2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 5520

At the request of Mr. KERRY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of amendment No. 5520 intended to be proposed to S. 3001, an original bill to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 5541

At the request of Mrs. FEINSTEIN, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of amendment No. 5541 intended to be proposed to S. 3001, an original bill to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 5550

At the request of Mr. DOMENICI, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of amendment No. 5550 intended to be proposed to S. 3001, an original bill to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 5581

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Vermont (Mr. LEAHY), the Senator from Wyoming (Mr. ENZI), the Senator from North Dakota (Mr. DORGAN), the Senator from Iowa (Mr. HARKIN) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of amendment No. 5581 intended to be proposed to S. 3001, an original bill to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 3493. A bill to require rail carriers to develop positive rail control system plans for improving railroad safety and to increase the civil penalties for railroad safety violations; to the Committee on Commerce, Science, and Transportation.

Mrs. FEINSTEIN. Mr. President, I make these remarks on behalf of my friend and colleague, Senator BOXER. She and I are cosponsoring legislation, which I will send to the desk at the end of my remarks.

On Friday, at 4:30 p.m., a Union Pacific freight train and a Metrolink commuter train, loaded with 225 commuters, leaving Los Angeles and traveling north through the San Fernando Valley, in the Chatsworth area, collided on a single track. The collision took place at about 40 miles an hour for each train. The engine of the Metrolink train was rammed two-thirds through the first car of the Metrolink train. Here it is. Here is the Union Pacific engine and this mess is the Metrolink engine and it rammed two-thirds through the first car. Thus far, 26 people are dead. Some were dismembered by the crash, some bodies had to be removed in a dismembered state from the train. There are 138 people in the hospital, 40 of them in critical condition, and more deaths could well take place.

This accident happened because of a resistance in the railroad community in America to utilizing existing technology to produce a fail-safe control of trains to avoid colliding with each other and to avoid one train from crashing into the rear of another. Both of these have happened in the past. Yet today there is no requirement for a safe control of track and train.

The House has passed a bill reauthorizing the Federal Railroad Administration. The Senate has passed a bill reauthorizing the Federal Railroad Administration. They both have provisions, although they are different, for safe train control in these bills. But nothing has happened. The bills have not been conferenced. This must stop.

Let me point out for a minute how positive train control works. Every train's position is tracked through global positioning, which is new technology that can monitor its location and speed. These systems constantly watch for excessive speed, improperly aligned switches, whether trains are on the wrong track, unauthorized train movements, and whether trains have missed signals to slow or stop. Each train also has equipment on board that can take over from the engineer if the train doesn't comply with the safety signals. The system will override the engineer and automatically put on the brakes. These systems exist and are in use today. They are in place in the Chicago-Detroit corridor and in the Northeast corridor. But the railroad industry resists them.

I believe rail in America has a very real future. California believes it has a very real future. As a matter of fact, in 5 weeks, California has on the ballot a $10 billion bond issue to create a high-speed rail spine down the center of California that runs from Sacramento all the way down to Los Angeles. Now, people aren't going to ride these trains unless they know they are safe, and we have an obligation, I believe, to provide that safety.

I am sorry to have to say this, but southern California has the most high-risk track in America. The majority of Metrolink's 388 miles of track, which crosses six counties, believe it or not, is shared with freight trains. This is untenable.

Let me ask a question: How can you put commuter trains, passenger trains, on the same track as freight trains going in opposite directions with nothing more than a couple of signals that can be missed, and have been missed, to avert disaster?

Again, over the years, the railroad resisted, saying these systems are too expensive. Well, how expensive is the loss of human life? The cost of any system doesn't come close to the cost of the lives that were lost this past Friday and that will likely be lost in the future.

To date, positive train control has been put to use only in limited areas, including, as I said, parts of the Northeast and Chicago and Detroit. Nine railroads in at least 16 States have these positive control projects, but California is not one of them. Why, I ask. It is critical, particularly when—given the element of human error, which we may well see in this instance—it may well have been a cell phone that was in use at the time of the accident by the engineer.

