White House. I think during our extended debate on ANWR we had an extended discussion about the attitude of the White House that did not prevail in this body.

I think what is germane, however, is the attitude of the White House with regard to the sanctions on Iran and Libya. They are quite clear, and I think there is a notable similarity. Those sanctions were initiated in retaliation to terrorist activities associated with Libya. What was it? The downing of Pan American flight 103 over Scotland. That is why we took that action. It was most appropriate. In Iran, in 1979, it was the Embassy takeover and the terrorist activities associated with that.

So we have a parallel. I do not think there is any question about it. We terminated a relationship in the sanction action against Libya and Iran for fostering terrorism.

If what is going on with Saddam Hussein is not an act of terrorism, I do not know what is. I indicated in my statement pretty much throughout, this is a matter of principle for the United States. I do not think there is any question about the justification. It is the same justification. Saddam Hussein is fostering terrorism, and I think we would all acknowledge that. So I think, with all due respect, that is the justification for this action.

Today, who is more of a threat to the world? Is it Iran, is it Libya, or is it Iraq? Well, no question in my mind.

I am happy to respond to any questions.

I yield back the remainder of my time.

Mr. BINGAMAN. Mr. President, I yield back the remainder of our time as well.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3159. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE), is necessarily absent.

Mr. LOTT. I announce that the Senator from Oklahoma (Mr. NICKLES), is necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 10, as follows:

[Rollcall Vote No. 72 Leg.]

YEAS—88

Akaka	Cleland	Edwards
Allard	Clinton	Ensign
Allen	Cochran	Enzi
Baucus	Collins	Feingold
Bayh	Conrad	Feinstein
Bennett	Corzine	Frist
Bond	Craig	Graham
Boxer	Crapo	Grassley
Breaux	Daschle	Gregg
Brownback	Dayton	Harkin
Bunning	DeWine	Hatch
Burns	Dodd	Helms
Campbell	Domenici	Hollings
Cantwell	Dorgan	Hutchinson
Carnahan	Durbin	Hutchison
Inhofe	Mikulski	Smith (OR)
Jeffords	Miller	Snowe
Johnson	Murkowski	Specter
Kennedy	Murray	Stabenow
Kerry	Nelson (FL)	Stevens
Kohl	Reed	Thomas
Kyl	Reid	Thompson
Landrieu	Roberts	Thurmond
Leahy	Rockefeller	Torricelli
Levin	Santorum	Voinovich
Lieberman	Sarbanes	Warner
Lincoln	Schumer	Wellstone
Lott	Sessions	Wyden
McCain	Shelby	
McConnell	Smith (NH)	

NAYS—10

Biden	Chafee	Lugar
Bingaman	Fitzgerald	Nelson (NE)
Byrd	Gramm	
Carper	Hagel	

NOT VOTING—2

Inouye	Nickles

The amendment No. 3159 was agreed to.

Mr. MURKOWSKI. 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 as agreed to.

CAPACITY-BASED STANDARDS

Mr. DOMENICI. Mr. President, I have discussed with Senator BINGAMAN a concern with his amendment No. 3016. In particular, I question whether we should structure the renewable portfolio standard to refer to the ''capacity'' of a renewable system or, as done in Senator BINGAMAN's amendment, to the ''energy generated.'' I think we would simplify compliance by staying with a ''capacity-based'' standard, but I realize that this is a complex issue. I strongly recommend that we return to this issue in conference and carefully evaluate the pros and cons of these two approaches.

Mr. BINGAMAN. I concur with my colleague that this issue deserves more discussion. I look forward to further analysis and discussion of this in conference in order to arrive at a final position.

ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 3525, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3525) to enhance the border security of the United States, and for other purposes.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I understand that we have a time limit on both the bill and the particular amendments. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. And the time on the overall bill is?

The PRESIDING OFFICER. Thirty minutes equally divided.

Mr. KENNEDY. And 40 minutes on each amendment equally divided. Am I correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

Mr. President, I am very pleased that we are enacting the Enhanced Border Security and Visa Entry Reform Act of 2002.

I would like at the outset to thank my colleagues and fellow sponsors, Senators BROWNBACK, FEINSTEIN, and KYL, as well as their dedicated staff, David Neal, LaVita Strickland, and Elizabeth Maier. We began working together on this legislation in November and have moved through every stage of this process as a united team.

I would also like to thank Senator HOLLINGS and Senator GREGG for their invaluable contributions to the bill. I thank Senator BYRD for steadfastly working with us to make important improvements to the legislation.

Finally, I thank all of our colleagues in the Senate for withdrawing their unrelated amendments to assure the swift passage of this vital legislation, the Enhanced Border Security and Visa Entry Reform Act, which will strengthen the security of our borders. It will improve our ability to screen visitors, monitor foreign nationals, and enhance our capacity to deter potential terrorists.

