely the possible responses of our allies and potential adversaries will play an important part in the President's calculation. At the end of the day, the President will have determined whether the nation is more or less secure as a result of deciding to deploy the NMD system.

In the meantime, as responsible stewards for public expenditures, it be-

hooves us to take all measures necessary to ensure that the billions we are spending for NMD are giving the taxpayer real dividends. This amendment is an important means to make that happen. I urge all of my colleagues to support realistic testing before committing the nation to procurement and deployment of NMD. Thank you, Mr. President. I yield the floor.

Mr. JEFFORDS. Mr. President, this discussion of a national missile defense system comes at a timely moment. As we struggle to complete action on our thirteen appropriations bills that fund the Federal Government, we are confronted with many unmet needs and the desire to reduce the amount the Federal Government takes from the American taxpayers' hard earned income. The budget agreement locks in spending limits and requires a balanced budget, thereby preventing us from increasing spending on missile defense without cutting other programs. The debate over how much to spend in research on a national missile defense (NMD) system and whether it is time to make a decision on deployment strongly effects both the government's ability to meet the needs of Americans and the likelihood that we will be able to return money to the taxpayers of this country. The costs of such a system and the choices it would force us to make must be carefully weighed against the benefit of an NMD system, the chances that it would work, and the effect that deployment would have on the arms control agenda of the United States.

The decision on how much to spend on an NMD research program cannot be made without considering these questions. We must ask how much we can afford to spend on defense. I argue that national security also has a social component: affordable health care for all Americans, better job opportunities, a strong education system and economic security for America's seniors are all facets of a strong America. Without these things, military technology cannot protect America from the real threats against us.

I have long supported a reasonable program of research and testing of anti-ballistic missile technologies, while opposing efforts to throw huge increases at the program. I hope that thoughtful research will lead to some technological breakthroughs on ways to counter ballistic missiles. Their proliferation, especially in the hands of irresponsible leaders such as North Korea's Kim Jong Il, requires that we actively investigate possible defenses. We cannot ignore the emergence of new nuclear threats to the United States.

A premature decision to deploy an inadequately tested national missile defense system would also be a risk to national security. We cannot afford to spend huge amounts of money on a system we are not certain would work, or on a system that might provoke the very reaction from rogue states that we are ultimately trying to prevent. I

am a strong believer in strengthening international non-proliferation regimes such as the Non-Proliferation Treaty and the Comprehensive Test Ban Treaty, which I am very disappointed the Senate has failed to ratify. Successful non-proliferation efforts are worth every penny! The Anti-Ballistic Missile Treaty has also served us well for many years, and we must be careful to not throw out a valuable asset in our rush to jump on the newest technology.

I am pleased to be a cosponsor of Senator DURBIN's amendment to add some important requirements to any national missile defense testing regime. This amendment would require realistic testing of an NMD system against the countermeasures that might be deployed against it. Senator DURBIN's amendment would help ensure that if we move to consider deployment of an NMD system, we would have a realistic assessment of that system's expected performance. Any evaluation of the effectiveness of an NMD system must consider not only the capabilities of the system itself, but its ability to survive what we expect might be thrown up to defeat it. Without this information, it would be hard to judge the true utility of such a system, and easy to overestimate its performance.

This past Friday's failed test of a space intercept brings into sharper focus the issue of claims and performance of an NMD system. Without realistic tests proving the expectations of researchers, we can never be sure that laboratory results can be duplicated in practice. It might be tempting to rush to deploy a system that appeared to provide significant protection for the American people. Passage of this amendment would help ensure that any system have a reasonable chance of working before it is considered for deployment.

I continue to believe that our greatest vulnerability to nuclear attack is not from a nuclear bomb delivered by an intercontinental ballistic missile, but rather from a nuclear device slipped into the country in some much less visible way, like hidden in some cargo coming into a major U.S. seaport. Committing many billions of dollars to deploy the proposed defense systems would do nothing to protect us against this very real threat. At this time, it would be much more productive to invest these funds in stopping the spread of nuclear technologies and in using other means to counter terrorist organizations and other rogue elements.

Personally, I believe that the politics of missile defense have gotten way out ahead of the science of missile defense. This amendment would help restore the proper order of these concepts. I urge my colleagues to support the Durbin amendment.

Mrs. BOXER. Mr. President, the Durbin amendment to the fiscal year 2001 Defense authorization bill is a common sense proposal that will ensure that a

National Missile Defense system is properly tested before it becomes operational.