Let me tell you what sort of hours this engineer works. He works 5 days a week, and it is an 11-hour day. It is a split shift of 15 hours. Let me explain. He is due at work at 6 in the morning. He works until late morning, and then he has 4 hours off but returns to work from 3 p.m. to 9 p.m. That is an 11-hour day in an engine on high alert in major populated areas. He performs a critical function, and he does it on an 11-hour workday on a split shift. I think that is untenable.

The NTSB, the National Transportation Safety Board, has pushed again and again for positive train control systems, particularly after a deadly crash in my own State in Orange County in 2002. Three people died and two hundred sixty were injured. In the Orange County crash, the National Transportation Safety Board concluded that a Burlington Northern engineer and a conductor were talking to each other. They failed to see a yellow warning light telling them to slow down. I think that same thing has happened again. Their freight train slammed into a Metrolink commuter train that had stopped on the same track.

Now, we know that positive, or safe, train control would prevent 40 to 60 accidents a year, 7 fatalities, and 55 injuries a year. So why hasn't it been put in place? I actually believe it is negligence, and I will even go as far to say I believe it is criminal negligence not to do so.

The report also concluded that positive train control could have prevented a fatal collision in Graniteville, SC, in 2005. In this accident, a rail employee failed to properly align a track switch. As a result, several cars derailed, deadly chlorine gases escaped, and nine people died.

Cost is used as the reason not to do this, but I ask: How can we afford not to do it, whatever the cost? How many accidents does it take? How many deaths does it take? How many injuries does it take? Experts estimate that the cost is about $2.3 billion to install safe, technological train controls on 100,000 miles of track around the United States—high priority track.

Today, my colleague, Senator BOXER, and I are introducing legislation which takes the strongest parts of the House and Senate bills and beefs them up. This legislation would require positive safe train controls for major freight and passenger lines. By 2012, areas declared as high risk by the Department of Transportation must run with positive train control systems. Railroads would be required to develop plans to implement these controls within 1 year of enactment of the legislation. These plans must be submitted to the Secretary of Transportation also within 1 year of enactment. It sets a deadline of December 31, 2014, for safe rail control to be in place on all major freight and passenger lines in America. It would be mandatory, and it would require penalties for noncompliance, with fines of up to $100,000 per violation.

Passenger rail will not succeed in this country unless public safety is guaranteed. Again, on Friday, these trains hit at 40 miles per hour. What happens when trains pile into each other at 120 miles per hour?

I have asked the majority leader to include this in the continuing resolution. I don't know whether he will—I think it is a remote possibility—but I do believe we need to get this moving right now.

Once again, look at this. When we know there is global positioning that can be in place to shut down the freight train and the passenger train before they run into each other and we do nothing about it, then I believe this body is also culpable and negligent.

Mr. President, if I might, I send this legislation to the desk with a plea that it be enacted right away, with a plea that we get the planning moving, with a plea that we get 100,000 miles of high-priority track equipped with global positioning so this never again can happen in a high-priority passenger-freight train area where the trains are traveling on the same track. If we don't do it, it is going to happen again.

By Mr. VOINOVICH (for himself, Mr. BROWN, Mr. HARKIN, MR. COCHRAN, Mr. VITTER, Mr. OBAMA, Mr. BAYH, and Mr. LUGAR):

S. 3498. A bill to amend title 46, United States Code, to extend the exemption from the fire-retardant materials construction requirement for vessels operating within the Boundary Line; to the Committee on Commerce, Science, and Transportation.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3498

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

SECTION 1. EXTENSION OF EXEMPTION.

Section 3503(a) of title 46, United States Code, is amended by striking ''2008'' and inserting ''2018''.

By Mr. FEINGOLD (for himself and Mrs. FEINSTEIN):

S. 3501. A bill to ensure that Congress is notified when the Department of Justice determines that the Executive Branch is not bound by a statute; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I am introducing, along with the senior Senator from California, Senator FEINSTEIN, the OLC Reporting Act of 2008. In short, the bill would require the Attorney General to report to Congress when the Department of Justice issues a legal opinion concluding that the executive branch is not bound by a statute. Along with the Executive Order Integrity Act of 2008, which I introduced in July with the junior Senator from Rhode Island, Senator WHITEHOUSE, this bill takes an important step toward curbing the executive branch's reliance on secret law.