Our bill provides real solutions to real problems. It closes loopholes in our immigration system. Our solutions include expanding intelligence and law enforcement capabilities, upgrading 21st century technology, and establishing an electronic interoperable data system. Vital information will be shared in real time among our front line agencies.

Our legislation sets realistic deadlines for the Attorney General and the Secretary of State to issue to all foreign nationals machine-readable, tamper-resistant travel documents with biometric identifiers. It also sets a realistic deadline for our ports of entry to be used with biometric data readers and scanners.

It also recognizes the valuable role of our border security and INS personnel by ensuring that these offices receive adequate pay and training and have the technology they need to secure our borders without obstructing the efficient flow of persons and commerce.

It also recognizes the demands on our consular offices, and provides them with the additional training and resources to screen for security threats.

In this legislation, we preserve the visa waiver program but require a stringent reporting requirement on passport theft and more frequent evaluation of participating countries' compliance with the programs' conditions.

Our bill honors our proud immigration tradition. It safeguards the entry of the more than 31 million persons who enter the United States legally each year as visitor students, temporary workers, and the 550 million who legally cross our borders each year to visit family and friends.

We recognize that immigration is not the problem—terrorism is. We must identify and isolate potential terrorists—not isolate the United States. ''Fortress America'' is not a solution that we would consider.

In defending America, we are defending the fundamental constitutional principles of diversity, cultural exchange, and civil rights that have made America strong in the past and which will make us even prouder in the future.

This legislation strikes the appropriate balance. I hope we will receive overwhelming support for it.

I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I join my colleague, Senator KENNEDY, as ranking member on the Immigration Subcommittee to support this bill.

This bill cleared the House of Representatives twice on a unanimous consent calendar. It is important. We still have problems at our borders. This bill deals with trying to get at the terrorists who seek to enter our land and not the legitimate people who are seeking to come here for reasons that are positive to the United States.

This bill is a testament to the dedication of this body and in Congress. It is bipartisan. It has had the input of many Members. The bill reflects how truly united we as Americans stand before the threat of terrorism.

The bill is the product of a lot of dedicated people, too many to name—elected officials from both sides of the aisle, from both Houses, and experts from both inside and outside of Government. The entire community in and around Washington and the country came together for this common goal of defending America.

The bill is endorsed by the entire immigration spectrum. The groups that are the most impacted by it endorse it. They appreciate the hard decisions that have to be made after September 11 and see the wisdom in this legislation.

We have legislation here that protects our borders without compromising our values or our economy. This legislation is a measured, intelligent response to an evil that we will defeat. I am proud to be a part of this bill.

I will describe quickly, what we are trying to do—and we will get it done—is to get information sharing from the various governmental agencies—the INS, the State Department, but also the CIA, the FBI, the DIA, and, hopefully, even other intelligence sources—so that we will have information sharing so we can catch before they enter this country people who seek to do harm. That information sharing is not taking place to the degree it needs to be today. Senator KENNEDY noted how many people yearly enter this country legally—over 300 million entries—and we are looking for those few who seek to come in here to do us harm. We are looking for a needle in a haystack, so we have to have that information sharing.

We are trying to expand the perimeter around the United States. This would include working with Canada and Mexico to get our perimeter broader and more secure.

I visited the El Paso INS detention facility 1 year ago. There at the detention center were people who had tried to enter our country illegally from 59 different countries, coming in through Central America, going up by land through Central America, through Mexico. We need to get the Mexican Government's support and help in protecting our perimeter.

We require manifests from other countries before the flights leave so we can check those when they come in. We provide more monitoring of foreign students in this country once they come here.

On September 11, unfortunately, some of those terrorists were here under student visas. We have to monitor the foreign students better in this country.

This bill provides biometrics. It provides more information we can use in checking people at the border. We have a number of other provisions that are in the bill. It provides for more border security officials to be able to check to make sure we are getting our job done.

In short, Mr. President, this bill has received a lot of work. We need to pass this legislation. I believe we will get it passed today.

Mr. President, I yield the floor and reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Will the Senator yield for a question from the Senator from New Mexico?

Mr. BROWNBACK. I would be happy to yield for a question. I have yielded back the floor.

If I could secure the floor, Mr. President, I would be happy to yield for a question from the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOMENICI. I say to the Senator, I would just like to eliminate a little bit of confusion. This bill is going to pass unanimously—or almost—today. And stories are going to say we provided 1,000 new agents for the INS and all the other things you provide in this bill.

I wonder if you might tell me, is any of this money appropriated by this bill?

Mr. BROWNBACK. If I could respond to that question, within the President's budget is allocated $742 million in the first year for the implementation of this bill. It is within the President's budget. It is believed that the budget needs for the first year are $1.3 billion total. We have over half of that in the President's budget, and we are going to be seeking the approval for additional resources. We think we can compete for the necessary funding with the homeland security issues within it. It is going to take authority, and this is the authority it is going to take appropriations to be able to get this implemented. The Senator from West Virginia has been raising in hearings and in this Chamber this issue about the implementation.

