CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If there is no further morning business, morning business is closed.

USA PATRIOT ACT OF 2001

The PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to consideration of H.R. 3162, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 3162) to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

The PRESIDENT pro tempore. The senior Senator from Vermont, Mr. LEAHY, is recognized.

Mr. LEAHY. Mr. President, what is the time agreement that we now have before us?

The PRESIDENT pro tempore. The chairman and ranking member of the Judiciary Committee have 90 minutes each; the Senator from Michigan, Mr. LEVIN, has 10 minutes; the Senator from Minnesota, Mr. WELLSTONE, has 10 minutes; the Senator from Maryland, Mr. SARRANES, has 20 minutes; the Senator from Wisconsin, Mr. FEINGOLD, has 1 hour; the Senator from Florida, Mr. GRAHAM, has 15 minutes; and the Senator from Pennsylvania, Mr. SPECTER, has 15 minutes.

Mr. LEAHY. I thank the Presiding Officer, the President pro tempore of the Senate.

Mr. President, I yield myself such time as I may need out of my 90 minutes.

Mr. REID. Will the Senator yield?

Mr. LEAHY. Of course.

Mr. REID. Mr. President, I ask unanimous consent that during the day, when quorum calls are initiated, the time be charged proportionately, not only against the person who asked for the quorum to be initiated, but that it be charged proportionately against all people who have time under the agreement that is now in effect.

The PRESIDENT pro tempore. Is there objection?

The Chair hears no objection. That will be the order of the Senate.

The Senator from Vermont, Mr. LEAHY, is recognized.

(Mrs. CLINTON assumed the chair.)

Mr. LEAHY. Thank you, Mr. President. I agree with the distinguished Democratic leader in his request because we do want to have discussion of this piece of legislation, but there is no question in my mind that this piece of legislation today and we will pass this legislation today.

I think it is only fitting the Senator from New York is now in the chair as we begin discussion of this legislation because her State was one of those that was hit the worst and tragically impacted on September 11, as were the people of New Jersey and Connecticut, who worked in the World Trade Towers, and, of course, those at the Pentagon in Virginia, including those in Maryland and the District of Columbia, and actually the whole Nation.

Today we consider H.R. 3162, the second House-passed version of the "Uniting and Strengthening of America Act" or "USA Act of 2001." Senate passage of this measure without amendment will amount to final passage of this important legislation, and the bill will be sent to the President for his signature. We completed six weeks after the September 11 attacks and months ahead of final action following the destruction of the Federal Building in Oklahoma City in 1995. The American people and the Members of this body deserve fast work and final action.

On October 4, I was pleased to introduce with the Majority Leader, Senator DASCHLE, and the Chairmen of the Banking and Intelligence Committees, as well as the Republican Leader, Senator LORIE and Senator HATCH and Senator SHELBY, the Uniting and Strengthening America, or USA Act. This was not the bill that I, or any of the sponsors, would have written if compromise was unnecessary. Nor was it the bill the Administration had initially proposed and the Attorney General delivered to us on September 19, at a meeting in the Capitol.

We were able to refine and supplement the Administration's original proposal in many ways in the original USA Act, and have continued that process in the development of H.R. 3162. The Administration accepted a number of the practical steps I had originally proposed on September 19 to improve our security on the Northern Border, assist our Federal, State and local law enforcement officers, and provide compensation to the victims of terrorist acts and to the public safety officers who gave their lives to protect ours. This final version of the USA Act further improved and expanded by including additional important checks on the proposed expansion of government powers that were not contained in the Attorney General's initial proposal.

Let me outline just ten ways in which we in the bicameral, bipartisan negotiations were able to supplement and improve this legislation from the original proposal we received from the Administration.

We improved security on the Northern Border: We added money laundering; We added programs to enhance information sharing and coordination with State and local law enforcement, grants to State and local governments to respond to bioterrorism, and to increase payments to families of fallen firefighters, police officers and other public safety workers; We added humanitarian relief to immigrants who were victims of the September 11 terrorist attacks; We added help to the FBI to hire translators; We added more comprehensive victims assistance; We added measures to fight cybercrime; We added measures to fight terrorism against mass transnational terrorism; We added important measures to use technology to make our borders more secure.

Finally, and most importantly, we were able to include additional important checks on the expansion of government powers contained in the Attorney General's initial proposal.

In negotiations with the Administration, I did my best to strike a reasoned balance between our desire to address the threats of terrorism, which we all keenly feel at the present time, and the need to protect our constitutional freedoms. Despite my misgivings, I acquiesced in some of the Administration's proposals to move the legislative process forward. That progress has been rewarded by a bill we have been able to improve further during discussions over the last two weeks.

The Senate passed the original version of the USA Act, S. 1510, by a vote of 96-1 on October 11. The House passed a similar bill, based largely on the USA Act, the following day. The Majority Leader and I both strongly believed that a conference would have been the better and faster way to reconcile the differences between the bills, and to consider the proposals that had been included in the managers' amendment to S. 1510, which Republicans did not approve in time for consideration and passage with the Senate bill. The House did not request a conference when it passed the bill, however, and despite the understanding among House and Senate leadership, the House leadership abruptly incorporated the product of our discussions in a new bill rather than proceed to a quick conference.

Yesterday, the House passed H.R. 3162, which was based upon informal agreements reached between the House negotiators, but which did not include additional important provisions to make the Justice Department more efficient and effective in its anticrime efforts and to reduce domestic and international demand for illegal drugs, some of which are produced and supplied from Taliban-controlled regions of Afghanistan. I am disappointed that the commitment we received to hold a conference—at which these proposals could have been considered more fully—was not honored. Nonetheless, H.R. 3162, which the House passed yesterday, contains additional improvements to the USA Act that had been negotiated on a bicameral, bipartisan basis, and deserves the support of the Senate.

I do believe that some of the provisions contained both in this bill and the original USA Act will face difficult tests in the courts, and that we in Congress may have to revisit these issues at some point. But I am also confident that the present crisis has passed, the sunset has expired or the courts find an infirmity in these provisions. I also extend
as Chairman of the Judiciary Committee to exercise careful oversight of how the Department of Justice, the FBI and other executive branch agencies are using the newly-expanded powers that this bill will give them. I know that the needs of the Department of Justice and the FBI to keep our country safe are paramount. We must ensure that the Department has the tools to do its job while also being mindful of potential civil liberties concerns.

The negotiations on terrorism legislation have not been easy. Within days of the September 11 attacks, I began work on legislation to address counterterrorism needs on the Northern Border, the needs of victims and State and local law enforcement, and criminal and civil law improvements. A week after the attack, on September 19, the Attorney General and I exchanged the outlines of the legislative proposals and pledged to work together toward our shared goal of pursuing terrorism and terrorist organizations that would help prevent another terrorist attack.

Let me be clear: No one can guarantee that Americans will be free from the threat of future terrorist attacks, and to suggest that this legislation—or any legislation—would or could provide such a guarantee would be a false promise. I will not engage in such false promises, and those who make such assertions do a disservice to the American people.

I have also heard claims that if certain powers had been previously authorized by the Congress, we could somehow have prevented the September 11 attacks. Given this rhetoric, it may be instructive to review efforts that were made a few years ago in the Senate to provide law enforcement with greater tools to conduct surveillance of terrorists and terrorist organizations. In 1996, Senator DODD offered an amendment to the bill that became the Antiterrorism and Effective Death Penalty Act of 1996 that would have expanded the government’s authority to conduct emergency wiretaps and other forms of domestic or international terrorism and added a definition of domestic terrorism to include violent or illegal acts apparently intended to “intimidate, coerce the civilian population.” The consensus, bipartisan bill that we considered today contains a very similar definition of domestic terrorism.

In 1995, however, a motion to table Senator LIEBERMAN’s amendment was agreed to by a party-line vote, with Republicans voting against the measure. In fact, then Senator ASHERST voted to table that amendment, and one Republican colleague spoke against it and opined, “I do not think the American people will want the wiretaps and the expanded legal laws any further.” He further said that “We must ensure that in our response to recent terroristic acts, we do not de-stroy the freedoms that we cherish.” I have worked very hard to maintain that balance in negotiations concerning the current legislation.

Following the exchange on September 19 of our legislative proposals, we have worked over the last month around the clock with the Administration to put together the best legislative package we could. I share the Administration’s goal of providing promptly the legal tools necessary to deal with the current terrorist threat. While some have complained publicly that the negotiations have gone on for too long, the issues involved are of great importance, and we will have to live with the laws we enact for a long time to come. Our mission is to expand the government’s powers irresponsibly when the roadmap is pointed in the wrong direction. As Ben Franklin once noted, “if we surrender our liberty in the name of security, we shall have neither.” Therefore, our ability to make rapid progress was impeded because the negotiations with the Administration did not progress in a straight line. On several key issues that are of particular concern to me, we had reached an agreement with the Administration on Sunday, September 30. Unfortunately, over the next two days, the Administration announced that it was reneging on the deal. I appreciate the complex task of considering the concerns and missions of multiple Federal agencies, but these laws must give law enforcement the flexibility to be modified as their implications are scrutinized by affected agencies. When agreements made by the Administration must be withdrawn and negotiations on resolved issues reopened, those who originally agreed must sometimes reopen negotiations on the deal. I appreciate the seriousness with which the Administration proceeded and the need to include both money laundering and biological weapons provisions in the bill. In an apparent effort by the Administration and Republican leadership to try to pressure the Senate to accept that version of the bill, without strong money laundering or biological weapons provisions with a 5-year sunset, the Senate failed to take the procedural steps necessary to convene a conference. Had a conference been requested and begun, a final bill would have been passed last week. Instead, the procedures this week were less concentrated and it was only after a leadership meeting last week that the major outline of the measure was agreed upon.

During the negotiations over the past two weeks, the Administration sought to eliminate the sunset altogether, but that effort failed. The House insisted that the amendments to the so-called “McCane” law be dropped, and the Administration acquiesced. Eventually, the House accepted the Senate’s position on the need to include both money laundering and biological weapons provisions. Even then, the House Republican leadership reneged on the agreement to proceed by way of a traditional House-Senate conference. Instead, they opted to proceed by a new bill passed by the House in short order and sent to the Senate as an amendable measure. That brings us to today.

Given the expedited process that has been used to move legislation through the House and now to the Senate, I will take more time than usual to detail its provisions.

This bill has raised serious and legitimate concerns about the expansion of authorities for government surveillance and intelligence gathering within this country. Indeed, this bill will change surveillance and intelligence procedures for all types of criminal and foreign intelligence investigations, not just for terrorism cases. Significantly, the Administration may issue the final calls for vigilant legislative oversight, so that the Congress will know how these legal authorities are
used and whether they are abused over the next four years.

We should be clear at the outset that while the sunset applies to the expanded surveillance authorities under FISA, it does not apply to other controversial provisions in the bill that were originally passed by the House, the sunset did not apply to the provisions on sharing grand jury information with intelligence agencies, in section 203(a), and the so-called "sneak and peak" authority for surreptitious search and seizure, in section 213. The final bill, H.R. 3162, removes two more provisions from the sunset—the expanded scope of subpoenas for records of electronic communications, in section 210, and the new authority for pen registers and trap and trace devices in criminal investigations, in section 216.

Congressional oversight is especially necessary to monitor the implementation of these new authorities. I agree with Leader Moynihan that the sunset will help ensure that law enforcement is responsive to congressional oversight and inquiries on use of these new authorities and that a full record is developed on their efficacy and necessity. The Senate Judiciary Committee has the challenging duty to establish and maintain an oversight regime that allows the Congress to know how these powers are exercised.

This bill will authorize the expanded surveillance of information collected as part of a criminal investigation, and the expanded use of foreign intelligence surveillance tools and information in criminal investigations. Where foreign-sponsored terrorism is the target of an investigation, criminal and foreign intelligence jurisdictions clearly overlap and agencies must coordinate their efforts accordingly. This bill enters new and uncharted territory by breaking down traditional barriers between law enforcement and foreign intelligence power. This is not done just to combat international terrorism, but for any criminal investigation that overlaps a broad definition of "foreign intelligence."

Yet, before final passage of this bill, the Senate should recall our nation's unfortunate experience with domestic surveillance and intelligence abuses that came to light in the mid-1970s. Until Watergate and the Vietnam war, Congress allowed the Executive branch virtually unfettered to use the FBI, the CIA, and other intelligence agencies to conduct domestic surveillance in the name of national security. It was the Cold War, Members of Congress were reluctant to take on FBI Director J. Edgar Hoover, and oversight was nonexistent. One of the few safeguards enacted into law drew a sharp line between foreign intelligence and law enforcement. The National Security Act of 1947, which established the Central Intelligence Agency, said—and still says—that the CIA "shall not engage in, or assist, support, or provide funds for, any political, military, or other activity directed against the Government of the United States, whenever a criminal investigation makes exceptions (in section 905).

There would be far less controversy if these provisions were limited to information about domestic or international terrorism or espionage. Instead, they potentially authorize the disclosure throughout intelligence, military, and national security organizations of a far broader range information about United States persons, including citizens, permanent resident aliens, domestic political groups, and anyone from the United States. The information may be shared if it fits the broad definitions of "foreign intelligence" and "foreign intelligence information." The term "foreign intelligence" is defined to mean "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities." The term "foreign intelligence information" is defined to include information about a United States person that concerns a foreign power or foreign territory and "that relates to the national defense or the security of the United States" or "the national defense or the security of the United States."

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First Amendment and the political opinions of Americans.

During the height of antiwar protest and urban unrest in the late 1960's, Army intelligence joined the FBI in monitoring domestic political activity. National intelligence agencies such as CIA and NSA received extensive reporting from the FBI and the military, as well as from other intelligence gathering on critics of government policy. Other law enforcement agencies such as the Internal Revenue Service received material about the activities and beliefs of political organizations based on their political views. Under President's of both parties, these agencies disseminated information to the White House about the lawful political activities and opinions of citizens of Administration policy—all under the rubric of protecting the national security. The scope of intelligence gathering swept up environmental groups, women's liberation activists, and virtually any organization that mounted peaceful protest demonstrations.

During this unfortunate period in our history, the government did more than just gather information about protest and dissent. The FBI developed a systematic program to disrupt domestic groups and discredit their leaders, known as "COINTELPRO." The FBI's efforts included the selective sharing of information from its investigations to deny people employment and smear their reputations. Beginning with Conservations groups, the FBI's COINTELPRO operations spread in the 1960s to the Klan, the "New Left," and black militants. Elements of the civil
rights and antiwar movements were targeted for disruption because of sus-
picion that they were “influenced” by communists; others because of their strident rhetoric. When some targets were suspected of engaging in violence, the FBI's tactics went so far as to place lives in jeopardy by passing false allegations that individuals were gov-
ernment informants.

The most notorious case was J. Edgar Hoover's vendetta against Dr. Martin Luther King, Jr. The Church Committee documented the FBI's ef-
fort to discredit Dr. King by disclosing confidential information that was ob-
tained from wiretaps and microphones targeted against him. The wiretaps were justified to the Kennedy and Johnson Administrations on the

grounds that some of Dr. King's advi-
sors were Communists, but this excuse allowed the FBI to mount continuous political surveillance to undermine Dr. King's effectiveness. The FBI dissemi-

nated allegedly derogatory information not only within the government, but to media and other private organizations including efforts to deny Dr. King the Nobel Peace Prize. Most vicious of all was the FBI's preparation of a com-

posite tape to recapture that was sent to

him anonymously with an apparent in-

vitation to commit suicide. During the 1964 Democratic National Convention in Atlantic City where the greatest controversy involved seating the Mis-
sissippi Freedom Democratic Party delegates, the FBI provided the John-

son White House a continuous flow of
deleges, the FBI provided the John-

son White House a continuous flow of

political intelligence from the wiretaps
on Dr. King's telephones in Atlantic

City.

These methods of domestic political surveillance and covert manipulation and disruption have no place in a free society. They are lawful for the CIA to use against terrorists abroad, under Presidential authorization and over-
sight by the Intelligence Community. In the United States, however, such surveillance activities by our government offends our fundamental First Amendment rights of speech and asso-
ciation, and undermines our demo-
cratic values. Since the Church Com-
mittee investigation, one of the main reasons for maintaining barriers be-
tween domestic criminal investigations and foreign intelligence operations has been a concern that the no-hold-barred methods abroad must not be brought back into this country.

The Church Committee recommended a series of safeguards to restrict the collection of information about Ameri-
cans by the CIA, the National Security Agency, and other U.S. intelligence agencies. The Attorney General issued guidelines for FBI investigations and

President issued Executive Orders re-

quiring procedures approved by the At-
torney General for the collection and

retention of information about Ameri-
cans by the FBI. These guidelines and procedures have served for the past 25 years as a stable framework that, with rare exceptions, has not allowed previous abuses to recur.

The most significant legislative re-
sult of the Church Committee inves-
tigation was the Foreign Intelligence Surveillance Act of 1978 which required court approval for electronic surveillance in the United States. No longer did the Executive branch have exclusive control over the vast powers of U.S. intelligence to con-
duct wiretapping, bugging, and other communications monitoring in this country. Surveillance was limited to foreign powers and agents of foreign powers, and the statutory probable cause standard for targeting an Ameri-
can as an “agent of a foreign power”
required a showing of clandestine intel-

ligence activities, sabotage, or inter-
national terrorist activities on behalf of a foreign power. Americans could not be targeted solely on the basis of activities protected by the First Amendment. Surveillance of Ameri-
cans under FISA was limited to coun-
terintelligence purposes to defend the nation against foreign spying and ter-
rorism. Americans could not be consid-
ered “agents of a foreign power” on the basis of their lawful business or political activities or relationships with foreign govern-
ments or organizations.

The Congress has been cautious in the decades following the revelations of the Church Committee about allow-
ing use of criminal justice information for other purposes and, specifically, on sharing such information with intel-

ligence agencies. In 1979 Attorney Gen-
eral Benjamin Civiletti testified before the House Judiciary Subcommittee on Constitutional Rights that the guide-

telines for “any dissemination outside the Bureau . . . will have to be very, very specific. We will have to be very
certain the dissemination is lawful, meets the same standards of certainty, of intent, which is the basic reason for the Church Committee and the investigation. . . .” On the issue of FISA sharing with the CIA, Attorney Gen-
eral Civiletti said “you have to be extremely careful in working out, pur-
suant to the law, the information which is being exchanged, what its pur-
pose is, how it was obtained and col-
clected, so that you are not inadvert-
ently, out of a sense of cooperation or ef-
ciciency, perverting or corrupting the fact that the CIA’s main duty is for-

counterintelligence, protective, immi-

grant, no responsibility, and not duty performance, no mission to investigate criminal acts in the United States.”

The bill we are passing today makes potentially sweeping changes in the re-

lationships between the law enforce-

ment and intelligence agencies. In the current crisis, there is justification for expanding authority specifically for counterintelligence to detect and pre-
vant international terrorism. I support the FBI request for broader authority on FISA wiretaps, but not broader access to records without having to meet the statutory “agent of a foreign power” standard, because the Fourth Amend-

ment does not normally apply to such techniques and the FBI has comparable authority in its criminal investiga-
tions. However, I have insisted that this authority to investigate U.S. per-
sons be limited to counterintelligence investigations conducted to protect Americans from the widespread and sym-

ing activities and that such inves-
tigations may not be based solely on activities protected by the First Amendment. None of the changes in FISA would authorize investigations of American for the broader and am-

biguous purpose of collecting “foreign intelligence” generally. In that re-

spect, the bill adheres to the basic principles recommended by the Church Committee.

The gravest departure from that framework, and the one with most po-
tential for abuses, is the new and un-

precedented statutory authority for sharing of “foreign intelligence” from criminal investigations with “any other Federal law enforcement, intel-
ligence, protective, immigration, na-
tional defense, or national security of-

ficial.” The Church Committee warned of the political abuse of the dissemina-
tion of intelligence from domestic inves-
tigations. Intelligence was dissemi-

nated to the White House to track the contacts of members of Congress with

particular foreign embassies. Informa-
tion was volunteered to the White

House about Administration critics and other political figures. The Church

Committee found “excessive dissemina-
tion of large amounts of relatively

useless or totally irrelevant informa-
tion” to the White House that was not evaluated and “thus exaggerated the
dangers.”

The Church Committee recommended permitting FBI dissemination of per-

sonally identifiable information about Americans to intelligence, military

and other national security agencies in two areas—“preventive criminal inves-
tigations of terrorist activities” and “preventive intelligence investigations of hostile foreign intelligence activi-
ties.” This has been substantially the practice under the Attorney General’s guidelines and Executive order proce-
dures since then.

The new authority to disseminate “foreign intelligence” from criminal investigations, including grand juries and law enforcement wiretaps, is an invi-

tation to abuse without special safe-
guards. Fortunately, the final bill in-

cludes a provision, which was not in

the Administration's original proposal, to maintain some degree of judicial oversight of the dissemination of grand

jury information. Within a “reasonable
time” after the disclosure of grand jury

information, a government attorney “shall file under seal a notice with the court stating the fact that such infor-
mation was disclosed and the depart-
ment and agencies to which the disclo-

sure was made.” No such judi-
cicial role is provided for the disclo-
sure of information from wiretaps and
other criminal investigative techniques including the infiltration of organizations with informants. However, that authority to disclose without judicial review is subject to the sunset in four years.

Other safeguards can, if used properly, minimize the unnecessary disclosure of "foreign intelligence" that identifies an American. When the information comes from grand juries or wiretaps, the Attorney General is required under the bill to establish procedures for the disclosure of information that identifies a United States person. The Senate Judiciary Committee will want to take a very close look at these procedures. Although not required under the bill, such procedures would also be desirable for disclosure of information from criminal investigations generally, as permitted under section 203(d). In section 905, where the bill requires disclosure to intelligence agencies from criminal investigations, the Attorney General is authorized to make exceptions and must issue implementing procedures. Again, these procedures will be closely examined by the Senate Judiciary Committee.

There will be critical in determining the scope and impact of these provisions. Will they focus the sharing of information on international terrorism, which is the immediate and compelling need before us, or will they be broader? Will they permit automatic dissemination to intelligence agencies of any information about foreign governments, foreign organizations, or foreign persons that is obtained in FBI investigations of international organized crime and white collar crime? What are the specific circumstances under which confidential information collected by particular agencies, such as the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms, will be disseminated to the CIA or military or other agencies? What will be the guidelines for including information that identifies United States persons? How will need-to-know decisions be made on the handling of this information, and how will access be controlled? What will be done to ensure compliance with the 1947 ban on CIA having "police, subpoena, or law enforcement powers or internal security functions?"

These and many other questions must be part of the Judiciary Committee’s oversight of the implementation of the surveillance and intelligence provisions of this bill. Our government is entering uncharted territory. Much of the government’s experience from the Cold War era before the mid-1970s warns us of the risks of abuse. Reasonable measures that we are taking to protect against international terrorism may have far-reaching ramifications beyond the immediate crisis. There has never been a greater need for reasonable procedures to ensure our liberty against unnecessary and improper use of the wiretap capability being granted by a new law. I intend to ask the Attorney General and the Director of Central Intelligence to advise the Judiciary Committee of their implementation plans and practices every step of the way.

The final bill includes a long overdue remedy for unauthorized disclosure of information obtained from electronic surveillance under FISA and under criminal procedures. If the government monitors the conversations of a person under wiretaps, it will provide for procedures of title 18 or FISA and that information is disclosed without proper authority, the aggrieved person may recover money damages from the Federal Government. Such improper disclosure is what happened just when the FBI passed information from the electronic surveillance of Dr. Martin Luther King to selected private individuals and organizations in an effort to discredit Dr. King. The government had decided that discipline as well as the civil remedy was not warrented.

As a deterrent against malicious leaks, this provision wisely includes procedures for administrative discipline as well as the civil remedy provision. Title 5 of the USA Act precludes the appropriate agency determines that there is serious question about whether or not an employee willfully disclosed information without proper authority, disciplinary proceedings may be initiated. If the agency head decides that discipline is not warranted, he or she must notify the Inspector General with jurisdiction over the agency and provide the reasons for the decision not to impose discipline. The Inspector General may request a hearing. A finding that the employee willfully disclosed information is made, the Department of Justice is authorized to recover money damages from the Federal Government. The Department of Justice has worked with Representative Frank to ensure that the procedures for civil discovery take into account the needs for protecting related criminal investigations or prosecutions and classified operations under the Foreign Intelligence Surveillance Act.

When Congress authorized electronic surveillance under title 18 and in 1978 under FISA, the legislation imposed civil and criminal sanctions for violations by individuals. This bill takes the law two steps forward by adding government liability and administrative procedures for government employees. Along with the sunset provision, judicial oversight of the sharing of grand jury information, and other improvements, the Frank amendment reflects the valuable contribution of the House of Representatives towards making this a balanced bill.

The heart of every American aches for those who died or have been injured because of the tragic terrorist attacks in New York, Virginia, and Pennsylvania on September 11. Even now, we cannot assess the full measure of this attack in terms of human lives, but we know that the number of casualties is extraordinary high.

Congress acted swiftly to help the victims of September 11. Within 10 days, we passed legislation to establish a Victims Compensation Program, a Victims Assistance Program to provide emotional support to those most affected by this national tragedy. I am proud of our work on that legislation, which will expedite payments to thousands of Americans whose lives were so suddenly shattered. Yet, now more than ever, we should remember the tens of thousands of Americans whose needs are not being met—the victims of crimes that have not made the national headlines. Just one day before the events that have so traumatically affected this country, I wrote to express my concern that we were not doing more for crime victims. I noted that the pace of victim legislation had slowed, and that many opportunities for progress had been squandered. I suggested that this year, we had a golden opportunity to make significant progress in this area by passing S. 783, the Leahy-Kennedy Crime Victims Assistance Act of 2001.

It is pleasing, then, that the antiterrorism package now before the Senate contains substantial portions of S. 783 aimed at refining the Victims of Crime Act of 1984 (VCOA), and improving the manner in which the Crime Victims Fund is used. VCOA was passed in 1978 under FISA, the legislation had slowed, and that many significant progress in this area by passing S. 783, the Leahy-Kennedy Crime Victims Assistance Act of 2001.

The final bill includes a long overdue remedy for unauthorized disclosure of information obtained from electronic surveillance under FISA and under criminal procedures. If the government monitors the conversations of a person under wiretaps, it will provide for procedures of title 18 or FISA and that information is disclosed without proper authority, the aggrieved person may recover money damages from the Federal Government. Such improper disclosure is what happened just when the FBI passed information from the electronic surveillance of Dr. Martin Luther King to selected private individuals and organizations in an effort to discredit Dr. King. The government had decided that discipline as well as the civil remedy was not warrented.

As a deterrent against malicious leaks, this provision wisely includes procedures for administrative discipline as well as the civil remedy provision. Title 5 of the USA Act precludes the appropriate agency determines that there is serious question about whether or not an employee willfully disclosed information without proper authority, disciplinary proceedings may be initiated. If the agency head decides that discipline is not warranted, he or she must notify the Inspector General with jurisdiction over the agency and provide the reasons for the decision not to impose discipline. The Inspector General may request a hearing. A finding that the employee willfully disclosed information is made, the Department of Justice is authorized to recover money damages from the Federal Government. The Department of Justice has worked with Representative Frank to ensure that the procedures for civil discovery take into account the needs for protecting related criminal investigations or prosecutions and classified operations under the Foreign Intelligence Surveillance Act.

When Congress authorized electronic surveillance under title 18 and in 1978 under FISA, the legislation imposed civil and criminal sanctions for violations by individuals. This bill takes the law two steps forward by adding government liability and administrative procedures for government employees. Along with the sunset provision, judicial oversight of the sharing of grand jury information, and other improvements, the Frank amendment reflects the valuable contribution of the House of Representatives towards making this a balanced bill.

The heart of every American aches for those who died or have been injured because of the tragic terrorist attacks in New York, Virginia, and Pennsylvania on September 11. Even now, we cannot assess the full measure of this attack in terms of human lives, but we know that the number of casualties is extraordinarily high.

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Senator DURBIN that condemns violence and discrimination against Sikh Americans. Many of us would like to do more, and finally enact effective hate crimes legislation, but the Administration has asked that the debate on that legislation be postponed. One of my greatest regrets regarding the negotiations in this bill was that objections to a crime. On September 11, the nation saw that the first on the scene were the heroic firefighters, police officers, and emergency personnel in New York City. Many of the brave public safety officers, many of whom gave the ultimate sacrifice, remind us of how important it is to support our State and local law enforcement partners. The USA Act provides three critical measures to support our State and local law enforcement officers in the war against terrorism.

We streamline and expedite the Public Safety Officers’ Benefits application process for family members of fire fighters, police officers, and rescue workers who perish or suffer a disabling injury in connection with prevention, investigation, rescue or recovery efforts related to a future terrorist attack.

The Public Safety Officers’ Benefits Program provides benefits for each of the families of law enforcement officers, fire fighters, and emergency response crew members who are killed or disabled in the line of duty. Current regulations, however, require the families of public safety officers who have fallen in the line of duty to go through a cumbersome and time-consuming application process. In the face of our national fight against terrorism, it is important that we provide a quick process to support the families of brave Americans who selflessly give their lives so that others might live before, during, and after a terrorist attack.

This provision builds on the new law changes that Senator SCHUMER and Congressman NAPOLITANO asked for. The First Responders Assistance Act, was added as section 1005 of H.R. 3062. This provision authorizes a $25 million Department of Justice program to promote information sharing among Federal, State and local law enforcement agencies to coordinate their counterterrorism efforts.

During negotiations following initial passage of the Senate and House bills, we added two new provisions to support State and local governments in the fight against terrorism. One agency or from one agency to another. Federal agencies, such as the FBI, do not have this capability, but recognize the need for it. Indeed, on September 11, immediately after the attacks, FBI Headquarters called RISS officials to request "Smartgate" cards and readers to secure their communications systems.

The Regional Information Sharing Systems Program is a proven success that we need to expand to improve secure information sharing among Federal, State and local law enforcement agencies to coordinate their counterterrorism efforts.

I authored section 1014 of H.R. 3062 to authorize a Department of Justice grant program for State and local domestic preparedness support. These provisions are essential for and respond to terrorist attacks including but not limited to events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices. This provision improves an appropriate program to provide: 1. additional flexibility to purchase needed equipment; 2. training and technical assistance to State and local responders; and 3. a more equitable allocation of funds to all States.

Our State and local law enforcement partners welcome the challenge to join in our national mission to combat terrorism. We cannot ask State and local...
law enforcement officers to assume these new national responsibilities without also providing new Federal support. This bill provides five key provisions for necessary Federal support for our State and local law enforcement as full partners in our fight against terrorism.

I am deeply troubled by continuing reports that critical information is not being shared with State and local law enforcement. In particular, the recent testimony of Baltimore Police Chief Ed Norris before the House Government Reform Committee highlighted the current problem. I have also spoken to Mayor Giuliani and to Senator Schumer and Senator Clinton about the need for better coordination and information sharing between the FBI and State and local law enforcement authorities who are being called upon to assist in the current terrorism investigations. This is no time for turf battles. The FBI must recognize the contributions of State and local law enforcement authorities and facilitate their continued cooperation in this national effort.

The unfolding facts about how the terrorists who committed the September 11 attacks were able to enter this country without difficulty are chilling. Since the attacks many have pointed to our northern border as vulnerable to the entry of future terrorists. This is not surprising when a simple review of the numbers shows that the northern border has been routinely short-changed in personnel. While the number of border patrol agents along the southern border has increased over the last few years to over 8,000, the number at the northern border has remained the same as a decade ago at 300. This remains true despite the fact that Admad Ressam, the Algerian who planned to blow up the Los Angeles International Airport in 1999, and who has been linked to those involved in the September 11 attacks, chose to enter the United States at our northern border. That border will remain an inviting target until we dramatically improve our security.

The USA Act includes my proposals to provide the substantial and long overdue assurance for our law enforcement and border control efforts along the Northern Border. My home State of Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement. The number of people coming through our borders has risen steeply over the years, but our staff and our resources have not.

I proposed—and this legislation authorizes in section 402—tripling the number of Border Patrol, INS inspectors, and Customs Service employees in each of the States along the 4,000-mile Northern Border. I was gratified when 22 Senators—Democrats and Republicans alike—and the President supporting such an increase, and I am confident that the Administration will fully fund this critical law enforcement improve-

Senators Cantwell and Schumer in the Committee and Senators Murray and Dorgan have been especially strong advocates of these provisions and I thank them for their leadership. In addition, the USA Act, in section 205, directs the Attorney General to waive the FTE cap on INS personnel in order to address the national security needs of the United States on the northern border. Now more than ever, we must patrol our border vigilantly and prevent those who wish America harm from gaining entry. At the same time, we must work with the Canadians to allow speedy crossing to legitimate visitors and foster the continued growth of trade which is beneficial to both countries.

In addition to providing for more personnel, this bill also includes, in section 402(4), my proposal to provide $100 million in funding for both the INS and the Customs Service to improve the technology used to monitor the Northern Border and to purchase additional equipment. The bill also includes, in section 403(c), an important provision from Senator Cantwell directing the Attorney General, in consultation with other agencies, to develop a technical database to carry out the identity of persons applying for visas or seeking to enter the United States. In short, this bill provides a comprehensive high-tech boost for the security of our nation.

This bill also includes important proposals to enhance data sharing. The bill, in section 403, directs the Attorney General and the FBI Director to give the State Department and INS access to the criminal history information in the FBI’s National Crime Information Center (NCIC) database, as the Administration and I both proposed. The Attorney General is directed to report back to the Congress in two years on progress in implementing this requirement. We also advocated that the Administration’s language, in section 413, to make it easier for the State Department to share information with foreign governments for aid in terrorist investigations. The USA Act contains a number of provisions intended to improve and update the Federal criminal code to address better the nature of terrorist activity and assist the FBI in translating foreign language information collected. I will mention just a few of these provisions.

The truth certainly seems self-evident that all the best surveillance techniques in the world will not help this country defend itself from terrorist attack if the information cannot be understood in a timely fashion. Indeed, within days of September 11, the FBI Director issued an employment ad on national TV calling upon Arabic speakers to apply for a job as an FBI translator. This is a dire situation that needs to be addressed. Further, we have adopted the House provision in section 408, to provide all possible support. The Administration has a high priority, and the Congress should provide all possible support. Therefore, the bill calls on the Attorney General to report to the Judiciary Committees on the number of translators employed by the Justice Department; any legal or practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

The Administration’s initial proposal assembled a laundry list of more than 40 Federal crimes ranging from computer hacking to malicious mischief to the use of weapons of mass destruction, and designated them as “Federal terrorism offenses,” regardless of the circumstances under which they were committed. For example, a teenager who downloaded the NASA website and, as a result, recklessly caused damage, would be deemed to have committed this new “terrorism” offense. Under the Administration’s proposal, the consequences of this designation were severe. Crimes on the list would carry no statute of limitations. The maximum penalties would shoot up to life imprisonment, and those released earlier would be subject to a lifetime of supervised release. Moreover, anyone who harbored a person whom he had “reasonable grounds to suspect” had committed, or was about to commit, a “Federal terrorism offense”—whether it was the Taliban or the mother of my hypothetical teenage computer hacker—would be subject to stiff criminal penalties. I worked with the Administration to ensure that the definition of “terrorism” in the USA Act fit the crime.

First, we have trimmed the list of crimes that may be considered as terrorism predicates in section 808 of the bill. This shorter, more focused list, to be codified at 18 U.S.C. § 2332(p)(5)(B), more closely reflects the sorts of offenses committed by terrorists. We have provided, in section 809, that the current 8-year limitations period for this new set of offenses will remain in place, except where the Commission of the offense resulted in, or created a risk of, death or serious bodily injury.

Third, rather than make an across-the-board, one-size-fits-all increase of the penalties for every offense on the list, without regard to the severity of the offense, we have made, in section 810, more measured increases in maximum sentences for the crimes, including life imprisonment or lifetime supervised release in cases in which the offense resulted in death. We have also
Senator WYDEN, who worked strenuously to emphasize the importance of this provision than one in the Senate knows more about the enforcement provision from the bill. No one in the Senate, are not included in the bill before the Senate today. Well before September 11, the Justice Department has said that the McDade law—which subjects Federal prosecutors to multiple and potentially conflicting State bar rules—has delayed important criminal investigations, prevented the use of effective and traditionally-accepted investigative techniques, and served as the basis of litigation to interfere with legitimate Federal prosecution. Despite the recent retraction, and the increasing demands upon Federal prosecutors in the wake of the terrorist attacks, the Administration simply acceded to House demands to remove this provision from the USA Act. This abandonment has removed a critical law enforcement provision from the bill. No one in the Senate knows more about the importance of this provision than Senator WYDEN, who worked strenuously to include the McDade law in this bill. His efforts and mine proved unavailing without Administration backing through the entire process.

The McDade law has a dubious history, to say the least. At the end of the 106th Congress, it was slipped into an omnibus appropriations bill over the objection of every member of the Senate Judiciary Committee. Since it was adopted, it has caused numerous problems for Federal prosecutors, and we must amend this bill to remove more cases are compromised. At a time when we need Federal law enforcement authorities to move quickly to catch those responsible for the September 11 attacks, and to prevent further attacks on our country, we can no longer tolerate the drag on Federal investigations and prosecutions caused by this ill-considered legislation.

Another provision of the USA Act that was not included in the Administration’s initial proposal is section 803, which targets acts of terrorism and other violence against mass transportation systems. Earlier this month, a Greyhound bus crashed in Tennessee after a deranged passenger slit the driver’s throat and then grabbed the steering wheel, forcing the bus into oncoming traffic. Six people were killed in the crash. Because there are currently no Federal laws addressing terrorism-related crimes, however, there may be no Federal jurisdiction over such a case, even if it were committed by suspected terrorists. Cleary, there is an urgent need for strong criminal legislation to deter attacks against mass transportation systems. Section 801 will fill this gap.

The Computer Fraud and Abuse Act, 18 U.S.C. § 1030, is the primary Federal criminal statute prohibiting computer frauds and hacking. I worked with Senator HATCH in the last Congress to make improvements to this law in the Internet Security Act, which passed the Senate as part of another bill. Our work is included in section 814 of the USA Act. This section would amend the statute to clarify the appropriate scope of Federal jurisdiction. (1) The Federal court in which the case is filed, at the defendant’s request, determines the appropriate guideline range and restitution amount. (2) The bill amends the definition of “protected computer” to include qualified computers even when they are physically located outside of the United States. This clarification will preserve the ability of the United States to assist in international hacking cases and finally, this section eliminates the current directive to the Sentencing Commission requiring that all violations, including misdemeanor violations, of certain provisions of the Computer Fraud and Abuse Act be punished with a term of imprisonment of at least six months.

Borrowing from a bill introduced in the last Congress by Senator BIDEN, the USA Act contains a provision in section 817 to strengthen our Federal laws relating to the threat of biological weapons. At a time when the nation’s headlines are filled with news about anthrax and other biological threats, it is fitting that the House added this provision back to the bill after dropping it from H.R. 2975. Unfortunately, we must amend this provision to include the predicates to resolve inter-agency conflicts. Given the grave importance of this issue, I urge the Administration to resolve these disputes and work with the Congress to provide these additional protections.

Current law prohibits the possession, development, or acquisition of biological agents or toxins “for use as a weapon.” The Administration’s interpretation of “for use as a weapon” to include all situations in which it can be proven that the defendant had any purpose other than a peaceful purpose. This will enhance the government’s ability to prosecute suspected terrorists in possession of biological agents or toxins, and conform the scope of the criminal offense in 18 U.S.C. § 175b to the related forfeiture provision in 18 U.S.C. § 176. This section also contains a new statute, 18 U.S.C. § 175b, which generally makes it an offense for certain restricted persons, including non-resident aliens from countries that support international terrorism, to possess a listed biological agent or toxin.

Of greater consequence, section 817 defines another additional offense, punishable by up to 10 years in prison, of possessing a biological agent, toxin, or delivery system “of a type or in a quantity that, under the circumstances, is not reasonably justified by a peaceful purpose. As originally proposed by the Administration, this provision specifically stated that “the circumstances” of whether or not the agent or toxin was reasonably justified was not an element of the offense. Thus, although the burden of proof is always on the government, every person who possesses a biological agent, toxin, or delivery system was at some level of risk. At my urging, the Administration agreed to drop this portion of the provision.

Nevertheless, I remain troubled by the substantive breadth of the amendment’s requirement to find a violation of the new criminal prohibition and question whether it provides sufficient notice under the Constitution. I also share the concerns of the American Society for Microbiology and the Association of American Universities that this provision will have a chilling effect upon legitimate scientific inquiry that offsets any benefit in protecting against terrorism. While we have tried to prevent against this by creating an explicit exception “for bona fide research,” this provision may yet prove unworkable, unconstitutional, or both. I urge the Justice Department and the research community to work together on substitute language that would provide prosecutors with a more workable tool.

Two sections of the USA Act were added at the request of the United States Secret Service, with the support of the Administration. I was pleased to accommodate the Secret Service by including these provisions in the bill to expand Electronic Crimes Task Forces and clarify the authority of the Secret Service to investigate computer crimes.

The Secret Service is committed to the development of new tools to combat the growing areas of financial crime, computer fraud, and cyberterrorism. Recognizing a need for law enforcement, private industry and academia to pool their resources, skills, and vision to combat criminal enterprises, the Secret Service created the New York Electronic Crimes Task Force (NYECTF). This highly successful model includes
over 250 individual members, including 50 different Federal, State and local law enforcement agencies, 100 private companies, and 9 universities. Since its inception in 1995, the NYECTF has successfully investigated a range of financial crimes, including credit card fraud, identity theft, bank fraud, computer systems intrusions, and e-mail threats against protectees of the Secret Service. Section 105 of the USA Act authorizes the Secret Service to develop a familiar task forces in cities and regions across the country where critical infrastructure may be vulnerable to attacks from terrorists or other cyber-criminals.

Section 506 of the USA Act gives the Secret Service concurrent jurisdiction to investigate offenses under 18 U.S.C. § 1030 relating to fraud and related activity in connection with computers. Prior to the 1996 amendments to the Computer Fraud and Abuse Act, the Secret Service was authorized to investigate violations of section 1030, pursuant to an agreement between the Secretary of Treasury and the Attorney General. The 1996 amendments, however, concentrated Secret Service jurisdiction on certain specified subsections of section 1030. The current amendment would return full jurisdiction to the Secret Service and would allow the Justice and Treasury Departments to decide on the appropriate work-sharing balance between the agencies.

The USA Act also authorizes, for the first time, a counter-terrorism fund in the United States. The fund will enable the Secret Service to investigate a wide range of potential White House network intrusions, as well as intrusions into remote sites (outside of the White House) that could impact the safety and security of its protectees, and to continue its mission to protect the nation’s critical infrastructure and financial payment systems.

The bill, in section 206, would authorize the use of roving wiretaps in the course of a foreign intelligence investigation and brings FISA into line with criminal procedures that allow surveillance to follow a person, rather than requiring a separate court order identifying each telephone company or other communication common carrier whose assistance is needed. This is a matter on which the Attorney General and I reached early agreement. This is the kind of change that has a compelling justification, because it recognizes the ease with which targets of investigation can evade surveillance by changing phones. In fact, the original roving wiretap authority for use in criminal investigations was enacted as part of the Electronic Communications Privacy Act, ECPA, in 1986. I was proud to be the primary Senate sponsor of that earlier law.

Paralleling the statutory rules applying to criminal investigations, the formulation I originally proposed made clear that this roving wiretap authority must be requested in the application before the FISA court was authorized to order such roving surveillance authority. Indeed, the Administration agrees that the FISA court may not grant such authority sua sponte. Nevertheless, we believe the Administration’s formulation of the new roving wiretap authority, which requires the FISA court to make a finding that the actions of the person whose communications are to be intercepted could have the effect of thwarting the identification of a specified facility or place. While no amendment is made to the statutory directions for what must be included in the application for a FISA order, these applications should include the necessary information to support the FISA court’s finding that roving wiretap authority is warranted.

Section 220 of this bill authorizes nationwide service of search warrants in terrorism investigations. This will allow the judge who is most familiar with the developments in a fast-breaking and complex terrorism investigation to issue a warrant, no matter where the property to be searched is located. This will not only spare the judge time that is better spent elsewhere, but will also save the FBI and Fourth Amendment interests in ensuring that the most knowledgeable judge makes the determination of probable cause. The bill, in section 209, also authorizes voice mail messages to be seized on the authority of a probable cause search warrant rather than through the more burdensome and time-consuming process of a wiretap.

The bill updates the laws pertaining to electronic records in three primary ways. First, in section 210, the bill authorizes the nationwide service of subpoenas for subscriber information and expands the list of items subject to subpoena to include the means and source of payment for the service. Section 211, this standard for law enforcement access to cable subscriber records on the same basis as other electronic records. The Cable Communications Policy Act, passed in 1984 to regulate various aspects of the cable industry, did not take into account the changes in technology that have occurred over the last fifteen years. Cable television companies now often provide Internet access and telephone service in addition to television programming. This amendment clarifies that a cable company must comply with the laws governing the interception and disclosure of wire and electronic communications just like any other telephone company or Internet service provider. The amendment would establish consistent standards that govern the release of customer records for television programming.

Finally, the bill, in section 212, permits, but does not require, an electronic communications service to disclose the contents of and subscriber information about communications in emergencies involving the immediate danger of death or serious physical injury. Under current law, if an ISP’s system receives an e-mail death threat from another customer of the same ISP, and the victim provides a copy of the communication to the ISP, the ISP is limited in what actions it may take. On one hand, the ISP may disclose the contents of the forwarded communication to law enforcement (or to any other third party as it sees fit). See 18 U.S.C. §2702(b)(3). On the other hand, current law does not expressly authorize the ISP to voluntarily provide communications with the identity, home address, and other subscriber information of the user making the threat. See 18 U.S.C. §2703(c)(1)(B), (C) (permitting disclosure
As the outline of my earlier legislation suggests, I have long supported modernizing the pen register and trap and trace device laws by modifying the statutory language to cover the use of these orders on computer transmissions and to remove some of the jurisdictional limits on service of these orders; and to update the judicial review procedure, which, unlike any other area in criminal procedure, bars the exercise of judicial discretion in reviewing the justification for the order. The USA Act, in section 216, updates the pen register and trap and trace laws only in two out of three respects I believe are important, and without allowing meaningful judicial review. Yet, we were able to improve the Administration’s initial proposal, which suffered from the same problems as the provision that was hastily taken up and passed by the Senate, by voice vote, on September 13, 2001, as an amendment to the Commerce Justice State Appropriations Act.