The principle behind this bill is straightforward. It is a basic tenet of democratic government that the people have a right to know the law. The very notion of ''secret law'' has been described in court opinions and law treatises as ''repugnant'' and ''an abomination.'' That's why the laws passed by Congress have historically been matters of public record.

But the law that applies in this country includes more than just statutes. It includes regulations, the controlling legal interpretations of the executive branch and the courts, and certain Presidential directives. As we learned at a hearing of the Judiciary Committee's Constitution Subcommittee that I chaired in April, this body of executive and judicial law is increasingly being kept secret from the public, and too often from Congress as well. Perhaps the most troubling recent example of secret law is the elaborate legal regime constructed by DOJ's Office of Legal Counsel to justify controversial administration policies that operate outside the framework of statutory law.

An opinion issued by OLC is not just a piece of legal advice, such as the advice individuals or corporations might solicit from their lawyers. An OLC opinion binds the entire executive branch, just like the ruling of a court. If a court were to reach a different interpretation than OLC, the court's interpretation would prevail—but many OLC opinions address matters that courts never have the chance to decide. On those matters, OLC essentially steps into the role of the courts as the final interpreter of the law. In the words of Jack Goldsmith, former head of OLC under President Bush: ''These executive branch precedents are 'law' for the executive branch.''

OLC opinions are ''law'' in another sense as well. Attorney General Mukasey has stated that DOJ will not prosecute a government actor for criminal conduct if he or she relied on an OLC opinion. Thus, even if a court overturns OLC's interpretation, the opinion may grant retroactive immunity for past violations of the law—effectively amending the law that existed at the time of the criminal act.

The Bush administration has relied heavily on secret OLC opinions in a broad range of matters involving core constitutional rights and civil liberties. The administration's policies on interrogation of detainees were justified by OLC opinions that were withheld from Congress and the public for several years. The President's warrantless wiretapping program was justified by OLC opinions that, to this day, have been seen only by a select few Members of Congress. And, when it was finally made public this year, the March 2003 memorandum on torture written by John Yoo was filled with references to other OLC memos that Congress and the public have never seen—on subjects ranging from the Government's ability to detain U.S. citizens without congressional authorization to the Government's ability to operate outside the Fourth Amendment in domestic military operations.

The few opinions whose content has been made public share a notable characteristic: the conclusion that various laws enacted by Congress do not apply to the conduct of the executive branch. The 2003 Yoo torture memo took the alarming position that the executive branch was not bound by the criminal statute prohibiting torture when interrogating detainees. Likewise, according to congressional testimony of former OLC head Steve Bradbury, the President's warrantless wiretapping program was supported by OLC opinions claiming that the President's wiretapping authority was not limited by the constraints of the Foreign Intelligence Surveillance Act. The titles of other OLC opinions referenced in the Yoo memo strongly suggest that other statutory constraints have been disposed of in a similar manner.

The secrecy of these opinions cannot be justified or explained away by a wholesale claim of privilege. To be sure, there are sound arguments for shielding from public disclosure deliberations among OLC lawyers, as well as final OLC opinions that are not adopted as the basis for an executive branch policy. But once a final OLC opinion is issued and adopted by an executive

branch agency or official, that opinion is no longer mere legal advice or a deliberative document—it is effectively the law. Indeed, in his testimony before the Constitution Subcommittee in April, the Deputy Assistant Attorney General for OLC acknowledged that the confidentiality interest in OLC opinions is ''completely different'' for opinions that have been implemented as policy, and that such opinions should be made public ''as fast as possible.'' The Supreme Court expressed the same sentiment in legal terms, holding that ''opinions and interpretations which embody [an] agency's effective law and policy'' are not privileged, precisely because agencies otherwise would be operating under ''secret law.''

There is an even stronger interest in disclosure when an OLC opinion concludes that the executive branch is not bound by a Federal statute. In such cases, the executive branch is no longer operating according to the rules that are on the books, and there is truly a separate—and sometimes conflicting—regime of secret law. Moreover, Congress has an obvious institutional interest in knowing when DOJ opines that the executive branch is not bound by a statute, and the reasons for that opinion. If DOJ concludes that a statute is unconstitutional, Congress may wish to challenge this position, or it may decide to simply rewrite the law to avoid the perceived constitutional problem. Similarly, if DOJ concludes that Congress did not intend for a statute to apply to the executive branch, then Congress should have the opportunity to assess this conclusion and revise the law if necessary to make its intent clear. None of this can happen when Congress is denied access to the opinion.