Mr. DOMENICI. I say to the Senator, as I indicated, I do not doubt it has wonderful provisions in it. I have read them. I come from the border, and I confirm that they are all good; our border people would like to have them.

I just want to make sure we understand that there is no money provided in this bill. So the public will get the story today or tomorrow that we passed this bill, but 3 or 4 months from now, when the appropriations bill comes that funds these kinds of activities, the Appropriations Committee has to have the money or we will just have another bill that expresses, in beautiful words, what we would like to have happen for our country. Is that about right?

Mr. BROWNBACK. No. I would disagree, if I could, with my colleague. The appropriate way to proceed is authorization language, then appropriations, of course. What we are doing here is the authorization language. The President has built into his budget request over half of the funding for this already. Now we will have to appropriate it. But to get there, first we are supposed to authorize. This is authorizing language.

Mr. DOMENICI. Sure. There is nothing tricky about my question. I am not trying to put anyone on the spot. I am just trying to establish that unless the money is appropriated later on by another act of Congress, and signed in another act by the President, we do not have 200 new agents this year in each of the Departments, we don't have the research money that is in this bill for new technology, because this bill does not provide for any money to be spent. If that is not a correct statement, then I withdraw it.

Mr. BROWNBACK. That is correct. This is authorizing language.

Mr. DOMENICI. I thank the Senator very much.

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

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield myself a half a minute.

I want to add to what my colleague said. There is also $100 million in fees here. We have raised the fee part of it, which will be self-funding, making the total $843 million. This agency has a budget of $6 billion. It is our intention to try to work within that $6 billion to find the additional money and to work with the Appropriations Committee.

But I think that the point the Senator from New Mexico makes about the difference between authorization and appropriations is always worthwhile to point out so people have a very full understanding of the process.

Mr. DOMENICI. I thank the Senators.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

Mr. BYRD. Mr. President, before the distinguished Senator from New Mexico leaves the floor, I say to the Senator from New Mexico, he has made a very important observation.

I am going to vote for this bill. But we do not have a CBO estimate of the cost. We have no estimate of the cost. There is an estimate by the Immigration and Naturalization Service. Now, that may be off a great deal or it may not be off a great deal.

I think it is important to keep in mind what the distinguished Senator from New Mexico has pointed out. There is a great difference between authorizations and appropriations. And it is the money that counts. Cicero, that great Roman orator, said: ''There is no fortress so strong that money cannot take it.'' So it is the money that counts. And the Senator has made an important observation. I made that observation, too, early on. And I don't know what the estimate of the cost is going to be in here. We have certain estimates, the $1.1 billion for the first year, and the $3.2 billion—or something like that—$3.2 billion for 3 years. But those are estimates. They are by the Immigration and Naturalization Service. And, of course, that is not a great bank to put your money into when the INS estimates it. We have seen that agency fall on its face so many times in recent years.

But, in any event, I thank the Senator.

Mr. DOMENICI. Will the Senator yield for 1 minute?

Mr. BYRD. Yes. I would be glad to yield.

Mr. DOMENICI. A question along with this observation: I say to the Senator, it seems to me that what we do—and what we are doing in this crisis, which is a very big crisis, with the President putting large numbers of billions of dollars in homeland security and saying this is new money—we come along and pass bills that authorize the new programs that he is saying he wants new money for, but the truth of the matter is that very seldom are any existing programs that are being paid for eliminated.

So you are going to have a subcommittee of your Committee on Appropriations, maybe two, that are going to fund this authorization bill—or maybe not, or maybe part of it; who knows? But the President had in mind canceling a whole bunch of programs in order to pay for this. And the point I make is, nobody helps with that part of the burden. Nobody carries any weight on trying to make room within the Government. They just pass on to the appropriators a very good, wonderful, new set of authorizations that we have all passed, and we go home and tell our people it is going to help solve the crisis that is before us with reference to taking care of our borders, which are porous and should not even be called borders, they are so bad.

I thank the Senator.

Mr. BYRD. Well, the Senator is correct. There will be a lot of eyes looking toward the Senator from New Mexico and toward me, and the other 27 members of the Senate Appropriations Committee, when it comes time to put the money on the barrelhead.

But having said that, I am going to vote for this bill. I am still going to seek a CBO estimate of the cost because I think that would be helpful in the coming days as we proceed to the conference and then to the conference report, and so on.

AMENDMENT NO. 3161

(Purpose: To revise provisions relating to the compliance by institutions and other entities with recordkeeping and reporting requirements with respect to nonimmigrant students and exchange visitors)

Mr. BYRD. Mr. President, the opportunity to seek a quality higher education has long enticed men and women to leave their homelands to travel to America.