President Clinton is expected to make a decision in the next few months on whether or not to begin the deployment of a National Missile Defense system. He has said that the decision will be based on four criteria: the readiness of the technology, the impact on arms control and our relations with Russia, the cost of the system, and the threat. Based on these criteria, I do not believe that a decision to deploy should be made at this time.

This amendment deals with just one of these criteria, the readiness of the technology. It says that the National Missile Defense system should be tested against realistic decoys and other countermeasures before it becomes operational. Initial operating capability is now scheduled for 2005.

Let me be clear, this amendment would not prevent a deployment decision this year, nor would it delay the deployment of the system.

Mr. President, this is no different from school. If you cannot pass the exams, you cannot graduate. In this case, if NMD cannot pass a test against realistic countermeasures, it will not be made operational. There will be no social promotion of missile defense. The strategic implications of this system are too great. We do not want to make a system operational that we are not sure will work against an incoming warhead.

Now the opponents of this legislation might say: Senator Boxer, this amendment is unnecessary. The U.S. would never make a missile defense system operational that wouldn't work.

Well, in 1969 the U.S. made a decision to deploy the Safeguard missile defense system to defend U.S. missile against incoming Soviet missiles. This system would have used Spartan missiles armed with small nuclear warheads to intercept incoming ICBMs.

On October 1, 1975, after spending \$6 billion (over \$20 billion in today's dollars), the first ABM site became operational at Nekoma, North Dakota. Five months later the project was terminated.

Why was the project terminated? Because it didn't work. There were at least two major problems with the Safeguard system. First, its radars were vulnerable to destruction by Soviet missiles. Destruction of these radar systems would blind the defensive system. Second it was found that when the nuclear warheads on defending Spartan missiles were detonated, these explosions themselves would also blind the radar systems. You do not have to be a rocket scientist to know that it is important for the system to work before it is made operational.

So why is the Senator from Illinois concerned about countermeasures? A September 1999 National Intelligence Estimate warned that emerging missile states would use countermeasures.

Let me quote from the unclassified version of the report:

Many countries, such as North Korea, Iran, and Iraq would rely initially on readily available technology—including separating warheads, spin-stabilized warheads, warhead reorientation, radar absorbing material, booster fragmentation, low power jammers, chaff, and simple balloon decoys.

It goes on to say that "Russia and China each have developed numerous countermeasures and probably are willing to sell the requisite technology."

Many of our best scientists have said that the planned NMD system would be defeated by countermeasures. An April 2000 report released jointly by the Union of Concerned Scientists and MIT Security Studies Program found that "the current testing program is not capable of assessing the system's effectiveness against a realistic attack."

So Mr. President, this is an important amendment. It would ensure that our NMD system is tested against realistic countermeasures and require detailed reports from the Secretary of Defense and the Independent Review Panel which is headed by retired Air Force General Larry Welch.

I congratulate my friend, Senator DURBIN, for offering this important amendment and I urge the Senate to adopt it.

Mr. HATCH. Mr. President, I want to extend my personal gratitude to the Armed Services Committee Chairman and the Ranking Member, as well as to the Chairman and Ranking Member of the Subcommittee on Readiness for their consideration of my recommended language at Sec. 361 of this bill. This provision requires the Secretary of Defense to report on the consequences of high OPTEMPO on military aviation and ground equipment. Let me explain why I applaud this provision. My particular interest is somewhat more focused on aviation assets.

Quite simply, we need to know the adverse effects that the worldwide contingency operations engaged in by our military high-performance aircraft are having on the integrity of the aircraft's frame, engines and other components.

I raise this issue, Mr. President, because my state proudly hosts the Ogden Air Logistics Center at Hill Air Force Base, Utah. Just recently, a team of depot technicians at Hill discovered that the mechanical assembly designed to brake or halt the rise and fall of the stabilizer on the Air Force KC-135 tanker had been prematurely wearing out because of a surge of KC-135 flight activity, much of it related to the frantic deployment schedules that these aircrews are tied to.

The shortage of replacement parts for the stabilizer braking system forced the Air Force to come up with a methodology to refurbish the old part. There had never been a refurbishment of the braking assembly before this time.

This is an important fact because the engineering design missed a critical step in the refurbishment process designed to heat out hydrogen that

risked getting into microscopic fissures in the brake ratchet. This would have eventually embrittled the system, causing the stabilizer to fail. It would have meant with near certainty that we would have lost aircraft in midair flight as well as some aircrew lives.