Recognizing Congress's strong interest in knowing when DOJ takes issue with its enactments, current law requires the Attorney General to report to Congress when DOJ decides that it will not enforce or defend a statute because the statute is unconstitutional. This reporting provision, however, does not reach situations in which OLC stops short of declaring a statute unconstitutional, and instead construes the statute not to apply to the executive branch in order to avoid a finding of unconstitutionality. At the hearing I chaired on secret law, Dawn Johnsen, who served as the head of OLC for 2 years under President Clinton, testified that the law should be amended to require reporting to Congress in these situations as well. Bradford Berenson, former counsel to President Bush from 2001–2003, agreed with this modest proposal.

The bill that Senator FEINSTEIN and I are introducing today grew out of this bipartisan agreement. It was drafted with the substantial assistance and input of Johnsen, Berenson, and an impressive group of some of the finest attorneys to serve in OLC in past years, many of whom are now constitutional scholars. The aim was to craft a targeted bill—one that would allow Congress to be sufficiently informed when OLC purports to release the executive branch from the strictures of a statute, without encroaching on the institutional interests, prerogatives, and privileges of OLC. We took great pains to ensure that an appropriate balance of power was maintained between the legislative and executive branches. The result is an approach that is narrowly tailored and eminently reasonable.

The bill adds a new disclosure requirement to 28 U.S.C. 530D, the statutory provision that requires the Attorney General to report to Congress if DOJ decides not to enforce or defend a statute on the ground that it is unconstitutional. Under the bill, the Attorney General must also report to Congress under four circumstances. These circumstances represent the means by which OLC is most likely to exempt the executive branch from the reach of a statute, in those areas where Congress has the greatest interest in knowing about it.

First, a report is required if DOJ issues an opinion that concludes that a Federal statute is unconstitutional. Current law requires reporting only when DOJ decides not to defend or enforce a statute, which does not necessarily reach cases in which an agency policy conflicts with a statute but DOJ is not presented with the opportunity for an enforcement action.

Second, a report is required if DOJ relies on the so-called ''doctrine of constitutional avoidance'' and cites Article II or the separation of powers—in other words, if DOJ determines that applying a statute to executive branch officials would raise constitutional problems. Regardless of the validity of this determination, the effect is to exempt executive branch officials from the statute's reach—a result that Congress should know about.

Third, a report is required if DOJ relies on a ''legal presumption'' against applying a statute to the executive branch. For example, the Yoo torture memo relied on the legal presumption that laws of general applicability, such as those prohibiting torture, do not apply to the conduct of the military during wartime. The criterion of a ''legal presumption'' serves to keep the reporting requirement narrowly tailored: it captures situations in which the executive branch is exempted from a statute categorically, without requiring reporting in more run-of-the-mill cases where a particular executive action simply does not fall within the statute.

Fourth, a report is required if DOJ determines that a statute has been superseded by a later enactment, when the later enactment does expressly say so. This provision would address situations like OLC's conclusion that the Authorization for Use of Military Force superseded the constraints of the Foreign Intelligence Surveillance Act. In such cases, reporting to Congress gives Congress the opportunity to clarify its intent.

These reporting requirements are accompanied by several provisions to ensure scrupulous respect for executive privileges and prerogatives. The Attorney General would not be required to disclose the OLC opinion itself, as long as the report to Congress includes the information already required under 28 U.S.C. 530D whenever DOJ decides not to enforce or defend a statute—namely, a complete and detailed statement of the relevant issues and background. Furthermore, the bill leaves intact section 530D's provision allowing the Attorney General to exclude privileged information from the statement; the only information that could not be excluded is the date of the opinion, the statute at issue, and which of the four reporting categories the opinion falls within. No report would be required if officials expressly declined to adopt or act on the opinion, thus protecting from disclosure opinions that are truly advisory in nature.