We are, by and large, a generous Nation when it comes to providing an education to foreign citizenry. Indeed, American colleges, universities, and technical schools have opened wide their doors to students from foreign lands. And all levels of schooling are available to foreign nationals of every age—from preschool to post-graduate work, from public grade schools to private technical-training institutions.

In fact, foreign students have proven to be a lucrative source of revenue for U.S. educational institutions. Private-sector analysts estimate that foreign students contribute between $9 billion and $13 billion to the U.S. economy every year. Any number of marketing efforts are made by colleges and universities to recruit foreign students, whose tuition fees serve to bulk up college budgets.

As a result, we have opened our borders to a stream of foreign students with precious little oversight of their movement through the American educational stream. According to the INS, there are currently 2 million foreign students admitted to study in this country—649,000 of whom were admitted just last year. These include nuclear engineering scholars, biochemistry students, and pilot-trainees, who have access to sensitive technology, training, and information.

Yet while our schools have been training would-be pilots in the art of flying airliners, we have been asleep at the switch! There has been too little accountability, and too few checks, largely because oversight has proven too burdensome and costly for the government and the U.S. educational industry.

The lax government oversight of these student visa beneficiaries was underscored by the fact that three of the September 11 hijackers were awarded student visas—not to mention the fact that the INS was still processing the student visa applications for two of them 6 months after they had crashed two planes into the World Trade Center towers and gone on to meet their eternal destiny.

Clearly INS has not been up to the job of monitoring foreign students, and, in its current condition, placing new burdens on that agency alone is no solution. Therefore, as we look at our Nation through the prism of the new realities of terrorism, we must reconsider ways to involve those who have the best opportunity to prevent attacks. We need the assistance of our educational institutions.

In recent years, efforts to impose more stringent reporting requirements on schools have faltered because educational institutions have been reluctant to get into the job of monitoring foreign students. In fact, colleges and universities have lobbied heavily against such requirements, and the current lack of a national program to monitor foreign students indicates the effectiveness of that lobbying effort.

The pending legislation takes some important steps toward closing many of the loopholes in our foreign student policies that could be exploited by a potential terrorist. If the student monitoring provisions in this bill are to be successful, however, we must ensure the participation of our schools. These institutions are best suited to inform the INS and the State Department as to which students have been accepted to attend a school, whether they actually show up for class once they enter the country on a student visa, and whether they continue their classes or merely drop out of sight after checking in with the admissions office.

Monitoring the student via program requires a partnership between the government and all colleges, and technical schools that accept foreigners.

The pending bill gives the INS and the Secretary of State too much discretion in determining whether or not these educational institutions should be penalized.

Section 502(c) of this bill reads:

EFFECT OF FAILURE TO COMPLY.—Failure of an institution or other entity to comply with the record keeping and reporting requirements to receive nonimmigrant students or exchange visitor program participants under section 101(a)(15) (F), (M), or (J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F), (M), or (J)) or Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), may, at the election of the Commissioner of Immigration and Naturalization or the Secretary of State, result in the termination, suspension, or limitation of the institution's approval to receive such students or the termination of the other entity's designation to sponsor exchange visitor program participants, as the case may be.

What's more, in section 502 of this bill, the ''periodic reviews,'' which the INS Commissioner, Secretary of State, and Secretary of Education are required to make to determine whether institutions are complying with this legislation, are not defined. A ''periodic review'' could mean every 5 years or it could mean every 20 years or it could mean every 50 years.

That is very soft language.

My amendment would require reviews by the relevant agency heads at least once every two years. Further, if they found that U.S. educational institutions were materially not complying with the reporting requirements in this bill, my amendment would require the relevant agency heads to terminate or suspend, for at least one year, the right of those institutions to accept foreign students.

This amendment makes clear the serious concern about this Nation's ability to help foreign students while also protecting our homeland. Educational institutions are essential partners in our efforts to ensure that foreign students really are ''students'' with no other agenda but learning.

I thank Senators KENNEDY, BROWNBACK, FEINSTEIN, and KYL for their support of this amendment. I hope that the Senate will adopt it.

Mr. President, I have made my statement prior to calling up the amendment. I ask unanimous consent that the time I have consumed in reading my statement come out of my time on the amendment.

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

Mr. BYRD. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3161:

On page 49, beginning on line 4, strike ''The'' and all that follows through ''reviews'' on line 7 and insert ''Not later than two years after the date of enactment of this Act, and every two years thereafter, the Commissioner of Immigration and Naturalization, in consultation with the Secretary of Education, shall conduct a review''.

On page 49, lines 22 and 23, strike ''The Secretary of State shall conduct periodic reviews'' and insert ''Not later than two years after the date of enactment of this Act, and every two years thereafter, the Secretary of State shall conduct a review''.

On page 50, line 16, strike ''(c) EFFECT OF FAILURE TO COMPLY.—Failure'' and insert ''(c) EFFECT OF MATERIAL FAILURE TO COMPLY.—Material failure''.