The Secretary of the Air Force, Whitten Peters, has commended the depot technicians for their astute recommendations to the Air Force Materiel Command to ground the KC-135 fleet; this was done, and I am convinced that lives were saved.

But I am no less convinced that we need better visibility over the rapidly aging aircraft airframes and other parts are suffering from the near-freight flying schedules and deployments that they and their crews are committed to. Put more directly: we cannot and must not push these brave aircrews into harm's way in aircraft that are even remotely vulnerable to critical component failures.

Mr. President, my concern extends to all tactical and strategic, as well as support and service support aviation assets used in these contingency and peacekeeping operations by the Navy, Marine Corps, and the Air Force. The provision asks for a study of the effects of these deployments on all such assets. Wisely, the Committee has added Army aviation since its predominately rotary wing—or helicopter—operations warrant inclusion in the scope of this assessment.

If one looks at the Air Force commitments, which have carried the bulk of many of the contingency operations, the statistics are as staggering as they are telling: 18,400 sorties over Iraq; 73 percent of the air assets patrolling the Northern watch no-fly zone which produced 75 percent of the total number of sorties in that region. In the Southern Watch no-fly zone, the Air Force also provided 35 percent of the total air assets and produced 68 percent of the sorties. But I don't want to ignore the Navy with its carrier-based aircraft that undergo take-off and, especially, landing procedures that create unimaginably harsh stresses on aircraft. Many members of this body have witnessed carrier operations and know precisely what I am talking about. Some of our colleagues, like my good friends John McCain and Tom Harkin, are even former Navy carrier pilots.

The Secretary of Defense has tried to deal with this issue. And we have tried to help him in the past year. Secretary Bill Cohen cited in his report to Congress this February that aging systems, spot spare parts shortages, and high OPTEMPO [high operating tempo] are placing increased pressure on materiel readiness." The Secretary has testified to his "particular concern" for "negative readiness trends in mission capable rates for aircraft." Last year, Congress provided DOD with \$1.8 billion in Kosovo emergency supplemental funding to meet the most urgent demands.

Yet, our equipment is aging. The average age of Air Force aircraft is now

20 years old. Our state of art air-to-ground mission aircraft, the F-16, has a technology base older than most of its pilots, some of whom are flying F-16 aircraft that have been in service longer than they have been alive! The problems of corrosion, fatigue and even parts obsolescence are rampant. I spend much time at Hill Air Force Base in my state of Utah. There are certain critical components that are still tied to vacuum tube technology. Imagine that! How many of us still listen to vacuum tube radios; some of our younger staff members may not even know what they are! Some of our top-of-the-line tactical fighter aircraft use gyroscopes—which are absolutely critical to positional accuracy—that are several generations old. It bothers me greatly to hear people complain about "gold-plated" military aircraft. I would invite any of them to join me in a tour of the Ogden, Utah, depot. When they see the condition of components from our best tactical fighters being serviced, I suspect they would better understand the real meaning of courage.

But let me conclude with a word about the most important resource in this equation: people. We have reduced our forces by 30 percent and increased deployments by nearly 400 percent. The effect is exactly what you would expect. Recently, the Marine Corps' Commandant and the Army Chief of Staff announced that deployments of their aviation and ground equipment are now 16 times the rate during the Cold War. Unprecedented pilot losses, reaching a 33 percent level in the Navy, 15 percent in the Air Force and 21 percent in the Marine Corps. But the most critical losses are found among the highly specialized aircraft service technicians. Specialists in electronic components, air traffic control, armaments and munitions, and other technical specialties, at all levels of service, short-term, mid-term and long-term, are leaving in unprecedented numbers. Even the Air Force's valiant Expeditionary Air Force concept, which organizes a highly mobile slice of the Air Force into 10 task forces, called "Air Expeditionary Forces," faces technical enlisted skill shortages which still burden the fewer and fewer technicians who remain on active duty, according to a General Accounting Office study on military personnel released in early March 2000.

Mr. President, I want to thank my colleagues for listening to this long presentation regarding my concerns for the state of our military aircraft and the people who fly and service them. I know that most will join with me and the committee in calling for a full review of the consequences of the unprecedented peacetime demands being made on our people and their equipment.

NATIONAL GUARD CHALLENGE PROGRAM

Mr. BYRD. Mr. President, I am seriously concerned about Section 910 of S. 2549, the National Defense Authorization Act for Fiscal Year 2001.