The existing legal procedures for pen register and trap-and-trace authority require service of individual orders for installation of pen register or trap and trace device service providers that carried the targeted communications. Deregulation of the telecommunications industry has had the consequence that one communication may be carried by multiple providers. For example, a telephone call may be carried by a competitive local exchange carrier, which passes it at a switch to a local Bell Operating Company, which passes it to a long distance carrier, which hands it to an incumbent local exchange carrier elsewhere in the U.S., which in turn may finally hand it to a cellular carrier. If these carriers do not pass source information with each call, identifying that source may require compelling information from a host of providers located throughout the U.S. Under present law, a court may only authorize the installation of a pen register or trap device “within the jurisdiction of the court.” As a result, when one provider indicates that the source of a communication is a carrier in another district, a second order may be necessary. The Department of Justice has advised, for example, that in 1996, a hacker (who later turned out to be launching his attacks from a foreign country) extensively penetrated computers belonging to the Department of Defense. This hacker was dialing into a computer at Harvard University and using this computer as an intermediate staging point in an effort to conceal his location and identity. Investigators obtained a trap and trace order instructing the phone company, Nynex, to trace these calls, but Nynex could only report that the communications were coming to it from a long-distance carrier, MCI. Investigators then applied for and obtained an order authorizing interception of communications from MCI, but since the hacker was no longer actually using the connection, MCI could not identify its source. Only if the investigators could have served MCI with a trap and trace order while the hacker was actively on-line could they have successfully traced back and located him.

As another example provided by the Department of Justice, investigators encountered similar difficulties in attempting to track Kevin Mitnick, a criminal who continued to hack into networks and steal data even while under federal supervision, despite the fact that he was on supervised release for a prior computer crime conviction. The FBI attempted to trace these electronic communications while they were in progress. In order to evade arrest, however, Mitnick moved around the country and used cloned cellular phones and other evasive techniques. His hacking attacks would often pass through one of two cellular carriers, a local phone company, and then two intermediate providers. In this situation, where investigators and service providers had to act quickly to trace Mitnick in the act of hacking, only many repeated attempts—accompanied by an order to each service provider—fully produced results. Fortunately, Mitnick was such a persistent hacker that he gave law enforcement many chances to complete the trace.

This duplicative process of obtaining a separate order for each link in the communications chain can be quite time-consuming, and it serves no useful purpose since the original court has already authorized the trace. Moreover, a second or third order addressed at a particular carrier may be of no value at all if part of a prior communication may prove useless during the next attack: in computer intrusion cases, for example, the target may use an entirely different path (i.e., utilize a different set of intermediate providers) for his or her subsequent activity.

The bill would modify the pen register and trap and trace statutes to allow for nationwide service of a single order for installation of these devices, with the necessity of returning to court for each new carrier. I support this change.

The language of the existing statute is hopelessly out of date and speaks of a pen register or trap and trace “device” being “attached” to a telephone “line.” However, the rapid computerization of the telephone system has changed the tracing process. No longer are such functions normally accomplished by physically attaching components attached to telephone lines. Instead, these functions are typically performed by computerized collection and retention of call routing information passing through a communications system.

The statute’s definition of a “pen register” as a “device” that is “attached” to a particular “telephone line” is particularly obsolete when applied to the wireless portion of a cellular phone call, which has no line to which anything can be attached. While courts have authorized pen register orders for wireless phones based on the
tion of obtaining access to a "virtual line," updating the law to keep pace with current technology is a better course.

Moreover, the statute is ill-equipped to facilitate the tracing of communications over the Internet. For example, the pen register definition refers to telephone "numbers" rather than the broader concept of a user's communications account. Although pen register and trap orders have been used to monitor activity on computer networks, Internet service providers have challenged the application of the statute to electronic communications, frustrating legitimate investigations. I have long supported updating the statute by removing words such as "numbers...dialed" that do not apply to the way that pen/trap devices are used and to clarify the statute's proper application to tracing communications in an electronic environment, but in a manner that is technology-neutral and does not capture the content of communications. That being said, I have been concerned about the FBI and Justice Department's insistence over the past few years that the pen/trap devices statutes be updated to define terms that continue to flame concerns that these laws will be used to intercept private communications content.

The Administration's initial pen/trap device proposal added the terms "routings" and "impulses" giving the FBI definitions describing the information that was authorized for interception on the low relevance standard under these laws. The Administration and the Department of Justice flatly rejected my suggestion that these terms be defined to respond to concerns that the new terms might encompass matter considered content, which may be captured only upon a showing of probable cause, not the mere relevancy of the pen/trap statute. Instead, the Administration agreed that the definition should express exclude the use of pen/trap devices to intercept "content," which is broadly defined in 18 U.S.C. 2510(8).

While this is an improvement, the FBI and Justice Department are short-sighted in their refusal to define these terms. We should be clear about the consequence of not providing definitions for these new terms in the pen/trap device statutes. These terms will be defined by the courts in the context of criminal cases where pen/trap devices have been used and challenged by defendants. If a court determines that a pen register has captured "content," which the FBI admits such devices do, in violation of the Fourth Amendment, suppression may be ordered, not only of the pen register evidence by any other evidence derived from it. We are leaving the courts with little or no guidance of what is covered by "addressing" or "routings." The USA Act also requires the government to use reasonably available technology that limits the intercep-

This transactional data intercepted after the call is connected is "content." As the Justice Department explained in a May 1998 letter to then-House Judiciary Committee Chairman Henry Hyde, "The retrieval of the electronic impulses that a caller necessarily generated in attempting to direct the phone call" does not constitute a "search" requiring probable cause since "no part of the substantive information transmitted after the calling party's assertion that a call is about to be completed" is obtained. But the Justice Department made clear that "all of the information transmitted after a phone call is connected to the called party...is substantive in nature...The retrieval of pure transactional data..." (Report 1998) is "content" of the call. They are not used to direct or process the call, but instead convey certain messages to the recipient.

When I added the direction on use of reasonably available technology (codified as 18 U.S.C. 3121(c)) to the pen register statute as part of the Communications Assistance for Law Enforcement Act (CALEA) in 1994, I recognized that these devices collected content and that such collection was unconstitutional and that this was taken a contrary position by the courts in the context of criminal cases where pen/trap devices have been used and challenged by defendants. If a court determines that a pen register has captured "content," which the FBI admits such devices do, in violation of the Fourth Amendment, suppression may be ordered, not only of the pen register evidence by any other evidence derived from it. We are leaving the courts with little or no guidance of what is covered by "addressing" or "routings.

The USA Act also requires the government to use reasonably available technology that limits the intercep-

The Justice Department's assertion that the information likely to be obtained by the installation of a pen/trap device is "transactional data" will be relevant to an ongoing criminal investigation. The court is required to issue an order upon seeing the prosecutor's certification. The court is not authorized to look behind the certification to evaluate the judgment of the prosecutor.

I have urged that government attorneys be required to include facts about their investigations in their applications for pen/trap orders and allow courts to grant such orders only where the facts support the relevancy of the information likely to be obtained by the orders. This is not a change in the process standard, which would remain the very low relevancy standard. Instead, this change would simply allow the court to evaluate the facts presented by a prosecutor, and, if it finds that the facts support the government's assertion that the information to be collected will be relevant, issue the order. Although this change will place an additional burden on law enforcement, it will allow the courts a greater ability to assure that government attorneys are using such orders properly.

Some have called this change a "roll-back" in the statute, as if the concept of allowing meaningful judicial review was an extreme position. To the contrary, this is a change the Clinton Administration supported in legislation transmitted to the Congress last year. This is a change that the House Judiciary Committee also supported last year. In the Electronic Communications Privacy Act (ECPA), that Committee proposed that before a pen/trap device "could be ordered installed, the government must first demonstrate to an independent judge that 'specific and articulable facts reasonably indicate that a crime has been, is being, or will be committed, and information likely to be obtained by such installation and use...is relevant to an investigation of that crime.'" (Report 106-932, 106th Cong. 2d Sess., Oct. 4, 2000, p. 13). Unfortunately, the Bush Administration has taken a contrary position and has rejected this change in the judicial review process.

Currently, an owner or operator of a computer that is accessed by a hacker agent does not have the means to ensure that a third computer, cannot simply consent to law enforcement monitoring of the computer. Instead, because the owner or operator is not technically a party to the communication, law enforcement needs wiretap authorization under the Foreign Intelligence Surveillance Act (FISA), which is used to monitor the voice and data communications of a legitimate user. I have long been interested in closing this loophole. Indeed, when I asked about this problem, the FBI explained to me in June 2000 that:

"This anomaly in the law creates an untenable situation whereby providers are sometimes forced to sit idly by as they witness hackers enter and, in some situations, destroy or damage their systems and networks when law enforcement utilizes the mandated process of seeking court authorization to assist them. In the real world, the situation is akin to a homeowner being forced to help law enforcement search a burglary suspect or allow a police seek a search warrant to enter the dwelling.

I therefore introduced as part of the Internet Security Act, S. 2430, in 2000,
an exception to the wiretap statute that would explicitly permit such monitoring without a wiretap if prior consent is obtained from the person whose computer is being hacked through and used to send "harmful interference to a lawfully obtained wiretap of any user who violated a workplace computer use policy or online service term of service and was thereby an "unauthorized" user. The Administration's proposal was not limited to computer hacking offenses under 18 U.S.C. 1030 or to conduct that caused harm to a computer or computer system. The Administration rejected these refinements to their proposed wiretap exception, but did agree, in section 217 of the USA Act, to limit the authority for wiretapping with the consent of the user to communications of unauthorized users without an existing subscriber or other contractual relationship with the owner/operator. The bill will make significant changes in the sharing of confidential criminal justice information with various Federal agencies. For those of whom we have been concerned about the leaks from the FBI that can irreparably damage reputations of innocent people and frustrate investigations by alerting suspects to flee or destroy material evidence, the Administration's insistence on the broadest authority to disseminate such information, without any judicial check, is disturbing. Nonetheless, I believe we have improved the Administration's initial proposal in responsible ways. Only time will tell whether the improvements we were able to reach agreement on are sufficient.

At the outset, we should be clear that current law allows the sharing of confidential criminal justice information, but with close court supervision. Federal Rule of Criminal Procedure 6(e) provides that matters occurring before a grand jury may be disclosed only to an attorney for the government, such other government personnel as are necessary to assist the attorney and another grand jury. Further disclosure is also allowed as specifically authorized by a court, or supervisory order.

Similarly, section 2517 of title 18, United States Code provides that wiretap evidence may be disclosed in testimony during official proceedings and to investigative or law enforcement officers to the extent appropriate to the proper performance of their official duties. In addition, the wiretap law allows disclosure of wiretap evidence "relating to offenses other than specified in the order" when authorized or approved by a judge. Indeed, just last year, the Department of Justice told us that "law enforcement agencies have authority under current law to share title III information regarding terrorism with intelligence agencies when the information is of overriding importance to the national security." (Letter from Robert Raben, Assistant Attorney General, September 28, 2000).

For this reason, and others, the Justice Department at the time opposed an amendment proposed by Senators KYL and FEINSTEIN to S. 2507, the Intelligence Authorization Act for FY 2001, that would have allowed the sharing of foreign intelligence information collected from wiretaps with the intelligence community. I deferred to the Justice Department on this issue and sought changes in the proposed amendment to address the Department's concerns that the provision was not only unnecessary but also "could have significant implications for prosecutions and the discovery process in litigation," "raises significant issues regarding the sharing information collected about United States persons," and jeopardized "the need to protect equities relating to ongoing investigations. In the end, the amendment was designed to address the Justice Department's concerns and passed the Senate as a free-standing bill, S. 3205, the Counterterrorism Act of 2000. The House took no action on this legislation.

The Administration initially proposed adding a sweeping provision to the wiretap statute that broadened the definition of an "investigative or law enforcement officer" who may receive disclosures of information obtained through wiretaps with the intelligence community. The law enforcement, intelligence, national security, national defense, protective and immigration personnel and the President and Vice President. This proposal troubled me because information obtained by a wiretap has enormous potential to infringe upon the privacy rights of innocent people, including people who are not even suspected of a crime and merely happen to speak on the telephone with the targets of an investigation. The authority to disclose information obtained through a wiretap has always been carefully circumscribed in law.

While I recognize that appropriate officials in the executive branch of government should have access to wiretap information that is important to combating terrorism or protecting the national security, I proposed allowing such disclosures where specifically authorized by a court, or supervisory order. Furthermore, by further limiting, with respect to information relating to terrorism, I proposed allowing the disclosure without a court order as long as the judge who authorized the wiretap was notified as soon as practicable thereafter that a disclosure had been made. This change was important in clarifying what information may be disclosed because the term "foreign intelligence" is specifically defined by statute whereas "national security" is not.

Moreover, the rubric of "national security" has been used to justify some particularly unsavory activities by the administration in the past. We must have at least some assurance that we are not embarking on a course that will lead to a repetition of these abuses because our statute more clearly defines what type of information is subject to disclosure. In addition, Federal officials who receive the information
may use it only as necessary to the conduct of their official duties. Therefore, any disclosure or use outside the conduct of their official duties remains subject to all limitations applicable to their retention and dissemination of information of foreign intelligence and counterintelligence information received. This includes the Privacy Act, the criminal penalties for unauthorized disclosure of electronic surveillance information under chapter 119 of title 18, and the contempt penalties for willful violation of special type of information type received. This provision that would allow the sharing of foreign intelligence information throughout the executive branch of the government notwithstanding any current legal prohibition that may prevent or limit its disclosure. I have resisted this proposal more strongly than any other provision in the bill. What concerns me is that it is not clear what existing prohibitions this provision would affect beyond the grand jury secrecy rule and the wiretap statute, which are already covered by the bill. The Administration, which wrote this provision, has not been able to provide a fully satisfactory explanation of its scope.

If there are specific laws that the Administration believes impede the necessary sharing of information on terrorism and foreign intelligence within the executive branch, we should address those problems through legislation that is narrowly targeted to those statutes. Tackling on a blunderbuss provision that we do not fully understand can only lead to consequences that we cannot foresee. Further, I am concerned that such legislation, broadly authorizing the secret sharing of intelligence information through the executive branch, will fuel the unwarranted fears and dark conspiracy theories of Americans who do not trust their government. This was another provision on which the Administration reneged on its agreement with me; it agreed to drop it on September 30, but resurrected it within two days, insisting that it remain in the bill. I have made efforts to mitigate its potential for abuse somewhat by adding the same safeguards that apply to disclosure of law enforcement wiretap and grand jury information.

Another issue that has caused serious concern relates to the Administration’s proposal for so-called “sneak and peek” search warrants. The House Judiciary Committee, which reviewed this proposal entirely from its version of the legislation. Normally, when law enforcement officers execute a search warrant, they must leave a copy of the warrant and a receipt for all property seized at the premises searched. Thus, even if the search occurs when the owner of the premises is not present, the owner will receive notice that the premises have been lawfully searched pursuant to a warrant rather than, for example, burglarized.

Two circuit courts of appeal, the Second and the Ninth Circuits, have recognized a limited exception to this requirement. When specifically authorized by the issuing judge or magistrate, the officers may delay providing notice of the search to avoid compromising an ongoing investigation or for some other good reason. However, this authority has been carefully circumscribed.

First, the Second and Ninth Circuit cases have dealt only with situations where the officers search a premises without seizing any tangible property. As the Second Circuit explained, such searches are “less intrusive than a conventional search with physical seizure because the latter deprives the owner not only of privacy but also of the use of his property.” United States v. Villegas, 899 F.2d 1324, 1337 (2d Cir. 1990). Second, the cases have required that the officers seeking the warrant must show good reason for the delay. Finally, while the courts have allowed notice of the search may be delayed, it should be provided within a reasonable period thereafter, which should generally be no more than seven days. The reasons for these careful limitations were spelled out succinctly by Judge Sneed of the Ninth Circuit: “The mere thought of strangers walking through and visually examining the center of our privacy interest, our home, arouses our passion for freedom as does nothing else. That passion, the true source of the Fourth Amendment, demands that surreptitious entries be closely circumscribed.” United States v. Freitas, 800 F.2d 1451, 1456 (9th Cir. 1986).

The Administration’s original proposal would have ignored some of the key concerns created the law for sneak and peek search warrants. First, it would have broadly authorized officers not only to conduct surreptitious searches, but also to secretly seize any type of property without any notice showing the reasonable necessity for the seizure. This type of warrant, which has never been addressed by a published decision of a Federal appellate court, has been referred to in a law review article written in 1982 by me: the “sneak and steal” warrant. See K. Corr., “Sneaky But Lawful: The Use of Sneak and Peek Search Warrants,” 43 U. Kan. L. Rev. 1103, 1113 (1995). Second, the proposal would simply have adopted the procedural requirements of 18 U.S.C. § 2705 for providing delayed notice of a wiretap. Among other things, this would have extended the permissible period of delay to a maximum of 90 days, instead of the presumptive seven-day period provided in the caselaw on sneak and peek warrants.

I was able to make significant improvements in the Administration’s original proposal that will help to ensure that the government’s authority to obtain sneak and peek warrants is not abused. First, the provision that is now in section 213 of the bill prohibits the government from seizing any tangible property or any wire or electronic communication or stored electronic information unless there is a showing of reasonable necessity for the seizure. Thus, in contrast to the Administration’s original proposal, the provision is that the warrant will authorize only a search unless the government specifies the additional need for a seizure. Second, the provision now requires that notice be given within a reasonable time of the execution of the warrant rather than giving a blanket authorization for up to 270 days. Finally, it establishes a reasonable time, of course, will depend upon the circumstances of the particular case. But I would expect courts...
to be guided by the teachings of the Second and the Ninth Circuits that, in the ordinary case, a reasonable time is no more than seven days.

Several changes in the Foreign Intelligence Surveillance Act, FISA, are designed to enhance the statutory framework and take account of experience in practical implementation. These changes are subject to the four-year sunset.

The USA Act, in section 207, changes the duration of electronic surveillance under FISA in cases of an agent of a foreign power, other than a United States person, who acts in the United States as an officer or employee of a foreign power or as a member of an international terrorist group. Current law limits court orders in these cases to 90 days, the same duration as for United States persons. Experience indicates, however, that after the initial period has confirmed probable cause that the foreign national meets the statutory definition, court orders are renewed repeatedly and the 90-day renewal becomes an unnecessary procedural burden for investigators taxed with far more pressing duties.

The Administration proposed that the permit for FISA surveillance be changed from 90 days to one year in these cases. This proposal did not ensure adequate review after the initial stage to ensure that the probable cause determination remained justified over time. Therefore, the bill deletes the initial period of the surveillance from 90 to 120 days and changes the period for extensions from 90 days to one year. The initial 120-day period provides for a review of the results of the surveillance or search directed at an individual before one-year extensions are requested. These changes do not affect surveillance of a United States person.

The bill also changes the period for execution of an order for physical search under FISA from 45 to 90 days. This change applies to United States persons as well as foreign nationals. Experience since physical search authority was added to FISA in 1994 indicates that 45 days is frequently not long enough to plan and carry out a covert physical search. There is no change in the restrictions which provide that United States persons may not be the targets of search or surveillance under FISA unless a judge finds probable cause that they are agents of foreign powers who engage in specified international terrorism, sabotage, or clandestine intelligence activities that may involve a violation of the criminal statutes of the United States.

The bill, in section 208, seeks to ensure that the special court established under FISA has sufficient judges to handle the workload. While changing the duration of orders and extensions will reduce the number of cases in some categories, the bill retains the courts' responsibility for issuing orders for records and other tangible items needed for counterintelligence and counterterrorism investigations. Upon reviewing the court's requirements, the Administration requested an increase in the number of Federal district judges designated for the court from seven to 11 of whom no less than three shall reside within 20 miles of the District of Columbia. The latter provision ensures that more than one judge is available to handle cases on short notice and reduces the need to invoke the alternative court in extraordinary circumstances. Instead, the bill requires that use of the surveillance technique or access to the records concerning a United States person be relevant to an investigation to protect against international terrorism or clandestine intelligence activities.

In addition, an investigation of a United States person may not be based solely on activities protected by the First Amendment. This framework applies to pen registers and trap and trace under section 215, access to business records under section 2703, credit reports under title 18, and my concerns apply to the FISA procedures as well.

Among the more controversial changes in FISA requested by the Administration was the proposal to allow surveillance and search when "a purpose" is to obtain foreign intelligence information. Curiously, it is just that the secret procedures and different probable cause standards under FISA be used only if a high-level executive official certifies that "the purpose" is to obtain foreign intelligence information. The Administration's aim was to allow FISA surveillance and search for law enforcement purposes, so long as there was at least some element of a foreign intelligence purpose. This proposal raised constitutional concerns, which were addressed in reliance on a certification process provided by the Justice Department.

The Justice Department opinion did not defend the constitutionality of the original proposal. Instead, it addressed a suggestion made by Senator FEINSTEIN to the Attorney General at the Judiciary Committee hearing to change "the purpose" to "a significant purpose." No matter what statutory change is made even the Department concedes that the court may impose a constitutional requirement on "primary purpose." It is time to uphold appellate court decisions upholding FISA against constitutional challenges over the past 20 years.
Section 218 of the bill adopts “significant purpose,” and it will be up to the courts to determine how far law enforcement agencies may use FISA for criminal investigation and prosecution beyond the scope of the statutory definition of “foreign intelligence information.”

In addition, I proposed and the Administration agreed to an additional provision in Section 505 that clarifies the boundaries for consultation and coordination between officials who conduct FISA search and surveillance and Federal laws enforcement officials including prosecutors. Such consultation and coordination is authorized for the enforcement of laws that protects against international terrorism, clandestine intelligence activities of foreign agents, and other grave foreign threats to the nation. Protection against these foreign-based threats by any lawful means is within the scope of the definition of “foreign intelligence information,” and the use of FISA to gather evidence for the enforcement of these laws was contemplated in the enactment of FISA. The Justice Department’s opinion cites relevant legislative history from the Senate Intelligence Committee report in 1978, and there is comparable language in the House report.

The Administration initially proposed that the Attorney General be authorized to detain any alien indefinitely upon his certification that the alien met the criteria of the terrorism grounds of the Immigration and Nationality Act, or was engaged in any other activity endangering the national security of the United States. Under close questioning by both Senator Kennedy and Senator Specter at the Committee hearing on September 25, the Attorney General said that his proposal was intended only to allow the government to hold an alien suspected of terrorism activity while deportation proceedings were ongoing. In response to a question by Senator Specter, the Attorney General said: “Our intention is to be able to detain individuals who are the subject of deportation proceedings on other grounds, to detain them as if they were the subject of deportation proceedings on terrorism.” The Justice Department, however, continued to insist on broader authority, including the power to detain an alien even if the alien was found not to be deportable.

I remain concerned about the provision, in section 412, but I believe that we have twice improved it from the original proposal offered by the Administration, first in S. 1510 and second in the bill we pass today. S. 1510 provided that the Justice Department had to charge an alien with an immigration or criminal violation within seven days of taking custody, and that the merits of the Attorney General’s certification were after official review. The bill we vote on today is further improved. First, if an alien is found not to be removable, he must be released from custody. Second, the Attorney General can only delegate the power to certify an alien to the Deputy Attorney General, ensuring greater accountability and prevention of the certification decision from being made by low-level officials. Third, the Attorney General must review his certification of an alien every six months. Fourth, an alien who is found to be removable but has not been removed, and whose removal is unlikely in the reasonably foreseeable future, may be detained only if the Attorney General demonstrates that release of the alien will adversely affect national security or the safety of the community or any person. This improvement is essential to preserve the constitutionality of the bill. Fifth, habeas corpus review of detention is made available in the District where the detention is occurring, instead of only in the District Court in the District of Columbia. Despite these improvements, there remains a major and controversial power for the Attorney General, and I would urge him and his successors to employ great discretion in using it.

In addition, the Administration initially proposed a sweeping definition of terrorism activity, and new powers for the Attorney General to designate an organization as a terrorist organization for purposes of immigration law. We were able to work with the Administration to refine this definition to limit it to individuals who had innocent contacts with non-designated organizations. We also limited the retroactive effect of these new definitions. If an alien solicited funds or membership, or provided material support for an organization that was not designated at that time by the Secretary of State to designate an organization as a terrorist organization, the alien would have the opportunity to show that he did not know and should have known that his acts would further the organization’s terrorist activity. This is substantially better than the Administration’s proposal, which by its terms, would have empowered the INS to deport someone who raised money for the African National Congress in the 1980s.

Throughout our negotiations on these issues, Senator Kennedy provided steadfast leadership. Although neither of us are entirely pleased with the final product, it is far better than it would have been without his active involvement.

I was disappointed that the Administration’s initial proposal authorizing the President to impose unilateral food and medical sanctions would have undermined a law we passed last year with overwhelming bipartisan support. Under that law, the President already has full authority to impose unilateral food and medicine sanctions during this crisis because of two exceptions built into the law that apply to our current situation. Nevertheless, the Administration proposal to undo this law and obtain virtually unlimited authority in the future to impose food and medicine embargoes, without making any effort for a multi-lateral approach in cooperation with other nations. Absent such a multi-lateral approach, other nations would be free to step in immediately and take over business from American farms and food processors that are unilaterally barred from pursuing.

Over 30 farm and export groups, including the American Farm Bureau Federation, the Grocery Manufacturers of America, the National Farmers Union and the U.S. Dairy Export Council, wrote to me and explained that the Administration proposal would “not achieve its intended policy goal.” I worked with Senator Enzi, and other Senators, on substitute language to give the Administration the tools it needs in this crisis. This substitute has been carefully crafted to avoid needlessly hurting American farmers in the international market and making sure the U.S. can engage in effective multilateral sanctions.

This bipartisan agreement limits the authority in the bill to existing laws and executive orders that the President full authority regarding this conflict, and grants authority for the President to restrict exports of agricultural products, medicine or medical devices. I continue to agree with then-Senator Ashcroft, who argued in 1999 that unilateral U.S. food and medicine sanctions simply do not work when he introduced the “Food and Medicine for the World Act.” As recently as October 2000, then-Senator Ashcroft pointed out that bilateral, unilateral embargoes of food or medicine are often counter-productive. Many Republican and Democratic Senators made it clear just last year that the U.S. should work with other countries on food and medical sanctions so that the sanctions will be effective in hurting our enemies, instead of just hurting the U.S.

I am glad that with Senator Enzi’s help, we were able to make changes in the trade sanctions provision to both protect our farmers and help the President during this crisis.

Title III of this bill contains money laundering provisions agreed upon by the relevant House and Senate committee, I commend the Chairman of the Senate Banking Committee, Senator Sarbanes, for working with the House to produce a balanced and effective package of measures to combat international money laundering and the financing of terrorism.

The Senate included money laundering provisions in the original USA Act, but those provisions were removed from the bill the House passed the following day. Instead, the House passed a separate money laundering bill, H.R. 3004, on October 17. House and Senate negotiators then met to resolve the differences between the bills and produce the language contained in the bill the Senate considers today.

I am very pleased that the House has agreed to include money laundering provisions in anti-terrorism legislation. Preventing money laundering is a
crucial part of our efforts to defeat terrorism, and it was important for Congress to develop a bipartisan approach to strengthening our laws. This bill contains such an approach.

I am also pleased that a number of provisions have been included in the Civil Asset Forfeiture Act of 2000, which I sponsored in the Senate, have been removed. In addition, this bill does not include language that would have unduly expanded administrative subpoena powers in all money laundering cases. A more targeted approach was necessary, and has been produced. This measure could not be considered today and would not be in the improved condition it is without the steadfast commitment of our Majority Leader, Senator Daschle. Daschle deserves all the credit for all that is good in this bill. Without his commitment and focus, we simply would not be in the position to pass this bill today.

On a more important note, on behalf of the American people, I want to publicly acknowledge his vital role in this legislation.

I have done my best under the circumstances and want to thank especially Senator Daschle for his leadership on the Immigration parts of the bill. My efforts have not been completely successful and there are a number of provisions on which the Administration has insisted with which I disagree. Frankly, the agreement of September 30, 2001 of sharing of immigration and national justice information would have led to a better balanced bill. I could not stop the Administration from reneging on the agreement any more than I could have sped the process to reconstitute this bill in the aftermath of those breaches. In these times we need to work together to face the challenges of international terrorism. I have sought to do so in good faith.

We have worked around the clock for the past month to put forward the best legislative package we could. While I share the administration’s goal of promptly providing the tools necessary to deal with the current terrorist threat, I feel strongly that our responsibilities include equipping such tools with safety features to ensure that these tools do not cause harm and are not misused.

I want to conclude my remarks with thanks for the efforts of many staff members who worked to develop the bill under unusual and enormously inconvenient circumstances to help us craft the legislation before us today. In particular, I want to thank Mark Childress and Andrea LaRue on the staff of Majority Leader Daschle, and David Hoppe on the staff of Republican Leader Lott. I would also like to thank Makan Delrahim, Jeff Taylor, Stuart Nash, and Leah Belaire with Senator Hatch, the Ranking Member of the Judiciary Committee, Melody Bhardwaj, Liz McMahon, and Tara Lynch with Senator Biden, Bob Schiff with Senator Finkgold, and Stacy Baird and Beth Stein with Senator Cantwell. Finally, I would like to thank my own Judiciary Committee staff, especially Bruce Cohen, Beryl Howell, Julie Katzman, Ed Pagano, John Elliff, David James, Ed Barron, Tim Lynch, Susan Davies, Manu Bhardwaj, Liz McMahon, and Tara Magner.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

**The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. H.R. 3162—SEC.-BY-SECTION ANALYSIS**

Sec. 1. Short title and table of contents.

Both S. 1519 passed by the Senate on October 11, 2001 (the "Senate bill"), and H.R. 2975 passed by the House of Representatives on October 12, 2001, included this section containing the Uniting and Strengthening America (USA Act) of 2001, and the table of contents for the Act. H.R. 3162, the bill subsequently passed by the House on October 15, ("House bill"), changed the title to the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.”

Sec. 2. Construction; severability. Both the House and Senate bills included this rule of construction to provide that any portion of this Act found to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed to give it the maximum effect permitted by law and that any portion found invalid or unenforceable in its entirety shall be severable from the rest of the Act.

**TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM**

Sec. 101. Counterterrorism fund. Both the House and Senate bills included this provision to establish a counterterrorism fund in the Treasury of the United States, without affecting prior appropriations, to reimburse Department of Justice components for costs incurred in terrorism and terrorism prevention, rebuild any Justice Department component damaged or destroyed in connection with terrorism, pay terrorism-related rewards, conduct terrorism threat assessments, and reimburse Federal agencies for costs incurred in connection with detaining suspected terrorists in foreign countries. Not in original Administration proposal.

Sec. 102. Sense of Congress condemning discrimination against Arab and Muslim Americans. Both the House and Senate bills included this provision to condemn acts of violence and discrimination against Arab Americans and American Muslims from South Asia, and to declare that every effort must be taken to protect their safety. Not in original Administration proposal.

Sec. 103. Increased funding for the technical support center at the Federal Bureau of Investigation. Both the House and Senate bills included this provision to authorize funding of $200,000,000 per year for fiscal years 2002, 2003 and 2004 for the Technical Support Center established in section 811 of the Antiterrorism and Effective Death Penalty Act of 1996 to help meet the demands of activities to combat terrorism and enhance the technical support and tactical operations of the FBI. Not in original Administration proposal.

Sec. 104. Requests for Military Assistance to Enforce Prohibition in Certain Emergencies. Both the House and Senate bills included this provision to authorize the Attorney General to request military assistance in support of Department of Justice activities related to the enforcement of 18 U.S.C. §2332a during an emergency situation involving a weapon of mass destruction. Current law references a statute that was repealed in 1996 relating to wiretaps. Not in original Administration proposal.

Sec. 105. Expansion of National Electronic Crime Task Force Initiative. Both the House and Senate bills included this provision to allow the Secret Service to develop a national network of electronic crime task forces, based on the highly successful New York regional Electronic Crime Model, for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems. Not in original Administration proposal.

Sec. 106. Presidential authority. Both the House and Senate bills included this provision to give to the President, in limited circumstances involving armed hostilities or attacks against the United States, the power to take appropriate action against the United States to protect the property of the enemies of the United States during times of national emergency, which was permitted by the original Administration proposal.

Sec. 107. Foreign Intelligence Surveillance Act of 2001. This measure could not be considered in its entirety, shall be severable from any portion found invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed to give it the maximum effect permitted by law and that any portion found invalid or unenforceable in its entirety shall be severable from the rest of the Act.

**TITLE II—ENHANCED SURVEILLANCE PROCEDURES**

[Note: Elimination of original Administration proposal to allow government use of wiretap information on U.S. citizens obtained illegally overseas in violation of the Fourth Amendment and of foreign government laws.]

Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorist threats. Both the House and Senate bills included this provision to add criminal violations relating to terrorism to the list of predicate statutes in the criminal procedures for interception of communications under chapter 119 of title 18, United States Code. Not in original Administration proposal.

Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses. Both the House and Senate bills included this provision to add criminal violations relating to terrorism to the list of predicate statutes in the criminal procedures for interception of communications under chapter 119 of title 18, United States Code. Not in original Administration proposal.

Sec. 203. Authority to share criminal investigatory information. Both the House and Senate bills included provisions amending the criminal procedures for interception of communications under chapter 119 of title 18, United States Code, and the grand jury procedures under Rule 6(e) of the Federal Rules of Criminal Procedure to authorize disclosure of foreign intelligence information obtained by such interception or by a grand jury to any Federal law enforcement, intelligence, or national security personnel as authorized by statute to receive such information, including protective or immigration personnel to assist the official receiving that information in...
the performance of his official duties. Section 203(a) requires that within a reasonable time after disclosure of any grand jury information, an attorney for the government notify the court of such disclosure and specify the department, agency or entity to which disclosure was made. Section 203(b) pertains to foreign intelligence information obtained by interception of communications by a court-ordered wiretap. Section 203(c) also authorizes such disclosure of information obtained as part of a criminal investigation notwithstanding other law.

The information must meet statutory definitions of foreign intelligence or counterintelligence or intelligence concerning terrorism. Recipients may use that information only as necessary for their official duties, and use of the information outside those limits requires subject to applicable penalties, such as penalties for unauthorized disclosure under chapter 119, contempt penalties under Rule 9(e) and the Privacy Act. The Attorney General must establish procedures for disclosure of information that identifies a United States person, such as the current procedures established under Executive Order 12333. The bill amends a previously published Administration proposal to limit scope of personnel eligible to receive information. In case of grand jury information, limited procedures do not require notification to court after disclosure.

Sec. 204. Clarification of intelligence exception. The exception currently on interception and disclosure of wire, oral, and electronic communications. Both the House and Senate bills included this provision to amend the criminal procedures for interception of wire, oral, and electronic communications in title 18, United States Code, to make clear that these procedures do not apply to the collection of communications intelligence information under the statutory foreign intelligence authorities. Not in original Administration proposal.

Sec. 205. Employment of translators by the Federal Bureau of Investigation. Both the House and Senate bills included this provision to support the FBI Director to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations. Not in original Administration proposal.

Sec. 206. Roving surveillance authority under FISA. Foreign Intelligence Surveillance Act of 1978. The House and Senate bills included this provision to modify the Foreign Intelligence Surveillance Act ("FISA") to allow surveillance to follow a person who uses multiple communications devices or locations, a modification which conforms FISA to the parallel criminal procedure for electronic surveillance in 18 U.S.C. §2518(11)(b). The court order need not specify the person whose assistance to the surveillance is required (such as a particular communications or Internet service provider). The court finds that the actions of the target may have the effect of thwarting the identification of a specified person. Same as original Administration proposal.

Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of foreign power. Both the House and Senate bills included this provision to change the initial period of a FISA order for a surveillance or physical search targeted against an agent of a foreign power from 90 to 120 days, and extend for extensions of up to 90 days to one year. One-year extensions for physical searches are subject to the requirement in current law that the judge find "specific and articulately detailed facts" that pertain to the collection of any United States person will be acquired during the period." Section 207 also changes the ordinary period for physical searches under FISA from 45 to 90 days. Narrower than Administration proposal which sought to eliminate the initial 90-day limitation and extend the surveillance for up to one year from the outset.

Sec. 208. Designation of judges. Both the House and Senate bills included this provision to increase the number of Federal district judges designated to serve on the FISA court from seven to 11, and requires that no fewer than five of the judges reside completely outside the 20 miles of the District of Columbia. Not in original Administration proposal.

Sec. 209. Seizure of voice-mail messages pursuant to grand jury warrant. Senate bills included this provision to authorize government access to voice mail with a court order supported by probable cause, similar to electronic communications. Both the House and Senate bills included this provision to authorize government access to voice mail with a court order supported by probable cause. In many cases, law enforcement agencies may be able to be accessed, and authorizes nationwide service with a single search warrant for voice mail. Current law, 18 U.S.C. §2518(1), defines "wire communication" to include "any electronic storage of such communication," with the result that the government must apply for a Title III wiretap order before it may obtain any voice messages recorded by a service provider. This section amends the definition of "wire communication" so that it includes other forms of voice communications. It also amends 18 U.S.C. §2703 to specify that the government may use a search warrant (instead of a wiretap order) to compel the disclosure of voice mail. This provision harmonizes the rules applicable to stored voice and non-voice (e.g., e-mail) communications. Same as original Administration proposal.

Sec. 210. Collection of evidence in terrorism. The scope of subpoenas for records of electronic communications. Both the House and Senate bills included this provision to broaden the types of records that law enforcement agencies may obtain through a subpoena, from electronic communications service providers by requiring providers to disclose the means and source of payment, including any bank account or credit card numbers. Current law allows the government to use a subpoena to compel communications providers to disclose a small class of records that pertain to electronic communications, limited to such records as the customer's name, address, and length of service. 18 U.S.C. §2703(c)(1)(C). Investigators may not obtain any records of communications with a particular number, address, or name, or that pertain to electronic communications with a specific address or number. The provision replaces this requirement with a determination that the party or service providers whose records are sought is relevant to an investigation to protect against international terrorism or clandestine intelligence activities or to obtain foreign intelligence information not concerning U.S. persons. Any investigation of a United States person may not be based solely on activity that is not protected by the First Amendment. Narrower than original Administration proposal, which would simply have removed the "agent of a foreign power" requirement.

Sec. 211. Clarification of scope. Both the House and Senate bills included provisions to amend the Cable Communications Privacy Act of 1984. Under the original Act, an authority under FISA may be used for an investigation to protect against international terrorism or clandestine intelligence activities or to obtain foreign intelligence information not concerning U.S. persons. An investigation of a United States person may not be based solely on activities protected by the First Amendment. Narrower than original Administration proposal, which would have permitted delay as law enforcement saw fit.
"addressing" information for Internet users does not authorize the interception of the content of any such communications. It further requires the government to use the latest available technology to ensure that register or trap and trace device does not intercept the content of any communications. Finally, it provides for a report to the court pursuant to section 216 shall be reasonably compensated for expenditures incurred in providing assistance to the Secretary. Not in original Administration proposal.

Sec. 223. Civil liability for certain unauthorized disclosures. H.R. 2975 included this provision to create civil liability for violations, including unauthorized disclosures, by law enforcement authorities of the electronic surveillance procedures set forth in this title. Like H.R. 2975, the Administration proposal in that it limits forum shopping provisions. Both the Senate and the House bills included this provision to allow service of process in courts with jurisdiction to only those communications transmitted to, through, or from the protected computer. However, it does not include a provision known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator to obtain protection against unauthorized interception to only those communications through the computer in question. Not in original Administration proposal.

Sec. 218. Foreign intelligence information. Both the Senate and House bills included this provision to amend FISA to require a certification that "a significant purpose" rather than "the purpose of" a surveillance or search warrant would be obtained to intelligence information. Narrower than original Administration proposal, which did not exclude service provider subscribers from definition of "person." Not in original Administration proposal. Sec. 219. Single-jurisdiction search warrants for terrorism. Both the House and Senate bills included this provision to amend Federal Rule of Criminal Procedure 41(a) to provide that warrants relating to the investigation of terrorist activities may be obtained where the activities or the person or property or the communications connected to the activities related to the terrorism may have occurred, regardless of where the warrant will be executed. Same as Administration proposal.

Sec. 222. Assistance to law enforcement agencies. Both the House and Senate bills included this provision that this Act does not impose any additional technical requirements on a provider of a wire or electronic communication service and that a provider of a wire or electronic communication service, or any person furnishing facilities or technical assistance pursuant to section 216 shall be reasonably compensated for expenditures incurred in providing assistance to the Secretary. Not in original Administration proposal.

Sec. 223. Civil liability for certain unauthorized disclosures. H.R. 2975 included this provision to create civil liability for violations, including unauthorized disclosures, by law enforcement authorities of the electronic surveillance procedures set forth in this title. Like H.R. 2975, the Administration proposal in that it limits forum shopping provisions. Both the Senate and the House bills included this provision to allow service of process in courts with jurisdiction to only those communications transmitted to, through, or from the protected computer. However, it does not include a provision known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator to obtain protection against unauthorized interception to only those communications through the computer in question. Not in original Administration proposal.

Sec. 224. Sunset. H.R. 2975 included a provision to sunset certain amendments made by this title in 3 to 5 years. H.R. 3162 provides a 4-year sunset for sections 206, 201, 202(b), 294, 206, 207, 209, 212, 214, 215, 217, 218, 220, 223, 226, 227, 228, and 229 which, with the authorities "grandfathered" as to particular investigations based on offenses occurring prior to sunset. No provision included in original Administration proposal.

Sec. 230. Short title. This section contains the short title of Title III. "International Money Laundering Abatement and Anti-Terrorist Financing Act of 1999."

Sec. 231. Trade sanctions. Both the House and Senate bills included this provision to authorize the President to impose sanctions on the territory of Afghanistan controlled by the Taliban. Narrower than original Administration proposal which would have undermined the congressional approval requirement, concerning both the economic and medical exports to all designated terrorists and narcotics entities wherever they are located.

Sec. 232. Trade sanctions. Both the House and Senate bills included this provision that this Act does not
cooperation among financial institutions, financial regulators and law enforcement officials, and to permit the sharing of information by law enforcement and regulatory authorities with foreign officials, to facilitate the investigation of foreign persons reasonably suspected of terrorist acts or money laundering activities. This section also authorizes the Secretary of the Treasury to provide to foreign law enforcement authorities, at least semiannually, a report containing a detailed analysis of patterns of suspicious activity in financial institutions and any investigative tips derived from suspicious activity reports and law enforcement investigations. The final text of this section includes section 205 (Regulation on Money Laundering by Financial Institutions on Suspicious Financial Activities) and portions of section 205 (Public-Private Task Force on Terrorist Financing Issues) of H.R. 3004.

Sec. 315. Inclusion of foreign corruption offenses as money laundering crimes. Section 315, included in both the Senate bill and H.R. 3004, amends 18 U.S.C. § 1566 to include foreign corruption offenses, certain U.S. export control violations, certain customs and firearm offenses, certain alien drug offenses, and violations of the Foreign Agents Registration Act of 1938, to the list of crimes that constitute “specified unlawful activities” for purposes of the criminal money laundering provisions.

Sec. 316. Anti-terrorist forfeiture protection. Section 316, included in the Senate bill, establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government’s anti-terrorism authority.

Sec. 317. Long-arm jurisdiction over foreign money launderers. Section 317, which was included in both the Senate bill and H.R. 3004, amends 18 U.S.C. § 1965 to give United States courts “long-arm” jurisdiction over foreign persons committing money laundering offenses in the United States, over foreign banks opening U.S. bank accounts, and over foreign persons who convert assets ordered forfeited by a U.S. court. It also permits a Federal court dealing with such foreign persons to issue a pre-trial restraining order or take other action necessary to preserve property in the United States to satisfy an ultimate judgment. The Senate, but not the House, also included language extending the appointment by a Federal court of a receiver to collect and take custody of assets of a defendant to satisfy criminal or civil money laundering or forfeiture judgments; with respect to the latter provision, the House receded to the Senate.

Sec. 318. Laundering money through a foreign bank. Section 318, included in both the Senate bill and H.R. 3004, expands the definition of financial institution for purposes of 18 U.S.C. § 1957 to include banks operating outside the United States.

Sec. 319. Forfeiture of funds in United States interbank accounts. Section 319 combines sections 111, 112, and 113 of H.R. 3004 with section 319 of the Senate bill. This section amends 18 U.S.C. § 1961 to treat amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of justice and consistency with United States national interest, to suspend a forfeiture proceeding, based on that presumption. This section also adds a new subsection (k) to 31 U.S.C. § 5318 to include financial institutions and customers to whom an account at a financial institution; the minimum standards shall require financial institutions to implement, and customers to comply with, reasonable procedures concerning verification of customer identity, maintenance of records of identity verification, and maintaining records of accounts of known or suspected terrorists provided to the financial institution by a government authority. The Senate receded to the House.

Sec. 320. Proceeds of foreign crimes. Section 320, included in both the Senate bill and H.R. 3004, amends 18 U.S.C. § 1961 to permit the U.S. government to seek a restraining order to preserve property located abroad and to order a civil forfeiture defendant to return property located abroad pending trial on the merits. With respect to the provisions requiring a response to certain requests for information by U.S. regulators within 120 hours of receipt and the requirements that foreign banks that do not either respond or challenge subpoenas issued under new 31 U.S.C. § 5318(k) must be terminated, the Senate receded to the House. Finally, section 319 amends section 413 of the Controlled Substances Act to authorize the government to order a convicted criminal to return property located abroad and to order a civil forfeiture defendant to return property located abroad pending trial on the merits. With respect to the provisions requiring a response to certain requests for information by U.S. regulators within 120 hours of receipt and the requirement that foreign banks that do not either respond or challenge subpoenas issued under new 31 U.S.C. § 5318(k) must be terminated, the Senate receded to the House.