Beginning on page 50, line 24, strike ''may'' and all that follows through the period on line 5 of page 51 and insert the following: ''shall result in the suspension for at least one year or termination, at the election of the Commissioner of Immigration and Naturalization, of the institution's approval to receive such students, or result in the suspension for at least one year or termination, at the election of the Secretary of State, of the other entity's designation to sponsor exchange visitor program participants, as the case may be.''.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I will urge our colleagues to support this amendment for the excellent reasons that the sponsor gave in support and in justification of the amendment.

There are now 26,000 universities and schools that can effectively approve a foreign student to come and study. But the foreign student has to qualify for the visa project at the current time. We have included some very important requirements in this legislation because this has been one of the great loopholes in our monitoring of who comes into this country and who does not.

The State Department must first receive the electronic evidence of the acceptance from an approved U.S. institution prior to issuing a student visa. The State Department must inform the INS that a visa has been approved. The INS must inform the approved institution the student has been admitted into the country, and then the approved institution must notify INS when the student has registered and enrolled. If the student doesn't report for class, the school must notify the INS of this absence not later than 30 days after the deadline for the classes.

So the colleges and universities have to develop that kind of system in order to be qualified for these programs, which is enormously important and a very significant, dramatic change from the current situation.

Currently, there are sporadic inspections of the universities. So now the Byrd amendment comes along and says, well, what you have in here looks good on paper, but what we take note of is the fact that, even if it is good on paper, the INS, in its history, has been sporadic in inspecting and finding out whether the schools and colleges are doing what they said and what they are supposed to do. That has been true. This tightens that provision up in a very important way.

If there is a material breach, then there will be a suspension of that institution from being able to receive the foreign students. So I believe it is going to make a very important difference in terms of compliance with one of the most important aspects of this legislation, which is understanding the students who are coming here, monitoring the students when they are here, knowing when the students are leaving, and if the students are not attending the schools, having access to that kind of information as well.

I thank the Senator from West Virginia for the amendment. What it does is put real teeth into this provision which we had worked out in the committee to achieve the kind of oversight the INS has not had up to this time.

Mr. BYRD. Mr. President, I thank the Senator for his statement.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I urge my colleagues, as well, to support the Byrd amendment. The reasons have been stated by both Senators BYRD and KENNEDY. I think the important thing to look at and see here is that we have a number of foreign students in the United States, and this has been a very positive thing, overall, for the United States and for the rest of the world. I don't think anybody would disagree with that statement. Yet what we have had taking place is a system that, over time, has gotten far too loose, and we saw the effects of that on September 11, where a couple of these individuals who came into the United States and did this operation, this horrific thing that happened, came in under student visas because they were looking for weaknesses in the system to get into the United States in a less restrictive, reviewed area. So that is why this has been at the very heart of this bill.

Senator BYRD puts in a good provision. There have been sporadic reviews by the Government of the educational institutions to see that they are doing this right, that they are taking the program seriously and not just finding some way of being able to bump up their student account and the number of students coming to the United States. We will have a regular reporting requirement and we will be able to monitor this much more closely. It should not inhibit legitimate students from coming here, nor the institutions that are legitimate and serious about what their projects are. It will be a bit more of a hindrance to those looking to increase their foreign student accounts and, hopefully, it will help us to get at those students who are here to do us harm.

I urge adoption of this amendment.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, this amendment actually came into the bill from the original parts of the bill, Senator KYL's and my investigations from the Terrorism and Technology Subcommittee. What we found is the student visa program was greatly in disarray. We found that we have about 660,000 students coming in a year, and there is no tracking of any of them. Nobody knows whether they are really at a school.

Up to this point, the schools have had no responsibility to report that a student has arrived, that a student is taking this or that course and, yes, that the student has stayed in school. So I think Senator BYRD's amendment strengthens what is already in the bill. I think it makes it a better bill. We intend to follow up on this. Senator KENNEDY and I have discussed it. We intend to see, in fact, that the schools do keep their word and do, in fact, do the reporting they are required to do under this legislation.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, Senator FEINSTEIN and I were upstairs a moment ago during the time allotted for discussion of the bill in general. Let me take a couple of minutes, if I could, to express my support also for the amendment pending that Senator BYRD offered. As Senator FEINSTEIN said, it will strengthen what we are trying to do with the student visa program.

Mr. President, the Judiciary Committee has a couple of subcommittees of jurisdiction. Senator KENNEDY and Senator BROWNBACK are the chairman

and ranking member of the Immigration Subcommittee, and I have the honor of serving on that committee, as does Senator FEINSTEIN. She chairs and I am ranking member of the Terrorism Subcommittee. So we have had the ability in both of these subcommittees to hold hearings and to discover after September 11 areas in which we can improve our immigration laws to make it much more difficult for terrorists to enter this country or to stay here illegally.

This legislation is designed to close as many of those so-called loopholes as we can. I think it is a good effort in that regard. Each of the amendments that will be offered by Senator BYRD, in one way or another, strengthens the bill we have already offered.