Section 910 would effect the transfer of responsibility for the National Guard Youth Challenge program from the Chief of the National Guard Bureau to the Secretary of Defense and would amend the limitation on federal funding for the National Guard Challenge program to limit only Department of Defense funding. This language removes the National Guard Bureau from the "chain of command" and from its statutory role as the channel of communication between the federal government and the states (10 U.S.C. Sec. 10501).

Youth Challenge exists in 25 states and is a federal/state partnership program. While there is partial federal funding (which is capped by law at \$62.5 million per year), the Challenge staff members are state employees who meet state teacher and counselor certification requirements. All legally binding cooperative agreements currently in place are between the Governors and the Chief, National Guard Bureau.

Challenge is a highly successful program that takes at-risk youths and gives them the opportunity to turn their lives around and become productive members of their communities. Since the program was established, with my assistance in 1991, more than 4,500 young Americans have graduated. Of this number, more than 66% have earned their GED or high school diploma; more than 12% entered the military, and more than 16% enrolled in college.

Challenge is a program in demand by the states. If it were not for the cap on spending, more states would have a Challenge program. Transferring authority from the National Guard to the Office of the Assistant Secretary of Defense for Reserve Affairs could only have a negative impact and upset a program that is operating extremely well under the auspices of the National Guard Bureau. It would add another layer of bureaucracy and require the State National Guard programs to relate through an altogether new "chain of command" for the Youth Challenge program, while maintaining the existing "chain of command" for all other National Guard activities.

On June 16th of this year, I participated in the graduation ceremony of the cadets of the Mountaineer Challenge program at Camp Dawson, West Virginia. In all my years of delivering commencement speeches and high school diplomas, I can say without reservation that this was the most impressive group of students that I have ever encountered. The graduates sat at full attention throughout the event, with obvious pride in their hard-earned achievements and serious commitment to a future on the right path. Such transformation can not be achieved by mere bootcamp exercises alone. It takes a tough-love approach with caring and compassionate instructors who want to see the lives of these troubled youth turned around forever. The National Guard offers these young people

the very virtues—leadership, follow-ership, community service, job skills, health and nutrition, and physical education—that are in keeping with the Guard's tradition of adding value to America and it certainly showed in West Virginia.

Let us not punish this fine organization which is doing an exceptional job in helping youth in-need.

Mr. WARNER. It is my understanding that the committee report language may not fully and adequately explain the intent of the Committee. The Committee's intent is to reaffirm the role of the Secretary of Defense to establish policy for and oversee the operation of DOD programs. I intend to see that the conference report language adequately expresses the view that the National Guard is to continue to administer the Youth ChalleNGe program under the oversight and direction of the Secretary of Defense.

Mr. LEVIN. I think the Chairman has a workable solution. It is not the intent of the Committee that the National Guard should lose its ability to administer this highly successful program. Rather, the intent is that there be adequate policy direction and oversight of the Youth ChalleNGe program by the Secretary of Defense.

Mr. BYRD. I had intended to offer an amendment to clarify this issue. However, I believe that the comments of the distinguished Chairman and Ranking Minority Member of the Armed Services Committee have helped clear up this matter. I hope the conference report will further clarify the matter.

CONVEYANCE AUTHORITY FOR UTILITY SYSTEMS

Mr. GORTON. Mr. President, I am very concerned about a provision contained in H.R. 4205, the National Defense Authorization Act for Fiscal Year 2001, regarding the conveyance authority for utility systems at U.S. military installations. The House proposes to change existing law in a manner that jeopardizes the ability of a municipal utility in Washington, Tacoma Power, to participate in the competitive selection process and acquire Fort Lewis' electric utility system. Fort Lewis is Washington's major Army base. I oppose changes to DOD's current conveyance authority, when that change impedes competition.

The Department of Defense is privatizing utility systems at military bases throughout the country. Military bases are considered Federal enclaves, and therefore are subject to Federal, rather than State, law. The language contained in H.R. 4205 dramatically weakens existing Federal law by subjecting military bases to State laws, regulations, rulings and orders in the competitive bid process of their utility systems. This would have a negative impact on DOD utility privatization efforts in my state of Washington. The reason for this is that utility service territories in Washington are established by service area agreements—contracts—rather than by State decree. Eliminating the Federal law that

applies on military bases would create a host of legal questions, the effect of which is to foster litigation and undercut the DOD privatization process in Washington.

Because I am not a member of the Senate Armed Services Committee, and would therefore not be privy to Conference Committee negotiations, I respectfully request your assistance in assuring that whatever utility language is included in the FY01 Defense Authorization bill properly takes into account the unique circumstances of Washington.