The bill also protects the security of classified information. Information that could harm the national security if disclosed publicly could be provided to Congress in a classified annex. Classified information involving intelligence activities would be reported only to the Intelligence and Judiciary Committees—or, under appropriate circumstances, a more narrow ''Gang of Twelve,'' to parallel the more limited disclosure provisions of the National Security Act.

The bill's targeted focus and careful preservation of executive prerogatives has earned it the support of former officials from both the Clinton and Bush Administrations. Former head of OLC, Dawn Johnsen, and former counsel to President Bush, Bradford Berenson, have written a joint letter endorsing the bill. In their words: ''[W]e believe [the bill] strikes a sensible and constitutionally sound accommodation between the executive branch's need to have candid legal advice, to protect national security information, and to avoid being overburdened by overly intrusive reporting requirements and the legislative branch's need to know the manner in which its laws are interpreted.'' They write that enacting this bill ''would have the effect of enhancing democratic accountability and the rule of law.'' I ask unanimous consent to place this letter in the record along with my statement.

Of course, the bill does not represent a perfect or complete solution to the problem of secret law. For example, it would not reach the now-infamous OLC conclusion that the infliction of pain does not constitute ''torture'' unless it approaches the level associated with ''death, organ failure, or serious impairment of body functions''—an interpretation that effectively exempted the executive branch from the full scope of the anti-torture statute. Moreover, under the provisions of the bill allowing the Attorney General to withhold privileged information, Congress may

well be forced to operate under a significant informational handicap. Nonetheless, the bill represents an important and necessary step toward curbing secret law and restoring the proper balance of power between the executive and legislative branches.

When OLC concludes that a statute passed by Congress does not bind the executive branch, Congress has a right to know that the executive branch is not operating under that statute, and to be apprised of the law under which the executive branch is operating. The bill I am introducing with Senator FEINSTEIN codifies that right. I urge all of my colleagues in the Senate to support this common-sense measure.

Mr. President, I ask unanimous consent that the text of the bill and a letter of support be printed in the RECORD.

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

S. 3501

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''OLC Reporting Act of 2008''.

SEC. 2. REPORTING.

Section 530D of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (B), by striking ''or'' at the end;

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

(iii) by inserting after subparagraph (B) the following:

''(C) except as provided in paragraph (3), issues an authoritative legal interpretation (including an interpretation under section 511, 512, or 513 by the Attorney General or by an officer, employee, or agency of the Department of Justice pursuant to a delegation of authority under section 510) of any provision of any Federal statute—

''(i) that concludes that the provision is unconstitutional or would be unconstitutional in a particular application;

''(ii) that relies for the conclusion of the authoritative legal interpretation, in whole or in the alternative, on a determination that an interpretation of the provision other than the authoritative legal interpretation would raise constitutional concerns under article II of the Constitution of the United States or separation of powers principles;

''(iii) that relies for the conclusion of the authoritative legal interpretation, in whole or in the alternative, on a legal presumption against applying the provision, whether during a war or otherwise, to—

''(I) any department or agency established in the executive branch of the Federal Government, including the Executive Office of the President and the military departments (as defined in section 101(8) of title 10); or

''(II) any officer, employee, or member of any department or agency established in the executive branch of the Federal Government, including the President and any member of the Armed Forces; or

''(iv) that concludes the provision has been superseded or deprived of effect in whole or in part by a subsequently enacted statute where there is no express statutory language stating an intent to supersede the prior provision or deprive it of effect; or'';

(B) in paragraph (2), by striking ''For the purposes'' and all that follows through ''if the report'' and inserting ''Except as provided in paragraph (4), a report shall be considered to be submitted to the Congress for the purposes of paragraph (1) if the report''; and

(C) by adding at the end the following:

''(3) DIRECTION REGARDING INTERPRETATION.—The submission of a report to Congress based on the issuance of an authoritative legal interpretation described in paragraph (1)(C) shall be discretionary on the part of the Attorney General or an officer described in subsection (e) if—

''(A) the President or other responsible officer of a department or agency established in the executive branch of the Federal Government, including the Executive Office of the President and the military departments (as defined in section 101(8) of title 10), expressly directs that no action be taken or withheld or policy implemented or stayed on the basis of the authoritative legal interpretation; and

''(B) the directive described in subparagraph (A) is in effect.