I wanted to make two quick comments. Eighteen of the terrorists who entered the country and flew airplanes into the World Trade Center, the Pentagon, and into the ground in Pennsylvania came in using B–1, B–2 tourist visas. According to the Department of State, 47 foreign-born individuals, including these 19, have been charged with, pled guilty to, or been convicted of involvement in terrorism over the past decade. All 47 of these people had contacts with an INS inspector. Yet, somehow, they were able to get into the country. The 19th of the 19 was Hani Hanjour. He entered the country on an F1 student visa, the subject of the specific amendment now before us. He supposedly came here to attend classes and study English. He never showed up for class. The school did not notify the authorities that he never attended classes. He overstayed his visa and just melted into our society.

Another example of one of the terrorists, Mohamed Atta, came in on a tourist visa. According to several sources, he was placed on the FBI watch list 6 weeks before the terrorist attacks. But his name was never entered into INS's system. Before his visa expired in December of 2000, Atta actually went to the INS to change his status to that of student. After December of 2000, even without the information that showed his placement on a watch list, he should not have been allowed to reenter the country.

Yet, on June 3, 2000, at Newark International Airport on a Czech Air flight from Prague, after being questioned by INS for an hour, he was admitted back into the United States.

My point of illustrating with these two examples is to point out that the INS had contact with all of these people. They clearly should have been caught, but they were not caught because the INS officials either did not have the information they should have had or for some other reason did not ask the right questions.

Mary Ryan, who is one of the people who testified before Senator FEINSTEIN's subcommittee—her title is Assistant Secretary for Consular Affairs, Department of State—actually said: we felt like the woman driving through the school zone at 15 miles an hour and the little girl runs out behind the parked cars. She gets hit, and we feel terrible, but what could we do about it? That is why we set about trying to figure out what we could do about it.

One provision is to tighten up the student visa requirements. Without going into anything further, I think it sets the stage for what we are trying to accomplish and trying to close some of these loopholes, how we hope it will have some good, positive effect—not the overall answer to terrorism, but it will help to some extent.

As I said, the amendments Senator BYRD offers strengthen the bill. I am supportive of them, and I hope we can get to final passage.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, if it is agreeable with Senator KENNEDY and the other cosponsors of the amendment, I will yield back the remainder of my time on the amendment. Some Senators have been promised that there will be no votes until about 7:15 p.m. If it is agreeable with all the cosponsors, I will be happy to ask unanimous consent that the vote on this amendment occur upon the expiration of all time on the amendments and further statements can be made in regard to the bill so that the votes would be stacked for beginning, say, around 7:15 p.m.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, stacking the votes is fine with me. I would rather have our colleagues available so that we can move along. It is just 6 o'clock now. Maybe my cosponsors want to spend time describing the amendments. I do not think so. I know Senator FEINSTEIN has not had a chance to address the whole issue as a prime sponsor. It seems to me we should be able to consider these amendments in a timely manner. I would like to see if we can move the votes to prior to 7:15 p.m. If the leader set that time, then that will be the time, but I hope we can make progress prior to that time.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, if we stack these votes, I certainly think our colleagues will appreciate that. I believe there is going to be, if I understand the intention of the Senator from West Virginia and the amendments he is putting forward, broad agreement amongst the cosponsors of the amendments.

All of these are strengthening amendments. I see no reason why we cannot do all of the amendments together in an expedited fashion. What the Senator is doing is really making the bill better. I do not know if it is possible, but if we could do it, we could have a limited number of votes for which we would call our colleagues back.

These are good amendments. I do not anticipate anybody coming to the Chamber in opposition to them. Possibly we could adopt these together as one. Of the ones I have looked at, they appear to look quite good. My hope is to complete them quickly. If we need to do it at 7:15 p.m., fine, and we can do them possibly altogether.

Mr. BYRD. I think it will work out all right if we just proceed.

I ask unanimous consent, Mr. President, that the vote on this amendment occur at the expiration of the time on all the amendments with the yielding back of that time and yielding back or making final statements on the bill, if that is agreeable with the cosponsors.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3162

Mr. BYRD. Mr. President, I send to the desk the second amendment, and I ask that the clerk read the amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3162.

(Purpose: To require as a condition of a country's designation or continued designation as a program country under the Visa Waiver Program that the country reports to the United States Government the theft of blank passports issued by that country)

Beginning on page 32, strike line 23 and all that follows through line 5 on page 33 and insert the following:

(a) REPORTING PASSPORT THEFTS.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) by adding at the end of subsection (c)(2) the following new subparagraph:

"(D) REPORTING PASSPORT THEFTS.—The government of the country certifies that it reports to the United States Government on a timely basis the theft of blank passports issued by that country."; and

(2) in subsection (c)(5)(A)(i), by striking "5 years" and inserting "2 years"; and

(3) by adding at the end of subsection (f) the following new paragraph:

"(5) FAILURE TO REPORT PASSPORT THEFTS.—If the Attorney General and the Secretary of State jointly determine that the program country is not reporting the theft of blank passports, as required by subsection (c)(2)(D), the Attorney General shall terminate the designation of the country as a program country.".