Mr. WARNER. I share the Senator's concerns regarding the impact the House language might have on competition, and will work with you to ensure that Washington state's issues are addressed during the conference. Any suggestions you may have on this matter would be most welcome.

Mr. GORTON. I thank the Senator in advance for your commitment to this effort. I look forward the working with you in the coming weeks to see that this issue is resolved in a favorable manner.

Mr. KENNEDY. Mr. President, this past year, the men and women of the Armed Forces proved, once again, the value of a strong and ready military. Since the end of the Cold War, our Armed Forces have been busier, and have conducted a greater variety of missions around the world, than at any other time during our nation's history, short of war.

Our forces ended Serb aggression in Kosovo, brought peace to East Timor, and aided earthquake victims in Turkey. At this moment, American service men and women are monitoring the demilitarized zone in Korea, enforcing the no-fly zones over Iraq, patrolling the Arabian Gulf for oil smugglers, and assisting in the battle against drugs in Central and South America. These activities are in addition to the daily operations they conduct at home and with our allies overseas to maintain the readiness of our forces.

Our National Guard and Reserve members continue as equal partners in carrying out our national security and national military strategies. Last May, in the span of only one week, C-5 transport aircraft from the 439th Airlift Wing at Westover Air Reserve Base in Massachusetts carried helicopters and equipment to Trinidad-Tobago to aid in the war against drugs, flew the Navy's new mini-submarine to Hawaii, an unprecedented accomplishment and a tribute to their ingenuity and resourcefulness, airlifted Marines to Greece, carried supplies to Europe, and continued their very important training at home.

Last week, over a hundred citizen-soldiers from Bravo Company of the 368th Engineer Combat Battalion left their homes in Attleboro, Massachusetts for duty in Kosovo.

These are just a few examples of what Guard and Reserve members from every state, do for us each day around the world.

We ask the men and women of our Armed Forces to prepare for and respond to every contingency, from supporting humanitarian relief efforts, peacekeeping, and enforcing United Nations sanctions, to fighting a full-scale Major Theater War. A quarter million of our service members are deployed around the world to deter aggression, keep the peace, promote democracy, and foster goodwill and cooperation with our allies, and even with our potential adversaries.

All of our men and women in uniform put our nation's interests above their own. When called upon, they risk their lives for our freedom. As a nation, we often take this sacrifice for granted, until we are reminded of it again by tragic events such as the April training accident in Arizona, where 19 Marines lost their lives in the line of duty. These Marines paid the ultimate sacrifice for their country, and it was fitting for the Senate to honor them with a resolution. I commend my colleague Senator SNOWE for her leadership on that resolution.

More recently, this week, two Arizona Army Guardsmen lost their lives when their Apache helicopter crashed in a night training exercise. Two Navy pilots were killed in a training accident in Maryland. The cost of training in the name of peace and security is high.

One of Congress' most important duties is to make sure that our Armed Forces are able to meet the many challenges of an increasingly unstable international environment. Both the Director of Central Intelligence and the Director of the Defense Intelligence Agency testified before the Senate Armed Services Committee that, more than at any other time in the nation's history, we are at risk of "substantial surprise" by adversaries. Their views are supported by the worldwide expansion of information technology, the proliferation of dual-use technology, and the fact that the expertise to develop weapons of mass destruction is available and for hire on the open market.

The growing resentment by potential adversaries of our status as the last superpower makes us susceptible to hostile acts ranging from computer attacks to chemical or biological terrorism. Our military must be equipped to deter this aggression and, if necessary, counter it. The FY 2001 National Defense Authorization Bill takes a positive step toward doing so.

The many activities which our forces have undertaken and maintained in the past decade, in spite of reduced resources, has taken a toll on our people, their equipment, and readiness. This bill continues the increases in defense spending needed to reverse this trend that the President and Congress began last year. At \$310 billion, this bill represents real growth, and a necessary investment in the future of the nation's security. At the heart of our armed forces are the soldiers, sailors,

airmen and Marines who took the oath of office to support and defend the Constitution against all of our enemies, foreign and domestic. Clearly, without them, we could not preserve our freedom. Attracting young men and women to serve, and retaining them in an all-volunteer force, is more challenging than ever. Last year, Congress authorized the largest pay raise in nearly two decades, reformed the pay table, and restored the 50% retirement benefit. This year, we continue these efforts to support our service members and their families, by granting a 3.7 percent pay raise, which is one-half percent above inflation. We also provide for the gradual reduction to zero—over five years—of out-of-pocket housing expenses for service members living off base, and we provide better military health care for family members. The bill also directs the implementation of the Thrift Savings Plan that Congress authorized last year. The welfare of the men and women of our armed forces is rightly at the center of this year's Defense Authorization Bill.