Sec. 321. Financial institutions specified in Title III. Section 321, included in both the Senate bill and H.R. 3004, amends 18 U.S.C. § 1961 to permit the U.S. government to seek a restraining order to preserve property located abroad and to order a civil forfeiture defendant to return property located abroad pending trial on the merits. With respect to the provisions requiring a response to certain requests for information by U.S. regulators within 120 hours of receipt and the requirement that foreign banks that do not either respond or challenge subpoenas issued under new 31 U.S.C. § 5318(k) must be terminated, the Senate receded to the House.
Subtitle B—Bank Secrecy Act Amendments and Related Improvements

Sec. 351. Amendments relating to reporting of suspicious activities. Section 351, included in both the Senate bill and H.R. 3004, re- states 31 U.S.C. §315(b)(3) to clarify the terms of the safe harbor from civil liability for financial institutions filing suspicious activity reports pursuant to 31 U.S.C. §5318 and 33 U.S.C. §5318(h). The act also creates a safe harbor from civil liability for banks that provide information in employment references sought by other banks pursuant to the Official Deposit Insurance Act made by section 355. The House receded to the Senate with respect to minor differences in wording between the House and Senate versions of the provision.

Sec. 352. Anti-money laundering programs. Section 352, included in both the Senate bill and H.R. 3004, amends 31 U.S.C. §5314(b) to require financial institutions to establish anti-money laundering programs and grants the Secretary of the Treasury authority to set minimum standards for such programs. The Senate receded to the House with respect to a provision in H.R. 3004 that the anti-money laundering program requirement take effect at the time of enactment on the date of enactment of the Act and a related provision that the Secretary of the Treasury regulations will be issued by the end of that 180-day period that consider the extent to which the requirements imposed under amended §315(b) are commensurate with the size, location, and activities of the financial institutions and to which the regulations apply.

Sec. 353. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening effective period of geographic targeting orders. Section 353, included generally in both the Senate bill and H.R. 3004, amends 31 U.S.C. §§5311, 5322, and §524 to clarify that penalties for violation of the Bank Secrecy Act and its implementing regulations also apply to violations of Geographic Targeting Orders issued under 31 U.S.C. §5326, and to certain recordkeeping requirements relating to funds transfers. The House receded to a provision in the Senate bill that also amended 31 U.S.C. §5326 to make the period of a geographic target order 180 days.

Sec. 354. Anti-money laundering strategy. Section 354, included in the Senate bill, amends 31 U.S.C. §5314(b) to add “money laundering related to terrorist funding” to the list of subjects to be dealt with in the annual report on anti-money laundering programs prepared by the Secretary of the Treasury pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998.

Sec. 355. Authorization to include suspicion of illegal activity in written employment references. Section 355, included in both the Senate bill and H.R. 3004, amends 31 U.S.C. §5314 of the Bank Secrecy Act to permit (but not require) a bank to include information, in a response to a request for an employment reference by a second bank, about a relationship of an institution-affiliated party in potentially unlawful activity. The House receded to the Senate with respect to a provision that the safe harbor provision for banks that provide information to a second bank applies unless the first bank acts with malicious intent.

Sec. 356. Reporting of suspicious activities by securities brokers and dealers; investment company study. Section 356(a), included generally in both the Senate bill and H.R. 3004, amends 31 U.S.C. §5314 of the Bank Secrecy Act, after consultation with the Securities and Exchange Commission and the Federal Reserve Board, to publish proposed regulations, on or before December 31, 2001, and final regulations on or before July 1, 2002, requiring broker-dealers to file suspicious activity reports promptly with the House with respect to the specific time requirements in section 356(a).

Sec. 356(b), included in H.R. 3004, authorizes the Commodity Futures Trading Commission, in consultation with the Commodity Futures Trading Commission, to prescribe regulations requiring margin requirements, commodity trading advisors, and certain commodity pool operators to submit suspicious activity reports under 31 U.S.C. §5318(g).

Sec. 356(c), included in the Senate bill, requires the Secretary of the Treasury, the SEC and Federal Reserve Board to submit jointly to Congress, within one year of the date of enactment, recommendations for effective regulations to apply the provisions of 31 U.S.C. §§5311–30 to both registered and unregistered investment companies, as well as recommendations as to whether the Secretary should promulgate regulations treating personal holding companies as financial institutions that must disclose their beneficial owners, or authorizing fund transfers at any domestic financial institution.

Sec. 357. Annual report on administration of bank secrecy provisions. Section 357, included in the Senate bill, directs the Secretary of the Treasury to submit a report to Congress six months after the date of enactment, on the role of the IRS in the administration of the Bank Secrecy Act, with emphasis on whether IRS Bank Secrecy Act information processing responsibility (for reports filed by all financial institutions) or Bank Secrecy Act audit and examination responsibility (for certain non-bank financial institutions) should be retained or transferred.

Sec. 358. Bank Secrecy provisions and activities of the United States intelligence agencies. Section 358, included in the same general terms in both the Senate bill and H.R. 3004, contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act, to permit information to be used in the conduct of United States intelligence or counterintelligence activities to protect against international terrorism. This section combines the Senate and House provisions, with each body receding to the other in the case of particular language included in one version of the provision but not the other.

Sec. 359. Reporting of suspicious activities by underground banking systems. Section 359, included in both the Senate bill and H.R. 3004, clarifies that the Bank Secrecy Act treats certain underground banking systems in the same manner as the funds transfer recordkeeping rules applicable to licensed money transmitting businesses also apply to such underground systems. This section also gives the Director of FinCEN, directly or through the report to Congress, within one year of the date of enactment, on the need for additional legislation or regulatory controls relating to underground banking systems. The House receded to the Senate with respect to certain technical changes in the definition of the underground banking systems at issue.

Sec. 360. Use of authority of the United States Executive Directors. Section 360, included in the Senate bill, authorizes the Secretary of the Treasury to instruct the United States Executive Directors of the International Monetary Fund and the World Bank to use their voting power to support the implementation of the regulations that the President determines to be contributing to United States efforts to combat international terrorism, and to require the auditing of each international financial institution to ensure that funds are not paid to persons engaged in or supporting terrorism.

Sec. 361. Financial crimes enforcement network. Section 361, included in H.R. 3004, adds a new §310 to subchapter I of chapter 3 of title 31, United States Code, to establish the Financial Crimes Enforcement Network (“FinCEN”) a bureau within the Department of the Treasury, to specify the duties of the Director of FinCEN, to require the Secretary of the Treasury to establish operating procedures for the government-wide data access and communications center that FinCEN maintains, and to authorize appropriations for FinCEN for fiscal years 2002 through 2005. Finally, this section requires the Secretary to study methods for improving compliance with the reporting requirements for ownership of foreign bank and brokerage accounts by U.S. nationals imposed by regulations issued under §314 of the Bank Secrecy Act. The required report is to be submitted within six months of the date of enactment and annually thereafter.

Sec. 362. Establishment of highly secure network. Section 362, included in H.R. 3004, directs the Secretary of the Treasury to establish, within nine months of enactment, a secure network with FinCEN that will allow financial institutions to file suspicious activity reports and provide such institutions with information regarding suspicious activities warranting special scrutiny.

Sec. 363. Increase in civil and criminal penalties for money laundering. Section 363, included in the Senate bill, increases from $100,000 to $1,000,000 the maximum civil and criminal penalties for a violation of provisions added to the Bank Secrecy Act by sections 311 and 312 of this Act.

Sec. 364. Uniform protection authority for Federal Reserve facilities. Section 364, included in H.R. 3004, authorizes certain Federal Reserve personnel to act as law enforcement officers and carry firearms to protect and safeguard Federal Reserve employees and premises.

Sec. 365. Reports relating to coins and currency received in nonfinancial trade or business. Section 365, included in H.R. 3004, adds 31 U.S.C. §3531 (and makes related and conforming changes) to the Bank Secrecy Act to require any person who receives more than $10,000 in coins or currency, in one transaction or two or more related transactions in the course of that person’s trade or business, to file a report with respect to such transaction with FinCEN. Regulations implementing the new reporting requirement are to be promulgated within six months of enactment.

Sec. 366. Efficient use of currency transaction report system. Section 366, included in H.R. 3004, requires the Secretary of the Treasury to report to Congress before the end of the one year period beginning on the date of enactment containing the results of a study of the possible expansion of the system for reporting transactions from the currency transaction reporting requirements and ways to improve the use by financial institutions of the statutory exceptions to the reporting requirements as the volume of unneeded currency transaction reports increase.

Subtitle C—Currency Crimes

Sec. 371. Bulk cash smuggling into or out of the United States. Section 371, included in both the Senate bill and H.R. 3004, but with different language relating to forfeiture, creates a new Bank Secrecy Act offense, 31 U.S.C. §5324, involving a penalty of more than $10,000 in currency in any conveyance, article of luggage or merchandise or
container, either into or out of the United States, and related forfeiture provisions. The Senate receded to the House language.

Sec. 372. Forfeiture in currency reporting cases. This provision, included in the Senate bill and H.R. 3004 with different language concerning mitigation, amends 31 U.S.C. §317 to permit confiscation of funds in connection with other federal offenses, consistent with existing civil and criminal forfeiture procedures. The Senate receded to the House language.

Sec. 373. Revenue forgery and money transmitting businesses. Section 373, included in H.R. 3004, amends 18 U.S.C. §1960 to clarify the terms of the offense stated in that provision, relating to knowing operation of an unlicensed (under state law) or unregistered (under Federal law) money transmission business. This section also amends 18 U.S.C. §861(a) to authorize the seizure of funds involved in a violation of 18 U.S.C. §1960.

Sec. 374. Counterfeiting domestic currency and obligations. Section 374, included in H.R. 3004, makes a number of changes to the provisions of 18 U.S.C. §§470–473 relating to the maximum sentences for various counterfeiting offenses and to the definition of counterfeit in 18 U.S.C. §474 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of the United States.

Sec. 375. Counterfeiting Foreign Currency and Obligations. Section 375, included in H.R. 3004, makes a number of changes to the provisions of 18 U.S.C. §§478–480 relating to the maximum sentences for various counterfeiting offenses involving foreign obligations or securities and adds to the definition of counterfeit in 18 U.S.C. §481 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of a foreign government.

Sec. 376. Counterfeiting the proceeds of terrorism. This provision expands the scope of predicate offenses for laundering the proceeds of terrorism to include "providing material support or resources to terrorist organizations," as that crime is defined in 18 U.S.C. §2339B of the criminal code. Same as original Administration proposal.

Sec. 377. Extraterritorial jurisdiction. This provision applies the financial crimes prohibitions to conduct committed abroad in situations where the tools or proceeds of the offense are brought into or used in the United States. Same as original Administration proposal.

TITILE IV—PROTECTING THE BORDER

Subtitle A—Protecting the Northern Border

Sec. 401. Definitions. Section 401, included in the Senate bill and H.R. 3004, defines the Northern border. Both the House and Senate bills included this provision to authorize the Attorney General to waive any cap on the number of full time employees as consistent with existing civil and criminal forfeiture procedures. The Senate receded to the House language.

Sec. 402. Northern border personnel. Both the House and Senate bills included this provision to authorize additional appropriations to allow for a tripling in personnel for the Border Patrol, INS Inspectors, and the U.S. Customs Service to service in the northern border, and an additional $50 million each to the INS and the US Customs Service to improve technology and acquire additional equipment for use at the northern border. Not in original Administration proposal.

Sec. 403. Access by the Department of Homeland Security to certain identity and transaction information in the criminal history records of visa applicants and applicants for admission to the United States. Both the House and Senate bills included this provision to allow the Department of Homeland Security to conduct a biometrics database program to screen visa applicants for a criminal history using DNA, fingerprints, and facial recognition technology. The Senate receded to the House position.

Sec. 404. Additional training and equipment for use at the northern border. Both the House and Senate bills included this provision to allow the Attorney General to authorize overtime pay for INS employees in an amount in excess of $30,000 during periods that experienced personnel are available to handle the increased workload generated by the events of September 11, 2001. Same as original Administration proposal but based on a Leahy-Conyers proposal.

Sec. 405. Report on the integrated automated fingerprint identification system for ascertaining the identity of aliens who enter or exit the United States. Both the House and Senate bills included this provision to require the Attorney General to report to Congress on the feasibility of enhancing the FBI's Integrated Automated Fingerprint Identification System or other identification systems to identify foreign passports and visa holders who may be violating United States immigration laws. The section requires the Secretary of State to certify that an alien is engaged in any other activity that endangers national security or the safety of the community or any person. Judicial review of any action taken under this section, including review of the merits of the certification, is available through habeas corpus proceedings, with appeal to the U.S. Court of Appeals for the D.C. Circuit. The Attorney General shall report the certification to Congress six months. Narrower than original Administration proposal in numerous ways, including placing a 7-day limit on detention without charge, ordering release of aliens found not to be removable, and more meaningful judicial review of Attorney General's determination of national security risk posed by alien.

Sec. 406. Multilateral cooperation against terrorists. Both the House and Senate bills included this provision to provide new exceptions in 18 U.S.C. §§470–473 relating to the maximum sentences for various counterfeiting offenses. Not in original Administration proposal.

Sec. 407. Visa integrity and security. This section expresses the sense of the Congress that the Attorney General should coordinate with the Secretary of State to fully implement the entry/exit system as expeditiously as practicable. Particular focus should be given to the development of biometric technology and the development of tamper-resistant documents. Not in original Administration proposal.


Sec. 409. Foreign student monitoring program. This section seeks to implement the foreign student monitoring program created in the implementing statute, including the collection of user fees mandated by the statute with an appropriation of $36,800,000 for the express purpose of fully and effectively implementing the program. Based on original Administration proposal in numerous ways, including adding the Department of Homeland Security as a participant in the program.

Sec. 410. Machine readable passports. This section requires the completion of steps to conduct an annual audit to assess precautionary measures taken to prevent the counterfeiting and theft of passports among countries that participate in the machine-readable passport program. This section includes the new Office of Homeland Security in the list of institutions to include air flight schools, language training schools, and vocational schools. Not in original Administration proposal.

Sec. 411. Definitions relating to terrorism. Both the House and Senate bills included this provision to amend the definition of "engage in terrorist activity" to clarify that an alien who solicits funds or membership or provides material support to a terrorist organization is removable. Aliens who solicit funds or membership or provide material support to organizations not designated as terrorist organizations are not removable. This section also creates a definition of "terrorist organization," which is not defined under current law, for purposes of making an alien inadmissible or removable. The definition of a terrorist organization as one that (1) designated by the Secretary of State as a terrorist organization under the process supplied by current law; (2) designated by the United Nations under article 16 of the United Nations General Assembly resolution 1819 (2009) as a plan of counterterrorism activities and (3) a group of two or more individuals that commits terrorist activities or plans or prepares to commit (including logistical support for) terrorist activities. The changes made by this section will apply to actions taken by an alien before enactment with respect to any group that was at that time certified by the Secretary of State. Narrower than original Administration proposal by allowing an alien to show support for terrorist activities that were offered without knowledge of organization's terrorist activity.

Sec. 412. Mandatory detention of suspected terrorists; habeas corpus; judicial review. Both the House- and Senate-passed bills included provisions to grant the Attorney General the authority to certify that an alien meets the criteria of the terrorism grounds of the Immigration and Nationality Act, or is engaged in any other activity that endangers the national security of the United States. This section also provides to be "believed" standard, and take such aliens into custody. This authority is delegable only to the Deputy Attorney General. The Attorney General may not grant an alien the opportunity to utilize the protections and procedures against such aliens or bring criminall charges within seven days, or release them from custody. An alien who is charged but ultimately found not to be removable is to be released from custody. An alien who is found to be removable but has not been removed within a reasonable foreseeable future, may be detained if the Attorney General demonstrates that the alien's continued presence in the United States, and related forfeiture provisions. The Senate receded to the House language.

Sec. 413. Permanently Resident Aliens. Both the House and Senate bills included this provision to provide new exceptions in 18 U.S.C. §§470–473 relating to the maximum sentences for various counterfeiting offenses. Not in original Administration proposal.

Sec. 414. Visa integrity and security. This section expresses the sense of the Congress that the Attorney General should coordinate with the Secretary of State to fully implement the entry/exit system as expeditiously as practicable. Particular focus should be given to the development of biometric technology and the development of tamper-resistant documents. Not in original Administration proposal.


Sec. 416. Foreign student monitoring program. This section seeks to implement the foreign student monitoring program created in the implementing statute, including the collection of user fees mandated by the statute with an appropriation of $36,800,000 for the express purpose of fully and effectively implementing the program. Based on original Administration proposal in numerous ways, including adding the Department of Homeland Security as a participant in the program. Thereafter, the program would be funded by user fees. Currently, all institutions of higher education that enroll foreign students or exchange visitors are required to participate in the monitoring program. This section expands the list of institutions to include air flight schools, language training schools, and vocational schools. Not in original Administration proposal.

Sec. 417. Machine readable passports. This section requires the completion of steps to conduct an annual audit to assess precautionary measures taken to prevent the counterfeiting and theft of passports among countries that participate in the machine-readable passport program, and ascertain that designated countries have established a program to deliver machine-readable passports to the United States. The audit will be reported to Congress. This provision would advance the deadline for participating nations to develop machine-readable passports to 2005 and permit the Secretary of State to waive the requirements imposed by the deadline if he finds that the program country is making progress towards its goal of transitioning to machine-readable passports. Not in original Administration proposal.
Sec. 418. Prevention of consulate shopping. This section directs the State Department to examine what concerns, if any, are created by the practice of certain aliens to “shop” for a United States consulate where the alien is not a eligible for the original Administration proposal.

Subtitle C—Preservation of Immigration Benefits for Victims of Terrorism

[Note: This subtitle was not in original Administration proposal, but it is certain that some aliens fell victim to the terrorist attacks on the U.S. on September 11. For many families, these tragedies will be compounded by the disruptions, doubts, and uncertainty of losing their immigration status due to the death or serious injury of a family member. These family members are facing deportation proceedings because they are out of status. They may no longer qualify for their current immigration status or are no longer eligible to complete the application process because their loved one was killed or injured in the September 11 terrorist attack. Others are threatened with the loss of their immigration status, through no fault of their own, due to the disruption of communication and transportation that has resulted directly from the terrorist attacks. Because of these disruptions, people have been and will be unable to meet their deadlines, which may mean the loss of eligibility for certain benefits and the inability to maintain lawful status, unless the law is changed.]

At the request of Congressman Conyers and Senator Leahy, this new subtitle (sections 421-428) was included in the final bill to modify the immigration laws to provide the humanitarian relief to those victims and their family members in preserving their immigration status.]

Sec. 421. Special immigrant status. This section provides permanent resident status to an alien who was the beneficiary of a petition filed on or before September 11 to grant the alien permanent residence as a family-sponsored immigrant or employer-sponsored immigrant, or of an application for labor certification (filed on or before September 11), if the petition or application was rendered null because of the death or serious injury of a family member due to the terrorist attacks.

Sec. 422. Application of section 212(a)(9) of the INA. This section modifies the immigration laws to provide an alien who was lawfully present on September 10, 2001, and who was lawfully present as a nonimmigrant at the time of the terrorist attacks, and was unable to timely depart the United States as a direct result of the terrorist attacks, with lawfully present status as an immediate relative. This also applies to the children of the alien.

Sec. 423. Humanitarian relief for certain survivors who were members of families of the victims. This section provides that if an alien spouse, child of a U.S. citizen, or a U.S. citizen who was the spouse of the alien on September 11, 2001, and who was lawfully present on September 10, 2001, is a nonimmigrant at the time of the terrorist attacks, an alien who was lawfully present on September 10, 2001, and who was lawfully present as a nonimmigrant at the time of the terrorist attacks, and was unable to timely depart the United States as a direct result of the terrorist attacks, with lawfully present status as an immediate relative. This also applies to the children of the alien.

Sec. 424. “Age-out” protection for children. Under current law, certain visas are only available to a alien as of the alien’s 21st birthday. This section directs the Attorney General to establish a new rule to provide for the application for adjustment of status for an employment-based immigrant visa, for his or her application for adjustment judged adequate to the death (if the application was filled prior to the death). Not in original Administration proposal.

Sec. 425. Temporary administrative relief. This section permits that an alien who was lawfully present on September 10, 2001, and who was lawfully present as a nonimmigrant at the time of the terrorist attacks, and was unable to timely depart the United States as a direct result of the terrorist attacks, and is otherwise entitled to relief under any other provision of this legislation, may be considered to have died on the date of the terrorist attacks. Not in original Administration proposal.

Sec. 426. Evidence of death, disability, or loss of employment. This section instructs the Attorney General to issue regulations to provide for documents establishing that a death, disability, or loss of employment due to physical damage to, or destruction of, a business, occurred as a direct result of the terrorist attacks.
Sec. 507. Disclosure of educational records. Both the House and Senate bills included this provision to require application to a court to obtain educational records in the possession of a Federal, State, or local educational agency to prevent the discovery of confidential information if it is determined by the Attorney General or Secretary of Education (or their designees) that doing so could reasonably be expected to endanger the safety of the student, an individual engaged in law enforcement activities, or preventing a federal terrorism offense or domestic or international terrorism. Limited immunity is given to persons producing such information if their good faith, and the Attorney General is directed to issue guidelines to protect confidentiality. Narrower than original Administration proposal.

Sec. 509. Information from NCES surveys. Both the House and Senate bills included this provision to require application to a court to obtain reports, records, and information from the National Center for Education Statistics that are relevant to an authorized investigation or prosecution of terrorism. Limited immunity is given to persons producing such information acting in good faith, and the Attorney General is directed to issue guidelines to protect confidentiality. Narrower than original Administration proposal.

Title VI—Providing for Victims of Terrorism, Public Safety Officers, and their Families

Subtitle A—Aid for Families of Public Safety Officers

Sec. 611. Expended payment for public safety officers involved in the prevention, investigation, rescue, or recovery efforts related to terrorism. Both the House and Senate bills included this provision to streamline the Public Safety Officers Benefits Program application process for family members of public safety officers, firefighters, emergency medical personnel, and emergency personnel who perished or suffered serious injury in connection with, investigation, rescue, or recovery efforts related to a terrorist attack. The Public Safety Officers Benefits Program provides benefits for each of the families of law enforcement officers, fire fighters, emergency medical personnel, and emergency personnel who are killed or permanently disabled in the line of duty ($151,635 in FY 2001). Current regulations, however, require the families of public safety officers who have fallen in the line of duty to go through a cumbersome and time-consuming application process. Not in original Administration proposal.

Sec. 612. Technical correction with respect to expedited payments for heroic public safety officers. Both the House and Senate bills included this correction to Public Safety Officers Benefits Program payments to the fallen firefighters, emergency personnel and law enforcement officers who perished or were disabled during the rescue and recovery efforts related to the terrorist attacks on September 11, 2001. Modified from original Administration proposal.

Sec. 613. Public safety officers benefits program payment increase. Both the House and Senate-passed bills included this provision to raise the total amount of Public Safety Officers Benefits Program payment to $250,000 and is effective for any death or disability occurring on or after January 1, 2001. Not in original Administration proposal.

Title VII—Information Sharing for Critical Infrastructure Protection

Sec. 701. Expansion of regional information sharing. Both the House and Senate bills included this provision to expand the number of facilities participating in the Regional Information Sharing System (RISS) Program to facilitate information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities and doubles its authorized funding for FY2002 and FY2003. Currently, 5,700 Federal, State and local law enforcement agencies participate in the RISS Program. Not in original Administration proposal.

Title VIII—Strengthening the Criminal Laws Against Terrorism

Sec. 801. Terrorist attacks and other acts of violence against mass transportation systems. Both the House and Senate bills included this provision to expand the definition of terrorism (to be codified at 18 U.S.C. § 990) to make punishable acts of terrorism and other violence against mass transportation vehicles, facilities, and systems. Same as Administration proposal.

Sec. 802. Definition of domestic terrorism. Both the House and Senate bills included this provision to define the term “domestic terrorism” as a counterpart to the current definition of “international terrorism” in 18 U.S.C. § 2332b. The new definition of “domestic terrorism” is for the limited purpose of providing investigative authorities (i.e., court orders, warrants, etc.) for acts of terrorism within the territorial jurisdiction of the United States. Such offenses are those that are “(1) dangerous to human life and violate the criminal laws of the United States or any state; and (2) appear to be intended (or have the effect)—to intimidate a civilian population; influence government policy intimidation or coercion; or affect government conduct by mass destruction, assassination, or kidnapping (or a threat of).” Same as Administration proposal.

Sec. 803. Prohibition against harboring terrorists. Both the House and Senate bills included this provision to establish a new criminal prohibition against harboring terrorists, similar to the current prohibition in 18 U.S.C. § 792 which applies to spies, and makes it an offense when someone harbors or conceals another they know or should have known is engaged in federal terrorism offenses. Narrower than Administration’s proposal except that the final bill removes the Administration’s original proposal to make it an offense to harbor someone merely suspected of engaging in terrorism.

Sec. 804. Jurisdiction over crimes committed at U.S. facilities abroad. Both the House and Senate bills included this provision to extend the special maritime and territorial jurisdiction of the United States to cover acts of terrorism committed by or against a U.S. national, U.S. diplomatic, consular and military missions, and residences used by U.S. personnel assigned to such missions. Based on original Administration proposal.

Sec. 805. Material support for terrorism. Both the House and Senate bills included this provision to amend 18 U.S.C. § 2339A, which prohibits providing material support to terrorists, in four respects. First, it adds three terrorism-related offenses to the list of §2339A. Second, it provides that §2339A violations may be prosecuted in any Federal judicial district in which the predicate offense was committed. Third, it clarifies that the monetary limit on providing material, currency and other financial securities, may constitute “material support or resources”
for purpose of §2339A. Fourth, it explicitly prohibits providing terrorists with “expert advice or assistance,” such as flight training, knowing or intending that it will be used to carry out an act of terrorism. Same as original Administration proposal.

Sec. 816. Assets of terrorists organizations. Both the House and Senate bills included this provision to provide that the assets of individuals and organizations engaged in planning or perpetrating acts of terrorism against the United States, as well as certain proceeds and instrumentalities of such acts, are subject to civil forfeiture. Same as original Administration proposal.

Sec. 807. Technical clarification relating to provision of material support to terrorism. Both the House and Senate bills included this provision to clarify that the provisions of the Export Administration Act of 2000 (title IX of Public Law 106-367) do not limit or otherwise affect the criminal prohibitions against providing material support to terrorists or designated terrorist organizations, 18 U.S.C. §§2339A & 2339B. Same as original Administration proposal.

Sec. 808. Definition of Federal crime of terrorism. Both the House and Senate bills included this provision to update the list of predicate offenses under the current definition of “Federal crime of terrorism,” 18 U.S.C. §2332b(e)(5). Narrower than original Administration proposal.

Sec. 809. No statute of limitation for certain terrorism offenses. Both the House and Senate bills included this provision to eliminate the statute of limitations for certain terrorism-related offenses, if the commission of such offense resulted in, or created a foreseeable risk of, death or serious bodily injury to another person. Narrower than original Administration proposal.

Sec. 810. Alternative maximum penalties for terrorism offenses. Both the House and Senate bills included this provision to raise the maximum prison terms to 15 or 20 years or, if death results, life, in the following criminal statutes: 18 U.S.C. §81 (arsen within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §1366 (destruction of an energy facility); 18 U.S.C. §2155(a) (destruction of national-defense material); 18 U.S.C. §2339A & 2339B (material support to terrorists and terrorist organizations); 42 U.S.C. §2284 (sabotage of nuclear facilities or fuel); 18 U.S.C. §46505(c) (killings on aircraft); 18 U.S.C. §46505(d) (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

Sec. 811. Penalties for terrorist conspiracies. Both the House and Senate-passed bills included this provision to ensure adequate punishment of certain terrorism-related conspiracies by adding conspiracy provisions to the following criminal statutes: 18 U.S.C. §81 (arsen within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §830(c) (killings in Federal facilities); 18 U.S.C. §1366 (destruction of communications lines, stations, or systems); 18 U.S.C. §1368 (destruction of property within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §1992 (wrecking trains); 18 U.S.C. §2339A (material support to terrorists); 18 U.S.C. §2339B (torture); 42 U.S.C. §2284 (sabotage of nuclear facilities or fuel); 18 U.S.C. §46504 (interference with flight crews); 18 U.S.C. §46505 (carrying weapon on an aircraft); 18 U.S.C. §612 (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

Sec. 812. Post-release supervision of terrorists. Both the House and Senate bills included this provision to authorize extended period of supervised release for certain terrorism-related offenses that resulted in, or created a foreseeable risk of, death or serious bodily injury to another person. Narrower than original Administration proposal.

Sec. 813. Inclusion of acts of terrorism as racketeering activity. Both the House and Senate bills included this provision to amend the RICO statute to include terrorism-related offenses within the definition of “racketeering activity,” thus allowing multiple acts of terrorism to be charged as a single RICO offense. This section expands the ability of prosecutors to prosecute members of established, ongoing terrorist organizations that present a threat to the United States. A statutory provision was designed to permit prosecutors to combat. Narrower than original Administration proposal.

Sec. 814. Deterrance and prevention of cyberterrorism. Both the House and Senate bills included this provision to clarify the criminal statute prohibiting computer hacking, 18 U.S.C. §1030, to cover computers located outside the United States when used in a manner that affects the interstate commerce or communications of this country, and to update the definition to assure full costs to victims of hacking offenses are counted, clarify the scope of civil liability under the current criminal statute, and minimize sentence applicable in some cases. Not in original Administration proposal.

Sec. 815. Additional defense to civil actions relating to information in response to Government requests. Both the House and Senate bills included this provision to provide an additional defense under 18 U.S.C. §797(f)(e) to civil actions relating to preserving records in response to Government requests. Not in original Administration proposal.

Sec. 816. Development and support of cybersecurity forensic capabilities. Both the House and Senate bills included this provision to require the Attorney General to establish regional computer forensic laboratories and to support existing computer forensic laboratories to help combat computer crime. Not in original Administration proposal.

Sec. 817. Expansion of the biological weapons statute. The Senate-passed bill included this provision to amend the definition of “for foreign intelligence purposes” to broaden the definition to include the export of certain biological agents. Both the House and Senate bills included this provision to express the sense of Congress that the CIA should make efforts to recruit informants to fight terrorism. Not in original Administration proposal.

Sec. 818. Sense of Congress on the establishment and maintenance of intelligence relationships to acquire information on terrorists and terrorist organizations. Both the House and Senate bills included this provision to direct the Attorney General to establish a training program for Federal, State and local officials on the recognition and appropriate handling of intelligence information in their normal course of duties. Not in original Administration proposal.

Sec. 901. Responsibilities of Director of Central Intelligence regarding foreign intelligence gathered pursuant to the Foreign Intelligence Surveillance Act of 1978. Both the House and Senate bills included this provision to require the DCI to direct the Attorney General to establish a training program for Federal, State and local officials on the recognition and appropriate handling of intelligence information in their normal course of duties. Not in original Administration proposal.

Sec. 902. Inclusion of international terrorism activities within scope of foreign intelligence gathering pursuant to the National Security Act of 1947. Both the House and Senate bills included this provision to revise the National Security Act definitions section to include “international terrorism” as a subset of “foreign intelligence.” This change will clarify the DCI’s responsibility for collecting foreign intelligence related to international terrorism. Not in original Administration proposal.

Sec. 903. Sense of Congress on the establishment and maintenance of intelligence relationships to acquire information on terrorists and terrorist organizations. Both the House and Senate bills included this provision to express the sense of Congress that the CIA should make efforts to recruit informants to fight terrorism. Not in original Administration proposal.

Sec. 904. Temporary authority to defer submittal to Congress of reports on intelligence and intelligence-related matters. Both the House and Senate bills included this provision to allow the Secretary of Defense, the Attorney General and the DCI to defer the submission of certain reports to Congress until January 1, 2002. Not in original Administration proposal.

Sec. 905. Disclosure to Director of Central Intelligence of foreign intelligence-related information with respect to criminal investigations. Both the House and Senate bills included this provision to create a responsibility for law enforcement agencies to notify the Intelligence Community when a criminal investigation reveals information of intelligence value. Regularizes existing ad hoc authority to disclose some information with respect to criminal investigations. Not in original Administration proposal.

Sec. 906. Foreign Terrorist Asset Tracking Center. Both the House and Senate bills included this provision to authorize the creation of an element within the Department of the Treasury, to establish a foreign terrorist asset tracking center, to acquire element within the Department of the Treasury, to establish a foreign terrorist asset tracking center.

Sec. 907. National Virtual Translation Center. Both the House and Senate bills included this provision to direct the submission of a report on the feasibility of establishing a virtual translation capability, making use of cutting-edge communications technology to link securely translation capabilities on a nationwide basis. Not in original Administration proposal.

Sec. 908. Training of government officials regarding identification and use of foreign intelligence. Both the House and Senate bills included this provision to direct the Attorney General, in consultation with the DCI, to establish a training program for Federal, State and local officials on the recognition and appropriate handling of intelligence information in their normal course of duties.

TITILE IX—IMPROVED INTELLIGENCE

Sec. 909. Responsibilities of Director of Central Intelligence regarding foreign intelligence collected under the Foreign Intelligence Surveillance Act of 1978. Both the House and Senate bills included this provision to clarify the role of the Director of Central Intelligence (“DCI”) with respect to the overall management of collection goals, analysis and dissemination of foreign intelligence gathered pursuant to the Foreign Intelligence Surveillance Act of 1978.
Sec. 1001. Review of the Department of Justice. This provision authorizes the Inspector General of the Department of Justice to designate one official to review information and receive complaints alleging abuse of civil rights and civil liberties by employees and officials of the Department of Justice. Not in original Administration proposal.

Sec. 1002. Sense of Congress. This provision condemns discrimination and acts of violence against Sikhs-Americans. Not in original Administration proposal.

Sec. 1003. Definition of "electronic surveillance." This provision authorizes the use of the new computer trespass authority under FISA. Not in original Administration proposal.

Sec. 1004. Venues in money laundering cases. This provision clarifies the judicial districts in which money laundering prosecutions under 18 U.S.C. §§1956 and 1957 may be brought. Not in original Administration proposal.

Sec. 1005. First responders assistance act. This provision authorizes grants to State and local authorities to respond to and prevent acts of terrorism. Not in original Administration proposal.

Sec. 1006. Inadmissibility of aliens engaged in money laundering. This provision makes inadmissible to the United States any alien who solicits, directs, or aids the Attorney General, or has reason to believe, is involved in a Federal money laundering offense. Not in original Administration proposal.

Sec. 1007. Authorization of funds for DEA police training in South and Central Asia. This provision authorizes money for antidrug training in the Republic of Turkey and for increased precursor chemical control efforts in the South and Central Asia region. Not in original Administration proposal.

Sec. 1008. Feasibility study on use of biometric identifier scanning system with access to the FBI Integrated automated fingerprint identification system at overseas consular offices and points of entry into the United States. This provision directs the Attorney General to report to Congress on the feasibility of using a biometric identifier (fingerprint) system, with access to the FBI fingerprint database, at consular offices abroad and at points of entry into the United States. Not in original Administration proposal.

Sec. 1009. Study of access. This provision directs the FBI to report to Congress on the feasibility of providing airlines with computer access to the names of suspected terrorists. Not in original Administration proposal.

Sec. 1010. Temporary authority to contract with the States for performance of security functions at United States military installations. This provision provides temporary authority for the Department to enter contracts for the performance of security functions at any military installation in the United States with a proximately located local or State government. Not in original Administration proposal.

Sec. 1011. Crimes against charitable Americans. This provision amends the Telemarketing and Consumer Fraud and Abuse Prevention Act to require any person engaged in telemarketing for the solicitation of charitable contributions to disclose to the person calling that the purpose of the call is to solicit charitable contributions, and to make such other disclosures as the FTC considers appropriate. Not in original Administration proposal.

Sec. 1012. Limitation on issuance of hazmat licenses. This provision allows the Department of Transportation to obtain background records checks for any individual applying for a license to transport hazardous materials in interstate commerce. Not in original Administration proposal.

Sec. 1013. Expressing the sense of the Senate concerning the provision of funding for bioterrorism preparedness and response. This provision expresses the sense of the Senate that the United States should make a substantial new investment this year toward improving State and local preparedness to respond to potential bioterrorism attacks. Not in original Administration proposal.

Sec. 1014. Grant program for State and local domestic preparedness support. This provision authorizes the Department of Justice to provide grants to States to prepare for and respond to terrorist acts including but not limited to events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices. Not in original Administration proposal.

Sec. 1015. Expansion and reauthorization of the Criminal Identification Technology Act for antiterrorism grants to States and localities. This provision adds an additional antiterrorism purpose for grants under the Criminal Identification Technology Act, and authorizes grants under that Act through fiscal year 2007. Not in original Administration proposal.

Sec. 1016. Critical infrastructures protection and continuity through supplementing Federal Infrastructure Sectors (NISAC) to address critical infrastructures. This provision establishes a National Infrastructure Simulation and Analysis Center (NISAC) to address critical infrastructures through support for activities related to counterterrorism, threat assessment, and risk mitigation. Not in original Administration proposal.

Mr. LEAHY. After that terrible day of September 11, we began looking at our laws, and what we might do. Unfortunately, at first, rhetoric overcame reality. We had a proposal sent up, and we were asked to pass it within a day or so. But fortunately, and actually ironically beneficial to both the President and the Attorney General who asked for such legislation, we took time to look at it, we took time to read it, and we took time to remove those parts that were unconstitutional and those parts that would have actually hurt liberties of all Americans. I say that because I think of what Benjamin Franklin was quoted as saying at a time when he literally had his neck on the line, he could have been hanged if our revolution had failed. He said: A people who would give up their liberty for security deserve neither.

What we have tried to do in this legislation is to balance the liberties we enjoy as Americans and those liberties that have made us the greatest democracy in history but at the same time to enhance our security so we can maintain that democracy and maintain the leadership we have given the rest of the world.

We completed our work 6 weeks after the September 11 attacks. I compare this to what happened after the bombing of the Federal Building in Oklahoma City in 1995. It took a year to complete the legislation after that. We have done this in 6 weeks. But there has been a lot of cooperation. There have been a lot of Senators and a lot of House Members involved in this and dedicated staff who have worked around the clock.

I think of my own staff—and this could be said of many others, including the ranking Member's staff—who were involved in this legislation. I am seeing some puzzles looked around the Senate as I say this. But they have all these wires hanging from the ceiling and laptops and all the staff. That is the way our office looked. But they were working around the clock on this legislation to get something better. There was some unfortunate rhetoric along the way, but again, the reality overcame it. We have a good piece of legislation.

As we look back to when we began discussions with the administration about this bill, there were sound and legitimate concerns on both sides of the aisle, but about the legislation's implication for America's rights and freedoms. There was also a sincere and committed belief that we needed to find a way to give law enforcement authority new tools in fighting terrorism.

This is a whole new world. It is not similar to the days of the cold war where we worried about armies marching against us or air forces flying air strikes for years or decades or our country. This is not that world. Nobody is going to do that because we are far too powerful. Since the end of the cold war, with the strength of our military, nobody is going to do a frontal attack. But as the Presiding Officer and everyone else knows, a small dedicated group of terrorists, with state-supported efforts, can wreak havoc in an open and democratic Nation such as ours.

Anybody who has visited the sites of these tragedies doesn't need to be told the results. We know our Nation by its very nature will always be vulnerable to these types of attacks. None of us serving in the Senate today will, I hope, ever have to witness the matter how long it is, see a day where we are totally free of such terrorist attacks. That is the sad truth. Our children and our grandchildren will face the possibilities of such terrorist attacks because that is the new world. The United States can be attacked. But that doesn't mean we are defenseless. It doesn't mean we suddenly surrender.
We have the ability, with our intel-
ligence agencies and our law enforce-
ment, to seek out and stop people be-
fore this happens. We are in an open 
session today, so I won't go into the 
number of times we have had that. 
But really, the only way we have had, 
time and time again, during the former 
Bush administration, during the Clin-
ton administration, and in the present 
administration, potential terrorist at-
tacks thwarted. People have either 
been apprehended or eliminated.

Everywhere our life has changed. 
Whether the security checks and the 
changes in our airlines are effective or 
not, we know they are reality. We know 
travel is not as easy as it once was. We 
will be concerned about opening mail. We 
will worry when we hear the sirens in the 
night. But we are not going to retreat into 
fortress America. We are going to re-
main a beacon of democracy to the rest 
of the world. Americans don't run and 
hide. We stand up, as we have, to 
adversities, whether they be economic 
or wars or anything else.

We began this process knowing how 
we had to protect Americans. It was 
not that we were intending to see how 
much we could take out of the adminis-
tration's proposal, but it was with a de-
termination to find sensible, workable 
ways to do the same things to protect 
America the administration wanted 
but with checks and balances against 
abuse. We did that at different times in 
this Nation's history how good inten-
tions can be abused. We saw it dur-
ing the McCarthy era.

Following the death of J. Edgar Hoo-
over, we found how much totalitarian 
control of the FBI hurt so many inno-
cent people without enhancing our se-
curity. We saw it during the excesses of 
the special prosecutor law enacted with 
good intentions.

We wanted to find checks and bal-
cances. We wanted to make sure we 
could go after terrorism. We wanted 
that we could go after those who 
would injure our society, those who 
would strike at the very democratic 
principles that ironically make us a 
target. But we wanted to do it with 
checks and balances against abuse. 
That is what we did. In provision after 
provision, we added those safeguards 
that were missing from the administra-
tion's plan.

By taking the time to read and im-
prove the antiterrorism bill, Congress 
had done the administration a great 
favor in correcting the problems that 
were there. We have used the time 
wisely. We have produced a far better 
bill than the administration proposed. 
Actually, it is a better bill than either 
this body or the House initially pro-
posed. The total is actually greater 
than the sum of the parts.

We have done our utmost to protect 
Americans against abuse of these new 
law enforcement tools, and there are 
new law enforcement tools involved. In 
granting these new powers, the Amer-
ican people but also we, their rep-
resentatives in Congress, grant the ad-
ministration our trust that they are 
not going to be misused. It is a two-
way street. We are giving powers to the 
administration; we will have to extend 
some trust that they are not going to 
be misused.

The way we guarantee that is con-
gressional oversight. Congressional 
oversight is going to be crucial in en-
forcing this compact. If I might para-
phrase former President Reagan: We 
will entrust but with oversight.

We will do this. The Republican 
chairman and his ranking member in 
the House of Representatives intend to 
have very close oversight. I can assure 
you that I and our ranking member 
will have tight oversight in the Senate.

Interestingly enough, the 4-year sun-
set provision included in this final 
agreement will be an enforcement 
mechanism for adequate oversight.

This is not precisely the bill that 
Senator HATCH would have written. It 
is not precisely the bill I would have 
written, or not precisely the bill the 
President would have written. But it is 
a good bill. It is a balanced bill. It is a 
greatly improved piece of legislation. It is 
one that sets up the checks and balances 
necessary in a democratic society that 
protects but also are necessary against 
abuse. We saw it during the McCarthy 
era.

Mr. HATCH, Madam President, short-
lly after the September 11 attack on 
America, the President of the United States 
asked Congress to pass legislation 
that would provide our law en-
forcement and intelligence agencies 
the tools they needed to wage war on 
the terrorists in our midst. These tools 
represent the domestic complement to 
the weapons our military currently is 
bringing to bear on the terrorists' asso-
ciates at home and abroad. At one time, 
the President asked that, in crafting these 
tools, we remain vigilant in protecting 
the constitutional freedoms of all 
Americans—certainly of all law-abid-
ing Americans.

After several weeks of negotiations 
with Chairman LEAHY, the House of 
Representatives, and the administra-
tion, we have developed bipartisan con-
sensus legislation that will accomplish 
both of these goals. It enhances our 
ability to find, track, monitor, and 
prosecute terrorists operating here in 
the U.S. without in any way under-
mining civil liberties.

We can never know whether these 
tools would have prevented the attack 
on America, but, as the Attorney Gen-
eral has said, it is certain that without 
these tools we did not stop the vicious 
acts of last month.

I personally believe that if these 
tools had been in law—and we have 
been trying to get them there for 
years—we would have caught those ter-
rorists. If these tools could help us now 
to track down the perpetrators—if they 
will help us in our continued pursuit of 
terrorists—then we should not hesitate 
to enact these measures into law. God 
willing, the legislation we pass today 
will enhance our abilities to protect 
and prevent the American people from 
ever again being violated as we were on 
September 11.

This legislation truly represents the 
product of intense, yet bipartisan, nego-
tiations. Senator LEAHY and I car-
ried out a goal from the antiterrorism 
proposal submitted by the administra-
tion. There have been several hearings on this legislation in 
the Senate—not just this year, but in past years—on some of the 
provisions and features that we have in here, 
including discussions during the enact-
ment of the 1996 Antiterrorism Effec-
tive Death Penalty Act, called the 
Dole-Hatch bill.

We have heard from countless experts 
and advocates on all sides of this issue 
in this debate. Of late, we have also 
worked closely with Chairman SENSEN-
BRENNER in the House, Mr. CONYERS, 
the ranking member on the House Ju-
diciary Committee. It is our effort 
to complete legislation that could 
receive near unanimous approval 
and support in the Congress. Although 
I do not expect every Senator to vote 
in favor of this legislation, Senator 
LEAHY and I have taken it extremely 
to accommodate every concern. While 
Members ultimately may differ on 
some of these proposals, I know we all 
share the same overriding concern, and 
that is protecting our country from 
future harm.

The bill before us, which I hope we 
will pass today, differs in several re-
spects from the legislation we passed in 
the Senate 2 weeks ago. These changes 
result from negotiations with our 
House counterparts, and some of the 
changes are certainly not objection-
able. For example, we have included 
language requiring prosecutors to noti-
tify Federal courts when they have dis-
covered information indicating another 
Federal agencies for national security 
purposes. Also, the bill includes a 
provision requiring law enforcement to 
provide detailed reports concerning 
their use of the FBI's so-called Carni-
llo program. These changes will pro-
eriously encourage the law enforcement community to use 
these tools responsibly.

Unfortunately, not all of the changes 
are welcome. For instance, our effort 
to mitigate the same problems 
created by a change in the law gov-
erning the discipline of Federal pros-
ecutors was rebuffed by the House of
Representatives. As a result, Federal prosecutors will continue to be hampered by the myriad and often contradictory State bar rules, and sometimes very politicized State bar rules. Even more alarming, Federal law enforcement authorities in this area of Oregon would be prohibited from engaging in legitimate undercover activity—even undercover activity designed to infiltrate a terrorist cell. That is ridiculous. Nevertheless, we could not get our House counterparts to think otherwise.