Mr. BYRD. Mr. President, I yield such time as I may consume from my time on the amendment.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BYRD. Mr. President, in my testimony before the Immigration Subcommittee last week, I spoke about the safety of the American people and how that safety within their own borders often takes a back seat to such issues as commerce and diplomacy.

The visa waiver program, I believe, is a clear example of what I was talking about.

The program allows 23 million citizens from 28 countries to enter the United States without first obtaining a visa from a U.S. consulate abroad. This program, by eliminating the visa requirement and the subsequent State Department background check, expedites travel and commerce, but waives the usual first step by which foreigners are screened for admissibility when seeking to enter the United States.

Consequently, in a 1999 study, the Justice Department's Office of the Inspector General found that terrorists, criminals, and alien smugglers have attempted to gain entry into the United States through the waiver program. The inspector general's office also commented on the danger of stolen passports from visa waiver countries being used by terrorists to enter the United States without a visa.

It has been noted that in 1992 one of the conspirators in the 1993 World Trade Center bombing tried to get into the United States through the visa waiver program with a fake Swedish passport. Fortunately, he was caught, and a search of his luggage revealed bomb-making instructions.

In recent years, tens of thousands of blank passports from visa waiver countries have been stolen. These passports are sold on the black market to terrorists, criminals, and anyone else who may wish to avoid a State Department background check before entering the United States.

While only countries deemed ''low-risk'' are allowed to participate in the visa waiver program, and they must meet certain qualifications, the Attorney General is only required to review these countries' participation once every 5 years. Moreover, the Attorney General is not required to consider the efforts to prevent theft when determining whether to accept the country into or allow the country to continue to participate in the visa waiver program.

My amendment would require the Attorney General to review the countries that participate in the visa waiver program at least once every 2 years to help ensure that those countries continue to meet the programs's standards, and it also requires the Attorney General to remove countries from the program that do not report stolen passports. I am hopeful that my amendment will foster the kind of review that will result in greater scrutiny of this program and of those who enter the country through it.

This is a commonsense amendment, and I hope that Senators will support it.

I have discussed it with Senator KENNEDY, and he in turn has discussed it with the other authors of the bill and I hope that all Senators will support the amendment. I believe it to be a good one, a very worthwhile amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I urge our colleagues to support this amendment as well. It strengthens an important provision in the legislation. The Senator has outlined what the visa waiver program is, available now to 28 different countries.

Why the visa waiver? It was the judgment and the determination that if 2 percent, or less than 2 percent, of the visa applications were going to be rejected, then it probably made sense in terms of the efficiency to grant a visa waiver to that particular country. These are generally our oldest allies and friends as nations. A country has to stay at 2½ percent in order to stay in the program. Six countries a year is the general rule.

So what the Senator's amendment does is it says, look, given the changed circumstances that exist in the world, at least every 2 years we want to see countries reviewed. This is certainly supportable.

One of the principal reasons, obviously, in reviewing a country in terms of a visa waiver, may be because there are national security issues that are different. There may be law enforcement issues that are different. If there are security issues that are different, then we would want to know it and know about it in a timely way.

We have seen in recent times, a month ago, Argentina was dropped from the visa waiver program because of the turmoil that exists there and the enormous numbers of people who were leaving with very little intention perhaps of returning. So the amendment of the Senator will ensure that the visa waiver program will carry forward its real intention, and it will be carefully reviewed every 2 years with the idea that the review, which will be by the State Department and the Attorney General, will look at the country and see if there are new issues of security that may pose a potential threat to the United States. If they do, they can take the action of removing the country, or make other recommendations.

The second feature of this amendment, which is enormously important, is the requirement that we are going to have the report of stolen passports. That has been a very slipshod process in the past. The Byrd amendment puts teeth into that provision. If the countries themselves are not going to be reporting these stolen passports, they will no longer be participating in this favored position in terms of the visa waiver.

Getting a handle on stolen passports is enormously important. It is going to be even more important as we move on into the future. This amendment makes sense. I hope our colleagues will support it.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I urge my colleagues to support this second Byrd amendment. It is a strengthening amendment, for the reasons that have been articulated by the Senator from West Virginia and the Senator from Massachusetts.

I wish to focus on the final point that Senator KENNEDY put forward with an exclamation mark. This is an important program. The visa waiver program has certainly been a very valuable one for the countries that work closely with the United States. They like it. A number of people who travel really like and appreciate it, and yet in some places we are having thefts, losses of passports with which people can penetrate our borders. That has not been as forcefully enforced by other countries on this visa waiver provision.