''(4) CLASSIFIED INFORMATION.—

''(A) SUBMISSION OF REPORT CONTAINING CLASSIFIED INFORMATION REGARDING INTELLIGENCE ACTIVITIES.—Except as provided in subparagraph (B), if the Attorney General submits a report relating to an instance described in paragraph (1) that includes a classified annex containing information relating to intelligence activities, the report shall be considered to be submitted to the Congress for the purposes of paragraph (1) if—

''(i) the unclassified portion of the report is submitted to each officer specified in paragraph (2); and

''(ii) the classified annex is submitted to the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

''(B) SUBMISSION OF REPORT CONTAINING CERTAIN CLASSIFIED INFORMATION ABOUT COVERT ACTIONS.—

''(i) IN GENERAL.—In a circumstance described in clause (ii), a report described in that clause shall be considered to be submitted to the Congress for the purposes of paragraph (1) if—

''(I) the unclassified portion of the report is submitted to each officer specified in paragraph (2); and

''(II) the classified annex is submitted to—

''(aa) the chairman and ranking minority member of the Select Committee on Intelligence of the Senate;

''(bb) the chairman and ranking minority member of the Committee on the Judiciary of the Senate;

''(cc) the chairman and ranking minority member of the Permanent Select Committee on Intelligence of the House of Representatives;

''(dd) the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives;

''(ee) the Speaker and minority leader of the House of Representatives; and

''(ff) the majority leader and minority leader of the Senate.

''(ii) CIRCUMSTANCES.—A circumstance described in this clause is a circumstance in which—

''(I) the Attorney General submits a report relating to an instance described in paragraph (1) that includes a classified annex containing information relating to a Presidential finding described in section 503(a) of the National Security Act of 1947 (50 U.S.C. 413b(a)); and

''(II) the President determines that it is essential to limit access to the information described in subclause (I) to meet extraordinary circumstances affecting vital interests of the United States.'';

(2) in subsection (b)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) by redesignating paragraph (3) as paragraph (4);

(C) by inserting after paragraph (2) the following:

''(3) under subsection (a)(1)(C)—

''(A) not later than 30 days after the date on which the Attorney General, the Office of Legal Counsel, or any other officer of the Department of Justice issues the authoritative legal interpretation of the Federal statutory provision; or

''(B) if the President or other responsible officer of a department or agency established in the executive branch of the Federal Government, including the Executive Office of the President and the military departments (as defined in section 101(8) of title 10), issues a directive described in subsection (a)(3) and the directive is subsequently rescinded, not later than 30 days after the date on which the President or other responsible officer rescinds that directive; and''; and

(D) in paragraph (4), as so redesignated, by striking ''subsection (a)(1)(C)'' and inserting ''subsection (a)(1)(D)'';

(3) in subsection (c)—

(A) in paragraph (1), by striking ''or of each approval described in subsection (a)(1)(C)'' and inserting ''of the issuance of the authoritative legal interpretation described in subsection (a)(1)(C), or of each approval described in subsection (a)(1)(D)'';

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(C) by inserting after paragraph (1) the following:

''(2) with respect to a report required under subparagraph (A), (B), or (C) of subsection (a)(1), specify the Federal statute, rule, regulation, program, policy, or other law at issue, and the paragraph and clause of subsection (a)(1) that describes the action of the Attorney General or other officer of the Department of Justice;'';

(D) in paragraph (3), as so redesignated—

(i) by striking ''reasons for the policy or determination'' and inserting ''reasons for the policy, authoritative legal interpretation, or determination'';

(ii) by inserting ''issuing such authoritative legal interpretation,'' after ''or implementing such policy,'';

(iii) by striking ''except that'' and inserting ''provided that'';

(iv) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(v) by inserting before subparagraph (B), as so redesignated, the following:

''(A) any classified information shall be provided in a classified annex, which shall be handled in accordance with the security procedures established under section 501(d) of the National Security Act of 1947 (50 U.S.C. 413(d));'';