The bill also takes a bold and necessary step to honoring the promise of lifetime health care for military retirees. The Armed Services Committee heeded the needs of our military retirees, and addressed their number one priority—the cost of prescription drugs. The Defense Authorization Bill expands the Base Realignment and Closure pharmacy benefit—already available to 450,000 retirees—to the entire 1.4 million Medicare-eligible military retiree community. This benefit lets all men and women in uniform know that we care about their service, and that a career in the military is honorable and worth pursuing. It also lets all military retirees know that Congress is listening, cares, and is willing to act on their behalf.

The bill also continues and expands health care demonstration programs to evaluate how we can best address the health care needs of these retirees. We must complete the evaluation of these programs and move to answer their needs. I am hopeful that soon, we will be able to do more.

The bill also enhances efforts to prepare for and respond to other threats. It authorizes five additional Civil Support Teams to a total of 32 by the end of FY 2001. The teams will be specially trained and equipped to respond to the suspected use of weapons of mass destruction on American soil. While we hope they will never be needed, we must be prepared for any emergency.

The bill adds \$74 million for programs to protect against chemical and biological agents, and it funds the research and development for a second generation, single-shot anthrax vaccine. The men and women of our Armed Forces need this support now.

Each service has taken steps to protect the environment, but too little has been done to detect and deal with the effects of unexploded ordnance. On the Massachusetts Military Reservation,

unexploded ordnance may be contaminating the soil and groundwater in the area. This situation is unacceptable. If it is not addressed now, it could cause irreparable harm to the environment and the people who live there.

Unexploded ordnance is a problem in every active and formerly-used live-fire training facility. The bill includes \$10 million to develop and test new technologies to detect unexploded ordnance and analyze and map the presence of their contaminants, so that they can be more easily cleaned up. For too many years, this issue has been ignored. The time has come for the Department of Defense to take on the task of removing UXO. This step is essential to ensure the continued operation of training ranges, which are vital to the continued readiness of our forces and the safe reuse of facilities that have been closed.

Last May, the country felt the effect of a simple computer virus that disabled e-mail systems throughout the world, and cost industry billions of dollars. The "Love Bug" virus also reportedly infected classified e-mail systems within the Department of Defense. Last year, more than 22,000 cyberattacks took place on DOD computer systems—a 300 percent increase over the previous year. The cyber threat to national security will become more complex and more disruptive in the future. Our armed forces must be better prepared to deal with this threat and to protect these information systems. The bill adds \$77 million to address this serious and growing threat.

In the Seapower Subcommittee, under the leadership of our distinguished chair, Senator SNOWE, we heard testimony and continued concern about the Navy's force structure, the shipbuilding rate, and the overall readiness of the fleet. I support the Secretary of the Navy's decision to increase R&D spending for the new land-attack destroyer, DD-21, but I am concerned about the delay in the program, the effect of this delay on fire support requirements of the Marine Corps, and its effect on our shipbuilding industrial base.

The bill includes \$550 million for DD-21 research and development. It also asks the Navy to report to Congress on the feasibility of starting DD-21 construction in FY 2004, as originally scheduled, for delivery by 2009, and the effects of the current delay on the destroyer shipbuilding industrial base.

To ease the strain on the shipbuilding industrial base, the bill authorizes the extension of the DDG-51 multi-year procurement, approved by Congress in 1997, to include procurements through fiscal year 2005. This increase will bring greater near-term health to our destroyer shipyards. It could raise the Navy's overall shipbuilding rate to an acceptable level of 9 ships for each of those years, and it could save almost \$600 million for these ships by avoiding the additional unit cost of building them at a smaller rate.

This increase benefits the Navy, the shipyards, and the shipyard workers, and it is fiscally responsible.

I am particularly concerned about one section of the bill that closes the School of the Americas and then reopens it as the Defense Institute for Hemispheric Security Cooperation.

Despite the additional human rights curriculum, I am concerned that well-known abuses by the School's graduates have caused irreparable harm to its credibility. The School accounts for less than 10 percent of the joint education and training programs conducted by the U.S. military for Latin American forces, but it has graduated some of the most notorious human rights abusers in our hemisphere.