Another troublesome change concerns the 4-year sunset provision. As my colleagues know, the legislation that passed the Senate 2 weeks ago by a vote of 96-1 did not contain a sunset. This omission was intentional and wise. In my opinion, a sunset will undermine the effectiveness of the tools we are creating here and send the wrong message to the American public that somehow these tools are extraordinary.

One hardly understands the need to sunset legislation that both provides critically necessary tools and protects our civil liberties. Furthermore, as the Attorney General stated, how can we sunset when we know so well that the terrorists will not sunset their evil intentions? I sincerely hope we undertake a thorough review and further extend the legislation once the 4-year period expires. At least, we will have a vestige of effective law enforcement against terrorism that we currently do not have.

Despite these provisions, the legislation before us today deserves unanimous support. The core provisions of the legislation we passed in the Senate 2 weeks ago remain firmly in place. For instance, in the future, our law enforcement and intelligence community will be able to share information and cooperate fully in protecting our Nation and our communities.

Our laws relating to electronic surveillance also will be updated. Electronic surveillance conducted under the supervision of a Federal judge happens to be one of the most powerful tools at the disposal of our law enforcement community. We now know that e-mail, cellular telephones, and the Internet have been the principal tools used by terrorists to coordinate their attacks, and our law enforcement and intelligence agencies have been hamstrung by laws that were enacted long before the advent of these technologies. This bill will modernize our laws so our law enforcement agencies can deal with the world as it is, rather than with the world as it existed 20 years ago.

Also, the legislation retains the commitment immigration proposals that I negotiated with Senator LEAHY, Senator KENNEDY, Senator Kyl, Senator Brownback, and also Senator Feingold, who has played a significant role. She and Senator Kyl have both played significant roles leading up to this particular bill, and over the last 5 years in particular. We have worked hard to craft language that allows the Attorney General to be proactive, rather than reactive, without sacrificing the civil liberties of noncitizens.

In total, the amendments made by this legislation to the Immigration and Nationality Act reflect our intent to account for the complex and often mutating nature of terrorist groups by expanding the class of inadmissible and deportable aliens and providing a workable mechanism by which the Attorney General can reasonably and expeditiously suspect alien terrorists. Further, the legislation breaks down some of the barriers that have in the past prevented the State Department, the Immigration and Naturalization Service, the FBI, and others from effectively communicating with each other. If we are to fight terrorism, we cannot allow terrorists, or those who support terrorists, to enter or to remain in our country.

Finally, the bill provides the administration with powerful tools to attack the financial infrastructure of terrorism. For instance, the legislation expands the President’s authority to freeze the assets of terrorists and terrorist organizations and provides for the eventual seizure of such assets. These financial tools will give our Government the ability to choke off the financing that these dangerous organizations need in order to survive.

The legislation provides numerous other tools—too many to mention here—to aid our war against terrorism. Many of these were added at the request of our Senate colleagues, and I commend all of them for their input.

Before I yield the floor, I must take a moment to acknowledge the hard work by my staff, the staff of Senator LEAHY, and the representatives of the administration, from the White House and the Justice Department and elsewhere in the National Intelligence Community.

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This is a major anticrime, antiterrorism bill. It is probably the most important bill we will enact this year, certainly with regard to national security and terrorism. I thank everybody involved, and I will make further remarks about that later in the debate.

With that, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Madam President, it is my hope that today as we pass this antiterrorism legislation and as we will in future days take action on issues of resources to fight antiterrorism and changes in organizational structure, we will be making as significant a national statement about our will and determination to combat the scourge of global terrorism as previous generations did about other scourges that afflicted our country.

It was not that long ago that America was beset by the scourge of organized crime. Many of our communities had been seriously invaded by these insidious influences of organized crime. People, many of whom occupy the chairs that we now occupy in this very Chamber, decided that 4 years ago or more ago that was intolerable and we would take the necessary steps to re-capture the essential values of our country.

I think it is fair to say we live in a more safer and more secure America because of those efforts. I hope that in years in the future those who occupy this Chamber will look back with a similar belief that the actions we are taking now have had a similar effect in terms of making this a more secure, not just America but world for our children and grandchildren.

With that hope, I wish to talk about a few of the provisions of this legislation that relate directly to America’s intelligence community and the role it will play in securing that future.

First, a bit of history. For most of America’s history, we have been extremely uncomfortable with the idea of clandestine intelligence. It ran contrary to our basic spirit of national openness. While the British have had a well-developed intelligence system since the Napoleonic wars, our first adventure in this field really is a product of the Second World War, and as soon as our confidence was over, the American Intelligence services were essentially collapsed.

Two years later, President Truman recognized that with the advent of the Soviet Union and the development of what we came to know as the Iron Curtain that separated the Soviet Union from the free world, we were going to have to have some capability to understand what this large adversary was about and therefore prepare ourselves. So the National Security Act was adopted which created the Central Intelligence Agency and from that the other intelligence agencies which now constitute America’s intelligence community.

For 40 years that intelligence community was focused on one target: the Soviet Union and its Warsaw Pact allies. We knew that community. The United States had been dealing with Russia since even before John Quincy Adams was our Ambassador in St. Petersburg. It was a homogenous enemy. Most of the countries spoke Russian, and therefore if we had command of that language, we could understand what most of the Warsaw Pact nations were saying. It was also an old style symmetrical enemy. We were matching tanks for tanks, nukes for nukes.

With the fall of the Berlin Wall, the world changed in terms of intelligence requirements. Suddenly, instead of one enemy, we had dozens of enemies. Suddenly, instead of having command of one language which made us linguistically competent, there were scores of languages we had to learn to speak. In
Afghanistan alone, there are more than a half dozen languages with which one must have some familiarity in order to understand what is being said there. And instead of symmetrical relationships, we now have small groups of a dozen or a hundred or a thousand or so against a size of the United States of America. So our intelligence community has been challenged to respond to this new reality. This legislation is going to accelerate that response.

Let me focus, in my limited time, on three areas within this legislation that I think will be significantly beneficial.

The first goes to the reality that we have had, in large part, out of this history of unease with dealing with clandestine information, an orientation to treat terrorist activities as crimes and put up yellow tape, secure the crime scene, hold the information very close because we did not want to have it infected so that the evidence could not be used at trial. That trial that would lead to the conviction of the perpetrator. In the course of that, we also shut off the ability to share information which might allow us to anticipate the future actions of those same perpetrators and to get a trial that would end up with a conviction.

We take some significant steps to overcome that orientation by the provisions contained in this legislation which will require the sharing of criminal justice information with our intelligence agencies. I underscore the word “require” because even as recently as today’s Washington Post, there is an article describing the legislation which uses the term “the authority to share,” as if this were a permissive requirement.

In fact, the legislation very explicitly makes it mandatory. I refer to page 308 beginning at line 9 where it states that the Attorney General or the head of any other Department or Agency of the Federal Government with law enforcement responsibilities shall—shall—expeditiously disclose to the Director of Central Intelligence pursuant to guidelines developed foreign intelligence acquired by an element of the Department of Justice or any element of such Department or Agency, as the case may be, in the course of a criminal investigation.

We are closing that gap which has in the past been a major constraint on our ability to predict and interdict future actions.

Second, we are dealing with the issue of the empowerment of the Director of Central Intelligence. We tend to think of the CIA as being the lead agency for our intelligence community. In fact, that is not correct. If one looks at an organizational chart, across the top is the Director of Central Intelligence. Under the Director of Central Intelligence is a series of agencies, of which the CIA is one, which have operational responsibility.

If one looks at that chart, one assumes the Director of Central Intelligence is the head coach, the leader with the ability to command and control the intelligence community. In fact, because of other authorities, including budget authority and personnel authorities and some culture of individuality by agencies, the Director of Central Intelligence has not been fully empowered.

We take a step in this legislation towards giving the Director of Central Intelligence greater authority and in a very significant area. We have a limited ability to eavesdrop on the communication of potential adversaries, including terrorists. Under the current structure, it is primarily the responsibility of the Federal Bureau of Investigation, which actually operates and targets our electronic surveillance, as to which target will be listened to first if we cannot listen to everybody because we do not have, for instance, enough people who can understand the exotic language in which the communication is being spoken.

This legislation will establish the fact it is the Director of Central Intelligence who will decide what the strategic priorities for the use of our electronic surveillance will be. So if the Director of Central Intelligence is aware we face a terrorist attack from a specific terrorist organization which speaks a specific language, those communications will be given the priority for purposes of how we will use our available electronic surveillance capability.

The Director of Central Intelligence will then also, at the back end of that process, have the primary responsibility for determining how to disseminate that information. The nightmare that exists, and will exist until we complete a full review of what happened on September 11, is we are going to find someplace a tape of a conversation we secured which will disclose the identity of a terrorist organization or whatever, as to what was being prepared, what plot was being matured which resulted in the terror of September 11.

These provisions are intended to prioritize, on the front end, what we will gather information against and, on the back end, who will be first in line to get the information that has come from that surveillance.

A third provision goes to the criticism that the intelligence community has been reticent to take on the hardest targets because they are hard, because they may result in failure and non-accomplishment of the mission. As President Kennedy said as we started our space program, we start this not because it is easy but because it is hard and it will challenge us to our fullest.

One of the areas in which we have become risk adverse has been the area of hiring foreign nationals to do work which is very difficult for Americans to do, not because we are not smart, capable people, but if we are going to hire someone or secure the services of someone who can get close to an ominous figure such as Osama bin Laden, frankly, it is probably somebody who is pretty similar to bin Laden. It is someone who can gain his confidence. That may well mean he has been an associate of bin Laden in the past, has engaged in some of the activities we so abhor.

Today there is a sense within the intelligence community we should not hire people who have that kind of background because they are potentially unreliable but also because they bring a dirty background.

This legislation, through a sense-of-the-Congress statement, reverses that and says our priority goal in employing persons to assist in our antiterrorism activity should be to acquire services of persons who can be of greatest assistance to us in determining the plans and intentions of the terrorists, even if it means we might have to hire someone with whom we would not personally like to have a social or other relationship.

That is a statement of our commitment to this intelligence community; that we, the Congress, are prepared to back them up when they take some of these high-risk undertakings and that we will understand there is the risk of failure but it is better to risk failure than to be cowered by the unwillingness to engage in important but high-risk ventures.

So those are three illustrative provisions which are in the intelligence section of this legislation, which I think have the potential of the same impact on our capacity to rid the world of the scourge of terrorism as similar actions have so contributed to our ability to reduce the influence of organized crime within this Nation.

I urge the adoption of this conference report.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I yield 5 minutes to the Senator from Kansas.

Ms. HATCH. Madam President, I understand you wish to make a statement.

Ms. HATCH. Madam President, I thank my colleague, Senator BROWNBACK of Utah, for giving me time to speak in support of the bill. I want to particularly direct attention to the immigration provisions in the bill.

Last month, our Nation was attacked by terrorists who hoped to undermine our way of life and the liberties we enjoy. These individuals and the groups they represent want our country to recoil in terror and capitulate to fear. This we will not do.

We have before us today legislation that stands firm before those who mean us harm. This antiterrorism package, the product of an earnest bipartisan effort, is an intelligent and thorough response to the immediate security needs of our Nation. I commend the immigration provisions of this legislation, which will strengthen our immigration laws to better combat terrorism.
My heartfelt gratitude is to my colleagues on the Immigration Subcommittee and to the committee's leadership—Senator HATCH, Senator LEAHY, and others—for their dedication and diligence in crafting what I think is fine legislation.

This antiterrorist package will enhance the ability of our consuls overseas and our immigration officers at home to intercept and remove both alien terrorists and those who support them. This is a daunting task.

We have a domestic problem on trying to intercept people coming into this country who mean us harm, and it is difficult in the sense we have nearly 350 million people a year, non-U.S. citizens, who enter this country, and we are looking for those few who mean us harm. This is a difficult task. This legislation helps to make it easier. We are looking for a needle in a haystack, and this legislation helps us in finding that or gives us a bigger magnet to be able to find it.

This legislation will capture not only those individuals who commit acts of terror but also those who enhance, enable, and finance them. It does so through several forceful changes to our current immigration laws. Among those changes is an expanded definition of terrorism, one that encompasses not only the acts of terrorism but the network of terrorism.

This legislation will also permit the Attorney General to promptly take into custody and detain those aliens who pose a threat to the safety or security of this Nation. At the same time, it will provide the Secretary of State with better information and better tools to identify terrorists and to deny them access to our country.

Perhaps most important of all, this legislation will improve the flow of information between the Immigration and Naturalization Service, the Department of Justice, the Department of Homeland Security, and intelligence communities. This is important. What we have is several stovepipes of information, and we need to be able to get those collected to be able to stop the terrorists before they enter our land.

This increased flow of information will allow those agencies tasked with protecting our borders to better coordinate and thereby thwart any terrorist seeking to reach our shores. This is not to say that is unimportant, but it is not as much as innocent visitors or the lawful permanent residents of our country. To the contrary. These immigration provisions contain appropriate safeguards to protect the liberties of persons whom we want in this country.

I am pleased to report that this legislation is carefully crafted to combat terrorism without compromising the values of the economy of the United States or the values that guide our immigration laws. This legislation represents a profound and essential improvement in our immigration laws. We need these changes if our immigration laws are to be an effective defense against the threat of terrorism we face today.

I urge my colleagues to support the legislation and note as well we are continuing to refine further other potential areas where we can make changes in our immigration laws to better be able to catch those who seek to enter our country to do us harm. Senator KENNEDY and I are working on bipartisan legislation to do just that. We hope to introduce this next week.

I appreciate the opportunity to address my colleagues on this important legislation. I reserve the remainder of our time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I yield myself such time as I may need. I see the Senator from Wisconsin, so I am only going to take 2 or 3 minutes at this point.

A number of Senators have asked some of the areas where this changes. We had a separate, bipartisan, bicameral negotiation, and we shaped and changed the legislation as originally proposed by the Attorney General and the administration. I will speak at greater length as we go on.

We improved security on the northern border, the 4,000-mile wonderful border between our country and Canada, another democratic nation. The State of the President, the Border Canada, as does mine. It is just a short drive from the Canadian border. Many members of my family came from Canada. Canada had historic and economic ties with Canada. Partly because we have taken so much for granted, we have also shortchanged this relationship. We should look at the border for our sake and for the sake of Canada. We have greatly improved security on the northern border by adding better technology, more Customs and INS agents. That helps.

We added something the administration did not include—money laundering. It is a problem, and those Members know this—if you want to learn something, follow the money. If you want to stop terrorism, one way is to cut off the money supply.

Third, we have added programs to enhance information sharing in coordination with State and local law enforcement, grants for local governments to respond to bioterrorism, to increase payments to families of fallen firefighters, police officers, and other public safety officers important.

Cooperation is necessary. The mayor of New York City, Rudolph Giuliani, the mayor of Baltimore, the mayor of New York, Mayor Giuliani and the FBI have further deteriorated. According to New York City sources, the mayor has engaged in more than one shouting match with FBI Assistant Director Barry Mawn.

It’s the same old problem because it’s the same old FBI. Newly appointed, much acclaimed, Director Robert Mueller has little difference. The bureau refuses to share information with local police agencies. It won’t permit security clearances for high ranking officials. Law enforcement officers around the country say that attitude lent itself to catastrophe on Sept. 11 and could permit further disasters.

Last Friday in Washington, Mueller—amiable and agreeable—sat down with big city police chiefs and promised things will get better. The chiefs doubt whether Mueller or Trombetta, the new FBI director, can change the bureau’s culture, described to me by one police chief as “elitist and arrogant.” Efforts to enlist members of Congress into pressuring the FBI to find politicians awed by the FBI mystique.

The FBI’s big national security section in New York City long has grappled with the New York Police Department. Its attitude has been that if you need to know, we’ll tell you,” one New York police source told me. That “need” never occurs, with the FBI adamant against any local anti-terror activity. The locals, in turn, complain about the feds failing to follow important leads.

Giuliani is not venting his outrage in this time of crisis, but sources report a high private decibel level by the mayor. The complaint to Mawn is that the NYPD is out of the loop, its senior officers not even granted security clearances.

Such complaints are common across the country, but only a few police chiefs speak publicly—notably Edward Norris of Baltimore (who complained in congressional testimony), Michael Chitwood of Portland, Maine, and Dan Oates of Ann Arbor, Mich.

Chitwood’s experience is most bizarre. He was infuriated to learn that the FBI knew of a visit to Portland by two Sept. 11 hijackers before notifying the police department. The police did not pursue a witness of that visit, the FBI threatened to arrest the chief. “I ignored them,” Chitwood told me. Has cooperation with the bureau improved? “Not a bit,” he said. Only Tuesday he learned from reading his local newspaper about a plane under federal surveillance parked at the Portland airport for several weeks.

Oates is familiar with the FBI, having tried to work with the feds during 21 years as chief of the NYPD before retiring this year to go to Ann Arbor. As a deputy chief who was commanding officer of the bureau’s New York office, he describes the FBI as “obsessed with turf.” Closings doors to police officers particularly infuriates Oates. “The security clearance issue is a tired old excuse that allows the FBI not to share,” he told me. “They probably had 10,000 security clearances for cops around the country.” Oates and other police chiefs believe Sept. 11 might have been averted had the FBI alerted local police agencies about a Michigan’s report of an Arab who wanted instructions for steering a big jet but not for landing or taking off.

Police chiefs would open the FBI to the same probing of decisions and actions that they routinely perform after the fact. They
also would like the same rules for the bureau that govern most of the nation's police departments. In the FBI, nobody takes the fall for blundering.

A premise that things will change in the FBI was implicit in Director Mueller's remarks to city police chiefs last Friday. Philadelphia Police Commissioner John Timoney, a former NYPD detective, who is more cautious in his criticism of the feds than his former colleague Oates, sounded skeptical after the meeting. "I'm hopeful," he told me, but he would make no predictions.

What he hopes for is the safety of the American people. The police chiefs of America want them cleaning out a FBI that will require leadership from the Oval Office. If George W. Bush doubts the urgency, he should talk to Rudy Giuliani.

Mr. LEAHY. We have to dramatically increase that cooperation or stop the noncooperation and start cooperating.

We have added humanitarian relief to immigrant victims of the September 11 terrorist attacks. A lot of immigrants became victims of that attack. They suddenly became orphans or were spouses of people killed.

We added help to the FBI to hire translators. I shudder to think how much information was available before September 11 that was never translated that might have prevented this.

We have added more comprehensive victims assistance; measures to fight cyber-crime; measures to fight terrorism against mass transportation systems; important measures to use technology to make our borders more secure.

Last, Madam President, and I cannot emphasize this enough, the Senate should never give a blank check to our law enforcement or to any President or Attorney General of either party. We have to protect the liberties of our people. Who watches the watchers? We watch.

I said earlier, as Benjamin Franklin once said, a nation that would trade its liberties for security deserves neither.

We can have our security and we can protect our liberties but only if we have adequate checks and balances. People who are professional law enforcement say give us the checks and balances. We give enormous power to Federal, State, and local law enforcement, but with that there have to be checks and balances. We have all seen times where if law enforcement is unchecked, innocent people can be hurt.

I worked for 8 years and I know we have to have checks and balances. We have done that. You cannot simply have a case and say: Do this, we will set aside this pesky Constitution for the moment.

We cannot do that. We built in checks and balances that were not in the original proposal. Ultimately, that will be the best thing for the country.

We will give law enforcement translators, tools, computers, and other things necessary to help them. We stand united as a nation. We know the only way to protect ourselves is to stop the terrorists before they strike. Going to the funerals after the strike is too late. We will do that, but we will do it protecting the foundations of our Constitution and freedom which made us such a great democracy in the first place.

None of us have any idea how long we will be in the Senate. I hope my colleagues are willing to stay here as long as they can. When I leave the Senate, as I will, I want to leave knowing I have done my best to protect our freedoms.

I have said over and over again, the Senate is the conscience of the Nation. As much legislation, this has to reflect our conscience.

I reserve the remainder of my time.

Mr. PEINGOLD. Madam President, I have asked for this time to speak about the antiterrorism bill, H.R. 3162. As we address this bill, of course, we are especially mindful of the terrible events of September 11 and beyond, which led to this bill's proposal and its quick consideration by Congress.

This has been a tragic time in our country. Before I discuss this bill, let me first pause to remember, through one small story, how September 11 has irrevocably changed so many lives. In a town not far from here, a family lost their children.

The man, as he went jogging near the Pentagon, came across the makeshift memorial built for those who lost their lives. He slowed to a walk as he took in the sight before him, the red, white, and blue honoring the structures. Off to the side, was a smaller memorial with a card that read: Happy birthday, Mommy. Although you died and are no longer with me, I feel as if I still have you in my life. I think about you every day.

After reading the card, the man felt as if he were "drowning in the names of dead mothers, fathers, sons, and daughters." The author of this letter shared a moment in his own life that so many of us have had, the moment where televised pictures of the destruction are made painfully real to us. You read a card, see the anguished face of a loved one, and then, suddenly, we feel the enormity of what has happened to so many American families and to all of us as a people.

We also had our initial reactions to the attack. My first and most powerful emotion was a solemn resolve to stop these terrorists. That remains my principal reaction to these events. But I also quite often felt that two cautions were necessary. I raised them on the Senate floor the day after the attacks.

The first caution was that we must continue to respect our Constitution and protect our civil liberties in the wake of the attacks.

As the chairman of the Constitution subcommittee of the Judiciary Committee I recognize fully that this is a different world, with different technologies, different issues, and different threats.

Yet we must examine every item that is proposed in response to these events to be sure we are not rewarding these terrorists and weakening ourselves by giving up the cherished freedoms that they seek to destroy.

The second caution I issued was a warning against the mistreatment of Arab Americans, Muslim Americans, South Asians, or others in this country. Already, one day after the attacks, we were hearing news reports that misguided anger against people of these backgrounds had led to harassment, violence, and even death.

I suppose I was reacting instinctively to the unfolding events in the spirit of the Irish statesman John Philip Curran, who said:

"The condition upon which God hath given liberty to man is eternal vigilance."

During those first few hours after the attacks, I kept remembering a sentence from a case I had studied in law school. Not surprisingly, I didn't remember which case it was, who wrote the opinion, or what it was about, but I did remember these words:

"While the Constitution protects against invasions of individual rights, it is not a suicide pact."

I took these words as a challenge to my concerns about civil liberties at such a momentous time in our history; that we must be careful to not take civil liberties so literally that we allow ourselves to be destroyed.

But upon reviewing the case itself, Kennedy v. Mendoza-Martinez, I found that Justice Arthur Goldberg had made this statement but then ruled in favor of the civil liberties position in the case, which was about draft evasion. He elaborated:

"It is fundamental that the great powers of Congress to conduct war and to regulate the Nation's foreign relations are subject to the constitutional requirements of due process. The imperative necessity for safeguarding these rights to procedural due process under the greatest or most apparent exigency that has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that we must dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action."

The Justice continued:

"The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution."

I have approached the events of the past month and my role in proposing and reviewing legislation relating to it in this spirit. I believe we must, we must, re-double our vigilance. We must re-double our vigilance to ensure our security and to prevent further acts of terrorism; and we must re-double our vigilance to preserve our values and the basic rights that make us who we are.

The Founders who wrote our Constitution and Bill of Rights exercised that vigilance even though they had recently fought and won the Revolutionary War. They did not live in comfortable and easy times of hypothetical
enemies. They wrote a Constitution of limited powers and an explicit Bill of Rights to protect liberty in times of war, as well as in times of peace.

Of course, there have been periods in our nation’s history when civil liberties had to be temporarily curtailed. The last time that appeared at the time to be the legitimate exigencies of war. Our national consciousness still bears the stain and the scars of those events: The Alien and Sedition Acts, the suspension of habeas corpus, the Civil War internment of Japanese-Americans, German-Americans, and Italian-Americans during World War II, the blacklisting of supposed communist sympathizers during the McCarthy era, and the surveillance and harassment of antiwar protesters, including Dr. Martin Luther King Jr., during the Vietnam War. We must not allow these pieces of our past to become prologue.

Even in our great land, wartime has sometimes brought us the greatest tests of our Bill of Rights. For example, during the Civil War, the Government arrested some 13,000 civilians, implementing a system akin to martial law. President Lincoln issued a proclamation ordering the arrest and military trial of any persons “discouraging volunteer enlistments, or resisting military drafts.” Wisconsin provided one of the first challenges of this order. Draft protests rose up in Milwaukee and Sheboygan. An anti-draft riot broke out in Luxemburg in Port Washington, WI. When the government arrested one of the leaders of the riot, his attorney sought a writ of habeas corpus. His military captors said that the President had abolished the writ. The Wisconsin Supreme Court was among the first to rule that the President had exceeded his authority.

In 1917, the Postmaster General revoked the mailing privileges of the newspaper Milwaukee Leader because he felt that some of its articles impeded the war effort and the draft. Articles called the President an authoritarian and called the draft oppressive. Over dissents by Justices Brandeis and Holmes, the Supreme Court upheld the action.

We all know during World War II, President Roosevelt signed orders to incarcerate more than 110,000 people of Japanese origin, as well as some roughly 12,000 German origin and 3,000 of Italian origin.

Earlier this year, I introduced legislation to set up a commission to review the wartime treatment of Germans, Italians, and other Europeans during that period. It did not come out of heartfelt meetings in which constituents told me their stories. They were German-Americans, who came to me with some trepidation. They had waited 50 years to raise the issue with a member of Congress. They did not come to complain, but they had been the Government’s commission on the wartime internment of people of Japanese origin, and they wanted their story to be told, and an official acknowledgment as well with regard to what had happened to them. I hope, that we will move to pass this important legislation early next year. We must deal with our nation’s past, even as we move to ensure our nation’s future.

(Mrs. STABENOW assumed the chair.)

Mr. FEINGOLD. Now some may say, indeed we may hope, that we have come a long way since those days of interfering with the liberties of our citizens. But there is ample reason for concern. And I have been troubled in the past 6 weeks by the potential loss of commitment in the Congress and the country to traditional civil liberties.

As it seeks to combat terrorism, the Justice Department is making extraordinary use of its power to arrest and detain individuals, jailing hundreds of people on immigration violations and arresting more than a dozen “material witnesses” not charged with any crime. Although the Government has used these authorities before, it has not done so on such a broad scale. Judging from Government announcements, the Government has not brought any criminal charges related to the attacks on September 11 with respect to the overwhelming majority of these detainees.

For example, the FBI arrested as a material witness the San Antonio radiologist Albrader Al-Hazmi, who has a name like two of the hijackers, and who listed to be in San Diego for a medical conference. According to his lawyer, the Government held Al-Hazmi incomunicado after his arrest, and it took 6 days for lawyers to get access to him. After the FBI released him, his lawyer said:

This is a good lesson about how frail our processes are. It’s how we treat people in difficult times like these that is the true test of the democracy and civil liberties that we brag so much around the world.

I agree with those statements.

Now, it so happens—and I know the Presiding Officer is aware of that because he has been very helpful on this issue—that since early 1999, I have been working on another bill that is poignantly relevant to recent events: legislation to prohibit racial profiling, especially the practice of targeting pedestrians or drivers for stops and searches based on the color of their skin. Before September 11, people spoke of the issue as a political八卦 list of white Americans and Latino-Americans who had been profiled. But after September 11, the issue has taken on a new context and a new urgency.

Even as America addresses the demanding security challenges before us, we must strive mightily also to guard our values and basic rights. We must guard against racism and ethnic discrimination against people of Arab and South Asian origin and those who are Muslims.

We who do not have Arabic names or do not wear turbans or headscarves may not feel the weight of these times as much as Americans from the Middle East and South Asia do. But as the great jurist Learned Hand said in a speech in New York’s Central Park during World War II:

The spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty which weighs its interests alongside its own without bias. . . .

Was it not at least partially bias, however, when passengers on a Northwest Airlines flight a month ago insisted that Northwest remove from the plane three Arab men who had cleared security? Of course, given the enormous anxiety and fears generated by the events of September 11, it would not have been difficult to anticipate some of these reactions, both by our government and some of our people. Some have said rather cavalierly that in these difficult times we must accept some reduction in our civil liberties in order to be secure.

Of course, there is no doubt that if we lived in a police state, it would be easier to catch terrorists. If we lived in a country that allowed the government to open your mail, eavesdrop on your phone conversations, or intercept your email communications; if we lived in a country that allowed the government to hold people in jail indefinitely based on what they write or think, or based on mere suspicion that they are up to no good, then the government would no doubt discover and arrest more terrorists.

But that probably would not be a country in which we would want to live. And that would not be a country for which we could, in good conscience, ask our young people to fight and die. In short, that would not be America.

Preserving our freedom is one of the main reasons we are now engaged in this new war on terrorism. We will lose this war without firing a shot if we sacrifice the liberties of the American people.

That is why I found the antiterrorism bill originally proposed by Attorney General Ashcroft and President Bush to be troubling.

The administration’s proposed bill contained vast new powers for law enforcement, some seemingly drafted in haste and others that came from the anti-Arab wave that swept Congress rejected in the past. You may remember that the Attorney General announced his intention to introduce a bill shortly after the September 11 attacks. He provided the text of the bill the following Wednesday, and urged Congress to enact it by the end of the week. That was plainly impossible, but the pressure to move on this bill quickly, without deliberation and debate, has been relentless ever since.

The thing to shortcut the legislative process in order to get Federal financial aid to the cities hit by terrorism. We did that, and no one complained that we moved too quickly. It
is quite another to press for the enactment of sweeping new powers for law enforcement that directly affect the civil liberties of the American people without due deliberation by the people’s elected representatives.

Unfortunately, enthusiasm for new powers has prevailed at least to some extent, and while this bill has been on a fast track, there has been time to make some changes and reach agreement on a bill that is less objectionable than the bill that the administration originally proposed.

As I have concluded, I have not found the provision in question to be unconstitutional. The courts have almost uniformly rejected efforts to restrain assets before conviction if they are assets gained in the alleged criminal enterprise. This provision, in my view, was simply an attempt on the part of the Department to take advantage of the emergency situation and get something that they’ve wanted to get for a long time.

As I have indicated, the foreign wiretap and criminal forfeiture provisions were dropped from the bill that we considered in the Senate. Other provisions were rewritten based on objections that I and others raised about them. For example, the original bill contained a provision allowing the Attorney General to get copies of educational records without a court order. The final bill requires a court order and a certification by the Attorney General to get copies of educational records without a court order.

The bill contains some very significant changes in criminal procedure that will apply to every federal criminal investigation in this country, not just those involving terrorism. One provision would expand the circumstances in which law enforcement agencies can search homes and offices without notifying the owner prior to the search. The longstanding practice under the fourth amendment of serving a warrant prior to executing a search could be easily avoided in virtually every case, because the government would simply have to show that it had "reasonable cause to believe" that providing notice "may seriously jeopardize an investigation." This is a significant infringement on personal liberty.

Notice is a key element of fourth amendment protections. It allows a person to point out mistakes in a warrant and to make sure that a search is limited to the terms of a warrant. Just think about the possibility of the police showing up at your door with a warrant to search your house. You look at the warrant and say, "yes, that’s my address, but the name on the warrant doesn’t match." Realize a mistake has been made and go away. If you’re not home, and the police have received permission to do a "sneak and peek" search, they can come in your house, look around, and leave, and may never have to tell you that ever happened.

That bothers me. I bet it bothers most Americans.

Another very troubling provision has to do with the effort to combat computer crime. I want the effort to stop computer crime. The bill allows law enforcement to monitor a computer without the permission of the user or operator, without the need to get a warrant or show probable cause.

I want to tell you, Madam President, I have been at pains to point out things I can support in this bill. I think that power is fine in a case of a so-called denial of service attack. What is that? That is plain old computer hacking. You bet. We need to be able to get at that kind of crime.

Computer owners should be able to get the police permission to monitor communications coming from what amounts to a trespasser on the computer, a real trespasser.

But we tried to point out as calmly and constructively as possible on the floor that, as drafted in this bill, the provision might permit an employer to give permission to the police to monitor the e-mails of an employee who has used her computer at work or at a school, and happens to go to a gambling or pornography site in violation of the Internet use policies of the library or the university might also be subjected to Government surveillance—without probable cause and without any time limit at all. With this one provision, fourth amendment protections are potentially eliminated for a broad spectrum of electronic communications.

I am also very troubled by the broad expansion of Government power under the Foreign Intelligence Surveillance Act, known as FISA. When Congress passed FISA in 1978, it granted to the executive branch the power to conduct surveillance in foreign intelligence investigations without having to meet the rigorous probable cause standard under the fourth amendment that is required for criminal investigations.

There is a lower threshold for obtaining a wiretap order from the FISA court because the FBI is not investigating a crime. It is investigating foreign intelligence activities. But the law currently requires that intelligence gathering be the primary purpose of the investigation in order for this much lower standard to apply. The bill changes that requirement.

The Government will now only have to show that intelligence is a "significant purpose" of the investigation. So even if the primary purpose is a criminal investigation, the heightened protections of the fourth amendment will not apply.

It seems obvious that with this lower standard, the FBI will be able to try to...
use FISA as much as it can. And, of course, with terrorism investigations, that won’t be difficult because the terrorists are apparently sponsored or at least supported by foreign governments. So this means the fourth amendment rights will be significantly curtailed in many investigations of terrorist acts.

The significance of the breakdown of the distinction between intelligence and criminal investigations becomes apparent when you see other expansions of government power under FISA in this bill.

Another provision that troubles me a lot is one that permits the Government, under FISA, to compel the production of records from any business regarding any person if that information is sought in connection with an investigation of terrorism or espionage.

I want to be clear here, as well, we are not talking about travel records directly pertaining to a terrorist suspect, which we can all see obviously can be highly relevant to an investigation of a terrorist plot. FISA already gives the FBI the power to get airline, train, hotel, car rental, and other records of a suspect.

But this bill does much more. Under this bill, the Government can compel the disclosure of the personal records of anyone—perhaps someone who worked with, or lived next door to, or went to school with, or sat on an airplane that has been seen in the company of, or whose phone number was called by—the target of the investigation.

Under this new provision, all business records can be compelled, including those containing sensitive personal information, such as medical records from hospitals or doctors, or educational records, or records of what books somebody has taken out from the library. We are not talking about terrorist suspects, we are talking about people who just may have come into some kind of casual contact with the person in that situation. This is an enormous expansion of authority under a law that provides only minimal judicial supervision.

Under this provision, the Government can apparently go on a fishing expedition and collect information on virtually anyone. All it has to allege, in order to get an order for these records, is that the information is sought for an investigation of international terrorism or clandestine intelligence gathering. That is it. They just have to say that. On that basis the provision remains fundamentally flawed. Even with this 7-day charging requirement, the bill would nevertheless continue to permit the indefinite detention in two situations. First, if the Attorney General believes that deportation cases may be continued to be held if the Attorney General continues to have suspicions. Second, this provision creates a deep unfairness to immigrants who are found not to be deportable for terrorism but have an immigration status violation, such as overstaying a visa. If the immigration judge finds that they are eligible for relief from deportation, and therefore can stay in the country—for example, if they have longstanding family ties here—nonetheless, the Attorney General can continue to hold them indefinitely.

I am pleased that the final version of the legislation includes a few improvements over the bill that passed the Senate. In particular, the bill would require the Attorney General to review the detention decision every 6 months. And it would only allow the Attorney General to detain the person. Not lower level officials—to make that determination.

While I am pleased these provisions are included in the bill, I believe it still falls short of meeting even basic constitutional standards of due process and fairness.

The bill continues to allow the Attorney General to detain persons based on mere suspicion. Our system normally requires high standards of proof for a deprivation of liberty. For example, deportation proceedings themselves are subject to a clear and convincing evidence standard. And, of course, criminal convictions require proof beyond a reasonable doubt. The bill continues to deny detained persons a trial or a hearing where the Government would be required to prove that that person is, in fact, engaged in terrorist activity. I think this is unjust and inconsistent with the values of our system of justice that we hold dearly.

Another provision in the bill that deeply troubles me allows the detention and deportation of people engaging in innocent associational activity. It would allow for the detention and deportation of individuals who provide lawful assistance to groups that are not even designated by the Secretary of State as terrorist organizations but instead have engaged in something vaguely defined as “terrorist activity” sometime in the past. To avoid deportation, the immigrant is required to prove a negative: That he or she did not support, and who has not known, that the assistance would further terrorist activity.

I think this language creates a very real risk that truly innocent individuals could be deported for innocent associations with humanitarian or political groups that the Government later chooses to regard as terrorist organizations. Groups that could fit this definition could include Operation Rescue, Greenpeace, and even the Northern Ireland Loyalists fighting the Taliban in Afghanistan. So this really amounts to a provision of “guilt by association,” which I think violates the first amendment.

Another problem of the first amendment, under this bill, a lawful permanent resident who makes a controversial speech that the Government deems to be supportive of terrorism might be barred from returning to his or her family after taking a trip abroad.

Despite assurances from the administration at various points in this process that these provisions that imply associative activity would be improved, there have been no changes in the bills with these points since it passed the Senate.

Here is where my caution in the aftermath of the terrorist attacks and my concern about the reach of the antiterrorism bill come together. To the extent that the expansion of new immigration powers that the bill grants the Attorney General are subject to abuse, who do we think is most likely to bear the brunt of that abuse? It is probably someone from El Salvador or Nicaragua or immigrants from Haiti or Africa. Most likely it will be immigrants from Arab, Muslim and South Asian countries.

In the wake of these terrible events, our Government has been given vast new powers, and they may fall most heavily on a minority of our population who already feel particularly, acutely the pain of this disaster.

Concerns of this kind have been raised with the administration. Supporters of this bill have just told us: Don’t worry, the FBI would never do this. But the Attorney General and the Justice Department to ensure that my fears are not borne out.

The antiterrorism bill we consider in the Senate today, of course, highlights the march of technology and how that march cuts both for and against personal liberty. But Justice Brandeis foresaw some of the future in a 1928 dissent when he wrote:
The progress of science in furnishing the Government with means of espionage is not likely to stop with wire-tapping. Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. . . . One is that the Constitution affords no protection against such invasions of individual security? We must grant law enforcement the tools that it needs to stop this terrible threat, and we must give them only those extraordinary tools that they need and that relate specifically to the task at hand.

In the play, “A Man for All Seasons,” Sir Thomas More questions the bound-er Roper whether he would level the forest of English laws to punish the Devil. “What would you do?” More asks, “Cut a great road through the law to get after the Devil?” Roper affirms, “I’d cut down every law in Eng-land to do that.” To which More re-plies:

And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country’s planted thick with laws from coast to coast, man, I tell you. And if you cut them down, d’you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own sake’s safety.

We must maintain our vigilance to preserve our laws and our basic rights. We in this body have a duty to analyze, to test, to weigh new laws that the zealous and often sincere advocates of security insist to us. That is what I have tried to do with the anti-terrorism bill, and that is why I will vote against this bill when the roll is called.

Protecting the safety of the Amer-ican people is a solemn duty of the Congress. We must work tirelessly to prevent more tragedies like the devas-tating attacks of September 11. We must prevent more children from los-ing their mothers, more wives from los-ing their husbands, and more fire-fighters from losing their heroic col-leagues. But the Congress will fulfill its duty only when it protects both the American people and the freedoms at the foundation of American society. So let us preserve our heritage of basic rights. Let us practice as well as preach that liberty, and let us fight to maintain that freedom that we call America.

Madam President, I reserve the re-mainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Madam President, on behalf of Senator LEAHY, I yield 10 minutes to the Senator from North Dakota.

Mr. HATCH. May I make a few com-ments before?

Mr. REID. When the Senator from Utah finishes his remarks, I ask that the Senator from North Dakota be recog-nized for 10 minutes.

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

The Senator from Utah.

Mr. HATCH. I rise to address briefly a couple of the points made by the dis-tinguished Senator from Wisconsin. First, what he called a “sneak and peek” search warrant, these warrants are already allowed by the United States, throughout our whole country. The bill simply codifies and clarifies the practice making certain that only a Federal court, not an agent or pro-secutor, can authorize such a warrant. Let me be clear: Courts already allow warrants under our fourth amendment. It is totally constitutional. It has been held so almost from the beginning of this country; some will say from the beginning of this country. Together with Senator LEAHY, we carefully drafted a provision that standardizes this widely accepted practice.

Second, to respond to the suggestion that the legislation is not properly mindful of our constitutional lib-erties—of the freedoms at the core of American life. Let us practice as well as theorize about maybe the loss of some civil liberties—I would like to talk concretely about the loss of liberty of almost 6,000 people because of the terrorist acts on September 11. I am a little bit more concerned right now about the loss of life. I am even more concerned today about the fact that they have lost their lives that thousands of other Americans don’t lose their lives because we fail to act and fail to give law enforcement the tools that are essen-tial.

It is a nice thing to talk about the-ory. But we have to talk about reality. We have written this bill so the con-stitutional realities are that the Con-stitution is not infringed upon and civil liberties are not infringed upon except to the extent that the Constitu-tion permits law enforcement to cor-rect difficulties.

Yes, I think we must protect the Constitution, and that has been at the core of my 50 years in the Congress. This bill does just that. Nothing in this bill undermines constitutional liberty. Nothing in this bill comes remotely close to the Alien and Sedition Act, which, of course, was held to be unconstitutional, or the inter-ment of Japanese prisoners of war, which was a disgrace—there is no ques-tion about it, but at that point it was held to be constitutional—or the other outrages that have occurred in the past that were mentioned by the distin-guished Senator from Wisconsin.

The tools we are promoting in this legislation have been carefully crafted to protect civil liberties. In addition to protecting civil liberties, give law en-forcement the tools they need so we, to the extent we possibly can, will be able to protect our citizens from events and actions such as happened on September 11 of this year.

Thousands of Americans died that day, thousands. That is real. We have been told there may be some other ac-tions taken by terrorists. That may be real. To the extent that may be real, we sure want to make sure our law en-forcement people, within the con-straints of the Constitution, have the optimum law enforcement tools they need to do the job.

As the past few weeks have made clear, these terrorists still have a gun and they are attacking American people. Under such circumstances, it is our sworn duty to do everything in our power, within the bounds of the Constitution, to protect and defend our people. That is what this bill does.

Senator from Wisconsin worries about the “possible” loss of civil lib-erties. That is laudable. But I am more concerned about the actual loss of the thousands of lives that have been lost and the potential of other lives that may be lost because we don’t give law enforcement the tools they need.

This bill protects us, to the extent that we possibly can, against further attacks such as occurred on September 11 and many, many other potential attac-ks as well.

I think most people in this country would be outraged to know that various agencies of Government, the intel-ligence community, and law enforce-ment community, under current law— until this bill passed—had the ex-clusive information that might help interdict and stop terrorism. People are outraged when they hear this. And they ought to be.

The fact is that that is the situation. I know the heads of the Criminal Divi-sion of the Justice Department have said that: Unless we can share this infor-mation, we cannot pick up the peo-ple who are terrorists, whom we need to stop, in time to stop them. I think they would be outraged to know that, under title III, you cannot electroni-cally surveil a terrorist unless there is some underlying criminal predicate. In many cases, there is no underlying criminal predicate, so you can’t do to terrorists what we can do for health care fraud, or for sexual exploitation of children, or for the Mafia, or for drug dealers.

People would be amazed to know we treat terrorism with kid gloves in the current criminal code. This bill stops that. I think most people would be amazed to know that pen register trap-and-trace devices are not permitted against terrorists under provisions of the law today. You can’t get the num-bers called out of the phone and you can’t get the numbers called into the phone. That is what that means. This bill remedies that so we can get these numbers and do what has to be done.

I think most people are shocked to find out that you can’t electronically surveil the terrorists. You have to go after the phone, and then you have to get a warrant in every jurisdiction where that phone shows up. Terrorists don’t pay any attention to those anti-quated laws. They just buy 10 cell phones, talk for a while, and throw it out the window. We have to develop the tools to track terrorists. Under current law, we cannot do that with the efficiency that needs to be used here. I don’t see any
civil liberties violated there, but I see some of them protected. I think of the civil liberties of those approximately 6,000 people who lost their lives, and potentially many others if we don’t give law enforcement the tools they need to do the job. That is what this bill does.

I will have more to say, perhaps, on this later. I wanted to make these particular points. I am happy to retain the remainder of my time.

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

Mr. WELLSTONE. I ask unanimous consent that I may follow the Senator from North Dakota.

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

Mr. DORGAN. I understand we are under a time agreement and I am allotted 10 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. Madam President, the legislation that is on the floor is legislation I will vote for and support. I think it advances our country’s interests in dealing with the issue of terrorism. But I don’t want to talk about what we still want to talk about something that is not now in the bill and should be. I want to ask the question, Why?

I came to the floor an hour ago and was surprised to find out that something that I care very much, something agreed to in the Senate, is now no longer in this legislation. Here is the issue. I held and chaired a hearing in my subcommittee on Appropriations a couple weeks ago. The Customs Service was there and Immigration was there. They said we have a system in this country called the advance passenger information system. It is a system under which international air carriers electronically transmit to the Customs Service passenger and cargo manifests; so that before they enter and are cleared for departure, we know who is on that plane and what is on that plane, so we can determine whether there are people who should not be allowed to enter this country. That is the advance passenger information system. It works, but it is voluntary and only 85 percent of the carriers are complying.

I asked at my hearing of Customs and Immigration: Should this be mandatory? Absolutely, we need you to make this mandatory.

When we had the antiterrorism bill on the floor of the Senate, I had cleared an amendment in the managers’ package that would make this mandatory. Let me tell you of the airlines that do not comply under the voluntary standard and give us no advance notice:

Mr. HATCH. If the Senator will yield, I commend the Senator. I think he is absolutely right. We had it in the Senate bill. It was a worthwhile provision that I think we need to include later, since we can’t do it on this bill at this point. I will support him in every way possible to get this done in the future. I commend the Senator for bringing this to the attention of this body because I absolutely would not permit us to put that in the bill.

Mr. DORGAN. I inquire of the Senator from Utah, what possibly could be their motive to not want this in the antiterrorism bill?

Mr. HATCH. I think it came down to a jurisdictional argument. That is my opinion. We understand that around here, but we are trying to solve terrorism now. The Senator’s point is a very good point. My main reason for interrupting him at this point is to commend him and tell him I will do everything in my power to get that passed. I think it is critical that the other 15 percent be made mandatory, that they have to comply, because most of the airlines comply on a voluntary basis.