(vi) in subparagraph (B), as so redesignated—

(I) by inserting ''except for information described in paragraph (1) or (2),'' before ''such details may be omitted'';

(II) by striking ''national-security- or classified information, of any''; and

(III) by striking ''or other law'' and inserting ''or other statute'';

(vii) in subparagraph (C), as so redesignated—

(I) by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively;

(II) by inserting before clause (ii), as so redesignated, the following:

''(i) in the case of an authoritative legal interpretation described in subsection (a)(1)(C), if a copy of the Office of Legal Counsel or

other legal opinion setting forth the authoritative legal interpretation is provided;'';

(III) in clause (ii), as so redesignated, by striking ''subsection (a)(1)(C)(i)'' and inserting ''subsection (a)(1)(D)(i)''; and

(IV) in clause (iii), as so redesignated, by striking ''subsection (a)(1)(C)(ii)'' and inserting ''subsection (a)(1)(D)(ii)''; and

(E) in paragraph (4), as so redesignated, by striking ''subsection (a)(1)(C)(i)'' and inserting ''subsection (a)(1)(D)(i)''; and

(4) in subsection (e)—

(A) by striking ''(but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order)''; and

(B) by inserting ''issues an authoritative interpretation described in subsection (a)(1)(C),'' after ''policy described in subsection (a)(1)(A),''.

SEPTEMBER 15, 2008.

Hon. PATRICK LEAHY,
Chairman, Senate Committee on the Judiciary, U.S. Senate, Washington DC.

Hon. ARLEN SPECTER,
U.S. Senate,
Washington DC.

DEAR CHAIRMAN LEAHY AND SENATOR SPECTER: We write to convey our strong support for ''The OLC Reporting Act of 2008,'' to be introduced by Senator Feingold and Senator Feinstein. We respectfully urge the committee to give the bill prompt and serious consideration, because we believe that the addition of the reporting requirement it would create would have the effect of enhancing democratic accountability and the rule of law.

We both had the privilege to testify before Senators Feingold and Brownback, and the Subcommittee on the Constitution of the Senate Committee on the Judiciary, on April 30, 2008 in a hearing that examined ''Secret Law and the Threat to Democratic and Accountable Government.'' We served in different administrations, Brad Berenson as Associate Counsel to President George W. Bush and Dawn Johnsen as Acting Assistant Attorney General for the Office of Legal Counsel (OLC) under President Clinton. During our testimony, we found ourselves in substantial agreement about the desirability for new legislation that would require reporting to Congress regarding a limited category of OLC legal opinions.

As a general matter, we share a deep concern about safeguarding the legitimate need for confidentiality in the legal advice OLC provides to the President and others in the executive branch, by power delegated by the Attorney General. For example, in some instances national security information must be protected. In other instances, such as where OLC advises that a proposed action would be illegal, and that advice is accepted, the prospect of immediate and routine disclosure could deter executive branch officials from seeking advice in the first place.

We agree, however, that Congress has a legitimate legislative interest in receiving broader notice than current law provides with respect to certain categories of OLC opinions, which can generally be described as those in which OLC relies on constitutionally based interpretive doctrines to interpret a law in a way that might come as a surprise to Congress. These include the doctrine of ''constitutional avoidance,'' as well as implied repeals or modifications and certain presumptions against applying statutes to the executive branch officials. In our view, OLC opinions that place substantial reliance on such doctrines present the greatest potential for overreaching by the executive branch and thus the greatest need for notification to Congress. If Congress does not know about these interpretations, Congress is unable to consider the possibility of legislative change or clarification.

For this reason, after the hearing we worked closely with Senate staff as well as with a group of other former executive branch officials and Office of Legal Counsel lawyers to help draft ''The OLC Reporting Act of 2008.'' The resulting bill text was the product of careful consideration and negotiation. The bill mandates reporting in a carefully defined category of cases and includes appropriate provisions to protect national security and privileged information. All in all, we believe it strikes a sensible and constitutionally sound balance between the executive branch's need to have access to candid legal advice, to protect national security information, and to avoid being overburdened by unduly intrusive reporting requirements and the legislative branch's need to know the manner in which its laws are interpreted. We both endorse the bill as introduced and urge its prompt enactment.