A report of the UN Truth Commission on the School implicated former trainees, including death squad organizer Robert D'Aubuisson, in atrocities committed in El Salvador. During the investigation of the 1989 murder of six Jesuit priests in El Salvador, it turned out that 19 of the 26 people implicated in this case were graduates of the School. Other graduates include Leopoldo Galtieri, the former head of the Argentine junta, Manuel Noriega, the former dictator of Panama, and Augusto Pinochet, the former dictator of Chile. In September 1996, after years of accusations that the School teaches soldiers how to torture and commit other human rights violations, the Department of Defense acknowledged that instructors at the School had taught such techniques.

I welcome the Army's recognition that human rights and civil-military relations must be a top priority in our programs with Latin America. The provision in this bill, will close the School and immediately reopen it with a new name at the same location, with the same students and with much of the same curriculum. But this step will not solve the problems that have plagued this institution.

I commend my colleague, Representative MOAKLEY, for his leadership on this issue and his proposal to create a Task Force to assess the type of education and training appropriate for the Department of Defense to provide to military personnel of Latin American nations. These issues demand our attention, and we must address them more effectively.

In summary, I commend my colleagues on the Armed Services Committee for their leadership in dealing with the many challenges facing our nation on national defense. This bill keeps the faith with the 2.2 million men and women who make up our active duty, guard, and reserve forces. It is vital to our nation's security, and I urge the Senate to approve it.

Mr. WARNER. Mr. President, I ask unanimous consent that a previous unanimous consent agreement regarding the "boilerplate language" for completing the Defense authorization be modified with the changes that I now send to the desk.

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

The unanimous consent agreement, as modified, is as follows:

I ask unanimous consent that, with the exception of the Byrd amendment on bilateral trade which will be disposed of this evening, that votes occur on the other amendments listed in that Order beginning at 9:30 A.M. on Thursday, July 13, 2000.

I further ask unanimous consent that, upon final passage of H.R. 4205, the Senate amendment, be printed as passed.

I further ask unanimous consent that, following disposition of H.R. 4205 and the appointment of conferees the Senate proceed immediately to the consideration en bloc of S. 2550, S. 2551, and S. 2552 (Calendar Order Numbers, 544, 545, and 546); that all after the enacting clause of these bills be stricken and that the appropriate portion of S. 2549, as amended, be inserted in lieu thereof, as follows:

S. 2550: Insert Division A of S. 2549, as amended;

S. 2551: Insert Division B of S. 2549, as amended;

S. 2552: Insert Division C of S. 2549, as amended; that these bills be advanced to third reading and passed; that the motion to reconsider en bloc be laid upon the table; and that the above actions occur without intervening action or debate.

Finally, I ask unanimous consent with respect to S. 2550, S. 2551, and S. 2552, that if the Senate receives a message with respect to any of these bills from the House of Representatives, the Senate disagree with the House on its amendment or amendments to the Senate-passed bill and agree to or request a conference, as appropriate, with the House on the disagreeing votes of the two houses; that the Chair be authorized to appoint conferees; and that the foregoing occur without any intervening action or debate.

MORNING BUSINESS

Mr. WARNER. Mr. President, if there is nothing further on the authorization bill, I ask unanimous consent that the Senate proceed to 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.

VICTIMS OF GUN VIOLENCE

Mr. DASCHLE. Mr. President, it has been more than a year since the Columbine tragedy, but still this Republican Congress refuses to act on sensible gun legislation.

Since Columbine, thousands of Americans have been killed by gunfire. Until we act, Democrats in the Senate will read some of the names of those who lost their lives to gun violence in the past year, and we will continue to do so every day that the Senate is in session.

In the name of those who died, we will continue this fight. Following are the names of some of the people who were killed by gunfire one year ago today.

July 12, 1999:

Craig Briskey, 15, Atlanta, GA; Deleane Briskey, 33, Atlanta, GA; Torsha Briskey, 16, Atlanta, GA; Darius Cox, 31, Baltimore, MD; Willie Dampier, 31, Lansing, MI; Albert Fain,

25, Cincinnati, OH; Victor Gonzalez, 20, Holyoke, MA; Larry W. Gray, 52, Memphis, TN; Arvell Henderson, 28, St. Louis, MO; Essie Hugley, 37, Atlanta, GA; Wardell L. Jackson, 19, Chicago, IL; William Kuhn, 25, Pittsburgh, PA; Antoine Lucas, 9, Atlanta, GA; David Antonio Lucas, 13, Atlanta, GA; Edgar McDaniel, 34, Atlanta, GA; Sims Miller, 32, St. Louis, MO; Erica Reyes, 20, Holyoke, MA; Darryl Solomon, 28, Detroit, MI; James Sweeden, 48, Dallas, TX; Anthony White, Detroit, MI; Darrell Lewis White, 28, Memphis, TN; Unidentified male, 15, Chicago, IL.