I am sorry to interrupt the Senator. I reserve my time.

Mr. DORGAN. Madam President, I appreciate the one subcommittee of the Senator from Utah. It is not his fault. I understand he strongly supports this. I kind of felt blind-sided an hour ago when I was told this wasn’t in the bill we are discussing because we had cleared advances from the other side of this Capitol have this notion of muscle flexing with respect to jurisdictional standards. Frankly, I don’t understand that on an issue that is this important. We need advance passenger information clearing—not on a voluntary basis but on a mandatory basis. Somehow it got left out.

I thank the Senator from Utah for his cooperation because we are going to get this done. This needs to be done. If we have small-minded people in this Capitol simply protecting their turf and who don’t seem to worry about combating terrorism, we will move beyond them and we are not going to pay much attention to their concerns.

If I might ask, how much time remains on my 10 minutes?

The PRESIDING OFFICER. The Senator has 6½ minutes.

Mr. DORGAN. I want to mention two other issues, and they don’t relate directly to this bill. They are very important to me.

We are talking about antiterrorism activities. We have an organization down at the Treasury Department’s Office of Foreign Asset Control. I happen to fund that area, as I am chairman of the Appropriations subcommittee that funds that. I want to say something I said before the terrorist attacks of September 11. OFAC, in my judgment, ought to be using its resources to track terrorists and track the trail left by terrorists and the movement of money around the globe.

But in August I pointed out that what OFAC was doing—at least with some of its resources—and it appears that 10 percent of the resources of OFAC is devoted to chasing little old ladies in tennis shoes from Illinois who join a bicycle club from Canada and go bicycling in Cuba and 15 months later get a letter from the Treasury Department that the fine is $9,500. That is one example of a retired teacher from Illinois. OFAC is chasing retired folks who go on a bicycling trip to Cuba with a Canadian bicycling Club, and she was fined $9,500. I talked to her and others who have been fined.

There was a $55,000 fine for someone who was with some friends in the Cayman Islands and they decided to go to Cuba for the weekend. This guy is wondering what on Earth has happened. He was not supposed to travel to Cuba, but he didn’t know it. OFAC is supposed to be tracking terrorists, but they are chasing retired schoolteachers from Illinois for taking a bicycling trip in Cuba.

I want to stop this foolishness and track the trail of terrorists. It doesn’t make sense to be doing what OFAC has been doing. First of all, it is embarrassing. I understand the restrictions on travel, which we should change and we will change, but should we be using 10 percent of the assets of OFAC to track these people down and levy civil fines at a time when terrorists are designing approaches to kill Americans? What on Earth is going on here?

Mr. DORGAN. OFAC, if they are listening: Get busy doing the right things. Get right about public policy initiatives that we are funding you to do.

Let me mention one additional item, if I may, and again it relates to antiterrorism, not necessarily just to this bill, and that is the issue of northern border security. We have a 4,000-mile border between the United States and Canada, with 128 ports of entry, mostly of them at night. At 10 o’clock at night, the security between the United States and Canada is an orange rubber cone, just a big fat dumb rubber cone sitting in the middle of the road.

Those who want to come in illegally at 11 or 12 o’clock at night and are polite about it will stop in front of the rubber cone, remove the rubber cone, drive through, and replace it. Those who do not care will shred it at 60 miles an hour. That is supposed to be security in this country.

We know a terrorist came across that northern border at Port Angeles. This particular Middle Eastern terrorist was going to create substantial bombing activities of public facilities at the turn of the millennium in Los Angeles. We know the terrorists know where it is easy to get through our border and where it is not.

Having said all that, that a rubber cone is no substitute for security, the Treasury Department has said to this...
Congress that none of the $20 billion we appropriated for security is going to go for increased resources at the northern border for Customs. The other side, Immigration and Border Patrol, are going to get increased resources, but the Treasury Department says: No, we do not need additional resources at the Customs Service.

Nothing could be further from the truth. I am just asking these people who are thinking through these issues to stop the wrong way. We do need additional resources. That is why we provided the $20 billion. We do need additional security on the northern border. Yes, orange rubber cones are inexpensive. They are also ineffective. They are no substitute for the security in this country. I know I am going a bit afield from this bill, but I wanted to make the other two points about OFAC and what it is doing and northern border security because that, too, relates to the issue of terrorism and this country’s ability to deal with the terrorist threats.

I conclude by saying I came here to talk about the advance passenger information system. I, again, feel terrible it was left out of this bill because we had agreement in the Senate. I understand some folks in the House refused to move on this issue.

One way or another I am going to get this done in the next couple of weeks. I will find a bill, a vehicle. This is going to get done. I appreciate the willingness of the Senator from Vermont and the Senator from Utah to help me do that. That is a glaring omission from the Senate. If the House does not want to do it on this bill, we will force them to do it on another bill.

Mr. REID, Madam President, on behalf of senator LEAHY, I yield 10 minutes to the Senator from Massachusetts, and I ask unanimous consent that his remarks follow—there is an objection, it is so ordered in effect for Senator WELSTONE to be heard now—the remarks of Senator WELSTONE.

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

The Senator from Minnesota.

Mr. WELSTONE. Madam President, I thank the Chair.

Mr. WELSTONE. Thank you. Senator from Minnesota.

Mr. WELSTONE. I thank the Chair. Madam President, this is one of the most important pieces of legislation we will consider during this Congress. The horrifying events of life and destruction that occurred on September 11, the crime against humanity, changed us as a country. The Uniting and Strengthening America Act is an opportunity to help ensure that such terrorist attacks do not occur again. We need to improve all aspects of our domestic security, including by enhancing our intelligence capacities so that we can identify possible future attacks in their planning stages and prevent them from happening. We must be vigilant and willing to take the steps and resources required to gather the information that we need to protect ourselves and our way of life.

I appreciate the enormous amount of time and energy that my colleagues in both Chambers have put into this legislation. They have done their best to balance the risk of further terrorist attacks with possible risks to civil liberties. My bill includes measures to enhance surveillance; improve the working relationship among Federal, State, and local agencies; strengthen border control; permit the detention of certain suspects who may be the subject of investigative efforts; help crime victims; respond to bioterrorism; and crack down on money laundering.

I am especially supportive of two new important provisions added in conference that will enhance domestic preparedness against future attacks, at the local level: the First Responders Assistance Act, and the Grant Program for State and Local Domestic Preparedness Support. These provisions authorize grants to State and local authorities to respond to and prevent acts of terrorism, particularly for terrorism involving weapons of mass destruction and biological, nuclear, and chemical devices; and revises an existing grant program to provide 1, additional flexibility in the use of funds; 2, training and technical assistance to State and local first responders; and 3, a more equitable allocation of funds to all States.

Last week I traveled to Moorhead, Mankato and Rochester, MN and talked with firefighters and first-responders about this very issue. They told me they desperately need training and equipment to address our new terrorism risks. These local grants are extremely important to address the needs our most important asset in the fight against terrorism: those law enforcement and emergency personnel on the front lines.

Although I still have some reservations about certain provisions of the bill as they might affect civil liberties, and wish that it were more tightly targeted to address only actions directly related to terrorism or suspected terrorism, I am pleased with the inclusion of several key civil liberty safeguards. The bill requires certain electronic reports to go to a judge when pen registers are used on the internet; includes provisions requiring notification to a court when grand jury information is disclosed; and contains a 4-year sunset provision for several of the electronic surveillance provisions.

The bill expands the Regional Information Sharing Systems Program to promote information sharing among Federal, State, and local law enforcement. We have a critical role to play in preventing and investigating terrorism, and this bill provides them benefits appropriate to such duty. The bill streamlines and expedites the Public Safety Officers’ Benefits application process for family members of fire fighters, police officers and other emergency personnel who are killed or suffer a disabling injury in connection with a future terrorist attack. And it raises the total amount of the Public Safety Officers’ Benefit Program payments from approximately $150,000 to $250,000.

This bill will also make an immediate difference in the lives of victims of terrorism and their families. It refines the Victims of Crime Act and by doing so improves the way in which its crime fund is managed and preserved. It replenishes the emergency reserve of the Crime Victims Fund with up to $50 million and improves the mechanism to replenish the fund in future years. The USA Act also increases security on our northern border, including the border between Canada and my State of Minnesota. It triples the number of Border Patrol, Customs Service, and INS inspectors at the northern border and authorizes $100 million to improve old equipment and provide new technology to INS and the Customs Service at that Border.

On the criminal justice side, the bill clarifies existing “cybercrime” law to cover computers outside the United States that affect communications in the United States and changes sentencing guidelines in some of these cases. It provides prosecutor better tools to go after those involved in money laundering schemes that are linked to terrorism, and it adds certain terrorism-related crime and OFAC sanctions.

At the same time, the bill establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government’s antiterrorism authority. It strengthens our Federal laws relating to the threat of biological weapons and enhances the Government’s ability to prosecute suspected terrorists in possession of biological agents. It will prohibit certain persons, particularly those from countries that support terrorism, from possessing biological agents. And it will prohibit any person from possessing a biological agent of a type of quantity that is not reasonably justified by a peaceful purpose.

I support these much-needed measures. And I especially support the four-year sunset provision for several of the electronic surveillance provisions. I do wish, however, that some provisions were might tightly targeted to address only actions directly related to terrorism or suspected terrorism. It is for this reason, I believe we will need to monitor the use of new authorities provided to law enforcement agents to conduct surveillance. The bill broadens the Foreign Intelligence Surveillance Act, FISA, by extending FISA surveillance authority to criminal investigations, even when the primary purpose is not intelligence gathering. The bill limits this ability by authorizing surveillance only if a significant purpose for gathering information. I hope this new FISA authority will be used for the purpose of investigating and preventing terrorism or
suspected terrorism, and not for other domestic purposes. The bill also allow surveillance to follow a person who uses multiple communications devices or locations, the so-called “roving-wiretap.” Again, I am hoping this new authority will be abused.

We have done our best in this bill to maximize our security while minimizing the impact some of these changes may have on our civil liberties. Nearly all of us have probably said since September 11 that if that day’s terror is allowed to undermine our democratic principles and practices, then the terrorists will have won a victory. We should pass this bill today. And we should also commit ourselves to monitoring its impact on civil liberties in the coming months and years.

Our challenge is to balance our security with our liberties. While it is not perfect, I believe we are doing that in this bill.

Madam President, it is a jarring analogy, but I use it to explain how I arrived at my decision on this legislation. In 1940 and 1941, the Germans engaged in an unprecedented attack on the civilian population of Great Britain. The goal was to weaken citizens in their fight against Nazism. At the end of that attack, 20,000 people were killed. On September 11 in our country, close to 6,000 innocent people were massacred.

It is absolutely the right thing to take the necessary steps to try to prevent this from happening and to provide protection to people in our country.

There are many provisions in this legislation with which I agree. They are important to people in Minnesota, Michigan, and around the country, by way of what we need to do to protect our citizens.

When it comes to electronic surveillance, as Senator Feingold has stated with considerable eloquence, the legislation is going to create a danger to our country and world terrorists, who I think are a real threat to people in our country and other nations as well.

How do I balance it out? My view is that I support this legislation because all of the positive issues, which I will go into in a moment, that are so important to the people I represent have to do with protecting the lives of people. If we do not take this action and we are not able to protect people, then more people can die, more people will be murdered. That is irreversible. We cannot bring those lives back.

This legislation has a 4-year sunset. I said when the Senate passed the bill that I would reserve final judgment as to whether I vote for the final product based on whether there will be a 4-year sunset when it comes to electronic surveillance. We can monitor—there will be some abuses, I think—we can monitor that, and if there are abuses, it is reversible. We can change it. That is why I err on the side of protecting people, and it is why I support this legislation.

The bill includes measures to enhance surveillance, to improve the working relationships of Federal, State, and local agencies—that has to happen—to strengthen control of the Canadian border. For our States up North, that is very important. When it comes to some of the terrorist suspects who may be the subject of investigative efforts, there are safeguards against unlimited detention.

I thank Senator Leahy and Senator Hatch and others for pulling back from some of the proposals which made this a much better piece of legislation.

There is a crackdown on money laundering. I thank Senator Sarbanes and Senator Kerry and others for their fine work.

There is another provision that is very important. The First Responders Assistance Act and grant program all go together. When I traveled to greater Minnesota last week, when I went to Moorhead, St. Peter, Alexandria, and Duluth, I spoke with fire chiefs and all said: We are the first responders. We know that from New York. Please get some resources back to the local level. It is a local public safety model where if you give more resources let us assess our needs—we have the training: we may need additional equipment—if you are going to talk about the ways we can protect, protect people, we are going to protect people where they live, where they work, or where their children go to school. Getting the resources to the local community, the fire chiefs, and police chiefs is critically important.

As I said, there are some key civil liberty safeguards. The bill requires certain electronic reports to go to a judge when pen registers are used on the Internet. It includes provisions requiring notification to a court when grand jury information is disclosed, and it contains the 4-year sunset when it comes to electronic surveillance provisions. That is critically important.

The bill streamlines and expedites the public safety officers benefits application for the firefighters and the police officers and others who were killed and suffered disabling injuries. It raises the total amount of the Public Safety Officers’ Benefits Program. The Victims Crime Act is in this bill. It improves the way the crime fund is managed. It replenishes the emergency fund for crime victims up to $50 million. This is really important.

These are the important provisions.

On the other hand, I do wish some of the provisions were more tightly targeted to address only actions directly related to terrorism or suspected terrorism. It is for this reason that I think it is critically important each and every Senator and Representative monitor the use of new authorities provided to the law enforcement agency to conduct surveillance.

We are going to have to monitor this aspect very closely. It has been said, and it should be said, we do not want to pass legislation that undermines our democratic principles or practices. If we do that, the terrorists have won a victory. If I thought this was such legislation, I would not support it. But I view this one provision: From my point of view, this legislation is better than it was when it passed the Senate. The sunset provision is critically important. Ultimately, where I come down is if we do not take some of these steps we may need additional equipment—if we do not take this action and we are not able to protect people, then the terrorists will have won a victory. I think that is now the world, unfortunately, in which we live.

That is now the world in which all of God’s children live.

There are some things we are going to have to do differently and, as I said, we must be vigilant. Where there are excesses, we need to change that. I do believe this legislation is an important step in the direction of trying to prevent this and providing protection to our citizens. I yield the floor.

The PRESIDING OFFICER (Mr. Nelson of Nebraska). The Senator from Massachusetts.

Mr. Kerry. Mr. President, I support the conference report before the Senate today. It reflects an enormous amount of hard work by the members of the Senate Banking Committee and the Senate Judiciary Committee. I congratulate them and thank them for that work.

I particularly thank Senator Daschle, Senator Leahy, Senator Sarbanes, Senator Hatch, and Senator Levin for their work in developing this legislation. I am pleased the Conference Report includes what I consider to be a very important provision regarding money laundering that has been hard fought over and, frankly, long awaited for. We have been working on this for quite a few years, almost 10 years or more when I was a member of the Banking Committee and within the Foreign Relations Committee, the Chairman of the Senate Committee on Narcotics, Terrorism and International Operations. This really is the culmination of much of that work.
I am pleased at the compromise we have reached on the anti-terrorism legis-
lation, as a whole, which includes the sunset provision on the wiretapping and
electronic surveillance component. It has been a source of considerable con-
cern for people, and I think the sun-
set provides Congress a chance to come back and measure the record appropriately, and that is ap-
propriate.

The reason I think the money-lau-
ndering provision is so important is it permits the United States it real-
authorizes and gives to the Secretary of the Treasury the power to be able to
enforce the interests of the United States. It allows the Secretary to deny banks and jurisdic-
tions access to our economy if in the last measure they are not cooperative in other ways to
prevent money laundering from being a tool available to terrorists.

This is a bill I introduced several years ago that assists our ability to be able
to crack down on the capacity for
criminal elements, not just terrorists, who are criminals themselves. But also
narcotics traffickers, arms prolifer-
ators, people who traffic in people themselves. There are all kinds of crimes.

The effects of money laundering go
distant beyond the parameters of law en-
forcement, creating international po-
lice problems, people who traffic in narcotics traf-
cickers, arms prolifer-
ators, people who traffic in people themselves. There are all kinds of crimes.

The global volume of laundered
money staggering the imagination. It is estimated to be 2 to 5 percent of the
gross domestic product of the United States. That is $400 billion to $1.5 tril-
lion that is laundered, that comes into the country or passes through banks
without accountability. Those funds escape the tax system, for one thing.

So for legitimate governments strug-
gling to contribute the resources which benefit from access to the American financial
system. All of these will now be on no-
tice that our law enforcement commu-
nity has additional tools to use to be
able to close the incredible benefits of access to the American financial mar-
ketplace.

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Now obviously we do not want to do
that where there is a legitimate enter-
preneur, is to create a crossing of the line of the corporate veil that has been protected for a long
period of time, and I am not urging
that we do that. But we do have to
have a system in place, where probable
cause exists, for law enforcement enti-
ties.

I spent a number of years as a pros-
cutor. We make pretty good judg-
ments in the law enforcement commu-
nity about probable cause. They are not always without question and they
are not, obviously, without error at
times. We understand that. We have a
pretty good system in the United States to protect against that. What
we are trying to do with this legisla-
tion is to put those protections in
place, but even as we put in a series of steps that allow the Secretary of the
Treasury to be able to target a par-
ticular area as a known money-lau-
dering problem, and then be able to re-
quarantine that area or entity,

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We are simply putting into place the
standards by which most of the devel-
oped world is living. Ultimately we
hope all countries will adopt appro-
priate money laundering standards so we can all live in a safer world.

I think the Secretary will have a
number of different options and it will
provide a transparency and an account-
bility that is absent today.

Let me comment on one criticism
that is often raised by some opponents of this legislation who do not like the
idea that the Treasury should somehow put in place sanctions against
an entity that has a lower tax rate than we happen to have. I emphasize
there is nothing in this legislation that
empowers us to take action because an-
other country has a lower tax rate. That is their privilege. It is healthy, as
all Members know, to have competi-
tion in the marketplace of taxes, too.

The Chair is a former Governor and he
knows well the competition between States. States will say: We will not
have a sales tax; we will not have an
excise tax; we will try to make our-
selves more business friendly. We want
to be as competitive and as low tax as we conceivably can be.

We are not seeking to try to address
those jurisdictions that simply make
themselves more competitive on a tax basis. What we are trying to address
are those jurisdictions that not only have lower taxes but use the lower
taxes, coupled with a complete absence of accountability, a complete absence of
transparency, a complete absence of living by the law enforcement standards
of other parts of the world, to
knowingly attract the illicit gains that
come from criminal activity or that at-
tract and move terrorist money
throughout the world.

We are simply putting into place the
standards by which most of the devel-
oped world is living. Ultimately we
hope all countries will adopt appro-
priate money laundering standards so we can all live in a safer world.

Passage of this legislation is going to make it a lot more difficult for new
terrorist organizations to develop. I
can remember a number of years ago when I was chairing the subcommit-
tee on Narcotics, Terrorism and Inter-
national Operations, I conducted an in-
vestigation into a bank called BCCI,
the Bank of Credit Commerce Inter-
national. We uncovered a complex
money-laundering scheme involving billions of dollars. Fortunately, BCCI
was forced to close. We were able to
bring many of those involved in it to
Justice. But we have learned since the
closing that BCCI was a bank that had
a number of Osama bin Laden's ac-
counts. We learned when BCCI closed, we dealt Osama bin Laden a very seri-
ous blow.

So the Congress gives final ap-
proval to this legislation in response to
these attacks, we need to keep in our
focus the benefits that will come to us
by pressuring these money laundering standards on banks. With the passage
of this legislation, terrorist organiza-
tions will not be able to move funds as
easily and they will not be able to have
their people move within our country
with bank accounts that we cannot
penetrate, with major sources of funding transferred to them from the Middle East or elsewhere to empower them to be able to do the kind of things they did on September 11.

I also point out this bill will require the Federal Reserve to take into consideration the effectiveness financial institutions in combating money-laundering activities before any merger is approved. We will have an opportunity to judge if we open new opportunities for financial institutions.

The following is a description of the legislative intent of the Counter Money Laundering and Foreign Anti-Corruption Act of 2001 which was included in section 312B—Interagency Counter Money Laundering and Related Measures of the conference report. First, the Secretary of the Treasury determines whether “reasonable grounds exist for concluding” that a foreign jurisdiction, a financial institution operating in a foreign jurisdiction, or a type of international transaction, is of “primary money laundering concern.” In making this determination, the conference report includes a provision within section 351 relating to reporting of suspicious transactions which clarifies the Secretary of the Treasury’s authority to impose a rule immediately upon determining the operation to our foreign allies in their battle against money laundering. The House-passed rule of construction could have potentially limited the access of foreign jurisdictions to our courts and could have required them to negotiate a treaty in order to be able to take advantage of our money-laundering laws in their fight against crime and terrorism. The conference report did not include a rule of construction because the Congress has always recognized the fundamental right of friendly nations to have access to our courts to enforce their rights. Foreign jurisdictions have never had any right to have access to our courts. Since some of the money-laundering conducted in the world today also defrauds foreign governments, it would be hostile to the intent of this bill for us to interject complicated and costly measures against money laundering. That is why we did not include a rule of construction in the conference report. That is why we today clarify that it is the intent of the legislature that our allies will have access to our courts and the use of our laws if they are the victims of smuggling, fraud, money laundering, or terrorism. I make these remarks because there should be no confusion on this issue and comments made by others should not be construed as a reassertion of this rule of construction which we have soundly rejected. Our allies have had and must continue to have the benefit of U.S. laws in this fight against money laundering and terrorism.

Smuggling, money laundering, and fraud against our allies are an important part of the schemes by which terrorists fund their operations. Our money laundering statutes have appropriate scope so our law enforcement can fight money laundering wherever it is found and in any form it is found. By expanding the definition of “Specified Unlawful Activity” to include a wide range of offenses against friendly nations who are our allies in the war against terrorism, we are confirming that our money laundering statutes prohibit anyone from using the United States as a platform to traffic in the kind of money laundering offenses against foreign jurisdictions in whatever form that they occur. It should be clear that our intention that the
money laundering statues of the United States are intended to insure that all criminals and terrorists cannot circumvent our laws. We shall continue to give our full cooperation to our allies in their efforts to combat smuggling and money laundering, including access to our courts and the unprecedented use of our criminal and civil laws.

Ms. CANTWELL. Mr. President, we must act on many fronts to wage a successful fight against terrorism. The USA Patriot Act of 2001 will provide our law enforcement agencies with significant new tools to fight this battle on the home front. There are many good things in this bill. I am especially pleased that the bill includes language to allow the tripling of manpower on our northern border. The bill also includes a provision to set a new technology standard for our visa program so we can better identify people coming into this country. I am very proud of the entire bill for law enforcement. This legislation increases the number of FISA judges to speed law enforcement’s ability to get taps in place and going and contains excellent new provisions to help law enforcement and banks better track and freeze finances of terrorists. Furthermore, the bill provides for expedited hiring and training of FBI translators. Finally, the legislation takes steps to allow better sharing of information between the law enforcement and intelligence communities, and discloses the line between the two communities. Where information is sought for the purpose of law enforcement, we must ensure that fourth amendment protections apply. Our fear about the legislation comes from a legitimate concern that the ability to analyze information gathered in a law enforcement context with the intelligence community. There is a difference, however, between facilitating the sharing of information between the law enforcement and intelligence communities, and blurring the line between the two communities. Where information is sought for the purpose of law enforcement, we must ensure that fourth amendment protections apply. Our fear about the legislation comes from a legitimate concern that the ability for intelligence and defense purposes for information gathering and sharing between our intelligence and defense purposes for information gathering and sharing between our law enforcement needs and privacy concerns, going well beyond the changes to the law needed for intelligence technology standard to ordinary time for our country. But in this process we must remember those Fourth Amendment rights that we have so diligently fought for in the past.

I am proud of the bill for acting promptly and thoughtfully in response to the horrific events of September 11. That day was an awakening to Americans, signaling the urgency for this government to change how we deal with terrorism. This legislation does much to facilitate better information gathering and sharing between our law enforcement and intelligence communities and greater protection of our borders from the intrusion of terrorist. I am hopeful that the members in government have the wisdom and prudence to use these new powers in such a way as to not undermine the freedoms we seek to protect.

Mr. President, currently, there is no single technology standard in place that allows the Federal Government to confirm with certainty the identity of aliens seeking entry into the United States through the visa program. Insufficient identification technology is available to our consular officers responsible for reviewing visa applications to facilitate a comprehensive background check of persons applying for a United States visa. Consular officers lack the technology to verify that a person seeking a visa has not previously sought or received a visa using another name or identity. Similarly, there is no widely implemented technology that allows United States border inspectors to confirm the identity of persons seeking entry into the United States using a visa.

Pursuant to Section 403(c) of the USA PATRIOT Act of 2001, the Federal Government is required to develop and implement a technology standard that can facilitate extremely high confidence in confirming the identity of an alien seeking a visa or seeking entry into the United States pursuant to a visa. The standard required by these provisions will facilitate the capture and sharing of all relevant identity information regarding the alien applicant,
including biometrics, and information relevant to determining the eligibility of such a person for entry into the United States from and between all relevant departments and agencies through compatible, interoperable systems.

The purpose of this subsection is to ensure that United States Government will establish a technology standard to allow: 1, the State Department, at the time a person applies for a United States visa, to do a comprehensive background check against databases of known aliens ineligible for entry into the United States; 2, the State Department to verify the identity of a person applying for a United States visa as a person who has not on a previous occasion sought a visa using a different name or identity; and 3, United States border inspectors and preclearance agents to confirm that a person seeking entry to the United States on the basis of a visa is the same person who obtained the visa from the Department of State.

Although it is understood by Congress that technological advances may require revisions to any standard adopted pursuant to this provision, it is expected that the standard will initially incorporate appropriate biometric technologies to compare identity information provided by the visa applicant to criminal, immigration and intelligence databases that use a fingerprint biometric or a facial recognition biometric.

Further, to obtain the greatest protection of United States citizens by excluding persons ineligible for entry into the United States, the Department of State, the Department of Justice and other appropriate departments of the Federal Government should work with the governments of other countries to encourage such countries to adopt the standard established pursuant to this paragraph and to establish international interoperability of identity databases. In particular, it will be beneficial to the United States to facilitate adoption of this technology standard for appropriate identity information exchange with Canada and Mexico. It would further benefit the security of United States citizens to encourage adoption of this standard by those countries for whose citizens the United States, Canada or Mexico do not require a visa to enter the respective country.

Paragraph (1) requires the Department of Justice and Department of State, through the National Institute of Standards and Technology (NIST), and in consultation with other Federal law enforcement and intelligence agencies deemed appropriate by the Attorney General or the Secretary of State, to develop a technology standard to facilitate confirmation of the identity of persons seeking a visa or persons using a visa to enter the United States. The Departments of Justice and State shall also consult with Congress in the development of this standard through the reporting process described in paragraph (4) of this subsection.

This technology standard will enable the Department of State to confirm that a person seeking a visa is not known to the Federal Government as a person ineligible for a visa, or is a person who obtained a visa using a different name or identity. The technology standard will also enable Federal inspectors at all ports of entry and preclearance locations to confirm that a person seeking entry to the United States used the same name and identity as the person to which the Department of State issued the visa, and is not a person sought by the Federal Government to be excluded from entry to the United States.

The technology standard must be developed and certified by NIST within two years of the date of enactment of this subsection.

Paragraph (2) provides that the technology standard described in paragraph (1) shall be the basis for a cross-agency, cross-platform electronic database system that is a cost-effective, efficient, fully integrated means to share law enforcement and intelligence information necessary to confirm the identity of a person applying for a United States visa, or such a person seeking to enter the United States using a visa.

Paragraph (3) requires that the system described in paragraph (2) shall be implemented in a manner that is readily accessible to all consular officers responsible for the issuance of United States visas; all Federal inspection agents at United States border inspection points (including any preclearance locations); and all law enforcement and intelligence officers responsible for investigation or identification of aliens admitted to the United States pursuant to a visa, provided that such officers are provided access to this system pursuant to regulations.

Paragraph (4) provides that the Attorney General and the Secretary of State jointly and in consultation with the Secretary of the Treasury, shall report to Congress within 18 months of the date of enactment of this Act, and every two years thereafter, describing the development, implementation and efficacy of the technology standard described in this subsection. The report must also consider the privacy implications and applicability of Federal privacy laws.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield the Senator as much time as he requires.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank the Senator from Utah, the leader on our side on this committee.

I want to talk just in specifics about one area which this bill addresses. We know that as a result of the tragedy of September 11 and the continuing problems we are having with anthrax and other threats from abroad, we need to do a better job of seeing who comes into this country to make sure people who wish to do us harm are, if possible, screened out before they get here so people who are visitors from abroad who engage in things that are inappropriate, who violate the terms of their visa or their other status, can be removed.

So after the September 11 incident happened and people started talking about problems in immigration, I spent a full day traveling with representatives from my State. We are directly involved because many of these visitors come to Missouri as well. I know the people at our major ports have even greater problems, but we saw the problems firsthand.

I said: Why can’t you get somebody out of the country if they overstayed their visa? And they asked a very logical question: How do you know where they are? We don’t have a good system.

I said: Is it possible?

They said: You probably could not give us enough INS enforcement agents to make sure we could find every person. They come in, they say they are going to Brandenburg, MO, they are going to visit the Arch in Missouri, and they may go to one or two other lesser tourist attractions across the country, and we don’t know where they are.

As a result of discussions with them and some great assistance I received from my cosponsors, Senator CONRAD and Senator SNOWE, we put together what we think are some significant improvements in the way we deal with visitors to this country to lessen the likelihood that they will be able to participate in causing harm to citizens of the United States. So we have put together the Visa Integrity and Security Act. I express our sincere appreciation to the managers of this bill and to our colleagues in the House for adopting these principles and putting them into the bill.

This is not going to be a total solution. Nobody can expect that we are going to do a 100-percent job. But when we look at what has happened in the past, we think this is going to be a significant improvement.

As Senator SNOWE pointed out, Sheik Rahman, who has been in prison for his part in the first bombing of the World Trade Center, had been on the Foreign Intelligence Watch List, the Foreign Intelligence Watch List, for years, and nobody told the State Department or the INS, and they gave him permanent status in the United States. That was after he had been identified.

We are saying the criminal agencies, the law enforcement agencies have to talk with the State Department, the people who are issuing these visas, and let them know we should not let this guy back into the United States. He came and went five times. That is just not acceptable.

I also trust the State Department will change the directions in their
manual which has said in recent years that merely urging terrorist activities or belonging to a terrorist organization do not disqualify you from coming to the United States. I mean, if you are a member of al-Qaida, you say: Oh, well, he may have just been talking the talk.

Give me a break. If there is any ground for keeping somebody out of the United States, it ought to be that they are a member of al-Qaida. I hope in the future we can share that information and make sure they do not come in.

So one of the things we require is that the FBI share the National Criminal Information System with the State Department and the INS. We are going to ask the Director of Homeland Security to report to Congress on the need for any other Federal agencies, intelligence agencies, to share or feed their information into this database.

One of the things we know now is that people can come in under one name and then change names and we don’t know exactly who they are. We don’t have a foolproof method of identifying these people who come into the United States. Isn’t it about time we know for certain, before they even come in, who they are? Doesn’t it make sense that we know for certain who they are when they are in the United States?

I talked with the dean of the engineering school at the University of Missouri at Columbia. He said 10 years ago it wouldn’t be possible but now, clearly, we have the technology to do this. So this bill instructs the Attorney General to implement an automated system to track the entry and exit of visa holders, to make sure who they are, where they are, and what their status is.

Back in my time, we used to talk about fingerprints. Now the term is a biometric system. There are a number of different systems to review. There can be digitized facial profiles, digitized photos of the iris of the eye, whatever is most feasible and effective there—to select that. We need to put some money in putting the machinery in our consular offices overseas so when somebody comes in and presents himself to get a visa to get into the country, we can find out and make a record, permanently, of who they are. No more using stolen passports.

Students in Western Europe who operates under the visa waiver system has a problem with 60,000 stolen passports. Right now, if you buy a passport or take somebody else’s visa, we have a tough time tracking them. But once they get that biometric card, we know positively. We have a modern-day thumbprint on them. We can check them out overseas; we can check them in our records. When they come to the port of entry, we check them at the port of entry to make sure they are who they say they are. And if they do not get out of the country in time, we turn that information over to law enforcement agencies, so if there is a contact with a law enforcement agency, this rings a bell: You are out of status.

You stayed too long. Or if a student leaves the school, departs the school which he or she is supposed to attend or has an H-1B visa holder leaves the job he or she is supposed to have, they will know that is reported to the INS and they can turn over that information. Any law enforcement official in the United States who comes in contact with him will know that person is out of status.

So it is important to know if they are out of status? Many people who are out of status and performing activities that are highly suspicious may not rise to the level of criminal indictment or for a criminal information to be filed against them, but if they are involved in suspicious activities and they are out of status, they are violating the terms of their visa and they can be deported and we potentially have a lot of problems before they actually occur.

This is not going to be 100 percent effective. But when people are out of status, particularly if they are acting suspiciously, we will have a record on them and we want to update our system to know when they leave. Right now, it just depends upon the airlines, making sure they tell us who leaves the country. That is not good enough.

We need to keep a record of who comes in and who leaves. So we know who is overstaying their visa. They say 4 to 6 million people are here illegally because they overstayed their visa, and we don’t have any idea how to find them. At least if we have a biometric card, when they come in contact with a law enforcement agency, then we can do that.

Student visas are another thing. A lot of people focused on the student visas. This is a small portion of the people who come to the United States. There were a couple of people involved in the September 11 tragedy who were here on student visas.

Hanni Fajour came here supposedly to study English in California and never showed up at school. The school didn’t know he was coming. They didn’t tell anybody. The next time we heard from him he was apparently piloting the plane that went into the Pentagon.

It is not the student visas that are the problem. All visas are problems. But in this bill we authorize almost $37 million to implement the system that Congress dictated 4 or 5 years ago to track the people who come into the United States and to get a solid tracking system to know if they are overstaying their visa. If they do not show up for school, then the schools would have to notify the INS or they would apply the same requirements to language schools, to vocational schools, and, yes, especially to flight schools. So we would know who was coming in.

This data system which has been put on the slow road is to be speeded up and to be fully in effect by the beginning of January 2003. So we will have a better system.

Let me say a brief word about student visa holders. The foreign students who come to this land are a vitally important part of our educational system. We are very proud in Missouri to have a number of schools with a significant number of students wanting to bring their culture, their experience, and their knowledge to this country. In my view, one of the best foreign aid tools we have is to share education with the future leaders of other countries.

I have traveled extensively in Asia. I have found that many of the government leaders, scientific leaders, and leaders in journalism have studied in my State. They come up to me and ask to have Michigan Tigers. They know what we are about. We have a good basis to talk with them.

I was in Malaysia in August to talk about the potential that we have to gain great medical insight and perhaps add to that, considering the information in genes in the Malaysian rain forest. Two of the leaders graduated from the University of Missouri.

So those are in the bill. The visa waiver program needs to be tightened up so countries that just send their citizens into our country without going through the visa process—we need to work with them and negotiate with them so they have a strong, positive identifier, and we have the same kind of identification with them as we do with these other states.

I know many people want to speak on this. I, again, express my appreciation to my cosponsors, Senator CONRAD and Senator SNOWE. I urge adoption of this measure which I think is going to move us significantly in the right direction of preventing terrorist activities in the future.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I will take a moment. How much time is remaining to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 43 minutes remaining.

Mr. LEAHY. Mr. President, I know the distinguished senior Senator from New York has been waiting on the floor for some time. How much time is the Senator from New York going to want?

Mr. SCHUMER. I ask for 7 minutes.

Mr. LEAHY. I see the distinguished senior Senator from California. How much time does she have?

Mrs. FEINSTEIN. I take 1 additional minute; 8 minutes.

That was meant to be a joke.

Mr. LEAHY. I am trying to think how to react to that, considering the size of the State of Vermont—other than to say that when Vermont was admitted to the Union it had twice the population of California when California was admitted to the Union.

Every day now California gains the population of Vermont.
New York and 8 minutes to the Senator from California, both of whom are valued members of the Senate Judiciary Committee.

Mr. CONRAD. Mr. President, will the manager of the bill and others who are waiting permit me 15 seconds to mention what occurred.

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

The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank the manager of the bill for including the provisions that Senator BOND, myself, and Senator SOWEY authored to tighten our borders, to coordinate the violations and problems with our intelligence agencies with the INS and the State Department so we are confident of who is coming in, and to impose these new provisions using biometrics so we really know who is coming to our country.

I thank the managers very much, and I thank Senator BOND for his leadership.

Mr. LEAHY. Mr. President, I thank Senator BOND, I thank Senator CONRAD and Senator Byrd.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President.

Mr. President, first, let me thank our senior Senator from Vermont and our senior Senator from Utah, for their leadership on this bill; and also the many who have worked on it.

It is good that we have brought this bill in a timely fashion before the Senate. On the one hand, we didn’t rush so much that we did the bill in a day or two. On the other hand, we didn’t have a great need to wait in terms of security. I think it is coming to the floor at the right time with enough deliberation and care but at the same time not delaying too much because the security problems America faces are large and at times seem almost overwhelming.

If there is one key word that underscores this bill, it is “balance.” In the new post-September 11 society that we face, balance is going to be a key word. Technology has forced us to recalibrate in many different ways. The technology that allowed these horrible people to do what they did to my city and to America and the technology that allows law enforcement to try to catch them changes rapidly. No law can sit still as that technology changes and still be effective.

The balance between the need to update our laws given the new challenges and the need to maintain our basic freedoms which distinguish us from our enemies is real.

There have been some on the right who have said just pass anything. We just have to go after the terrorists and forget about our freedoms and our civil liberties. There are some on the left who say only look at the civil liberties aspect. They are both wrong. Fortunately, neither prevailed in this fine piece of work that we have before us.

Balance and reason have prevailed. This is the Senate working at its best under a crisis situation but still with care and an appropriate degree of deliberation.

It is also an example of the two parties coming together, and of the administration and the Congress coming together. In a sense, in this bill there is something for everyone to like and something for everyone to dislike, which may well show that it will end up in the right place.

I would like to talk about a few parts of the bill. The trap-and-trace provision is basically a proposal that Senator Kyl and I put together a couple years ago which is basically in the bill intact. It is vital. If you ask law enforcement what they need, they need a standard when they have somebody who is a terrorist or a potential terrorist to make it happen so they can find that person.

In the old days it was easy. It was not easy to get a new telephone. You had to go to the phone company to get one. It could take a few weeks. Now people have cell phones; and anyone, for an illicit or bad purpose, can get a cell phone every day. In fact, we know some of the hijackers regularly bought new cell phones.

Without these new provisions, without nationalizing trap-and-trace authority so you can follow the numbers that are called—you still cannot look at content without going to a judge—law enforcement would be powerless. It still confounds me provision such as this, which does not change the balance but simply updates the technology we need, had been held up for so long. Fortunately, it is here now. Or unfortunately, it took an awful incident to make it happen.

Most of the terrorists—and other criminals as well: money launderers, drug dealers—are pretty technologically savvy. To put handcuffs on law enforcement so they cannot be as technologically savvy, would make no sense.

I was also proud to work on the money laundering provision. Law enforcement has often said: Show me the money, and I will show you the terrorists. Let’s be honest about it. The money-laundering provision is not going to stop the flow of money completely to the terrorists. They can still have couriers and packets and things such as that. But if we do Nos. 1, is make it harder, and No. 2, it gives us information, the ability to find information, and find the flow of who is connected to whom, how, where, why, and when.

Again, the late Senator Coverdell and I had a money-laundering bill that is not terribly different than the provisions in this bill. We had introduced it a couple years ago.

I see my friend from Michigan. He has come to the Chamber. He has done great work in relation to money laundering, as has the Senator from Massachusetts, and so many others.

As to information sharing, again, we need to share information more quickly and more rapidly among our various law enforcement agencies and between law enforcement and intelligence agencies.

When we are facing a war where it is more likely that more civilians will die than military personnel, the homefront is a warfront. The old high wall between foreign intelligence and domestic law enforcement has to be modified.

The bill does a good job of that. There is a provision that would improve communication between Federal law enforcement and local law enforcement, which Senator CLINTON and I believe needs tightening up. There were procedural, not substantive, objections raised to it. We hope to bring that measure back either as a freestanding measure or as part of some other legislation.

The other provisions in the bill are good as well. I believe in immigration. I believe that immigrants make America. But immigrants do not have the exact same rights as citizens. They never have, nor should they. To say that somebody who is not a U.S. citizen and might be suspicious should be detained for a short period of time while law enforcement checks them out—after all, they are trying to enter the country, which is a privilege, not a right—makes sense. To say they should be detained indefinitely without going to a judge cuts too far against the grain of the freedoms we have. Once again, this bill seeks a balance.

Finally, as to the sunset. I was very much opposed to the House 2-year sunset. How could we have law enforcement adapt to a new law knowing that by the time they get geared up, it is almost going to be sunsetting? In fact, I think you do it the other way. If a law is good, you put it on the books permanently, and then you reexamine it. You don’t take the hammer away and they say now that’s unfair. That means you do not trust the product you put together.

Four years is about the minimum amount of time that would be acceptable to me. I thought 5 would be better, or, frankly, no sunset. Putting the burden of proof the other way would have made more sense, still. But a 4-year sunset, again, shows compromise.

Mr. President, I have said this in this Chamber before. In this new world in which we live, everyone has to give a little bit. We are asking for us to give a little bit. We are asking for us to give a little bit. We are asking our Armed Forces to give a lot. And that applies to us as well.

I hope and pray—and I believe it has happened in this bill—there is a bit of new attitude. Even if you cannot get everything your way, at least you give the benefit of the doubt to the compromise that has been put together because we have to move things forward, and this bill does that.

In conclusion, the scourge of terrorism is going to be with us for a while. Law enforcement has a lot of catching up to do. There is no question...
about it. In this bill, at least, we give them fair and adequate tools that do not infringe on our freedoms but, at the same time, allows them to catch up a lot more quickly.

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

The PRESIDING OFFICER. The Senator from California.

Mr. LEVIN. Mr. President, I wonder if the Senator from California would yield for a unanimous consent request.

Mrs. FEINSTEIN. I would be happy to yield.

The PRESIDING OFFICER. The Senator from California.

Mr. LEVIN. Mr. President, I ask unanimous consent that after the remarks of the Senator from California, I be recognized for the time allotted to me.

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

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, Americans tend to be a very open people. Americans, to a great extent, have looked at Government, saying: Just leave me alone, keep Government out of my life. At least that is the way it was before September 11. What I hear post-September 11 are people saying: What is my Government going to do to protect me?

As we look back at that massive, terrible incident on September 11, we try to ascertain whether our Government had the tools necessary to ferret out the intelligence that could have, perhaps, avoided those events. The only answer all of us could come up with, after having briefing after briefing, is we did not have those tools. This bill aims to change that. This bill is a bill whose time has come. This bill is a necessary bill. And I, as a Senator from California, am happy to support it.

This legislation brings us our criminal and national security laws in line with developing technologies so that terrorists will no longer be able to stay one step ahead of law enforcement. And believe me, they can today.

Right now, for example, terrorists can evade Foreign Intelligence Surveillance Act wiretaps, which are device-specific, by simply switching cell phones every few hours. This legislation fixes that and allows for roving FISA wiretaps. The same as are currently allowed for suspected criminals under the domestic law enforcement portions of the law known as title III.

And because modern communications often travel through countless jurisdictions before reaching their final destination, investigators must now get court orders from every one of those jurisdictions. They can have to get 15, 20 court orders to carry out a wiretap. This bill would change that, allowing for just one court order from the originating jurisdiction.

And the bill recognizes that voice mails and e-mails should be treated alike when law enforcement seeks access to them. Technology, as it changes, changes the ability to conduct an intelligence surveillance. This bill attempts to keep a very careful balance between the personal right to privacy and the Government’s right to know, in an emergency situation, to be able to protect its citizens.

It also increases information sharing between the intelligence community and law enforcement. As a matter of fact, it mandates it. Criminal investigations often result in foreign intelligence. This up to this point, is not shared with the intelligence community. After this bill becomes law, it must be shared.

And it makes it easier for law enforcement to defeat those who would use the computers of others to do mischief.

For example, with the Zombie computer, I invade your computer and, by invading your computer, go into 1,000 other computers and am able to get one of the floodgates of a dam. This bill prevents that.

Overall, this bill gives law enforcement and the intelligence community the tools they need to go after what is an increasingly sophisticated terrorist element.

I am very pleased this legislation also includes a number of provisions I drafted with Senator Graham well before the events on September 11—title 9 of this bill. These provisions give the Director of the CIA, as head of the intelligence community, a larger role with regard to the analysis and dissemination of foreign intelligence gathered under FISA. These mandate that law enforcement share information with the intelligence community.

And title 9 improves the existing Foreign Terrorist Asset Tracking Center which helps locate terrorist assets. It authorizes additional resources to help train local law enforcement to recognize and handle foreign intelligence.

We now have these anti-terrorist teams throughout the country. They need to be trained, and they need to learn the tools of the trade and get the security clearances so they can tap into these databases.

I agree with the 4-year sunset included for certain surveillance provisions in the bill. In committee I suggested a 5-year sunset. The House had 2 years. It is now 4 years. That is an appropriate time. It gives us the time to review whether there were any outrageous uses of these provisions or whether uses were appropriate under the basic intent of the bill.

Let me briefly touch on a related topic of great importance in the war against terrorism. As an outgrowth of the Technology, Terrorism, and Government Information Subcommittee, today Senator Jon Kyl, of Arizona and I held a press conference indicating a bill that respond to create a new, central database, a database that is a lookout database into which information from intelligence, from law enforcement, from all Federal agencies will go. That database will be for every visa holder, every person who crosses borders coming in and out of this country. The legislation will provide for “smart visa cards”, reform the visa waiver program, reform the unregulated student program, and improve and beef up identity documents.

I passed around at the press conference a pilot’s license, easily reproducible, no biometric data, no photograph, perforated around the edges showing that it had been removed from a bigger piece. This is the pilot’s license that every 747 pilot carries, every private pilot carries. It is amazing to realize that this can be a Federal document and be as sloppy as it is in this time.