Sincerely,

BRAD BERENSON,
Sidley Austin.
DAWN JOHNSEN,
Indiana University School of Law.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 662—RAISING THE AWARENESS OF THE NEED FOR CRIME PREVENTION IN COMMUNITIES ACROSS THE COUNTRY AND DESIGNATING THE WEEK OF OCTOBER 2, 2008, THROUGH OCTOBER 4, 2008, AS ''CELEBRATE SAFE COMMUNITIES'' WEEK

Mr. BIDEN (for himself, Mrs. CLINTON, Mr. KERRY, Ms. MIKULSKI, and Ms. STABENOW) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 662

Whereas communities across the country face localized increases in violence and other crime;

Whereas local law enforcement and community partnerships are an effective tool for preventing crime and addressing the fear of crime;

Whereas the National Sheriffs' Association (NSA) and the National Crime Prevention Council (NCPC) are leading national resources that provide community safety and crime prevention tools tested and valued by local law enforcement agencies and communities nationwide;

Whereas the NSA and the NCPC have joined together to create the ''Celebrate Safe Communities'' initiative in partnership with the Bureau of Justice Assistance, Office of Justice Programs, Department of Justice;

Whereas Celebrate Safe Communities will be launched the 1st week of October 2008 to help kick off recognition of October as Crime Prevention Month;

Whereas Celebrate Safe Communities is designed to help local communities highlight the importance of residents and law enforcement working together to keep communities safe places to live, learn, work, and play;

Whereas Celebrate Safe Communities will enhance the public awareness of vital crime prevention and safety messages and motivate Americans of all ages to learn what they can do to stay safe from crime;

Whereas Celebrate Safe Communities will help promote year-round support for locally based and law enforcement-led community safety initiatives that help keep families, neighborhoods, schools, and businesses safe from crime; and

Whereas the week of October 2, 2008, through October 4, 2008, is an appropriate week to designate as ''Celebrate Safe Communities'' week: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of October 2, 2008, through October 4, 2008, as ''Celebrate Safe Communities'' week;

(2) commends the efforts of the thousands of local law enforcement agencies and their countless community partners who are educating and engaging residents of all ages in the fight against crime;

(3) asks communities across the country to consider how the Celebrate Safe Communities initiative can help them highlight local successes in the fight against crime; and

(4) encourages the National Sheriffs' Association and the National Crime Prevention Council to continue to promote, during Celebrate Safe Communities week and yearround, individual and collective action in collaboration with law enforcement and other supporting local agencies to reduce crime and build safer communities throughout the United States.

SENATE CONCURRENT RESOLUTION 99—HONORING THE UNIVERSITY OF NEBRASKA AT OMAHA FOR ITS 100 YEARS OF COMMITMENT TO HIGHER EDUCATION.

Mr. HAGEL submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 99

Whereas local leaders in the Omaha area formed a corporation known as the University of Omaha on October 8, 1908, for the promotion of sound learning and education;

Whereas, on September 14, 1909, the first 26 University of Omaha students gathered in Redick Hall, located west of 24th and Pratt Streets in the city of Omaha;

Whereas, during the first 10 years of existence, the key division of the University of Omaha was Liberal Arts College, designed to produce a well-rounded and informed student;

Whereas, in 1910, the University of Nebraska announced it would accept all University of Omaha coursework as equivalent to its own, a milestone in terms of recognition for the new institution and acknowledgement of its substantial and respected curriculum;

Whereas, in December 1916, the University of Omaha students had a farewell party for Redick Hall and moved into their new building, a 3-story, 30-classroom building named Joslyn Hall;

Whereas, in 1929, the University of Omaha board of trustees and the people of Omaha voted to create the new Municipal University of Omaha to replace the old University of Omaha on May 30, 1930;

Whereas, in 1936, the Municipal University of Omaha acquired 20 acres of land north of Elmwood Park and south of West Dodge Street, which would become the site of the present-day campus;

Whereas the University dedicated its beautiful Georgian-style administration building in November 1938, capable of accommodating a student body of 1,000;

Whereas the increased enrollment of World War II veterans in 1945 due to the Montgomery GI Bill led to the completion of several new buildings, including a field house,