Deleane Briskey from Atlanta was one of six people I mentioned who was shot and killed one year ago today. On that day, her ex-boyfriend burst into her home, killed her, her sister and four of her six children. The gunman then shot and wounded her 11-year-old son Santonio, who was hiding in a closet, before turning the gun on himself.

The time has come to enact sensible gun legislation. These people, who lost their lives in tragic acts of gun violence, are a reminder of why we need to take action now.

INTEGRATED GASIFICATION COMBINED CYCLE (IGCC) SYSTEM

Mr. SPECTER. Mr. President, Air Products & Chemicals, Inc. of Allentown, Pennsylvania and an industrial team are developing a unique oxygen-producing technology based on high-temperature, ion transport membranes (ITM). The technology, known as ITM Oxygen, would be combined with an integrated gasification combined cycle (IGCC) system to produce oxygen and electric power for the iron/steel; glass, pulp and paper; and chemicals and refining industries. The ITM Oxygen project is a cornerstone project in the Department of Energy's (DOE) Vision 21 program and has the potential to significantly reduce the cost of so-called "tonnage oxygen" plants for IGCC systems.

Working in partnership with DOE's National Energy Technology Laboratory, the first of three phases of this \$24.8 million, 50 percent cost-shared research program will be completed in September 2001. Research and development conducted as part of phase 1 of the ITM Oxygen program has addressed the high-risk materials, fabrication and engineering issues needed to develop the ITM Oxygen technology to the proof-of-concept point. In phase 2, a full-scale ITM Oxygen module will be tested and will be followed by further scale-up to test the production and integration of multiple full-scale ITM modules. In the final phase, a pre-commercial demonstration unit will be designed, constructed, integrated with a gas turbine and tested at a suitable field site. At the end of phase 3, it is expected that sufficient aspects of the technology will have been demonstrated to enable industrial commercialization.

I thank the Senator from Washington for adding \$3.2 million to Department

of Energy's IGCC. I also understand that the House of Representatives added \$3.2 million to the FY01 budget request for IGCC without designating any one project to receive the increased funding. As part of its FY01 budget, DOE requested \$2.2 million as part of its \$32 million IGCC budget to complete phase 1 of ITM Oxygen.

Now I would urge the Department of Energy and the National Energy Technology Laboratory to provide \$2 million of the \$3.2 million as an increase to the FY01 budget request for IGCC to allow the programs second phase to begin in FY01. This additional funding would allow the ITM Oxygen team to have a smooth transition to the program's second phase and to level over future years the DOE cost share needed to maintain the program's schedule. This additional funding would also allow the ITM Oxygen team to make an early commitment to accelerate construction of the test facility and the full-scale ITM Oxygen module. Accelerating this program makes sound business sense. Now I am confident that DOE and the National Energy Laboratory will have the funding to do this. I urge them to work with the ITM Oxygen team and make it happen.

JUDICIAL NOMINATIONS IN THE 106TH CONGRESS

Mr. LEAHY. Mr. President, I am concerned at the continuing lack of any real, strong effort to confirm Federal judges this year compared to the situation in the last year of President Bush's term in office with a Democratic controlled Senate. We confirmed 66 judges—actually confirmed judges and had hearings right through September. Now we have very, very few hearings.

While I am glad to see the Judiciary Committee moving forward with a few of the many qualified judicial nominees to fill the scores of vacancies that continue to plague our Federal courts, I am disappointed that there were no nominees to the Court of Appeals included at this hearing. I have said since the beginning of this year that the American people should measure our progress by our treatment of the many qualified nominees, including outstanding women and minorities, to the Court of Appeals around the country. The committee and the Senate are falling well short of the mark.

With 21 vacancies on the Federal appellate courts across the country, and nearly half of the total judicial emergency vacancies in the Federal courts system in our appellate courts, our courts of appeals are being denied the resources that they need. Their ability to administer justice for the American people is being hurt. There continue to be multiple vacancies on the Fourth, Fifth, Sixth, Ninth, Tenth and District of Columbia Circuits. The vacancy rate for our courts of appeals is more than 11 percent nationwide—and that does not begin to take into account the additional judgeships requested by the