We intend to see that identity documents are strengthened to provide not only photographs, but biometric data as well (such as fingerprints or facial recognition information). And the data system would be such that it is flexible and scalable so as biometric technology and requirements progress, the database can keep up.

Both Senator Kyl and I also met with Larry Ellison, the CEO of Oracle. Oracle has stated that they are willing to devote some 1,500 engineers to develop a national identity database. What we are proposing is different from that. He said they would devote their software free of charge.

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

Mrs. FEINSTEIN. I yield just have 1 minute to conclude.

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

Mrs. FEINSTEIN. We are not proposing a national identity card, but we do believe this kind of database could be prepared by a company such as Oracle—they have offered to give it to the Government for free or by NEC, which did a state-of-the-art system for San Francisco. We believe this should be under the auspices of the Homeland Security Director, that these decisions need to be made rapidly, and that we need to get cracking to get the loopholes made the United States of America one giant sieve.

This bill, which I am so happy to support, takes a giant step forward in that direction. I thank both the chairman of the committee and the ranking member for their diligence on this bill.

I yield the floor.

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

Mr. LEVIN. Mr. President, the antiterrorism bill which the Senate is about to pass reflects the sentiments the American people have expressed since the events of September 11—that we must act swiftly and strongly to defend our country without sacrificing our most cherished values. The Senate antiterrorism legislation means that terrorists will no longer be able to evade the surveillance which has been the hallmark of our security since the events of September 11.
the principles of due process and fairness embedded in our Constitution.

The bill is not perfect. In fact, during the Senate’s consideration of its bill, I supported three amendments offered by Senator Feingold. Each of the Feingold amendments would have strengthened privacy protections for American citizens without undermining law enforcement efforts to investigate terrorists. One amendment would have maintained existing Federal and State law on law enforcement access to personal records, particularly with regards to sensitive medical and financial information. A second amendment would have required law enforcement to ascertain that a surveillance target under the antiterrorism bill’s expanded wiretap authority was actually in the house that was bugged or using the phone that was tapped before surveillance could be initiated. The third amendment that I supported would have placed sensible limits on the government’s ability to intercept computer communications. Among these limits were the type of investigation and the length of surveillance in which the government would utilize new surveillance authority provided in the antiterrorism bill.

While the amendments I supported were not adopted the bill before us is much stronger from a civil liberties standpoint than the legislation that was initially proposed by the administration. This is true in large part to the strong commitment to civil liberties and the tireless efforts of Senate Judiciary Committee Chairman Patrick Leahy.

The bill also bolsters Federal criminal laws against terrorism in several important areas, including extending the statute of limitations for terrorist offenses and that raising surveillance laws to permit investigators to keep pace with new technologies like cell phones and the Internet.

Michigan’s economy and security depend on the Federal Government providing resources for law enforcement and law enforcement at the State’s northern border. I am pleased that the final bill now before us also includes significant new funding to increase security and improve traffic flow at the northern border.

Finally, this legislation includes a landmark set of provisions that I have been proud to sponsor that will strengthen and modernize U.S. anti-money laundering laws. Osama bin Laden has boasted that his modern new recruits know the “cracks” in “Western financial systems” like they know the “lines in their hands.” Enactment of this bill will help seal the cracks that sustain terrorists and other criminals to use our financial systems against us.

The final money laundering provisions appear in Title 3 of the bill and represent a significant advance over existing law. Here are some of the anti-money laundering provisions that I authored and that are included in the final bill.

For the first time, all U.S. financial institutions—not only banks but securities firms, insurance companies, money transmitters, and other businesses that transfer funds or engage in large cash transactions—will have a legal obligation to exercise due diligence before opening a foreign financial institution to open a correspondent account with them and thereby gain entry into the U.S. financial system.

For the first time, U.S. banks and securities firms will be barred from opening accounts for foreign shell banks that have no physical presence anywhere and no affiliation with another bank.

For the first time, U.S. prosecutors will be able to freeze and seize a depositor’s funds in a foreign financial institution’s correspondent account to the same extent under civil forfeiture laws as a depositor’s funds in other U.S. financial accounts.

For the first time, foreign corruption offenses such as bribery and misappropriation of funds by a public official will qualify as predicate offenses that can trigger a U.S. money laundering prosecution.

Still other provisions in the bill give U.S. law enforcement a host of new tools to investigate and prosecute money laundering crimes, especially crimes involving a foreign financial institution.

Here are some of the other key provisions in the bill that make landmark changes in U.S. anti-money laundering laws.

For the first time, all U.S. financial institutions will have a legal obligation to verify the identity of their customers, and all customers will have a legal obligation to tell the truth about who they are.

For the first time, all U.S. financial institutions will be required to have anti-money laundering programs.

For the first time, the U.S. Treasury Secretary will have legal authority to designate specific foreign financial institutions, jurisdictions, transactions or accounts as a “primary money laundering concern” and use special measures to restrict or prohibit their access to the U.S. marketplace.

For the first time, bulk cash smuggling over U.S. borders will be a prosecutable crime, and suspect funds will be subject to forfeiture proceedings.

Just like we are tightening our border controls to restrict access to the United States across its physical borders, the bill’s anti-money laundering provisions will tighten our financial controls to restrict access to the U.S. financial system. They will require our financial institutions to take new steps, to do more work, and to exercise greater caution before opening up the financial system of the United States.

When the anti-money laundering provisions first passed the Senate on October 11, I gave a floor statement explaining a number of the provisions that had been taken from the Levin-Grassley anti-money laundering bill, S. 1371. While I do not want to repeat all of that legislative history here, some important improvements were made during the House-Senate negotiations that I would like to comment on in order to explain their intent and impact.

See Section 313 of the final bill. That provision appeared in both the House and Senate bills, with only a few differences. The primary difference is that the House provision applied only to "depository institutions," while the Senate bill was much stronger and included U.S. securities firms from opening accounts for shell banks. The final bill takes the broader approach advocated by the Senate and applies the shell bank ban to both U.S. banks and U.S. securities firms. This broader ban is intended to make sure that neither U.S. nor U.S. securities firms open accounts for shell banks, which carry the highest money laundering risks in the banking world. This broader ban was necessary, for example, for foreign banks that had shell banks as clients and was required to close those accounts under this provision would not be able to circumvent the ban simply by switching its shell bank clients to accounts at an affiliated broker-dealer. The goal instead is to close off the U.S. financial system to shell banks and institute a broad ban on shell bank accounts.

In my floor statement of October 11, I explained the related requirement in Section 313 that U.S. financial institutions take reasonable steps to ensure that other foreign banks are not allowing their U.S. accounts to be used by shell banks. The purpose of this language is to prevent shell banks from getting indirect access to the U.S. financial system by operating through a correspondent account at a bank in another foreign bank. That requirement was included in both the House and Senate bills, and in the final version of the legislation. It is a key provision because it will put pressure on all foreign financial institutions that want to do business in the United States to shut off the access that shell banks now enjoy in too many countries around the world.

I also explained on October 11 that the shell bank ban contains one exception that is intended to be narrowly construed to protect the financial system from shell banks to the greatest extent possible. This exception, which is identical in both the House and Senate bills and is unchanged in the final version of the legislation, allows U.S. financial institutions to open an account for a shell bank that meets two tests: the shell bank is affiliated with another bank that maintains a physical presence, and the shell bank is subject to supervision by the banking regulator of that affiliated bank. The point of this exception is to allow U.S. financial institutions to do business with shell branches of large, established banks on the understanding that
the bank regulator of the large, established bank will also supervise the established bank’s branch offices worldwide, including any shell branch. As explained in my earlier floor statement, U.S. financial institutions are cautious not to abuse this exception, to exercise both restraint and common sense in using it, and to refrain from doing business with any shell operation that is affiliated with a poorly regulated bank.

The House-Senate negotiations also added a new provision to Section 313 giving U.S. financial institutions a 60-day period to wind up and close any existing accounts for shell banks and to institute the reasonable procedures called for to ensure that other correspondent accounts with foreign financial institutions are not being used by shell banks. As I suggested on October 11, one possible approach with respect to other correspondent accounts would be for the U.S. financial institution to develop standard language for certifying to the foreign financial institution to certify that it is not and will not allow any shell bank to use its U.S. accounts and then to rely on that certification absent any evidence to the contrary.

A subject I want to discuss in some detail is the due diligence requirement in Section 312 of the final bill. This provision also appeared in both the House and Senate bills, again with only a few differences in wording. This provision is intended to tighten U.S. anti-money laundering controls by requiring all U.S. financial institutions to exercise due diligence when opening or managing correspondent or private banking accounts for foreign financial institutions or wealthy foreign individuals. The purpose of this requirement is to function as a preventative measure to stop rogue foreign financial institutions, terrorists or other criminals from using U.S. financial accounts to gain access to the U.S. financial system.

The most important change made to the due diligence requirement during the House-Senate negotiations was to make the definitional provisions in section 311 also apply to section 312. Specifically, the House and Senate negotiators amended what is now Section 311(e) to make sure that its provisions would be applied to both the new 31 U.S.C. 531A and the new subsections (i) and (j) of 31 U.S.C. 531B created by Sections 311, 312 and 313 of the final bill.

As I mentioned in my floor statement on October 11, one of the key changes that the Senate Banking Committee made to the due diligence requirement when they took that provision from the Levin-Grassley bill, S. 1371, was to make the due diligence requirement apply to all U.S. financial institutions, not just banks. The Banking Committee expanded the scope of the due diligence requirement defining the Levin-Grassley references to “banks” and substituting the term “financial institutions” which, in Section 5312(a)(2) of the Bank Secrecy Act, includes not only banks, but also securities firms, insurance companies, money exchanges, and many other businesses that transfer funds or carry out large cash transactions. The House Financial Services Committee accepted the same approach as the Senate Committee, using the term “financial institution” in its due diligence provision rather than, for example, the term “depository institution” which the House Committee used in its version of the shell bank ban. The bottom line, then, is that both the House and Senate expanded the due diligence provision to apply to all U.S. financial institutions, not just banks.

During the House-Senate negotiations on the final version of the anti-money laundering legislation, Section 311(e) of the bill was amended to make it applicable to both the due diligence requirement created by Section 312 and to the shell bank ban created by Section 313. In addition, the change in Section 311(e) establishes several new definitions for such terms as “account” and “correspondent account,” and also directs or authorizes the Treasury Secretary to issue regulations to clarify other terms. By making the Shell Bank Regulations a regulatory authority applicable to the due diligence requirement and shell bank ban, the House-Senate negotiators helped ensure that the same terms would be used consistently across Sections 311, 312, and 313. The change helps clarify the scope of the due diligence and shell bank provisions in several respects.

First, the change makes the definition of “account” applicable to the due diligence requirement. This definition makes it clear that the due diligence requirement is intended to apply to a wide variety of bank accounts provided to foreign financial institutions or private banking clients, including checking accounts, savings accounts, investment accounts, trading accounts, or accounts granting lines of credit or other credit arrangements. The clear message is that, before opening any type of account for a foreign financial institution or wealthy foreign individual and giving that account holder access to the United States financial system, U.S. financial institutions must use due diligence to evaluate the money laundering risk, to detect and report possible instances of money laundering, and to deny access to terrorists or other criminals.

The definition also ensures that the shell bank ban applies widely to bar a shell bank from attempting to open virtually any type of financial account available at a U.S. financial institution.

Second, the change makes it clear that the definition of “correspondent account” applies to the due diligence requirement. This clarification is important, because the definition makes it clear that “correspondent accounts” are not confined to accounts opened for foreign banks, as specified in S. 1371, but encompass accounts opened for any “foreign financial institution.” This broader reach is in keeping with the effort of the Senate Banking Committee and the House Financial Services Committee to expand the due diligence requirement to apply to all financial institutions, not just banks, for example, that U.S. financial institutions must use due diligence when opening accounts not only for foreign banks, but also for foreign securities firms, foreign insurance companies, foreign exchanges, and other foreign financial businesses.

Section 311(e)(4) authorizes the Treasury Secretary to further define terms used in subsection (e)(1), and Treasury may want to use that authority to issue regulatory guidance clarifying the scope of the term “foreign financial institution” to help U.S. financial institutions understand the extent of their due diligence obligation under the new 31 U.S.C. 531B. In fashioning this regulatory guidance, Treasury should keep in mind the intent of Congress in issuing this new due diligence requirement—to require all U.S. financial institutions to use greater care when allowing any foreign financial institution inside the U.S. financial system access to the U.S. financial systems.

The significance of applying the “correspondent account” definition to the shell bank ban is, again, to ensure that the ban applies widely to bar a shell bank from opening virtually any type of financial account available at a U.S. financial institution.

Third, due to the change made by House-Senate negotiators, Section 311(e)(3) directs the Treasury Secretary to issue regulations defining “beneficial ownership of an account” for purposes of both the new 31 U.S.C. 531A and the new subsections (i) and (j) of 31 U.S.C. 531B. How Treasury define “beneficial ownership” will have profound implications for these new provisions as well as for other aspects of U.S. anti-money laundering laws. Section 311(e)(3) directs Treasury to address three sets of issues defining beneficial ownership: the significance of “an individual’s authority to fund, direct, or manage the account”; the significance of “an individual’s material interest in the income or corpus of the account”; and the exclusion of individuals whose beneficial interest in the income or corpus of the account is immaterial.

The issue of beneficial ownership is at the heart of the fight against terrorists and other criminals who want to use our financial institutions against us. Terrorists and other criminals want to hide their identity as well as the criminal origin of their funds so that they can use their U.S. accounts without alerting law enforcement. They want to use U.S. and international payment systems to move their funds to their operatives with no questions asked. They want to deposit their funds in interest-bearing accounts to...
increase the financial resources available to them. They want to set up credit card accounts and lines of credit that can be used to finance their illegal activities. Above all, they do not want U.S. financial institutions determining who exactly is the owner of their accounts and what information is associated with these accounts. These concerns are behind the information associated with closure of the accounts, seizure of assets, exposure of terrorist or criminal organizations, and other actions by law enforcement.

After the September 11 attack, it is more critical than ever that U.S. financial institutions determine exactly who is the beneficial owner of the accounts they open. Another provision of the final bill, Section 326 which was authored by House Financial Services Chairman Oxley, requires financial institutions to verify the identity of their customers. That provision gets at the same issue—that our financial institutions need to know who they are dealing with and who they are servicing for.

Some financial institutions have pointed out the difficulties associated with determining the beneficial owner of certain accounts. But these are not new issues, and they can be dealt with in common sense ways. U.S. tax administrators and financial regulators have years of experience in framing ownership issues. Switzerland has had a beneficial ownership requirement in place for years, and in fact requires accountants on Invest a specific document, called “Form A,” declaring the identity of the account’s beneficial owner. The difficulties associated with determining beneficial ownership can be addressed.

There will, of course, be questions of interpretation. No one wants financial institutions to record the names of the stockholders of publicly traded companies. No one wants financial institutions to identify the beneficiaries of widely held trusts. That is why this section directs the Treasury Secretary to issue regulatory guidance in this area.

At the same time, there are those who are hoping to convince Treasury to turn the definition of beneficial ownership inside out, and declare that attorneys or trustees or asset managers who direct payments into or out of an account on behalf of unnamed parties can somehow qualify as the “beneficial owner” of the accounts. Their main concern is that attorneys will want to convince Treasury that offshore shell corporations or trusts can qualify as the beneficial owner of the accounts they open. But those are exactly the types of accounts that terrorists and criminals use to hide their identities and infiltrate U.S. financial institutions. And those are exactly the accounts for which U.S. financial institutions need to verify and evaluate the real beneficial owners.

The beneficial ownership regulation will be a challenging undertaking. But there is plenty of expertise to draw upon, from FATF, the Basel Committee, U.S. financial and tax regulators, other countries with beneficial ownership requirements and, of course, from our own financial community.

Fourth, Section 311(e)(2) directs the Treasury Secretary to issue regulations clarifying how the term “acquirer” is used for financial institutions other than banks. This authority should be read in conjunction with Section 311(e)(4) which allows, but does not require, the Secretary to issue regulations defining in the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318. These two regulatory sections should, in turn, be read in conjunction with Section 312(b)(1) which directs the Secretary to issue regulations further clarifying the due diligence policies, procedures and controls required under that section. Together, these grants of regulatory authority provide the Treasury Secretary with ample authority to issue regulatory guidance to help different types of financial institutions understand what is expected of them in the area of due diligence. Such guidance may be needed by banks, securities firms, insurance companies, exchange houses, money service businesses and other financial institutions. The guiding principle, again, is to ensure that U.S. financial institutions exercise appropriate due diligence before opening accounts for foreign financial institutions or wealthy foreign individuals seeking access to the U.S. financial system.

These grants of regulatory authority can also be used by Treasury to ensure that the regulations which were established by Section 313 is as broad and effective as possible to keep shell banks out of the U.S. financial system.

Next is due diligence and correspondent banking. Section 312 imposes an ongoing, industry-wide legal obligation on all types of financial institutions operating in the United States to exercise appropriate care when opening and operating correspondent accounts for foreign financial institutions or wealthy foreign individuals seeking access to the U.S. financial system. The general obligation to establish appropriate and specific due diligence policies, procedures and controls when opening correspondent accounts is contained in a new 31 U.S.C. 5318(1)).

Subsection 5318(1)(2) specifies additional, minimum standards for enhanced due diligence policies, procedures and controls that must be established. U.S. financial institutions for correspondent accounts opened for two specific categories of foreign banks: banks operating under offshore banking licenses and banks operating in foreign countries that have been designated as money laundering or terrorist financing countries. These two categories of foreign banks were identified due to their higher money laundering risks, as explained in the extensive staff report and hearing record of the Permanent Subcommittee on Investigations, copies of which I released earlier this year. Subsection 5318(1)(2) provides two alternative ways in which a foreign country can be designated as raising money laundering concerns. The first way is if a country is formally designated by an intergovernmental group or organization of which the United States is a member. Currently, the most well known such group is the Financial Action Task Force on Money Laundering, also known as FATF, which is composed of about 30 countries and is the leading international group fighting money laundering. In 2000, after a lengthy fact-finding and consultative process, FATF designated a list of countries that FATF’s member countries formally agreed to designate as noncooperative with international anti-money laundering principles and procedures. This list, which names between 12 and 15 countries, is updated periodically and has become a powerful force for effecting change in the listed jurisdictions. The second way a country may be designated for purposes of the enhanced due diligence requirement is if the country is so designated by the Treasury Secretary after the procedures provided in the new Section 5318A. This second alternative enables the United States to act unilaterally as well as multilaterally to require U.S. financial institutions to take greater care in opening correspondent accounts for foreign banks in jurisdictions of concern.

The House and Senate bills contained one minor difference in the wording of the provision regarding foreign country designations by an intergovernmental group or organization under the new 31 U.S.C. 5318(1)(2)(A)(i)(l). The House bill included a phrase, not in the Senate bill, stating that the foreign country designation had to be one with which the Secretary of Treasury concurred, apparently out of concern that an intergovernmental group or organization might designate a country as noncooperative over the objection of the United States. The final version of the provision includes the House approach, but uses statutory language making it clear that U.S. concerns regarding foreign country designation may be provided by the U.S. representative to the relevant international group or organization, whether or not that representative is the Secretary of Treasury or some other U.S. official.

The new 31 U.S.C. 5318(1)(2) states that the “enhanced due diligence policies, procedures, and controls that U.S. financial institutions must establish for correspondent accounts with offshore banks and banks in jurisdictions designated as raising money laundering concerns must include at least three elements. They must require the U.S. financial institution to ascertain the foreign bank’s ownership, to carefully monitor the account to detect and report any suspicious activity, and to determine whether the foreign bank is authorized to use a U.S. correspondent account and, if so, the identity of those banks and related due diligence information.
The three elements specified in Section 5318(i)(2) for enhanced due diligence policies, procedures and controls are not meant to be comprehensive. Additional reasonable steps would be appropriate before opening or operating accounts for these two categories of foreign accounts, including checking the foreign bank’s past record and local reputation, the jurisdiction’s regulatory environment, the bank’s major lines of business and client base, and the extent of the foreign bank’s anti-money laundering program. Moreover, other categories of foreign financial institutions will also require use of enhanced due diligence policies, procedures and controls including, for example, offshore broker-dealers or investment companies, foreign money exchanges, foreign casinos, and other foreign money service businesses.

Now I would like to discuss due diligence and private banking. The new Section 5318(i) also addresses due diligence requirements for private banking accounts. The private banking staff reported by the Permanent Subcommittee on Investigations explains why these types of private banking accounts are especially vulnerable to money laundering. The language of the provision is intended to cover accounts opened at other types of financial institutions, including securities firms which have developed lines of business for wealthy foreign individuals with a direct or beneficial ownership interest in the account. The House and Senate versions of this provision are very similar. The primary difference between them is that the House bill included a definition of ‘private banking accounts’ that originally appeared in the Levin-Grassley bill, S. 1371, while the Senate left the term undefined. The final version of Section 5318(i) includes the House definition. It has three elements. First, the account in question must require a $1 million minimum aggregate of deposits. Second, the account must be opened on behalf of living individuals who own a beneficial ownership interest in the account. Third, the account must be assigned to, administered, or managed in part by, a financial institution employee such as a private banker, relationship manager or account officer. The purpose of this definition is to require U.S. financial institutions to exercise due diligence when opening and operating private banking accounts with large balances controlled by wealthy foreign individuals with direct access to the financial professionals responsible for their accounts.

U.S. financial institutions with private banking accounts are required by the new Section 5318(i)(1) to establish appropriate and specific due diligence policies, procedures and controls with respect to those accounts. Section 5318(i)(3) states that, at a minimum, the due diligence policies, procedures and controls must include reasonable steps to ascertain the identity of the account owner; to ascertain the source of funds deposited into the account; and to monitor the account to detect and report any suspicious activity. If the account is opened for or on behalf of a senior foreign political figure or a close family member or associate of the political figure, the U.S. financial institution must use enhanced due diligence policies, procedures and controls with respect to the account to ensure that the account is not being used to evade anti-money laundering requirements, and the account is not being used to avoid, evade or circumvent the intent of the law. The enhanced due diligence requirements for private banking accounts involving senior foreign political figures are intended to work in tandem with the guidance issued on this subject by Treasury and federal banking regulators in January 2001.

The new 31 U.S.C. 5318(i). These regulations are, again, intended to provide regulatory guidance to the range of U.S. financial institutions that will be compelled to exercise due diligence before opening a private banking or correspondent banking account. Section 312(b) states that, whether or not the Treasury Secretary issues 180 days to issue regulations clarifying the due diligence policies, procedures and controls required under the new 31 U.S.C. 5318(i). These regulations are, again, intended to provide regulatory guidance to the range of U.S. financial institutions that will be compelled to exercise due diligence before opening a private banking or correspondent banking account. Section 312(b) states that, whether or not the Treasury Secretary issues regulations within 180 days after the date of enactment of the legislation, the due diligence requirement will go into effect 270 days after the date of enactment of the legislation. That means, whether or not the Treasury Secretary issues any regulations, after 270 days, U.S. financial institutions will be legally required to establish appropriate and specific due diligence policies, procedures and controls for their private banking and correspondent accounts, including enhanced due diligence policies, procedures and controls where necessary.

In addition to due diligence and the enhanced due diligence policies, procedures and controls for their private banking and correspondent accounts, U.S. financial institutions are required by the new Section 310 of the final bill to establish anti-money laundering policies, procedures and controls that are intended to prevent such maneuvering here.

The purpose of the private banking provision is to require U.S. financial institutions to exercise due diligence when opening or managing accounts with large deposits for wealthy foreign individuals who can use the services of a private banker or other employee to move funds, open offshore corporations or accounts, or engage in other financial transactions that carry money laundering risks. Because it is the intent of Congress to strengthen due diligence controls and protect the U.S. financial system to the greatest extent possible in the private banking area, the due diligence requirements in Section 5318(i) should be interpreted in ways that will maximize the due diligence efforts of U.S. financial institutions.

Finally, the House-Senate negotiators adjusted the effective date of the due diligence provision. The new effective date gives Secretary 180 days to issue regulations clarifying the due diligence policies, procedures and controls required under the new 31 U.S.C. 5318(i). These regulations are, again, intended to provide regulatory guidance to the range of U.S. financial institutions that will be compelled to exercise due diligence before opening a private banking or correspondent banking account. Section 312(b) states that, whether or not the Treasury Secretary issues regulations within 180 days after the date of enactment of the legislation, the due diligence requirement will go into effect no later than 270 days after the date of enactment of the legislation. That means, whether or not the Treasury Secretary issues any regulations, after 270 days, U.S. financial institutions will be legally required to establish appropriate and specific due diligence policies, procedures and controls for their private banking and correspondent accounts, including enhanced due diligence policies, procedures and controls where necessary.

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them the option of using a court-appointed receiver to chase down the laundered funds.

Second, the provision is intended to allow any U.S. district court to appoint a Federal receiver in a money laundering or forfeiture proceeding, whether criminal or civil, if so requested by the Federal prosecutor or Federal or State regulator associated with the proceeding. The only restriction is that the court must have jurisdiction over the defendant whose assets the receiver will be pursuing. Jurisdiction may be determined in the context of the criminal or civil proceeding before the court, including under new language in other parts of Section 317 making it clear that a district court has jurisdiction over any foreign financial institution that has a correspondent account at a U.S. financial institution; over any foreign person who has committed a money laundering offense involving a financial transaction occurring in whole or in part in the United States; and over any foreign person that has converted to their own use property that is the subject of a U.S. forfeiture order, as happened in the Swiss American Bank case described in the Subcommittee's staff report.

The third point about the Federal receiver provision is that it is intended to make it clear that Federal receivers appointed under U.S. money laundering laws or forfeiture proceedings are subject to the restrictions set by the Attorney General. These restrictions include a requirement to impose anti-money laundering requirements on all financial institutions across the board that reach virtually all U.S. financial institutions. The language is essential to increase the effectiveness of receivers who often have to work quickly, in foreign jurisdictions, in cooperation with foreign law enforcement and financial regulatory personnel, and who need clear statutory authority to make use of international wire transfer systems and maintain financial information from the U.S. Financial Crimes Enforcement Network in Treasury and from foreign countries as if the receiver were standing in the shoes of a federal prosecutor. This language is essential to increase the effectiveness of receivers who often have to work quickly, in foreign jurisdictions, in cooperation with foreign law enforcement and financial regulatory personnel, and who need clear statutory authority to make use of international wire transfer systems and maintain financial information from the U.S. Financial Crimes Enforcement Network in Treasury and from foreign countries as if the receiver were standing in the shoes of a federal prosecutor.

Finally, I would like to take note of two other provisions that are included in the final bill. They are Section 326 authored by Senate Banking Committee Chairman SARBANES to require all U.S. financial institutions to establish anti-money laundering programs, and Section 326 authored by House Financial Services Committee Chairman Oxley, which requires all U.S. financial institutions to verify the identity of their customers. Both are strong requirements that apply to all U.S. financial institutions and, in the case of the Oxley provision, to all financial accounts. Both represent important advances in U.S. anti-money laundering laws by codifying basic anti-money laundering requirements. I commend my colleagues for enacting these basic requirements to fill critical gaps into our laws and filling in some of the gaps that have made our anti-money laundering safeguards less comprehensive than they need to be.

The closing provision of both the House and the Senate bills, and the final bill being enacted by Congress today, is to impose anti-money laundering requirements across the board that reach virtually all U.S. financial institutions. Congress has determined that broad anti-money laundering requirements applicable to virtually all U.S. financial institutions are needed to seal the cracks in our financial systems that terrorists and other criminals are all too ready to exploit.

There are many other noteworthy provisions of this legislation, from requirements involving legal service of subpoenas on foreign banks with U.S. accounts, to new ways to prosecute money laundering crimes, to new arrangements for international cooperation among U.S. financial institutions, regulators, and law enforcement to stop terrorists and other criminals from gaining access to the U.S. financial system. There just is not sufficient time to go into all of this.

To reiterate, the antiterrorism bill we have before us today would be very incomplete—only half of a toolbox—without a strong anti-money-laundering title to prevent foreign terrorists and other criminals from using our financial institutions against us. With the anti-money-laundering provisions in this bill, the antiterrorism bill gives our enforcement authorities a valuable set of additional tools to fight those who are attempting to terrorize this country.

Osama bin Laden has boasted that his modern new recruits know, in his words, the “cracks” in “Western financial systems,” like they know the “lines in their own hands.” Enactment of this bill with these provisions will help seal those cracks that allow terrorists and other criminals to use our own financial systems against us.

The intention of this bill is to impose anti-money-laundering requirements across the board that reach virtually all U.S. financial institutions. Our Permanent Subcommittee on Investigations, which I chair, spent 3 years examining the weaknesses and the problems in our banking system with respect to money laundering by foreign customers, including foreign banks. Through 6 days of hearings and 2 major reports, one of which contained case studies on 10 offshore banks, we developed S. 1371 to strengthen our financial system. A bipartisan group of Senators joined me in pressing for its enactment, including Senators Grassley, SARBANES, KYL, DeWINE, BILL NELSON, DUBIN, STABENOW, and KERRY.

The major elements of S. 1371 are part of the legislation we are now considering.

Finally, Mr. President, I want to give a few thank-yous. First, I thank Senator SARBANES, chairman of the Senate Banking Committee, for his singular significance of the money laundering issue in the fight against terrorism, and I thank him for his quick action, his bipartisan inclusive approach, and his personal dedication to producing tough, meaningful law. I also thank him for allowing my staff to participate fully in the negotiations to reconcile the anti-money-laundering legislation passed by the House and the Senate.

I extend my thanks and congratulations to the Senate Banking Committee and the House Financial Services Committee for a fine bipartisan product that will strengthen, modernize, and revitalize U.S. anti-money-laundering laws. Congressman OXLEY and Congressman LAFALCE jumped right into the issue, committed themselves to producing strong legislation, and did the hard work needed to produce it. The negotiations were a model of House-Senate collaboration, with bipartisan, productive discussions leading to a legislative product that is stronger than the legislation passed by either House and which is legislation in which this Congress can take pride.

I also extend my thanks to Senator DASCHLE, Senator LOTT, and Senator LEAHY for taking the actions that were essential to ensure that the anti-money-laundering title was included in the antiterrorism bill. Senator DASCHLE made it very clear that without these provisions no antiterrorism bill would be complete, Senator LEAHY took actions of all kinds to make sure that, in fact, the anti-money-laundering provisions were included in the final bill.

I thank Senator GRASSLEY who joined me in this effort early on and who worked with me every step of the way in enactment of the anti-money laundering legislation into law.

Senator STABENOW I thank for her quick and decisive action during the Banking Committee’s consideration of this bill. Without her critical assistance, this would not be before us today. I also thank Senator KERRY for his consistent, strong and informed role in fashioning this landmark legislation.

Finally I want to give a few thank-yous to staff. Elise Bean of my staff first and foremost deserves all of our thanks for her heroic efforts on this legislation. She and Bob Roach of our Subcommittee staff led the Subcommittee investigations into money laundering and did very detailed work on the independent banking that laid the groundwork for the legislation we are passing today. I want to thank them both.
I want to thank Bill Olson of Senator Grassley’s office for jumping in whenever needed and lending strong support to this legislative effort. Similar thanks go to John Phillips of Senator Kerry’s office who was there at all hours to make sure this legislation happened.

Similar thanks go to Senator SARBANES’ staff on the Senate Banking Committee—especially Steve Harris, Marty Gruenberg, Patience Singleton and Steve Kroll, who put in long hours, main degrees of both competency and professionalism, and provided an open door for my staff to work with them.

I also want to thank the staff of the House Financial Services Committee—ike Jones, Carter McDowell, Jim Clinger and Cindy Fogleman. They put in long hours, knew the subject, and were dedicated to achieving a finished product of which we could all be proud.

Our thanks also go to Laura Ayoud of the Senate Counsel’s office, a few who literally worked around the clock during the negotiations on this legislation and, through it all, kept a clear eye and a cheerful personality. Her work was essential to this product.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Before I make my statement and before Senator LEVIN leaves the floor, I wish to acknowledge the very substantial contribution that Senator LEVIN made to the money-laundering title that is in this bill, which I think is an extremely important title. In fact, you can’t watch any program on television that has experts talking about what we ought to be doing with respect to this terrorism challenge when either the first or second thing they mention is to dry up the financial sources of the terrorists, and that, of course, comes right back to the money-laundering

Senator LEVIN over a sustained period of time, in the government operations committee, held some very important hearings, issued very significant reports, and formulated a number of recommendations. This title is, in part, built on the recommendations that Senator LEVIN put forward at an earlier time. I simply acknowledge his extraordinary contribution to this issue. I acknowledge Senator KERRY as well. There were two proposals. They both had legislation in them and we used some of the building blocks in formulating this title. We think it is a very strong title and that it can be a very effective tool in this war against terrorism, and against drugs, and against organized crime. It should have been done a long time ago, but it is being done now.

Before the able Senator from Michigan leaves the floor, I thank him and acknowledge his tremendous contribution.

Mr. LEVIN. Again, I thank Senator SARBANES for his great leadership, along with Senator LEAHY, which made this possible.

Mr. SARBANES. Mr. President, I rise in very strong support of this legislation—in particular, title III, the International Money Laundering Abatement and Financial Antiterrorism Act, which was included as part of the antiterrorism legislation. Of course, that bill will be marked up by the House of Representatives and will be approved very shortly by this body.

Title III represents the most significant anti-money-laundering legislation in many, many years—certainly since money laundering first made a crime in 1986. The Senate Committee on Banking, Housing, and Urban Affairs, which I have the privilege of chairing, marked up and unanimously approved the key anti-money-laundering provisions on October 4. Those provisions were approved unanimously, 21–0. Those were approved as Title III of S. 1510, the Uniting and Strengthening America Act on October 11 by a vote of 96–1. H.R. 3004, the Financial Antiterrorism Act of 2001, as amended, contains many of the same provisions and added important additional provisions, passed the House of Representatives by a vote of 412–1 on October 17.

Title III of this conference report represents a skillful melding of the two bills and is a result of the strong contribution made by House Financial Services Committee and chairman MICHAEL OXLEY and ranking member JOHN LAFalCE, working with Senator GRAMM, the ranking member of the Senate committee.

President Bush said on September 24, when he took executive branch action on the money-laundering issue:

We have launched a strike on the financial foundation of the global terror network.

Title III of our comprehensive antiterrorism package supplies the ammunition for that strike on the financial foundation of the global terror network. Terrorist attacks require major investment, training, practice, and financial resources to pay the bills. As bin Laden may have boasted, “Al-Qaeda includes modern, educated youth who are as aware of the cracks inside the financial system as they are aware of the lines in their hands,” but with title III, we are sealing up those cracks.

Money laundering is the transmission belt that gives terrorists the resources to carry out their campaigns of carnage, but we intend, with the money-laundering title of this bill, to end that transmission belt in its ability to bring resources to the networks that enable terrorists to carry out their campaigns of violence.

I need not bring to the attention of my colleagues the fact that public support, across the country, for anti-money-laundering legislation is extremely strong. Jim Hoagland put it plainly in the Washington Post:

This crisis offers Washington an opportunity to force American and international banks to clean up money-laundering practices they now tolerate or encourage, and which terrorism can exploit.

This legislation takes up that challenge in a balanced and forceful way.

Title III contains, among other provisions, authority to take targeted action against countries, institutions, transactions, or types of accounts the Secretary of the Treasury finds to be of potential money-laundering concern.

It also contains critical requirements of due diligence standards directed at correspondent accounts opened at U.S. banks by foreign offshore banks and banks in jurisdictions that have been found to fall significantly below international anti-money-laundering standards.

It prohibits U.S. correspondent accounts for offshore shell banks, those banks that have no physical presence or employees anywhere and that are not part of a regulated and recognized banking company.

The title also contains an important provision from the House bill that requires the issuance of regulations regarding the maintenance of records for verifying the identity of customers opening and maintaining accounts at U.S. financial institutions, and it very straightforwardly requires all financial institutions to establish appropriate anti-money-laundering programs.

Title III also includes several provisions to enhance the ability of the Government to share more specific information with banks, and the ability of banks to share information with one another relating to potential terrorist or money-laundering activities.

In addition, it provides important technical improvements in anti-money-laundering statutes, existing statutes, and mandates to the Department of the Treasury to act or formulate recommendations to improve our anti-money-laundering programs.

This is carefully considered legislation. While the committee moved expeditiously, its movement was based and reflects the efforts which have been made over a number of years on this issue.

As I indicated earlier, Senator CARL LEVIN, Senator KERRY, and in addition, Senator CHARLES GRASSLEY have led farsighted efforts to keep money-laundering issues on the front burner. Others in the Congress have also been involved with this issue over time. The House Banking Committee, under the leadership of Chairman MICHAEL OXLEY, and Ranking Member JOHN LAFalCE, approved a money-laundering bill in June of 2000 by a vote of 31–1. It was very similar to the legislation introduced by Senator KERRY.

As the successor to Congressman LEACH, House Financial Services Chairman OXLEY has continued the commitment to fighting money launderers to maintain the integrity of our financial system and, now, to help ensure the safety of our citizens.

We have been guided in our work by the testimony presented to the committee on September 26. We heard from a number of expert witnesses and from the Under Secretary of the Treasury
Gurule, Assistant Attorney General Chertoff, and Ambassador Stuart Eizenstat, the former Deputy Secretary of the Treasury. All of the witnesses advocated stronger and more modern money-laundering laws.

Before describing the provisions of Title III in greater detail, I want to single out a number of our colleagues and their staffs for their extraordinary contributions.

I have already spoken about House Financial Services Committee Chairman Oxley and ranking member Falce, but I want to note their personal willingness and that of their staffs to work overtime to ensure that the Senate Budget reached agreement on this important legislation. In fact, last week when the office buildings were closed down, we met here in a room in the Capitol on Wednesday evening, well beyond midnight, and resumed early the next morning and continued throughout the day on Thursday, working on all of our issues by the end of that afternoon.

I am truly grateful to all the members of the Senate Banking Committee for their strong, positive, and constructive contributions to the Senate amendment. I indicated it was approved by the committee on a 21-0 vote. Ranking member Senator Gramm provided critical support.

Senators Stabenow, Johnson, and Hagey were instrumental in producing a compromise to resolve a dispute over one of the package's most important provisions.

Senator Enzi brought his expertise as an accountant to bear in refining another critical provision.

Senator Schumer, who has been involved in past efforts to address money-laundering activities, played an important role, as did Senators Dodd, Bayh, Carper, Corzine, Allard, and Crapo who either offered amendments or made important contributions for improvements in this title.

I also want to take a moment to recognize those members of our staff who devoted so many hours to crafting this important and comprehensive legislation, literally all night in a couple of instances along the way in the legislative process: Steve Kroll, Patience Singleton, Steve Harris, Lynsey Graham, Vince Meehan, Marty Gruenberg, and Jesse Jacobs on the Banking Committee's majority staff. And on the Banking Committee's minority staff, I want to underscore the work of Wayne Abernathy, Linda Lord, and Madelyn Simmons.

I also thank Elise Bean from Senator Levin's staff and John Phillips from John Kerry's staff who worked closely with us and made significant contributions.

Finally, I take special note of Laura Ayoud of the Legislative Counsel's office. Mrs. Ayoud worked countless hours from the very beginning so that the committee print and a substitute for the Banking Committee markup were all produced on time and with the utmost accuracy and professionalism. I must say, I think the Senate is extremely fortunate to have professionals of the caliber of Mrs. Ayoud in the Legislative Counsel's office. I tip my hat not only to her, but to the extraordinary record of professionalism and dedication with which the Legislative Counsel's office renders to the Senate.

Title III addresses all aspects of our defenses against money laundering. Those defenses generally fall into three parts. The first is the Bank Secrecy Act passed in 1970. It requires financial institutions to keep standardized transaction records and report large currency transactions and suspicious transactions, and it mandates reporting of the movement of more than $10,000 in currency into and out of our country.

The Bank Secrecy Act is so named because it bars bank secrecy in America by preventing financial institutions from maintaining opaque records or hiding places. What we want to do is a hiding place for crime, and Congress has barred our institutions from allowing those hiding places.

The second part of our money-laundering defenses are the criminal statutes enacted in 1986 that make it a crime to launder money and that allow criminal and civil forfeiture of the proceeds of crime.

The third part is a statutory framework that allows information to be communicated to and between law enforcement officials. Our goal must be to assure, to the greatest extent consistent with reasonable privacy protections—and we understood the need to balancing these considerations—to assure ourselves that necessary information can be used by the right persons in real time to cut off terrorism and crime.

Title III modernizes provisions in all three areas to meet today's threats in a global economy. Its provisions are divided into three subtitles dealing respectively with international counter-money-laundering measures, sections 311 through 330; Bank Secrecy Act amendments and related improvements, sections 351 through 366; and currency crimes and protections, sections 371 through 377.

There are 46 provisions in Title III. At this time, I want to summarize some of the bill's most important provisions.

Section 311 gives the Secretary of the Treasury, in consultation with other senior government officials, authority to impose one or more of five new "special measures" against foreign jurisdictions, entities, transactions or accounts that in the determination of the Secretary, after consultation with other senior federal officials, poses a "primary money laundering concern" to the United States. The special measures all involve special recordkeeping requirements and can include closing the curtains behind which launderers hide. In extreme cases the Secretary is permitted to bar certain kinds of international bank accounts from especially problematic jurisdictions. The statute specifies the considerations the Secretary must take into account in using the new authority and contains provisions to supplement the Administration's Procedure Act. The new authority remains exempt except certain short-term measures—are subject to full comment from all affected persons.

This new provision gives the Secretary real authority to act to close foreign loopholes through which U.S. financial institutions are abused. At present the Secretary has no weapons except Treasury Advisories, which do not impose specific requirements, or full economic sanctions which suspend financial and trade relations with offending targets. President Bush's invocation of the International Economic Emergency Powers Act, IEEPA, several weeks ago was obviously appropriate. But there are many other situations in which we will not want to block all financial dealings but still want to do more than simply advise financial institutions about under-regulated foreign financial institutions or holes in foreign countermoney laundering efforts.

Former Deputy Secretary Eizenstat testified before the Committee in September that adding this tool to the Secretary's arsenal was essential.

Section 312 focuses on another aspect of the fight against money laundering, the fundamental intent is to make it difficult for those laundering money to make the initial decisions about what foreign banks to allow inside the United States. It requires U.S. financial institutions to exercise appropriate due diligence when dealing with private banking accounts and interbank correspondent relationships with foreign banks. With respect to foreign banks, the section requires U.S. financial institutions to apply appropriate due diligence to all correspondent accounts in foreign banks. But there is no due diligence for accounts sought by offshore banks or banks in jurisdictions found to have substandard money laundering controls or which the Secretary determines to be of primary money laundering concern under the new authority given him by section 311.

The section also specifies certain minimum standards for the enhanced due diligence that U.S. financial institutions are required to apply to accounts opened for foreign banks with high money laundering risks—offshore banks and banks in jurisdictions with weak anti-money laundering and banking controls. These minimum standards were developed from, and are based upon, the factual record and analyses that were prepared by the staff of the Senate Permanent Subcommittee on Investigations, which Senator Levin chairs. Section 312 is essential to Title III. It addresses, with appropriate flexibility, mechanisms whose very importance for the conduct of commercial banking
makes them special targets of money launderers, as illustrated in Senator Levin’s extensive reports and hearings. The intent of the statute is to provide special due diligence rules which will apply to correspondent relationships maintained by foreign financial institutions not merely by domestic banks but by all types of financial institutions operating in the United States, subject to the authority of the Secretary of the Treasury to define the appropriate standards of care by regulation where appropriate. Given the scope of the applicable definition of correspondent account, in new section 5318A (which also applies for purposes of new section 5318B(1)), the general due diligence obligations of new section 5318B(1) apply to all correspondent accounts maintained by U.S. financial institutions for any foreign financial institution (i.e., not simply foreign depository institutions). The statutory intent with respect to private banking accounts is similar; that is, the statute is intended to provide special due diligence rules for private banking accounts maintained by foreign financial institutions for non-United States persons not merely by depository institutions operating in the United States, but by all types of financial institutions operating in the United States and defined in 31 U.S.C. 5312, subject to the authority of the Secretary of the Treasury to define the appropriate definitions of the relevant terms by regulation.

The question has been raised whether the due diligence provisions of section 312 are “discretionary.” The answer is no. The provisions are to apply whether or not any rules are issued by the Treasury or whether the Treasury takes any other implementing action (in contradistinction to the provisions of new section 5318B(1)), the general due diligence obligations of new section 5318B(1) will be affirmatively invoked by the Secretary. The Secretary is given authority to issue regulations “further delineating” the “due diligence policies, procedures, and controls” required by new subsection (H) in order to meet those regulations in a manner which must of course be consistent with the statutory language and intent to require all U.S. financial institutions to exercise the required standard of care in dealing with the risk of the misuse of the financial mechanisms with which the subsection deals.

A provision of section 319 of title III requires foreign banks that maintain correspondent accounts in the United States to submit for scrutiny within the United States and authorizes the Attorney General and the Secretary of the Treasury to issue a summons or subpoena to any such foreign bank seeking records, wherever located, for such correspondent accounts. U.S. banks must sever correspondent arrangements with foreign banks that do not either comply with or contest any such summons or subpoena, upon notification from the Attorney General or Secretary of the Treasury.

All of these provisions send a simple message to foreign banks doing business through U.S. correspondent accounts: be prepared, if you want to use our banking facilities, to operate in accordance with U.S. law.

Section 313 of title III also builds on the factual record before the Banking Committee that those same foreign financial institutions maintained in the United States financial system pure “brass-plated” shell banks created outside the U.S. that have no physical presence anywhere and are not affiliated with any recognized banking institution. These shell banks carry the highest money laundering risks in the banking world because they are inherently unavailable for effective oversight—there is no office where a bank regulator or law enforcement official can go to observe bank operations, review documents or freeze funds. Thus the ban on provision of correspondent banking services for such brass-plated institutions is a particularly important part of title III. New 31 U.S.C. 5318B(1) is intended to be vigorously enforced and strictly applied in light of the relief provided in the statute for special banking vehicles that are affiliated with operating institutions and are subject to financial supervision along with those institutions.

Section 322 requires the Secretary to deal with abuse of another recognized commercial banking mechanism—concentration accounts that are used to commingle related funds temporarily in one place pending disbursement or then transferred to individual client accounts. Concentration accounts have been used to launder funds, and the bill authorizes the Secretary to issue rules to bar the use of concentration accounts to move client funds anonymously, without documentation linking particular funds to their true owners. I believe that the Secretary must move promptly toexercise the regulatory authority granted by this section.

Section 322 will help ensure that individuals opening accounts with U.S. financial institutions provide information adequate to enable law enforcement and supervisory agencies to identify accounts maintained by individuals suspected of terrorist activities. The section requires the Secretary of the Treasury to prescribe regulations in consultation with each federal functional regulator to set minimum standards and procedures concerning the verifications’ identification, maintenance of records of identity verification, and consultation at account opening of lists of known or suspected terrorists provided to the financial institution by a government agency. This section also requires the Secretary of the Treasury to submit recommendations to Congress, within 6 months of enactment, on the most effective way to require foreign nationals to provide financial institutions in the United States with accurate identity information.

It is the intent of section 326 that regulations pursuant to that section do not place obligations solely on the shoulders of the Nation’s financial institutions, without placing any obligations on their customers. The contemplated regulations should therefore include provisions relating to the obligations of individuals to provide accurate information in connection with account-opening procedures, so that in appropriate cases penalties may apply under the Bank Secrecy Act to customers who willfully mislead bank officials about matters of customer identification.

Section 332 requires financial institutions to establish minimum antimony laundering programs that include appropriate internal policies, management, employee training, and audit features. This is not a “one-size-fits-all” requirement; in fact its very generality recognizes that different types of programs will be appropriate for different types and sizes of institutions. It is our intent that the general language in the amended provision, that the content of the relevant antimony laundering programs will necessarily vary with the details of the particular financial institutions to the money laundering risks to which the nature of such institution and its financial products exposes the institution. Treasury regulations pursuant to this section should allow adjustment of the content of anti-money laundering programs for smaller businesses but not exempt businesses from the requirement altogether simply because of their size.

A number of improvements are made to the suspicious activity reporting rules. First, technical changes strengthen the safe harbor from civil liability for institutions that report suspicious activity to the Treasury, Sec. 351. The provisions not only add to the protection for reporting institutions; they also address individual privacy concerns by making it clear that government officers may not disclose suspicious transaction reports information except in the course of their official duties. Section 356 also requires the issuance of final suspicious transaction reporting rules applicable to brokers and dealers in securities by July 1, 2002; senior officials of the relevant agencies must meet expeditiously to resolve the policy issues raised at staff levels about the content of the necessary regulations and the extent to which suspicious transaction reporting rules should be the same for banks and non-bank financial institutions.

Sections 359 and 373 of the title deal with underground banking systems such as the Hawala, which is suspected of being a channel used to finance the al Qaeda network. Section 359 makes it unlawful for any organization under such a scheme to transmit funds to the United States financial system. The Hawala transmitters are subject to the same record-keeping rules—and the same penalties for violating those rules—as aboveground, recognized, money transmitters. It also directs the Secretary of the Treasury to report to Congress, within 1 year, on the need for additional legislation or regulatory controls relating to underground banking
systems. Section 373 clarifies that operators of a money transmitter business can be prosecuted under Federal law for operating an illegal money transmitting business if they do not have a required State license.

Section 374 requires the Secretary of the Treasury to instruct the United States Executive Director of each of the international financial institutions to use such Director’s “voice and vote” to support loans and other use of resources by nations that the President determines to be contributing to efforts to combat international terrorism, and to require the auditing of each international financial institution to ensure that funds are not paid to persons engaged in or supporting terrorism.

Section 371 creates a new Bank Secrecy Act offense involving the bulk smuggling of more than $10,000 in currency in any conveyance, article of luggage, or container, whether into or out of the United States, and related forfeiture provisions. This provision has been sought for several years by both the Departments of Justice and Treasury.

Other provisions of the bill address relevant provisions of the Criminal Code. These provisions were worked out with the House and Senate Judiciary Committees and are included in title III because of their close relationship to the provisions of title IIId added or modified by title III.

The most important section is 315, which expands the list of specified unlawful activities under 18 U.S.C. 1956 and 1957 to include foreign corruption offenses, certain U.S. export control violations, offenses subject to U.S. extraterritorial obligations under multilateral treaties, and various other offenses. The Department of Justice should make use of the expanded authority, created by section 315, to make the risk of detection to foreign kleptocrats immediate and palpable.

Section 316 establishes procedures to protect the confidentiality of a government's antiterrorism authority. This provision is designed to assure that there is no situation in which the defendant in a forfeiture action will lack the opportunity to challenge the forfeiture simply because of the authority under which the forfeiture is sought.

Section 319 treats amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of fairness and consistent with the United States national interest, to suspend a forfeiture proceeding based on that presumption. This closes an important forfeiture loophole.

A third important set of provisions modernize information-sharing rules to reflect the reality of the flight of terrorist assets to money laundering and terrorism.

Section 314 requires the Secretary of the Treasury to issue regulations to encourage cooperation among financial institutions, financial regulators and law enforcement officials and to permit the sharing of information by law enforcement and regulatory authorities with such institutions regarding persons reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. The section also allows banks to share information involving possible money laundering or terrorist activity among themselves—with notice to the Secretary of the Treasury.

Section 330 states the sense of Congress that the President should direct certain cabinet officers to seek negotiations with foreign supervisory agencies to ensure that foreign institutions maintain adequate records relating to any foreign terrorist organization or person engaged in any financial crime and to make such records available to U.S. law enforcement and financial supervisory personnel.

Section 332 treats, but does not require, a bank to include information, in a response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in money laundering activity, and creates a safe harbor from civil liability for the bank that includes such information in response to an employment reference request, except in the case of malicious intent.

Section 335 contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act to permit information subject to those statutes to be used in the conduct of United States intelligence or counterintelligence activities to protect against international terrorism.

Section 361 seeks to enhance the ability of FinCEN to address money laundering and terrorism. The section makes FinCEN an operating office of the Treasury and requires the Secretary to establish operating procedures for the government-wide data access service and communications center that FinCEN operates. In recognizing FinCEN’s evolution and maturity, it is not our intention to require existing delegations of authority to be reissued simply because FinCEN’s organizational status has changed from Treasury office to Treasury bureau.

The modernization of our money-laundering laws represented by Title III is long overdue. It is not the work of one or two weeks but represents years of careful study and a bipartisan effort to produce prudent and effective legislation. The care taken in producing the legislation extends to several provisions calling for reporting on the effect of the legislation and a provision for a three-year review of the effectiveness of the legislation. Title III responds, as I have indicated, to the current Attorney General Chertoff, the head of the Department of Justice’s Criminal Division. I want to express my appreciation to him, Under Secretary Gurule at the Treasury, and his associates for their help in this effort.

At the hearing on September 26, Assistant Attorney General Chertoff said, and I quote him, “We are fighting with outdated weapons in the money-laundering arena today.” Without this legislation, the criminal financial system of which bin Laden spoke would remain open. We should not, indeed we cannot, allow that to continue. And that is why enactment of this legislation is so important.

Title III is a balanced effort to address a complex area of national concern. It is the result of a truly bipartisan effort on both sides of Congress working closely with the executive branch, with the White House, with the Department of the Treasury, and the Department of Justice. I very strongly urge support for this essential component of the antiterrorism package.

I ask unanimous consent that a section-by-section summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD.

**Title III—International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001—Section-by-Section Summary**

Section 301. Short title and table of contents

Section 302. Findings and purposes

Section 303. 4-Year congressional review-expiration consideration

Section 313 provides that the provisions added and amendments made by Title III will terminate after September 30, 2004, if the Congress enacts a joint resolution to that effect, and that any such joint resolution will be considered by the Congress expeditiously.

**Subtitle A. International Counter-Money Laundering and Related Matters**

Section 311. Special measures for jurisdictions, financial institutions, or international transactions or accounts of primary money laundering concern

Section 311 adds a new section 31 U.S.C. 5316A, entitled “Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.” The new section gives the Secretary of the Treasury, in consultation with other senior government officials, authority (in the Secretary’s discretion), to impose one or more of five new “special measures” against foreign jurisdictions, foreign financial institutions, transactions involving such jurisdictions or institutions or one more types of accounts, that the Secretary, after consultation with the Secretary of State and the Attorney General, determines to pose a “primary money laundering concern” to the United States. The special measures include: (1) requiring additional recordkeeping or reporting for particular transactions, (2) requiring the identification of the foreign beneficial owners of certain accounts at a U.S. financial institution, (3) requiring the identification of customers of a foreign bank who use an interbank payable-through account opened by that foreign bank at a U.S. bank, (4) requiring the identification of customers of a foreign bank who use an interbank correspondent account opened by that foreign bank at a U.S. bank.
bank at a U.S. bank, and (5) after consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Reserve Board, restricting or prohibiting the opening or maintaining of correspondent or private banking accounts or interbank correspondent or payable through accounts. Measures 1–4 may not be imposed for more than 120 days except by regulation, and measure 5 may only be imposed by regulation.

Section 312. Special due diligence for correspondent accounts and private banking accounts

Section 312(a) of the Act adds a new subsection (1), entitled “Due Diligence for United States Private Banking and Correspondent Banking Accounts involving Foreign Banks.” This subsection requires a U.S. financial institution that maintains a correspondent account or private banking account for a non-United States person (or that person’s representative) to establish appropriate, specific, and, where necessary, enhanced due diligence procedures that are reasonably designed to detect and report instances of money laundering through such accounts. For this purpose, a correspondent account is defined in the new section 5318A, added to the Bank Secrecy Act (53 Stat. 182), as any account or combination of accounts held by or on behalf of any foreign bank correspondent whose shares are not publicly traded. Second, it must conduct enhanced scrutiny of the correspondent account to guard against money laundering and satisfy its obligation to report suspicious transactions under the terms of 18 U.S.C. 5318(g). Third, it must ascertain whether any foreign bank correspondent in turn provides correspondent accounts to third party foreign banks; if so the U.S. financial institution must ascertain the identity of the U.S. account’s direct or beneficial owners or of any foreign bank correspondent whose shares are not publicly traded. Second, it must conduct enhanced scrutiny of the correspondent account to guard against money laundering and satisfy its obligation to report suspicious transactions under the terms of 18 U.S.C. 5318(g).

These additional standards apply to correspondent accounts requested or maintained by or on behalf of any foreign bank operating under an offshore banking license (defined by the statute as a banking license that bars the licensee from conducting banking activities with citizens of, or in the local currency of, the jurisdiction that issued the license), or (ii) under a banking license issued (A) by any country designated as noncooperative with international anti-money laundering principles by an intergovernmental body of which the United States is a member, with the concurrence of the U.S. representative to such body, or (B) by a country designated by the Secretary of the Treasury as warranting special measures (i.e., the special measures authorized by new section 31 U.S.C. 5318A, added by section 313(b)(1) of Title III, due to money laundering concerns.

Private Banking Accounts.—In the case of private banking accounts, the additional standards required by subsection 5318A(c)(2) include a U.S. financial institution to, at a minimum, do three things. First, it must ascertain the identity, and the nature and extent of control over, the final account holders of any foreign bank correspondent whose shares are not publicly traded. Second, it must conduct enhanced scrutiny of the correspondent account to guard against money laundering and satisfy its obligation to report suspicious transactions under the terms of 18 U.S.C. 5318(g).

These additional standards apply to correspondent accounts requested or maintained by or on behalf of any foreign bank operating under an offshore banking license (defined by the statute as a banking license that bars the licensee from conducting banking activities with citizens of, or in the local currency of, the jurisdiction that issued the license), or (ii) under a banking license issued (A) by any country designated as noncooperative with international anti-money laundering principles by an intergovernmental body of which the United States is a member, with the concurrence of the U.S. representative to such body, or (B) by a country designated by the Secretary of the Treasury as warranting special measures (i.e., the special measures authorized by new section 31 U.S.C. 5318A, added by section 313(b)(1) of Title III, due to money laundering concerns.).

Section 313. Prohibition on United States correspondent accounts with foreign shell banks

Section 313(a) of the Act adds a new subsection (j), entitled “Prohibition on United States Correspondent and Private Banking Relationships with Foreign Shell Banks” to 31 U.S.C. 5318. The new subsection bars any depository institution or registered broker-dealer in securities, operating under an offshore banking license issued by or on behalf of any foreign bank where necessary, enhanced due diligence procedures that are reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption, for any primary or correspondent or private banking account that is requested or maintained by or on behalf of a natural person reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities.

Section 313(b) of Title III requires the Secretary of the Treasury to issue regulations within 120 days of the date of enactment that define the term “private banking account,” if the Secretary of the Treasury is unable to determine that a financial institution is complying with the requirements of section 312, to publish, at least semiannually, a report containing a detailed analysis of patterns of suspicious activity and other appropriate investigative insights derived from suspicious activity reports and law enforcement investigations.

Section 314. Inclusion of foreign corruption offenses as money laundering crimes

Section 314 amends 18 U.S.C. 1956 to include foreign corruption offenses in certain U.S. export control violations, certain offenses, and certain computer fraud offenses, and felony violations of the Foreign Agents Registration Act of 1938, to the list of crimes that constitute “specified unlawful activities” for purposes of the criminal money laundering provisions. These changes in law mean that the U.S. will no longer allow a rapacious foreign dictator to bring his funds to the U.S. and hide them without fear of detection or punishment.

Section 315. Anti-terrorism forfeiture protection

Section 315 establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government’s anti-terrorism authority.

Section 317. Long-arm jurisdiction over foreign money launderers

Section 317 amends 18 U.S.C. 1956 to give United States courts “long-arm” jurisdiction over foreign persons committing money laundering offenses in the United States, over foreign banks opening U.S. bank accounts, and over foreign persons who convert United States financial instruments abroad. The amendments made by section 317 also permit a federal court dealing with such foreign persons to issue a pre-trial restraining order or take other action necessary to protect the property in the United States to satisfy an ultimate judgment. Finally, the amendment also permits the appointment by a federal court of a receiver to collect and take custody of a defendant’s assets to satisfy criminal or civil money laundering or forfeiture judgments.

Section 318. Laundering money through a foreign bank

Section 318 expands the definition of financial institution for purposes of 18 U.S.C. 1956 and 1957 to include banks operating outside of the United States.

Section 319. Forfeiture of funds in United States interbank accounts

Section 319 contains a number of provisions that are designed to deal with practical issues raised by money laundering control and financial transparency, relating primarily to correspondent accounts at U.S. financial institutions.

Section 319(a) amends 18 U.S.C. 1981 to treat amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture of the fruits of the offense of terrorism. The Attorney General, in the interest of justice and consistent with the United States.
States' national interest, to suspend a forfeiture proceeding that is otherwise based on the "U.S. deposit" presumption.

Second, section 319 adds a new subsection (k) to section 315 of title 31 to require U.S. financial institutions to reply to a request for information from a U.S. regulator relating to anti-money laundering compliance within 120 hours of receipt of such a request, and to require foreign banks that maintain correspondent accounts in the United States to notify the Secretary of the Treasury to provide financial institutions with accurate identity information, comparable to that required to be provided by U.S. nationals, and to obtain an identification number that functions similarly to a U.S. national's tax identification number.

Section 320. Proceeds of foreign crimes

Section 320 amends 18 U.S.C. 1961 to permit the United States to institute forfeiture proceedings against the proceeds of foreign crimes, as defined by the United States Code.

Section 321. Financial institutions specified in subchapter II of chapter 53 of Title 31, United States Code

Section 321 amends 31 U.S.C. 5312(2) to add credit unions, futures commission merchants, commodity trading advisers, and registered commodity pool operators to the definition of "financial institution" for purposes of the Bank Secrecy Act, and to include the Commodity Futures Trading Commission within the term "federal functional regulator" for purposes of the Bank Secrecy Act.

Section 322. Corporation represented by a fugitive

Section 322 extends the existing prohibition, in 18 U.S.C. 2466, against the maintenance of a forfeiture proceeding on behalf of a fugitive to include a proceeding by a corporation that is represented by a fugitive and a proceeding in which the corporation's claim is instituted by a fugitive.

Section 323. Enforcement of foreign judgments

Section 323 permits the government to seek a restraining order to preserve the availability of property subject to a foreign forfeiture or confiscation judgment.

Section 324. Report and recommendation

Section 324 amends the Secretary of the Treasury, in consultation with the Attorney General, the Federal banking agencies, the SEC, and other appropriate agencies to evaluate the provisions of 31 U.S.C. 5319, in the Secretary of Title III of the Act and recommend to Congress any relevant legislative action, within 30 months of the date of enactment.

Section 325. Concentration accounts at financial institutions

Section 325 amends 31 U.S.C. 5318(h) to authorize the Secretary of the Treasury to issue regulations concerning the maintenance of concentration accounts by U.S. depository institutions, to prevent an institution's customers from anonymously directing funds into such accounts.

Section 326. Verification of identification

Sec. 326(a) adds a new subsection (l) to 31 U.S.C. 5318 to require the Secretary of the Treasury to prescribe by regulation, jointly with each federal functional regulator, minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution; the minimum standards shall require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures concerning verification of customer identity records and procedures for identity verification, and consultation at account opening of lists of known or suspected terrorists provided to the financial institution; and to require financial institution regulations are to be issued within one year of the date of enactment.

Section 327. Consideration of anti-money laundering compliance

Section 327 amends section 3(c) of the Bank Holding Company Act of 1956, and section 18(c) of the Federal Deposit Insurance Act to require the Federal Reserve Board and the Federal Deposit Insurance Corporation, respectively, to consider the effectiveness of a bank holding company or bank (within the jurisdiction of the appropriate agency) in combating money laundering activities, including in overseas branches, in ruling on any merger or similar application by the bank or bank holding company.

Section 328. International cooperation on identification of originators of wire transfers

Section 328 requires the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to take all reasonable steps to encourage governments to require the inclusion of the name of the originator in wire transfer instructions transmitted to or on behalf of a bank used to support activity by a U.S. bank or domestic financial institution.

Section 329. Criminal penalties

Section 329 provides criminal penalties for officials who violate their trust in connection with the administration of Title III.

Section 330. International cooperation in investigations of money laundering, financial crimes, and the finances of terrorist groups

Section 330 states the sense of the Congress that the Treasury, in consultation with the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate, and in consultation with the Federal Reserve Board, to seek negotiations with foreign financial supervisory agencies and other foreign officials, to ensure that foreign financial institutions maintain adequate records relating to an organization or its membership, or any person engaged in money laundering or other financial crimes, and make such records available to U.S. law enforcement personnel or to international supervisory personnel when appropriate.

Subtitle B. Bank Secrecy Act Amendments and Related Improvements

Section 351. Amendments relating to reporting of suspicious activity reports

Section 351 restates 31 U.S.C. 5318(g)(3) to clarify the terms of the safe harbor from civil liability for financial institutions filing suspicious activity reports pursuant to 31 U.S.C. 5318(g). The amendments to paragraph (g)(3) also create a safe harbor from civil liability for financial institutions filing employment references sought by other banks pursuant to the amendment to the Federal Deposit Insurance Act made by Section 335 of Title III.

Section 352. Anti-money laundering programs

Section 352 amends 31 U.S.C. 5318(h) to require financial institutions to establish anti-money laundering programs and grants the Secretary of the Treasury the authority to set minimum standards for such programs. The anti-money laundering program requirement takes effect at the end of the 180 day period after the date of the Act and the Secretary of the Treasury is to prescribe regulations before the end of that 180 day period that consider the extent to which the requirements imposed under amended section 5318(h) are commensurate with the size, location, and activities of the financial institutions to which the regulations apply.

Section 353. Penalties for violations of geographic targeting orders and certain record-keeping requirements, and lengthening effective period of geographic targeting orders

Section 353 amends 31 U.S.C. 5322, and 5324 to clarify that penalties for violation of the Bank Secrecy Act and its implementing regulations also apply to violations of Geographic Targeting orders issued under 31 U.S.C. 5326, and to certain recordkeeping requirements relating to funds transfers. Section 353 also amends 31 U.S.C. 5326 to make the period of a geographic target order 180 days.

Section 354. Anti-money laundering strategy

Section 354 amends 31 U.S.C. 5314(b) to add "money laundering related to terrorist funding" to the list of subjects to be dealt with in the annual National Money Laundering and Financial Crimes Strategy prepared by the Secretary of the Treasury pursuant to the Money Laundering and Financial Crimes Strategy Act of 1996.

Section 355. Authorization to include suspicions of illegal activity in written employment references

Section 355 amends section 18 of the Federal Deposit Insurance Act to permit (but not require) a bank, in a written employment reference, in a response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in permitted illegitimate activity. A bank that provides information to a second bank under the terms of this amendment is protected from civil liability arising from the provision of the information unless the first bank acts with malicious intent.

Section 356. Reporting of suspicious activities by securities brokers and dealers; investment company duties

Section 356(a) directs the Secretary of the Treasury, after consultation with the Securities and Exchange Commission and the Federal Reserve Board, to publish proposed regulations or before July 1, 2002, and final regulations on or before July 1, 2002, requiring broker-dealers to file suspicious activity reports.

Section 356(b) authorizes the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission, to prescribe regulations requiring futures commissions merchants, commodity trading advisors, and certain commodity pool operators to submit suspicious activity reports under 31 U.S.C. 5318(b). To a significant extent, the amendment clarifies and restates the terms of existing law, but it also signals our concern that the Treasury move quickly to
determine the extent to which suspicious transaction reporting by commodities firms is necessary as a part of the nation’s anti-money laundering programs.

Section 361. Bank Secrecy provisions and anti-money laundering programs. Section 361 directs the Secretary of the Treasury to submit a report to Congress, six months after the date of enactment, on the role of the Internal Revenue Service in the implementation of the Bank Secrecy Act, with emphasis on whether IRS Bank Secrecy Act information is used effectively to prevent financial crimes, and the extent to which such information is used to prevent financial crimes.

Section 357. Special report on administration of Bank Secrecy provisions. Section 357 directs the Secretary of the Treasury to report to Congress six months after the date of enactment, on the administration of the Bank Secrecy Act, with emphasis on whether the IRS Bank Secrecy Act information is used effectively to prevent financial crimes, and the extent to which such information is used to prevent financial crimes.

Section 358. Bank Secrecy provisions and anti-money laundering programs. Section 358 contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act, to provide for new reporting requirements, and to amend the definition of “financial institution.” The Senate committee report on the bill states that the changes to the Bank Secrecy Act are necessary to protect against international terrorism.

Section 359. Reporting of suspicious activities by underground banking systems. Section 359 amends various provisions of the Bank Secrecy Act to clarify the role of the Financial Crimes Enforcement Network (FinCEN). The bill requires that financial institutions report to FinCEN suspicious activities that could be used to finance terrorism.

Subtitle C. CURRENCY CRIMES

Section 371. Bulk cash smuggling. Section 371 creates a new Bank Secrecy Act offenses, 31 U.S.C. §332, involving the bulk smuggling of more than $10,000 in currency in any conveyance, including luggage, or a vehicle.


Section 373. Illegal money transmitting business. Section 373 amends 18 U.S.C. §1960 to clarify the definition of “money transmitter,” and to provide for civil and criminal penalties for violations of the Bank Secrecy Act.
for the pending legislation. This is very important legislation in response to the atrocious terrorist attacks of September 11. We will at some date in the future conduct congressional oversight to make a determination as to whether there were any deficiencies in our intelligence prior to the September 11 attacks. However, we should wait until the appropriate time because our intelligence entities are busy now collecting intelligence to avoid any recurrence of the terrorist attacks. But it is important that law enforcement have appropriate tools at their disposal to combat terrorists. In the United States that means careful legislation which is in accordance with our constitutional rights and our civil liberties.

I believe Congress has responded appropriately in this matter with due deliberation. There is obviously a temptation in the face of what occurred on September 11 to respond spontaneously or react without the understanding of this legislation, I think, with appropriate care and now have a good product.

I had expressed concerns when the bill was on the Senate floor that there could be confusion about the adequacy of the deliberative process because the Supreme Court of the United States has held acts of Congress unconstitutional where they questioned the thoroughness or deliberation. I think this bill as presented today does meet that standard.

The legislation has very important provisions under the Foreign Intelligence Surveillance Act where a modification has been made to authorize electronic surveillance where there is a “significant” rather than a “primary” purpose, allowing use of the Foreign Intelligence Surveillance Act.

I chaired the Judiciary subcommittee, which did Department of Justice oversight, getting into the Foreign Intelligence Surveillance Act in some detail with respect to the Wen Ho Lee case. This is a change which is necessary, and I believe it is a change which will pass constitutional muster.

The electronic surveillance adds terrorism to wiretap predicates. It is rather surprising that terrorism, or allegations of terrorism, have not been sufficient to authorize electronic surveillance where there is a “significant” rather than a “primary” purpose, allowing use of the Foreign Intelligence Surveillance Act.

I believe Congress has responded appropriately in this matter with due deliberation.

The provisions on immigration are important, requiring the Department of Justice and the FBI to share certain information with the State Department and INS. The issues regarding detention, I think, have been very substantially improved to be sure that there is a protection of constitutional rights while giving law enforcement an adequate law with which to conduct the inquiries they need.

The provisions on money laundering, I think, are very important additions to take a stand, to stop terrorist organizations such as al-Qaida and terrorists such as Osama bin Laden not to be financed through the laundering which has been possible through laxity of the banking regulations.

I think, I believe this is a very significant step forward. There is a very heavy report from Washington, DC, today with what is happening here with our efforts to respond in so many ways to September 11. Now with the anthrax, we are all concerned about what may happen in the future.

I chaired the subcommittee of the Intelligence Committee back in the 1995–1996 time period and chairing the appropriations subcommittee on terrorism, I am glad to see us move forward with this legislation which will give law enforcement the tools which would give them a better opportunity to prevent any more sneak attacks, any recurrence of the darnably deeds of September 11.

I thank the Chair, and I yield the floor.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a joint memorandum on the immigration provisions of H.R. 3162 be printed in the RECORD.

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

**JOINT MEMORANDUM OF SENATOR EDWARD M. KENNEDY AND SENATOR SAM BROWNBACK ON THE IMMIGRATION PROVISIONS OF “UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001”**

The U.S. PATRIOT Act of 2001 contains certain immigration provisions worked out between the Administration and members of both parties. Because the legislation was developed outside the ordinary committee process, it is not accompanied by the usual reports elaborating on the background and purpose of its provisions. This memorandum is accordingly submitted on behalf of the Chairman and Ranking Member of the Subcommittee on Immigration of the Senate Committee on the Judiciary to provide some background and explanations for these provisions.

**TITLE IV: PROTECTING THE BORDER**

**SUBTITLE A—PROTECTING THE NORTHERN BORDER**

**Section 401 Ensuring Adequate Personnel on the Northern Border**

This section permits the Attorney General to lift the cap on the number of “full time equivalent” employees that the Immigration and Naturalization Service (INS) may assign to the northern border.

**Section 402 Northern Border Personnel**

This section triples the number of Border Patrol agents, INS Inspectors, and Customs Service employees in each state along the northern border. It also requires additional staff and facilities needed to support northern border personnel. Further, this section provides $30 million to the INS and $50 million to the Customs Service for acquisitions to monitor the northern border and to acquire additional equipment for this purpose.

**Section 403 Requiring Sharing by the Federal Bureau of Investigation of Certain Criminal Record Extracts with Other Federal Agencies in Order to Enhance Border Security**

This section provides the State Department and the INS with electronic access to the information contained in the Federal Bureau of Investigation’s National Crime Information Center Interstate Identification Index (NCIC–III), Wanted Persons File, and other files maintained by the National Crime Information Center. This information is to be used in determining whether a visa applicant or an applicant for admission to the United States has a criminal history.

Under this section, the FBI must provide the State Department and the INS with extracts from its criminal files and periodically update those extracts. Within four months of enactment of this legislation, the State Department must issue regulations regarding the proper use of the information provided by the FBI. Within two years of enactment, the Attorney General and the Secretary of State will report to Congress on the implementation of this section.

Further, this section directs the Attorney General and the Secretary of State, working with the National Institute of Standards and Technology (NIST), to develop and certify a technology standard that can conform the identity of a visa applicant or applicant for admission. As these agencies do not utilize a single technology, the development of a technology standard will facilitate the collection and sharing of relevant identity information between all the pertinent agencies. In particular, this section instructs those agencies to investigate the use of biometric technology. The technology standard must be developed and certified by NIST not later than two years after the date of enactment of this subsection.

**Section 404 Limited Authority to Pay Overtime**

This section eliminates the $30,000 limit on overtime pay for INS personnel during 2001. The limit was contained in the 2001 Department of Justice Appropriations Act, which did not contemplate the extraordinary demands that have been placed on the INS since the terrorist attacks of September 11.

**Section 405 Report on the Integrated Automated Fingerprint Identification System for Points of Entry and Overseas Consular Posts**

This provision instructs the Attorney General, in consultation with the heads of other federal agencies, to report to Congress on the feasibility of enhancing the FBI’s Integrated Automated Fingerprint Identification System (IAFIS), and other identification systems, to identify better individuals wanted in connection with criminal investigations in the United States and abroad.

**SUBTITLE B: ENHANCED IMMIGRATION PROVISIONS**

**Section 411 Definitions Relating to Terrorism**

Under current law, unless otherwise specified, an alien is inadmissible and deportable for engaging in terrorist activity only when
the alien has used explosives or firearms. Because a terrorist can use a knife, a box-cutter, or an airplane in a terrorist act, this section expands the definition of terrorist activity to include any "other means or device." The language looks to the purpose, not the instrument, in determining whether an activity is terrorist in nature.

Current immigration law contains no provision acknowledging organized terrorist threats, therefore creating no legal ground for inadmissibility or deportability based on activities involving "terrorist organizations." Section 411 defines terrorist organization and requires the Attorney General to certify an organization expressly designated by the Secretary of State under current section 219 of the INA: (2) an organization otherwise designated as a terrorist organization by the Secretary of State, in consultation with the Attorney General, after finding that such organization engages in terrorist activities, as defined by section 212(a)(3)(IV)(i), (II), and (III), or provides material support to further terrorist activity; or (3) any group of two or more individuals that commits, plans, or prepares to commit terrorist activities.

This section adds three grounds of inadmissibility for individuals who, while not members of terrorist organizations, may advocate or support terrorist activity: (1) under new INA section 212(a)(3)(B)(i)(IV)(bb), being a representative of a group "whose public endorsement or support of terrorist activity" the Secretary of State has determined undermines United States efforts to combat terrorism; (2) under new INA section 212(a)(3)(B)(i)(VI), using one's "position of prominence within any country to advocate or espouse terrorist activity, or persuade others to support terrorist activity or a terrorist organization," in a way that "undermines United States efforts to combat terrorism;" or (3) under new INA section 212(a)(3)(B)(i)(VII), being a spouse or child of a person inadmissible under this section, unless the spouse or child did not know or reasonably should not have known of the activity causing the inadmissibility, or the spouse or child has renounced such activity.

This section clarifies the circumstances under which the provision of material support, or solicitation of funds, or solicitation of membership for a terrorist organization can be the basis for a charge permitting the removal of an alien. It provides that, if an organization is "unlawful" as a terrorist organization by the Secretary of State, any provision of material support or solicitation of funds or membership, as defined in subsection 212(a)(3)(B)(i)(VI), to a designated organization may be the basis for a charge of removal. With respect to activity prior to the designation of the organization, or where no organization-designated organization under section 212(a)(3)(B)(i)(VII) is available, only activity that was or is intended to further terrorist activity of the organization is prohibited by this section.

Section 412 Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review

The section creates INA section 236A, giving the Attorney General the authority to certify and therefore detain persons who pose a terrorist or security threat to the United States. The power to certify is limited to the Attorney General and the Deputy Attorney General. This section also provides judicial review of this authority in habeas corpus proceedings.

Further, it permits certification of aliens whom the Attorney General has "reasonable grounds to believe" are described under the terrorism grounds of the INA and are engaged in activity undermining the national security of the United States. "Reasonable grounds" is a higher standard than mere "reason to believe" and requires objective, articulable facts.

The Attorney General must, in certified cases, either initiate removal proceedings within seven days or release the alien. In cases not involving an alien certified by the Attorney General, proceedings should continue to be initiated within the time specified by the regulations. See 66 Fed. Reg. 46,353 (August 23, 2001). The seven-day window to initiate proceedings is limited to cases certified under section 236A and should be used judiciously, with charges filed expeditiously as possible.

For aliens whose removal is unlikely in the reasonably foreseeable future, the Attorney General is required to demonstrate that release of the alien will adversely affect national security or the safety of the community or any person before detention may continue beyond the removal period. Indefinite detention of aliens is permitted only in extraordinary circumstances. Zadvydas v. Davis, 121 S. Ct. 2491 (2001).

The Attorney General shall review the certification of an alien every six months and, when appropriate, revoke the certification and release the alien under such conditions as the Attorney General deems appropriate. The alien may submit documentation or other evidence to be considered by the Attorney General in reviewing his or her certification.

The Attorney General's decision to certify and detain an alien is subject to judicial review in habeas corpus proceedings. This review is expedited to protect the interests of the United States, and the Attorney General is required to demonstrate that removal is unlikely in the reasonably foreseeable future. Habeas corpus review is permitted in any appropriate district court of the United States, but appeals are limited to the United States Court of Appeals for the District of Columbia, with review available in the United States Supreme Court on certiorari or by original petition for habeas corpus.

Restricting appellate review to a single court protects the government's interest in uniformity, while providing an alien with a meaningful opportunity to seek judicial review.

Section 413 Multilateral Cooperation Against Terrorism

The records of the State Department pertaining to the issuance of or refusal to issue visas to enter the United States are confidential and can be used only in the formulation and enforcement of U.S. law. This section allows the State Department to provide such records to a foreign government on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism.

Section 414 Visa Integrity and Security

In 1996, Congress enacted legislation mandating the development of an automated entry/exit system to record the entry and departure of every non-U.S. citizen arriving in the United States. The INS lacks the technology and funding to implement this measure at all ports of entry, especially on the land border. Last year Congress amended the law to establish reasonable implementation deadlines. This provision directs the Attorney General, in consultation with the Secretary of State, to fully implement the entry/exit system, as amended, as expeditiously as practicable, with particular focus on the utilization of biometric technology and the development of tamper-resistant documents. To that end, this section also provides the appropriate funding to ensure such funds may be necessary to implement this system.

The entry/exit system will notify the INS when an alien holding a visa or the United States under the terms of their visas. Since the vast majority of persons who enter the United States do not pose a threat to our safety or security, this provision requires that the information obtained from the entry/exit system be interfaced with intelligence and law enforcement databases to enhance safety and security. The provision requires the Office of Homeland Security to submit a report to Congress assessing the information that these two agencies need to effectively screen those who might pose a threat to the United States.

Section 415 Participation of Office of Homeland Security on Entry Task Force

This section includes the new Office of Homeland Security as a participant in the Entry and Exit Task Force established by the Immigration and Naturalization Service Data Management Improvement Act of 2000.

Section 416 Foreign Student Monitoring Program

In 1996, Congress established a program to monitor foreign students entering the United States, funded by user fees. While a pilot phase of this program ended in 1999, this system has not been implemented nationwide. This section requires the system to be fully implemented and temporarily funds the program through January 2003.

Currently, all institutions of higher education that enroll foreign students or exchange visitors are required to participate in the monitoring program. This section also expands the list of eligible institutions to include air flight schools, language training schools, and vocational schools.

Section 417 Machine Readable Passports

The Visa Waiver Program permits nationals of participating countries to enter the United States without obtaining non-immigrant visas. Countries participating in the program must have low nonimmigrant visa refusal rates, have machine readable passport programs, and not compromise the law enforcement interests of the United States.

This section requires the Secretary of State to conduct an annual audit of the program to assess measures to prevent the counterfeiting and theft of passports and to assess whether participating countries have established a program to develop tamper-resistant passports. Results of the audit will be reported to Congress.

Currently, nationals of participating countries have until October 1, 2007 to obtain machine-readable passports to seek admission to the United States. This section advances the deadline to October 1, 2006, requiring the Secretary of State to waive the requirements imposed by the deadline for all nationals of a program country, if that country is unable to meet the requirements.
Section 418 Prevention of Consulate Shopping

This section directs the State Department to examine the concerns, if any, created by the practice of certain aliens to “shop” for a visa between issuing posts.

Section 421 Extension of Provisions of Immigration and Nationality Act

This section extends certain provisions of the INA to permit eligible relatives of an alien who is granted asylum to remain with the alien in the United States.

Section 424 Age-Out Protection for Children

This section extends age-out protection to children of certain aliens who are seeking status asylees, refugees, or holders ofmixed immigration status under the INA.

Section 426 Evidence of Death, Disability, or Loss Employment

This section directs the Attorney General to establish evidentiary standards regarding the determination of death, disability, or loss of employment resulting in removal.

Section 428 Definitions

This section defines terms used in the bill, including “specified terrorist activity,” “terrorist attacks,” and “terrorist organizations.”

It allows law enforcement to keep up with the modern technology these terrorists are using. The bill contains several provisions which are identical or nearly identical to those I previously proposed.

For example: it allows the FBI to get wiretaps to investigate terrorists, just like they do for the Mafia or for drug kingpins; it allows the FBI to get a roving wiretap to investigate terrorism—so they can follow a particular suspect, regardless of how many different forms of communication that person uses; and it allows terrorists to be charged with Federal “racketeering offenses,” serious criminal charges available against organizations which engage in criminal conduct as a group, for their crimes.

I am pleased that the final version of the bill we are considering today contains three provisions that I fought for.

First, section 613 incorporates a bill that Senator HATCH and I introduced earlier this year, S. 899. Named in honor of Delaware State trooper Francis Collender, who was tragically killed while on a traffic stop in Milissa, DE this past February. S. 899 and section 613 of this bill will raise the one-time death benefit paid to the families of slain or permanently disabled law enforcement personnel to $250,000. It also raises the benefits paid to the families of firefighters.

Second, section 817 is based on legislation I introduced in the 106th Congress, S. 3202. It provides a one-time, tax-exempt benefit to families of first responders who lost their life on or after September 11. It’s the least we can do for the Collemb family, the least we can do for the thousands of families who tragically lost a loved one on September 11, and I’m grateful my colleagues have agreed we need to include it in this larger anti-terrorism bill today.

Third, section 613 of this bill provides an additional $250,000 benefit to the families of these heroes.

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First, section 613 incorporates a bill that Senator HATCH and I introduced earlier this year, S. 899. Named in honor of Delaware State trooper Francis Collender, who was tragically killed while on a traffic stop in Milissa, DE this past February. S. 899 and section 613 of this bill will raise the one-time death benefit paid to the families of slain or permanently disabled law enforcement personnel to $250,000. It was indexed for inflation and currently stands at $151,000, but even this is far too low for the families of these heroes to make ends meet. The bill we consider today raises the benefit to $250,000, continues to index it for inflation, and makes it applicable to the family of any law enforcement or fire personnel who lost their life on or after January 1, 2001. It’s the least we can do for the Collemb family, the least we can do for the thousands of families who tragically lost a loved one on September 11, and I’m grateful my colleagues have agreed we need to include it in this larger anti-terrorism bill today.

Second, section 817 is based on legislation I introduced in the 106th Congress, S. 3202. It may shock my colleagues that under current law, anyone, including convicted felons, fugitives, and aliens from terrorist-sponsoring states, can possess anthrax or other biological agents. And under current law, the FBI has no tool at its disposal to charge someone with possession of anthrax, possession of anthrax, or any other dangerous biological agent, is legal, unless the FBI can make a case that the suspect intended to use the agent as a weapon. This far too high a hurdle for our investigators to overcome. And when the FBI has informed me it has hindered several of their past bioweapons investigations. Section 817 closes this loophole. It prohibits certain classes of individuals, felons, illegal aliens, fugitives and others, from possessing these dangerous biological agents. And for everyone else, my provision says you need to be able to show you possessed this stuff with a peaceful or
bona fide research reason. If not, you’re going to be charged with a felony and you face up to ten years in Federal prison.

Finally, section 1065 of this bill incorporates my First Responders Assistance Act, which I’ve worked with to help local police officers, chiefs, firemen and women, and others who feel left out of our fight against terrorism. I commend FBI Director Mueller for recently pledging to do a better job sharing information with our State and local law enforcement people, but clearly more needs to be done. Who responds first to a terrorist incident? On September 11 it was the New York City and Arlington County, VA police and fire departments. That’s always going to be the case, local law enforcement is our first line of defense against terrorists, and we need to give them the tools they need to get that job done well.

My provision will, for the first time, give local law enforcement and fire personnel the opportunity to apply directly to the Justice Department to receive terrorism prevention assistance. Specifically, departments will now be able to get help purchasing gas masks, hazardous material suits, intelligence equipment, twenty-first century communications devices and other tools to help them respond to terrorist threats. This section also creates a new anti-terrorism training grant program that will fund seminars and roundtables to help local police departments better analyze intelligence information they come across, help local fire departments acquire the knowledge they need to respond to critical incidents, and assist those agencies which may be called upon to stabilize a community after a terrorist incident. It is my intent that these funds go to professional law enforcement organizations who are in some instances already delivering this type of training. The Department of Justice’s Office for Domestic Preparedness does some of this, but their program is a block grant sent to the Governor. I want to involve local police and fire departments directly in the fight against terrorism, and this section is an important step towards meeting that goal. The funds authorized, $100 million over the next four years, may not be enough to get the job done, but it’s a good start. I thank the Police Executives Research Forum for working with me to craft this proposal, and I look forward to seeing significant dollars allocated to it in future spending bills.

So this bill contains many provisions critical to law enforcement. Some may say it doesn’t go far enough. I have to say, I was disappointed that the Administration dropped some provisions from an early draft of its bill, measures which I called for five years ago. Those measures are in the bill we consider today, but I continue to believe that they’re common-sense tools we ought to be giving to our men and women of law enforcement.

We should be extending 48-hour emergency wiretaps and pen-registers, caller-ID-type devices that track incoming and outgoing phone calls from suspects, to terrorism crimes. This would allow police, in an emergency situation, to immediately obtain a surveillance warrant. Last year, the Administration provided the police go to a judge within 48 hours and show that they had the right to get the wiretap and that emergency circumstances prevented them from going to the judge in the first place. Now, the bill restricts wiretaps only for organized crime cases and the wire we consider today does not expand this power to terrorist investigations.

We should be extending the Supreme Court’s “good faith” exception to wiretaps. This well-accepted doctrine prevents criminals in other types of offenses from going free when the police make an honest mistake in seizing evidence or statements from a suspect. We should apply this good faith exception to terrorist crimes as well, to prevent terrorists from getting away when the police make an honest mistake in obtaining a wiretap.

I’m pleased Chairman LEAHY and the Administration were able to reach consensus on the two areas which gave me some pause in the Administration’s original proposal: those provisions dealing with mandatory detention of illegal aliens and with greater information sharing between the intelligence and law enforcement communities.

The agreement reached has satisfied me that these provisions will not upset the balance between strong law enforcement and protection of our valued civil liberties.

This bill is not perfect. No one here claims it embodies all the answers to the question of how best to fight terrorism. But I am confident that by updating our surveillance laws, by taking terrorism as seriously as we do organized crime, we can make an important role state and local law enforcement has to play in this campaign, that we are taking a step in the right direction by passing this bill today.

ANTITERRORISM

Mr. KYL. Mr. President, I rise in strong support of the anti-terrorism bill. The bill will provide our Nation’s law-enforcement personnel with important tools to more effectively investigate and prevent further attacks against the people of the United States.

At the outset, I want to make clear that we did not rush to pass ill-conceived legislation.

During the past two Congresses, when I chaired the Judiciary Committee’s Subcommittee on Technology and Terrorism, the Subcommittee held 19 hearings on terrorism. I want to repeat that: 19. The witnesses who appeared before the Subcommittee included the Secretary of Homeland Security, Louis Freeh, the Attorney General, John Ashcroft, and representatives of all three of the congressionally-mandated commissions on terrorism that have issued reports over the last two years. Additional hearings on terrorism were held by the full Judiciary Committee and by other committees.

Many of the provisions proposed by the Attorney General, and included in the legislation we sent to the President to address one or more of the major terrorism commissions and have already been examined by the committee of jurisdiction. In fact, some of these provisions had already been voted on and passed by the Senate. In other legislation.

Indeed, as I will detail fully in a minute, the language sent forward by the Attorney General to establish nationwide trap and trace authority was included in the Hatch-Feinstein-Kyl Amendment to the recently passed Commerce, Justice, State Appropriations bill. Much of the remaining language in that amendment was included in the Counterterrorism Act of 2000, which the Senate passed last fall, after a terrorist attack on the U.S.S. Cole killed 17 American sailors and injured another 99. That bill was based on recommendations of the bipartisan, congressionally-mandated National Commission on Terrorism, known as the Bremmer Commission, which was established in 1998 in response to the embassy bombings in Tanzania and Kenya.

One particularly important provision, which was included in both the CJUS bill and the current bill, updates the law to keep pace with technology. The provision on pen registers and trap and trace devices: one, would allow judges to enter pen/trap orders with nationwide scope; and two, would codify current case law that holds that pen/trap orders apply to modern communication technologies such as e-mail and the Internet, in addition to traditional phone lines.

Nationwide jurisdiction for a court order will help law-enforcement to quickly identify other members of a criminal organization such as a terrorist cell. Indeed, last year Director Freeh testified before the Terrorism Subcommittee that one of the problems law-enforcement faces is “the jurisdictional limitation of pen registers and trap-and-trace orders issued by federal courts.”

He continued: “Today’s electronic crimes, which occur at the speed of light, cannot be effectively investigated with procedural devices forged in the last millennium during the infancy of the information technology age. Such too.

Prior to the legislation we passed today, in order to track a communication that was purposely routed through Internet Service Providers located in different States, law-enforcement was required to obtain multiple court orders. This is because, under existing law, a Federal court can order only those communications carriers within its district to provide tracing information to law enforcement.
According to Director Freeh’s testimony before the Terrorism Subcommittee, “As a result of the fact that investigators typically have to apply for numerous court orders to trace a single communication, there is a needless waste of time and resources, and important investigations are either hampered or delayed entirely in those instances where law enforcement gets to a communications carrier after that carrier has already discarded the necessary information.”

The bill would also like to address another important provision.

The bill will more clearly to criminalize the possession of biological and toxin agents by those who should not possess them. The bill would amend the implementing legislation for the 1972 “Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological, Biological, and Toxic Weapons and on Their Destruction,” BWC. Article I of the BWC prohibits the development, production, stockpiling, acquisition, or retention of Microbial or other biological agents, or toxins, whatever their origin or method of production, of types and in quantities no justification for prophylactic, protective, or other peaceful purposes. It is not the intent of the BWC, nor is it the intent of Section 802, to prevent the legitimate application of biological agents or toxins for prophylactic, protective, or other peaceful purposes. These purposes include, inter alia, medical and national health activities, and such national security activities as may include the confiscation, securing, and/or destruction of possible illegal biological substances.

In addition to the other provisions in this anti-terrorism legislation that will provide our law enforcement communities with the tools to weed out and stop terrorism, I want to express my support for the immigration provisions upon which the administration, key members of the House Judiciary Committee, Senators HATCH, KENNEDY, LEARY and I have reached agreement, and which are included in this bill.

We must not forget, however, that the United States will continue to face overwhelming infrastructure and personnel needs at our consular offices abroad, along both the southern and northern borders, and at the immigration offices throughout the United States. And, in addition to the provisions included in this anti-terrorism bill, the U.S. government will need additional tools to keep terrorists out of the country and, once they are in the country, find them and remove them. That means, among other things, eliminating the ability of terrorists to present altered international documents, and improving the dissemination of information about suspected terrorists to all appropriate agencies. After hearing first-hand about the extraordinary weaknesses of our immigration and visa processing systems, Senate Judiciary Terrorism Subcommittee Chairwoman DIANE FEINSTEIN and I will soon introduce legislation to better equip our government with the tools necessary to make our immigration and visa processing systems more secure.

With that said, the anti-terrorism bill will certainly provide a better legal framework for keeping foreign terrorists out of the United States, and detaining them should they enter. First, this anti-terrorism bill clarifies that the Federal Bureau of Investigation is authorized to share data from its “most wanted list,” and any other information contained in its national crime-information system, with the Immigration Naturalization Service and the State Department. This will help the INS and State Department identify suspected terrorists before they come to the United States, and, should they gain entry, will help track them down on our soil. It also allows the State Department, during a U.S. criminal investigation, to give foreign governments information on a case-by-case basis about the issuance or refusal to issue a U.S. visa.

The bill would add to U.S. law prohibiting the entry of, and requiring the removal of, individual alien terrorists. It will probably surprise the Members of this body a great deal to know that, under current law, a terrorist alien is not considered deportable, nor is she or he entitled to any legal representation if detained, or if withholding of deportation is granted by an immigration judge then the alien must be released. In addition, the underlying certification, and all collateral matters, can be reviewed by any U.S. District Court and any appeals court.

First, this anti-terrorism package also has provisions regarding temporary detention. It allows for the temporary detention of aliens who the Attorney General certifies that he has reasonable grounds to believe is inadmissible or deportable under the anti-terrorism grounds.” This compromise represents a bipartisan understanding that the Attorney General of the United States needs the flexibility to detain suspected terrorists. Under the compromise that Members have reached, the Attorney General must charge an alien with a deportable violation or he must release the alien. In this final version, if the charges are not sustained, or if withholding of deportation is granted by an immigration judge then the alien must be released. In addition, the underlying certification, and all collateral matters, can be reviewed by any U.S. District Court and any appeals court. The Attorney General, under this final version, is required to review all individual certifications every six months, and any alien certified can ask that the Attorney General reconsider the certification.

Finally, this package will determine whether “consular shopping,” i.e. someone has a visa application pending from his or her home country, but goes to another country for adjudication, is a problem. If so, the Secretary of State must recommend ways to remedy it. Another provision prevents countries that do not have machine-readable passports from participating in the Visa Waiver Program, although the Secretary of State can pro- vide a waiver for countries that do not provide such passports. I do not sup- port the waiver authority, but am pleased that the overall requirement is included. Another provision authorizes $36.8 million for immigration enforcement of the INS foreign student tracking system, a program that I have repeatedly urged be implemented. The final package also includes relief for immigrants who but for the tragic events of September 11, 2001, would have been granted entry to the United States and could now lose their legal status.

As former chairman and now ranking Republican of the Judiciary Committee’s Terrorism Subcommittee, I have long suggested, and strongly supported, many of the anti-terrorism and immigration initiatives now being advocated by Republicans and Democrats alike. In my sadness about the overwhelming and tragic events that took thousands of precious lives, I am resolved to push forward to make the United States a more secure home for millions of law-abiding citizens and legal immigrants. That means delivering justice to those who are responsible for
the lives lost on September 11, and reorganizing our institutions of government so that the law-abiding can continue to live their lives in freedom.

Finally, let me address briefly the concern voiced by some that we are in danger of trampling on civil liberties. I reiterate that we should not rush. There are already provisions in this bill that have been passed by the Senate. Nothing in the current proposals on civil liberties. The bill will give Federal agencies fighting terrorism the same tools we have given those fighting illicit drugs, or even email fraud. Many of the tools in the bill are modernizations of the criminal law, necessitated by the advent of the Internet.

While some of these tools are extremely helpful in terrorism investigations, it makes no sense to refuse to apply these common sense changes to other crimes that are committed, like kidnapping, drug dealing, and marriage perjury. It is unwise to limit these tools to only terrorism offenses because often, at the outset of an investigation of a particular person or crime, law enforcement does not know what you are dealing with. A credit-card fraud case or a false immigration documents case may turn out to be connected to funding or facilitating the operations of a terrorist group. We should give law enforcement the tools it needs to have the best chance of discovering and disrupting these activities.

We have a responsibility to the people of this nation to ensure that those who are charged with protecting us from future terrorist attacks are empowered to do so. This is not a zero sum game. We can both ensure our security and protect our liberties.

We cannot afford to lose this race against terror, and we cannot afford to give the enemy in this war a full lap head-start. I support this bill. I commend President Bush and General Ashcroft for submitting a sound proposal to the Senate, and for their tremendous efforts during the past month.

Mr. HOLLINGS. I have a number of questions about the substance, scope and procedure of section 1012 of the USA PATRIOT Act of 2001. I am concerned that there are some significant issues which this provision has not addressed, notwithstanding its noble intentions. Would the gentleman be able to explain some of these issues for me?

Mr. LEAHY. I will do my best to clarify the intent and operation of this section for the gentleman.

Mr. HOLLINGS. Would the gentleman please explain how the Secretary of DOT will determine whether an individual seeking an original or renewed license presents a security risk?

Mr. LEAHY. The Secretary will rely upon the background records check to be done by the Justice Department. Any further analysis to be done by the Secretary on this issue should be explained following a Congressional directive to do so, in regulations issued by the Secretary for notice and comment.

Mr. HOLLINGS. Does the section make clear what standards will be applied to determine if a security risk is present? If not, how will the applicant be advised of the reason for the denial of a hazmat license? If so, how will the applicant be advised of the reason for the denial of a hazmat license?

Mr. LEAHY. At this time the section does not and that matter should be clarified in subsequent legislation.

Mr. HOLLINGS. I am concerned that the review process could be delayed and a person seeking renewal of a hazmat license could be unable to work due to matters beyond his or her control.

Mr. LEAHY. The gentleman is correct. Regulations need to be issued by the Secretary specifying time periods and making it clear that delays not due to the applicant should not force him to be out of work and that his existing hazmat license will remain in effect pending completion of the security risk review process.

Mr. HOLLINGS. I am troubled by the lack of due process protections for the applicant. What is the gentleman's opinion on this subject?

Mr. LEAHY. I agree with the gentleman. The section needs to be clarified. At present, the regulations issued making clear that any applicant denied a hazmat license because of a security risk will be advised of the reasons for such denial and given an opportunity to present any comments he wishes. I am committed to providing the applicant with a right to challenge the Secretary’s decision and insure due process is protected.

Mr. HOLLINGS. Finally, isn't there a concern that foreign drivers transporting hazmat present an equal, if not a greater, security risk than that presented by U.S. drivers? If so, how will we deal with foreign drivers because they do not appear to be covered by section 1012?

Mr. LEAHY. I fully agree with the gentleman. The legislation must address foreign drivers to cover adequately the security risks applicable to hazmat transportation.

Mr. THURMOND. Mr. President, the September 11 terrorist attack has brought to the forefront numerous flaws in how we control and manage immigration in this country. It is now clear that the control of our borders has become a matter of national security.

Let me first state that I have no doubt that most aliens who enter this country are innocent, hard-working people who make important contributions to our society. America can continue our tradition of supporting genuine legal immigrants, but I am concerned that we are allowing illegal immigration to get out of control.

According to the most recent census data, there are at least 7 and possibly as many as 8 million illegal aliens in the United States. The number has at least doubled just since 1990. This trend is very troubling and has to be reversed. We must do more to stop illegal aliens from entering our country, and we must do more to deport those who are already here illegally. Our previous efforts, such as the 1996 Immigration Act, have proven to be inadequate. This is not only a matter of upholding our laws, it is a matter of maintaining the safety and security of our country. We do not even know how many of the September 11 hijackers got into the country. This is not acceptable. We must do more to track and keep out those who wish to harm our country and terrorize our citizens.

The Antiterrorism Act we are considering today contains some reforms in this area and is a step in the right direction. It expands the number of Border Patrol agents, INS inspectors, and Customs agents along the Northern Border. Also, it provides for greater data-sharing, including giving the INS easier access to the criminal history information contained in the NCIC database. Moreover, it grants the Attorney General greater power in the future.

In addition to immigration, this bill contains other crucial reforms that will update our wiretapping laws and allow greater sharing of intelligence and law enforcement information. I strongly supported this bill during Judiciary Committee hearings, including in one hearing in the Constitution Subcommittee of which I am Ranking Member. I am pleased that we are finalizing this bill today.

However, this bill is only a beginning. It is a move in the right direction, not an end in itself. Much more needs to be done to protect our nation from illegal immigration.

I believe one important measure could be to return to annual registration of immigrants in the United States. Requiring immigrants to register each year would help the INS keep track of where immigrants are in the United States, and whether they have overstayed their visas. In addition, it would benefit aliens by helping them prove how long they have been in the United States.

An alien registration system existed before 1981. However, the system became inactive at that time due to lack of funds and administrative difficulties. I think the time has come to reconsider this program. Recent technology, such as scanners, can help address some of the record-keeping problems that harmed the old system.

There are many other reform possibilities. Currently, when an alien commits a crime in the United States and is ordered deported, some home countries refuse to take him back. This creates huge difficulties for us, especially when the alien has completed his prison sentence. The United States should respond in kind by not granting visas to countries that have such a policy. This would encourage
countries to live up to their responsibilities. Also, we need to look into expanding the use of identification cards for aliens, including more fingerprinting.

The antiterrorism bill demonstrates that Congress is determined to address the problems we face regarding immigration. I look forward to working with my colleagues to continue our important work in this area. It must remain a top priority. We should not rest until we have illegal immigration under control in this country.

Ms. SNOWE. Mr. President, I rise today in support of the anti-terrorism legislation we have before us, the USA PATRIOT Act. I supported the Senate bill when it passed 2 weeks ago, and this bill—which was overwhelmingly passed by the House yesterday—retains key provisions that give our Government the tools it needs to combat terrorism.

One of the key issues during the House-Senate negotiations was that of the so-called “sunrise.” While the Senate-passed bill ensured these provisions would remain in effect as long as necessary, the House voted to suspend the bill’s provisions in 5 years. Ultimately, the House included the bill before us today and includes a four-year sunset. While I believe the provisions of this bill will be needed to combat terrorism beyond 4 years, it is fair to say Congress should review the provisions and make an assessment of their effectiveness in 4 years.

Let me also say I am pleased to have worked in conjunction with Senator BOND and Senator CONRAD in supporting the Visa Integrity and Security Act. This bill addresses many of the concerns we raised, such as the importance of information sharing among government law enforcement and intelligence agencies with the State Department and tightening tracking controls on the entering the U.S. on student visas, including those attending flight schools. These are critical issues, and I commend both Senators for their efforts, and I am pleased the bill before us contains provisions from this bill on information sharing and the use of biometric technology for the entry and exit of aliens.

With this legislation, we take reasonable, constitutional steps to enhance electronic and other forms of surveillance and make an assessment of their effectiveness in 4 years. I am pleased the bill before us today includes a four-year sunset. While I believe the provisions of this bill will be needed to combat terrorism beyond 4 years, it is fair to say Congress should review the provisions and make an assessment of their effectiveness in 4 years.

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war on terrorism is a war on many fronts. Some of the battles will be great in scale, many will be notable by what is not seen and by what doesn’t happen, namely, that individuals who pose a serious threat to this nation never see these shores and never set foot on them.

Many of our greatest victories will be measured by the attacks that never happen, in battles we win before they ever have a name, in conflicts we prevent before they ever claim one American life. And the partners and will pass and enter legislation that will help make that possible, and urge my colleagues to join me in supporting this bill.

Mr. President, I ask unanimous consent to have printed in the Record an op-ed from The Bangor Daily News.

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

[From the Bangor Daily News, Oct. 24, 2001]

HOMELAND SECURITY AND THE "THREE C’s": COORDINATION, COMMUNICATION, AND CO-OPERATION

(By U.S. Senator Olympia J. Snow)

This week, Congress is expected to send to the President landmark legislation for a new era—a law that brings into being sources of the federal government to bear in our war against terrorism. One of the most critical elements of this anti-terrorism package—nothing less than an amendment that are integral to preventing terrorism: coordination, communication, and cooperation.

Incredibly, there is no provisions of current law that mandates State Department access to sources such as the FBI’s National Crime Information Center (NCIC). This system, which maintains arrest and criminal information from a wide variety of federal, state, and local sources as well as from Canada, will be used by the State Department to deny visas to dangerous aliens. Similar to legislation I introduced in 1993, re-instating State Department access to these FBI resources only for purposes of accessing the NCIC as well as other FBI criminal records when processing any visa application, whether immigrant or non-immigrant. Unfortunately, a revision to this proposal also enacted in 1994 provided the State Department with free access to the NCIC for purposes of processing immigrant visas—dropping my requirement for non-immigrant visas eventually used by all 19 of the suspected hijackers. Even that limited law was allowed to expire, despite my legislation enacted in 1996 requiring the full range of information gathered by U.S. intelligence and law enforcement agencies to be shared with the NCIC.

During my twelve years as ranking member of the House Foreign Affairs Committee, and Chair of the subcommittee’s Senate counterpart, I saw firsthand why removing impediments to a cooperative federal effort is a national imperative. Perhaps the most egregious example came to light in our investigations into the coming-and-goings of radical Egyptian cleric Sheikh Omar Abdel Rahman, mastermind of the 1993 World Trade Center bombing.

Astonishingly, we found that in the period since 1987 when Sheikh Rahman was placed on the State Department’s wanted list, his name was never on the State Department’s wanted list, his name was never submitted to the FBI’s Consolidated Terrorist Lookout Committees, comprised of the head of the political section of each embassy and senior representatives of all U.S. law enforcement and intelligence agencies, as required by the anti-terrorism law which also included a provision that the Department of Justice coordinate with the FBI to list wanted terrorists.

The committees would be required to meet on a monthly basis to review and submit names to the State Department for inclusion in the visa database. Unfortunately, Senators did not reach agreement on amendments that could be added to the anti-terrorism bill, so the package was ultimately passed without the requirement. I will continue to work to pass this important measure separately.

Clearly, the catastrophic events of September 11th have put our country into a different era, and everything if forever changed. We must move heaven and earth to remove the impediments that keep us from maximizing our defense against terrorism, and that means changing the prevailing system and culture by re-focusing on the ‘Three C’s’ of coordination, communication, and cooperation.

The bottom line is, if knowledge is power, we are only as strong as the weakest link in our information network—therefore, we must ensure that the States will be the one to protect American turf. In our fight against terrorism, we can do no less.

The PRESIDENT OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent the time be divided equally between the distinguished chairmen and myself.

How much time remains?

The PRESIDENT OFFICER. Ten minutes for each side.

Mr. HATCH. Mr. President, as we wind down the debate and move to final passage, I want to continue my acknowledgment of those who worked so hard and were instrumental in getting this legislation enacted. I start again by expressing my gratitude to Senators KYL and FEINSTEIN for their efforts. No Senators have worked harder over the past few years in such a bipartisan manner on terrorist missions.

We are both dedicated to doing this job. Also, Senators BOB GRAHAM and SHELBY, who cosponsored this legislation, deserve credit for significant contributions. In the Intelligence Committee, of course, Senator SARBANES and Senator PHIL GRAHAM should be praised for the money laundering provisions of the package. They developed that in this bill. I credit the hard work of other fellow members of the Judiciary Committee, in particular, Senators BIDEN and SCHUMER, who devoted their energy to several of these proposals. Their assistance was instrumental in shaping this final product.

Next, I thank my dedicated staff and my chief counsel and staff director, Bruce Behn, who have both done an excellent job. I also extend our thanks to Sharon Prost, my former chief counsel who recently was appointed by President Bush to serve as a Federal appellate judge, for her wise counsel on this legislation.

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of the sworn oath of the office we hold, must do everything in his or her power to ensure that the heinous attacks of September 11 are never repeated. We must never forget the more than 5,000 innocent men, women, and children who lost their lives on American soil some 6 weeks ago.

I am grateful that I have been able to work on this matter with the distinguished Senator from Vermont. I am grateful we have been able to pull together in a short period of time, an antiterrorism bill that really is going to make a difference in all our lives. So I urge my colleagues’ support for this important legislation, thank my colleagues for all their help.

Mr. President, the Department of Justice has prepared an excellent and precise analysis of the legislation, with which I fully agree. I ask unanimous consent that the analysis be printed in the Record.

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

**OVERVIEW**

In the wake of the tragic, criminal act of violence perpetrated on the United States on September 11, the Bush Administration proposed legislation that would provide the Department of Justice with the substantial new powers needed to disrupt, weaken, and counter the infrastructure of terrorist organizations, to prevent or thwart terrorist attacks, and to punish or defeat in battle perpetrators of terrorism.

On October 24, the House passed a bill which contains a substantial number of the provisions proposed by the Department of Justice. The Department of Justice strongly supports this bill and urges the Senate to act quickly so that these new authorities can be made available to prosecutors and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice.

The events of September 11 demonstrate that terrorist acts are perpetrated by expertly organized, highly coordinated, and well-financed organizations, operating by expertly organized, highly coordinated, and well-financed organizations, operating.

The Administration reached bipartisan agreement with the leaders of the House and Senate and the chairman of the Senate and House Judiciary Committees on a bill which was passed by the House on October 24 by an overwhelming majority.

The Department of Justice strongly supports this bill and urges the Senate to act promptly. In particular, new authorities can be made available to prosecutors and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice.

These provisions would provide new funding and structural reforms in the fight against terrorism. A counterterrorism fund would be established to address terrorism that is not contained by the department of Justice. The Administration proposed legislation that would provide the Department of Justice with the necessary authority to disrupt, weaken, and counter the infrastructure of terrorist organizations, to prevent or thwart terrorist attacks, and to punish or defeat in battle perpetrators of terrorism.

**DISCUSSION ON SUBSTANTIVE PROVISIONS**

Enhancing domestic security against terrorism (title II)

These provisions would provide new funding and structural reforms in the fight against terrorism. A counterterrorism fund would be established to address terrorism that is not contained by the department of Justice. The Administration proposed legislation that would provide the Department of Justice with the necessary authority to disrupt, weaken, and counter the infrastructure of terrorist organizations, to prevent or thwart terrorist attacks, and to punish or defeat in battle perpetrators of terrorism.

Existing laws fail to provide our national security authorities and law enforcement with certain critical tools they need to fight and win the war against terrorism. Indeed, we have tougher laws for fighting organized crime and drug trafficking and for combating the threat of terrorism. For example, technology has dramatically outpaced our statutes. Many of our most important intelligence and enforcement tools date back decades or even further, in and for an era of rotary telephones. Meanwhile, our enemies use e-mail, the Internet, mobile communications and voice mail all the time. Until the Congress provides law enforcement with the tools necessary to identify, dismantle and punish terrorist organizations, we are fighting an uphill battle.

Making sure that the United States government is fully equipped to defend itself against the threat of terrorism is a national priority. The Administration proposes to provide the Department of Justice with the tools and authorities it requires to disrupt, weaken, and counter the infrastructure of terrorist organizations, to prevent or thwart terrorist attacks, and to punish or defeat in battle perpetrators of terrorism.

This new terrorist threat to Americans on our soil is a turning point in America’s history. It is a new challenge for law enforcement. Our fight against terrorism is not solely a criminal justice endeavor—it is defense of our nation and its citizens. We cannot wait for terrorists to strike to begin investigations and take action. The Administration strongly supports this bill and urges the Senate to act promptly. In particular, new authorities can be made available to prosecutors and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice.

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The Department of Justice strongly supports this bill and urges the Senate to act promptly. In particular, new authorities can be made available to prosecutors and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice.
note that in drafting these provisions, the Department's goal was and remains ensuring that the scope of the authority remains the same—in other words, that no more or less information is currently obtainable through a particular device (for example, a pen register) on a telephone, is obtainable from a computer.

Law enforcement must have intelligence gathering tools that match the pace and sophistication of the technology utilized by terrorists. Critically, we also need the authority to share vital information with our national security and intelligence agencies in order to prevent future terrorist attacks.

Terrorist organizations increasingly take advantage of technology to hide their communications from law enforcement. Today's terrorists are carried over multiple mobile phones and computer networks—frequently by multiple telecommunications providers located in different jurisdictions. To facilitate their criminal acts, terrorists do not discriminate among different kinds of technology. Regrettably, our intelligence gathering laws don't give law enforcement flexibility.

The bill creates a technology-neutral standard for intelligence gathering, ensuring law enforcement's ability to trace the communications of terrorists over mobile phones, computer networks and any new technology that may be developed in the coming years.

We are not seeking changes in the protections in the law for the privacy of law-abiding citizens. The bill would streamline intelligence gathering procedures only. Except for under the limited circumstances authorized by current law, the content of communications would remain off-limits to monitoring. The information captured by this technology-neutral standard would be limited to the kind of information you might find in a phone bill, such as the phone numbers dialed by a particular telephone.

The Department strongly opposed the two-year "sunset" on these critical provisions in the original House version of the legislation. The President and the Attorney General have stressed that the threat of terrorism will not "sunset"; rather the fight against terrorism will be a long struggle, and law enforcement needs that same flexibility in order to fight this war over the long term. However, law enforcement must have these tools now. To calm fears of a permanent authority, the bill provides a one-year "sunset" provision for several provisions as noted during the discussion of the impacted provisions, at which time it is the Administration's hope that these changes in surveillance law will be made permanent.

Foreign Intelligence Surveillance Act (FISA) amendments (title II)

These provisions sharpen the tools used by the FBI, CIA, and NSA for collecting intelligence on international terrorists and other targets under FISA, 50 U.S.C. §§ 1801–63. The amendments in this area would enable the agents and officers of the FBI and CIA and the analysts of NSA to respond more quickly and efficiently to crises and to operational opportunities against terrorists and other pests.

Period of FISA Surveillance and Search Orders

Problem: Currently, with limited exceptions, applications to the FISA Court for its authorization to conduct electronic surveillance and physical search must be renewed by the Court every 90 and 45 days, respectively. Applications to the Court for surveillance and search orders related to...
The bill further includes financial institutions in this endeavor by requiring them to have anti-terrorism programs. (§§ 314, 352).

The bill would expand the scope of predicate money laundering offenses to include providing material support for terrorist organizations. (§ 310). These offenses would further not be limited to conduct occurring within the United States, as long as the tools of the offense are in or passed through the United States. (§§ 302, 377).

Various common banking problems are also addressed in the bill, such as shell banking accounts, and concentration accounts. (§§ 312, 313, 325). Treasury would be authorized to order special measures be taken by financial institutions where they are deemed to be used in such accounts or other primary money laundering concerns. (§ 311).

Information would be made available as to such crucial facts as the beneficial, as opposed to nominal, owner of a bank account and minimum standards and policies would be put into effect to deal with correspondent and concentration accounts involving foreign persons. (§ 329).

Employee references would be permitted to include reference to suspicious activity by the employee without fear of liability and other cooperation among financial institutions, law enforcement, and regulatory authorities would be encouraged. (§§ 314, 330, 355).

These money laundering provisions are all subject to the four-year sunset.

Protecting the border (title IV)

The legislation expands the grounds for detaining an alien inadmissible or deportable from the United States for terrorist activity, provides for the mandatory detention of aliens whom the Attorney General certifies poses a risk to national security, and facilitates information sharing within the U.S. and with foreign governments. Current law allows some aliens who are threats to the national security to enter and remain in the United States. The provisions in the bill correct these inadequacies and are necessary tools to prevent detain and remove aliens who are national security threats from the United States. The Attorney General would also have the authority to detain suspected terrorists who are threats to national security, to expedite removal proceedings or criminal charges are filed within 7 days. (§ 412). In the rare cases where removal is determined appropriate but is not possible, detention may continue upon a review by the Attorney General every 6 months. (§ 412). The bill further would expand the definition of terrorists for purpose of inadmissibility or removal to include public endorsement of terrorist activity or provision of material support to terrorist organizations. (§ 411).

The bill further expands the types of weapons that can be used for terrorist activity. (§ 411).

The ability of alien terrorists to move freely across borders and operate within the United States is critical to their capacity to inflict damage on the citizens and facilities in the United States. Under current law, the existing grounds for removal of aliens for terrorism are limited to direct material support of an individual terrorist. The bill would expand these grounds for removal to include material support to terrorist organizations. (§ 412).

To address the need for better border patrol, additional border patrol officers would be authorized, specifically on the northern border which has, during the investigation into the September 11th events, been shown to be extremely problematic. (§§ 401, 402). To aid INS agents, the FBI would also be required to provide criminal records information to those agents. (§§ 403).

The bill additionally unseeks suspected terrorist aliens but also immigrants who may need additional consideration to stay within the United States where their loved ones were victims of terrorist activity. (§§ 421–428). The bill establishes procedures for expedited payment of public safety officers involved in the prevention, investigation, rescue or recovery efforts related to a terrorist attack, as well as providing increases to the Public Safety Officer Benefit Program. (§§ 611–614).

Increased information sharing (title VII)

The bill would require information sharing among Federal, State and Local law enforcement, thus, providing the necessary full picture needed to address terrorism activity. (§ 711).

Substantive criminal law/criminal procedure: Strengthening the criminal law against terrorism (title VIII)

These provisions reform substantive and procedural aspects of the law to strengthen federal law enforcement’s ability to investigate, prosecute, prevent, and punish terrorist crimes. There are substantial deficits in each of these areas which impede or weaken our antiterrorism efforts.

We must make fighting terrorism a national priority in our criminal justice system. Current law makes it easier to prosecute members of organized crime than to crack down on terrorists who can kill thousands of Americans in a single day. The same is true of drug traffickers and individuals involved in espionage—our laws treat these criminals and those who aid and abet them more severely than the terrorists.

Our investigation has found that wide terrorist networks, not isolated individuals, are responsible for the September 11 attacks. Whole matters of these networks are, in the United States or in other countries, as the bill currently regards those who harbor persons engaged in espionage, the bill would make the harboring of terrorists a criminal offense.

The bill further would expand the definition of terrorism against U.S. facilities abroad. (§ 801); expanding definition of domestic terrorism and offenses of the crime of terrorism, requiring a showing of coercion of government as an element of the offense. (§§ 802, 803).

Strengthening criminal penalties—longer prison terms and postrelease supervision of terrorists (§ 812); higher conspiracy penalties for terrorists (§ 811); alternative maximum sentences up to life for terrorism offenses (§ 810).

Improved intelligence (title IX)

The bill authorizes the Director of the CIA to establish requirements and provide for the collection of foreign intelligence. The Director would also be asked to ensure proper dissemination of foreign intelligence information. Only if the appropriate officials have all the relevant information will prevention, investigation, and prosecution be fully functioning. The bill would also provide for the tracking of terrorist assets as part of the collection of information. (§§ 901, 903).

Miscellaneous (title X)

The bill would finally require the Department of Justice Inspector General to designate an official to receive civil liberty and civil rights complaints and report those complaints to Congress. The presumption is that such information will be used in determining the continuing viability of the provisions in the bill subject to sunset in 2005. (§ 1001).

Mr. HATCH. Mr. president, I also ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

CONGRESSIONAL RECORD — SENATE

October 25, 2001

S11056

Bill provision No. | Bill description
--- | ---
1 | Title and table of contents.
2 | Coverage and scope of applicability.
101 | Establishes a fund to reimburse DOJ components for costs incurred to rebuild facilities, investigate and prosecute terrorism, and to reimburse other Federal agencies for detaining individuals in foreign countries accused of terrorist acts.
102 | Sense of Congress condemning discrimination against Arab and Muslim Americans.
103 | Establishes a $200M for each of FY 2002, 2003 and 2004 for the FBI Technical Support Center established by AEDPA.
104 | Broadens Attorney General’s authority to request assistance of Secretary of Defense in emergency situations involving weapons of mass destruction.
105 | Directs the Secret Service to develop a national network of electronic crime task forces modeled on the New York task force.
106 | Grants President the power to confiscate and take title to enemies’ property, when United States has been attacked or is engaged in military hostilities; also authorizes courts to consider classified evidence, without notice to the parties, in issuance of search warrants.
201 | Adds terrorism statutes—including chemical weapons offenses under 18 U.S.C. 22—as predicate offenses for which Title III wiretap orders are available.
202 | Allows voice wiretaps in computer hacking investigations.

FINAL COUNTER-TERRORISM BILL SECTION-BY-SECTION ANALYSIS
Permits sharing of grand jury information regarding foreign intelligence and law enforcement, including, intelligence, protection, immigration, national defense and national security personnel.

Permits the Attorney General to challenge a court that disclaims jurisdiction over a case.

Sharing of witness information regarding foreign intelligence, counternarcotics, and foreign intelligence information with federal law enforcement, intelligence, protection, immigration, national defense and national security personnel notwithstanding other law.

Permits that foreign intelligence gathering authorities are not disrupted by changes to pen register/trap and trace statute.

Provides that no benefits shall be given to terrorists or their family members.

Provides that aliens whose spouses or parents were killed in the September 11 attacks will continue to be considered "immediate relatives" entitled to remain in the United States.

Provides a temporary extension of status to people who are present in the United States on a "derivative status" (the spouse or minor child) of a non-immigrant who was killed or injured on September 11.

Triples the number of Border Patrol personnel, Customs Service personnel, and Immigration and Naturalization Service inspectors; also allocates an additional $50 million each to the Customs Service and the INS.

Increases penalties for counterfeiting foreign currency and obligations.

Includes a scienter requirement for the crime of operating an unlicensed money transmitting business.

Makes it a crime to smuggle more than $10,000 in currency into or out of the United States, with the intent of avoiding a currency reporting requirement, also authorizes civil forfeiture.

Requires Treasury Secretary to study expanding exemptions from currency reporting requirements.

Requires the government to consider financial institutions' anti-money laundering record when deciding to approve various requests, including proposed mergers.

Provides for retaliatory jurisdiction in cases of financial institutions that fail to cooperate with investigations.

Directs financial institutions to establish anti-money laundering programs, and allows Treasury Secretary to prescribe minimum standards.

Grants immunity to a financial institution that voluntarily discloses suspicious transactions; prohibits the institution from notifying the person who conducted the suspicious transaction that it has been reported.

Requires Treasury Secretary to promulgate regulations to encourage cooperation among financial institutions, regulators, and law enforcement; allows financial institutions to share information among persons suspected of terrorism-related money laundering.

Includes foreign-currency offenses—illegally bring or carry foreign currency on one's person or U.S. ports or harbors—within the money-laundering statute.

Provides that aliens whose spouses or parents were killed in the September 11 attacks will continue to be considered "immediate relatives" entitled to remain in the United States.

Provides for the reform of the Bank Secrecy Act to encourage cooperation among financial institutions, regulators, and law enforcement; allows financial institutions to share information among persons suspected of terrorism-related money laundering.

Includes foreign-currency offenses—illegally bring or carry foreign currency on one's person or U.S. ports or harbors—within the money-laundering statute.

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Provides a temporary extension of status to people who are present in the United States on a "derivative status" (the spouse or minor child) of a non-immigrant who was killed or injured on September 11.

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Provides for the reform of the Bank Secrecy Act to encourage cooperation among financial institutions, regulators, and law enforcement; allows financial institutions to share information among persons suspected of terrorism-related money laundering.

Increases penalties for counterfeiting foreign currency and obligations.

Requires Treasury Secretary to promulgate regulations to encourage cooperation among financial institutions, regulators, and law enforcement; allows financial institutions to share information among persons suspected of terrorism-related money laundering.

Authorizes the Financial Crimes Enforcement Network, a highly secure network that will allow the exchange of information with financial institutions.

Increases civil and criminal penalties for money laundering.

Requires the National's strategy on money laundering to include data regarding the funding of international terrorism.

Requires that financial institutions disclose suspicious activities in electronic communications to financial institutions.

Obliges Treasury Secretary to issue regulations that require securities brokers and commodities merchants to report suspicious activities.

Requires the Attorney General to report on the administration of Bank Secrecy Act anti-money laundering provisions.

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Provides for the reform of the Bank Secrecy Act to encourage cooperation among financial institutions, regulators, and law enforcement; allows financial institutions to share information among persons suspected of terrorism-related money laundering.

Includes foreign-currency offenses—illegally bring or carry foreign currency on one's person or U.S. ports or harbors—within the money-laundering statute.

Provides that aliens whose spouses or parents were killed in the September 11 attacks will continue to be considered "immediate relatives" entitled to remain in the United States.

Provides a temporary extension of status to people who are present in the United States on a "derivative status" (the spouse or minor child) of a non-immigrant who was killed or injured on September 11.
Mr. LEAHY. Mr. President, I thank the distinguished Senior Senator from Utah for his comments. Senator Hatch and I, over the last generation, have spent a great deal of time with each other on many issues, on numerous committees, especially the Judiciary Committee. But we have so much time together on this, we even appear to be coordinating the gray suits and blue shirts today. But I appreciate his help.

I appreciate so many who helped on crafting and moving forward with this legislation. I thank our leader, Senator Durbin. It would not have been possible for us to be here at this point without his steadfast commitment to the committee system and his willingness to have the committee work diligently to improve the legislation initially presented by the Administration. But my behalf and on behalf of the American people, I want to publicly acknowledge his vital role in this legislation. Senator Reid has also provided valuable counsel and assistance as we have moved first the original Senate USA Act, S. 1510, and now the House-passed bill, H.R. 3162.

Many others also helped us: Senator Hatch and Senator Specter and Senator Grassley and Senator Durbin, Senator Schumer, Senator Cantwell, and so many others on the Judiciary committee. I said many times we are merely constitutional impediments to staff.

In particular, I want to thank Mark Childress and LaRue on the staff of Majority Leader Daschle, and Luke Albee, J.P. Dowd, David Carle, and others. These are dear friends, but they are also people who bring such enormous expertise—expertise they had in their other careers before they came to the Senate, and how helpful they are.

Mr. President, we are about to vote and we will vote in a matter of minutes. I want us to think just for a moment why we are here. We have all
shaped the sadness, the horror of September 11. We are seeing Members of Congress and staffs threatened, tragic deaths in the Postal Service, those who died in the Pentagon, those who died at the Twin Towers.

It is also almost a cliche to say America under attack, but that is what it is. Each of us has a job helping to respond to that. We are not Republicans or Democrats in that, we are Americans preserving our Nation and preserving our democracy. But, you know, we plan, not just for today, but preserve it for the long run. That presents the kind of questions we have to answer in a bill such as this.

I suspect terrorist threats against the United States will exist after all of us, all 100 of us, are no longer serving in the Senate. It is a fact of life. It will come from people who hate our democracy, hate our diversity, hate our success. But that doesn’t mean we are going to stop our democracy, our diversity, our success.

Think what we cherish in this Nation. Our first amendment, for example, giving us the right to speak out about what we want—as we want. How many countries even begin to give that freedom of speech?

Also, in that same first amendment, the right to practice any religion we want, or none if we want.

The leaders of the Judiciary Committee, Senator HATCH and I, belong to different religions which we hold deeply. I think we gain a great deal of inner strength from our respective faiths. But we know we are not judged by our religion. That is something we must protect and hold. We are judged by how well we do in representing our States and our Nation.

Because we face terrible terrorist attacks today, we should not succumb tomorrow by giving up what makes us a great nation. That has been my benchmark throughout the work I have done in this bill.

I spoke of the people who bring so much to this. I was just talking with Beryl Howell, a brilliant lawyer, who, with Bruce Cohen, has led our team on this. She is a former prosecutor. How much she learned from her prior experiences and how much she brought here. Bruce Cohen, who was in private practice and came here, probably is as knowledgeable about Senate practice as anyone, and has brought that knowledge here. There are so many others I could name.

I have to think of my own case. Probably my 26 years here in the Senate, in many ways led up to this moment because I have never brought more of my own experiences or knowledge to bear than on this.

There was a rush, an understandable and even, some may say, justifiable rush, to pass legislation immediately after these horrible events. I understand that, the United States having been attacked within our borders for the first time, really, by an outside power since the War of 1812—attacked terribly, devastatingly. Who can forget the pictures we saw over and over again on television?

So I can understand the rush to do something, anything. But I used every bit of credibility I had as a Senator to say, wait, let us take time. I applaud people such as Senator Daschle who, using his great power as majority leader, said we will take the time to do this right, and backed me up on this. Other Senators from both sides of the aisle said, OK, let’s work together.

But I know Senator Utah shared the same anger that I did at the terrorists, and perhaps had been reluctant at first to join with me on that. But then the Senator from Utah and I worked day and night, weekends, evenings, and everything else to put together the best possible bill.

We worked with our friends and our colleagues in both parties in the other body. Ultimately, we do nothing to protect America if we pass a bill which for short-term solutions gives us long-term pain by destroying our Constitution or our rights as Americans.

There are tough measures in this legislation. Some may even push the envelope to the extent that we worry. That is why we put in a 4-year sunset. We have also built in constitutional checks and balances within the court system and within even some of the same agencies that will be given new enforcement powers. But we also will not forget our rights and responsibilities and our role as U.S. Senators.

We will not forget our role and our responsibilities as Senators to do oversight. Senator Hatch and I are committed to that. We will bring the best people from both sides of aisle, across the political spectrum, to conduct effective oversight.

I have notified Attorney General Ashcroft and Director Mueller that we will do that to make sure these powers are used within the constitutional framework to protect all of us. I said earlier on this floor what Benjamin Franklin said: that the people who would trade their liberties for security and deserve neither.

We will enhance our security in this bill, but we will preserve our liberties. How could any one of us who have taken an oath of office to protect the Constitution do otherwise?

Like the distinguished Presiding Officer, I have held different elective offices. As the distinguished Presiding Officer knows, we take seriously our duties and our roles in each of those. He was a Member of the House and was the Governor of one of the original 13 States. I was a prosecutor and am a U.S. Senator from the 14th State. But all of us take this responsibility, because none of us are going to be here forever.

I want to be able to look back at this time, that I was a Senator and able to tell my children, my grandchildren, and my friends and neighbors in Vermont—the State I love so much—that I came home having done my best.

We have so much in this country—so much. But it is our rights and our Constitution that give us everything we have, which allows us to use the genius of so many people who come from different backgrounds and different parts of the world. That makes us stronger. We become weak if we cut back on those rights.

We have had some difficult times in our Nation where we have not resisted the temptation to cut back. Here we have. The American people will know that this Congress worked hard to protect us with this bill.

I will vote for this legislation knowing that we will continue to do our duty, and to follow it carefully to make sure that these new powers are used within our Constitution.

I suggest that all time be yielded, and that we be prepared to vote. I ask for the yeas and nays.

THE PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was read the third time. The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRUIEU) is necessarily absent.

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

The result was announced—yeas 98, nays 1, as follows: [Rollcall Vote No. 333 Leg.]

YEAS—98

Abak  Akin  Allen  Baucus  Bayh  Bennett  Biden  Binger  Bond  Boxer  Braun  Brown  Brownback  Burns  Byrd  Campbell  Cantwell  Carnahan  Carper  Chafee  Cleland  Clinton  Cochran  Collins  Conrad  Corzine  Craig  Crapo  Daschle  Dayton  Domenici  Dodd  Dome

NAYS—1

Cleland  Corzine  Craig  Crapo  Daschle  Dayton  Domenici  Dodd  Dome

Pengilly
The bill (H.R. 3162) was passed.

Mr. COCHRAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

The PRESIDING OFFICER (Mr. JOHNSON). Under the previous order, the Appropriations Committee is discharged from consideration of H.R. 2330 and the Senate will proceed to its consideration.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2330) making appropriations for agriculture, rural development, Food and Drug Administration, and related agencies programs for fiscal year ending September 30, 2002, and for other purposes.

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

The assistant legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The assistant legislative clerk read as follows:

A bill (H.R. 2330) making appropriations for agriculture, rural development, Food and Drug Administration, and related agencies programs for fiscal year ending September 30, 2002, and for other purposes.

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

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 2:31 p.m., recessed until 3:01 p.m., and reassembled when called to order by the Presiding Officer (Mr. NELSON of Florida).

AMENDMENT NO. 1969

Mr. KOHL. Mr. President, pursuant to yesterday's unanimous consent agreement, I rise to offer the text of S. 1191 as reported by the Senate Appropriations Committee as a substitute amendment for H.R. 2330, the fiscal year 2002 appropriations bill for Agriculture, Rural Development, Food and Drug Administration, and related agencies. The text of S. 1191 is at the desk of the Senator from Wisconsin (Mr. KOHL), for himself and Mr. COCHRAN, proposes an amendment numbered 1969.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. KOHL), for himself and Mr. COCHRAN, proposes an amendment numbered 1969.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to.

The text of the amendment is printed in today's RECORD under "Amendments Submitted."

Mr. KOHL. Mr. President, I am pleased to present to the Senate, the fiscal year 2002 appropriations bill for agriculture, rural development, the Food and Drug Administration, and related agencies. This bill was approved by the Appropriations Committee without dissent, and I hope it will receive the support of all Senators. I believe this bill strikes an appropriate balance of programs, consistent with the interests of American farmers and agricultural producers; the farm sector, the environment, and rural America generally; nutrition assistance to our Nation's most vulnerable citizens; provide adequate resources to the Food and Drug Administration, the Department of Agriculture, and other programs to supply and other aspects of public health; and to support other national and international priorities.

This bill provides $73.9 billion in new budget authority for both mandatory and discretionary programs under our subcommittee's jurisdiction, and is within our 302(b) allocation. This bill is $2.8 billion below the level provided for fiscal year 2001, and is $78 million below the President's request. Let me restate, this bill is below the President's request.

Although this bill is $2.8 billion below the level provided last year, I should explain that the fiscal year 2001 bill included $3.6 billion in emergency spending for natural disaster and market loss related assistance to farmers and rural communities. No emergency funding is provided in the bill now before the Senate, and when compared to the non-emergency spending for fiscal year 2000, we are providing an increase of approximately $850,000. That amount represents an increase of slightly more than 1 percent from the previous year.

Before I go any further, I want to publicly thank my friend from Mississippi, Senator COCHRAN, ranking member on the Subcommittee, for his help and guidance. I also want to thank his staff: Rebecca Davies, minority clerk for the subcommittee, Martha Scott Poinexter and Rachelle Schroeder. Without their help and expertise, presentation of this bill to the Senate today would not have been possible. I owe a great deal of gratitude to Senator COCHRAN and his staff, as do all Senators.

Mr. President, when someone refers to this bill simply as the "Agriculture" appropriations bill, one might be left with the impression that it relates only to programs important to the farming community. While this bill does much to support our Nation's farmers, it also does much more. This bill provides substantial funding for agriculture research, including human nutrition research, biotechnology, energy alternatives, and many other important areas of inquiry. It also provides increases in conservation programs that protect our soil, water, and air resources, including examination of global change, and other critical aspects of environmental protection.

This bill also supports rural communites through economic development programs and assistance for basic needs such as housing, electricity, safe drinking water and waste disposal systems, and to help move rural America into the information age by promoting new technologies in the area of telecommunications and internet services. More and more, Americans are seeking relief from the congestion and sprawl of urban centers, and with the proper investments in alternative transportation systems, we can provide viable job opportunity alternatives. Programs in this bill do much to help rural communities provide the infrastructure necessary to create those jobs.

In conclusion, funding in this bill supports many nutrition and public health related programs. These include the food stamp, school lunch, and other nutrition assistance programs such as the Women, Infants, and Children program—WIC. This bill also provides funding for the Food and Drug Administration, which includes an increase for the Office of Generic Drugs to help make lower cost medications available to Americans as quickly as possible. Funding for the Food and Drug Administration, and other entities covered in this bill will also help guarantee that the food Americans eat is not only the most nutritious and affordable in the world, but that it is also the safest.

Assistance in this bill does not stop at our shores. This bill also includes a number of international programs such as Public Law 480, which provide humanitarian food assistance to people in dire need around the world. This bill also supports international trade through a number of programs designed to open, maintain, and expand markets for U.S. production overseas.

Before I describe some of the specific program included in this bill, let me offer a few observations in view of recent events. World headlines this past year have described the devastation to the rural sector of the United Kingdom and other areas where foot and mouth disease outbreaks have raged out of control. Should such outbreaks occur in this country, the effect to the farm sector, and the general economy, would be staggering. Thankfully, this country has a strong set of safeguards to keep our shores safe from problems such as foot and mouth disease. But our safeguards are only as strong as the weakest part.

More recently, we all witnessed the horrific events of September 11. Suddenly, we were reminded that the significant concerns were held, in regard to accidental introductions of exotic pests and disease, may pale in comparison to what could befall this country by design. This is true for protection of our food supply, and in order to ensure that our public health system has the resources for immediate response to any threat at any time.

Last week, events occurring in the United States Senate, itself, reminded us of the need to keep strong our nation's defenses in regards to public health and safety. This bill, with jurisdiction for the food and Drug Administration, the Food Safety Inspection