Now, with the Byrd amendment requiring an every 2-year review, if they are not enforcing this provision when there is a loss or a theft of a passport, it is not being reported aggressively, there is a real hammer here: No more visa waiver.

I rather imagine there are a number of countries that are in this visa waiver program that do not like this amendment, but for us and for our security this is an excellent provision given the world of today. If this were 10, 20 years ago and we did not have quite the present threat on us of terrorist attacks in the United States and people trying to slip through our borders, one might say this is going to be an added burden that maybe we should not have. But given the situation we are in today, I think we would have been wise to have had it 10 or 20 years ago. It is clearly a needed provision, and it will cause people who are working closely with the United States, that have this visa waiver, they will scrutinize their practices more closely and report these passports if they have been stolen.

This is an excellent strengthening provision. I urge my colleagues to support it as well.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

Mr. BYRD. I yield back the remainder of my time. I ask unanimous consent that the vote on this amendment occur immediately after the vote on the student monitoring amendment.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Does the Senator from Massachusetts yield back the remainder of his time?

Mr. KENNEDY. I yield back all of the time.

The PRESIDING OFFICER. The Senator from West Virginia.

AMENDMENT NO. 3163

Mr. BYRD. I now offer a third amendment. I anticipate we could have a voice vote on this amendment, unless enough Senators wish to have a rollcall vote.

I send the amendment to the desk.

The PRESIDING OFFICER. The pending amendment is laid aside. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3163.

The amendment is as follows:

(Purpose: To substitute October 26, 2004, for October 26, 2003, for the achievement of requirements with respect to machine-readable, tamper-resistant entry and exit documents)

On page 25, line 21, strike ''October 26, 2003'' and insert ''October 26, 2004''.

On page 26, lines 12 and 13, strike ''October 26, 2003'' and insert ''October 26, 2004''.

On page 26, lines 24 and 25, strike ''October 26, 2003'' and insert ''October 26, 2004''.

On page 28, line 2, strike ''October 26, 2003'' and insert ''October 26, 2004''.

On page 28, line 16, strike ''October 26, 2003'' and insert ''October 26, 2004''.

Mr. BYRD. Mr. President, I yield myself such time as I may consume of the time allotted to me on the amendment.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BYRD. Mr. President, as we strive to respond to the new challenges of terrorism, we must be cognizant of the essential component of public trust. Without the confidence of the people, our efforts to improve domestic security, including our efforts to tighten our border defenses, cannot succeed.

To help ensure that we do not undermine the public's confidence in our efforts to secure our borders, we must set realistic mandates—that is, guidelines and time frames that are measurable and achievable.

This bill, in two separate instances, sets an October 26, 2003, deadline for the Attorney General and the Secretary of State to meet two separate mandates.

Section 303(b)(1):

Not later than October 26, 2003, the Attorney General and the Secretary of State shall issue to aliens only machine-readable, tamper-resistant visas and travel and entry documents that use biometric identifiers.

Section 303(b)(2):

Not later than October 26, 2003, the Attorney General, in consultation with the Secretary of State, shall install at all ports of entry of the United States equipment and software to allow biometric comparison of all United States visas and travel and entry documents issued to aliens, and passports issued pursuant to subsection (c)(1).

A third October 26, 2003, deadline applies to visa waiver countries issuing to their nationals machine-readable passports that are tamper-resistant and that incorporate biometric identifiers.

I question whether the Attorney General and the Secretary of State will be able to meet these deadlines. When I asked one of the authors of this bill, Senator KYL, about this deadline during the floor debate on Monday, Senator KYL said:

The Senator from West Virginia raises a good question with respect to those deadlines. Frankly, on two of the three, there is no good answer. The Senator is absolutely correct about that. . . . As to precisely how long it will take to get those [systems] online, there is not a good specific answer, nor is there an answer as to when we can have the interoperable system developed, which is one of the central features of the bill.

These dates are not based on the availability of technology, or even projections about the availability of technology. Nor are they based on any realistic expectation about the availability of funding. As far as I can tell, these deadlines are based solely on the fact that the USA PATRIOT Act was signed into law on that same day in 2001.

I appreciate the notion that, without deadlines, it is difficult to press the agencies to act expeditiously. But, when this deadline comes and goes, and the Attorney General and the Secretary of State have not met these goals, the public will have reason to become disillusioned with our efforts to tighten our border defenses. Considering the public's current skepticism regarding the INS and its ability to safeguard our borders, I suggest that we be careful about committing our border defense agencies to deadlines that they cannot meet.

Under the regular appropriations process, Congress cannot make the necessary funding available to the agencies before October 1, 2002, and that assumes that all 13 appropriations bills are completed on time, by the end of the fiscal year. Even if the bills are completed on time, it could still take months before funds are released to the agencies to meet these mandates.

With the support of Senator KENNEDY, I am offering an amendment that would move the October 26, 2003, deadlines back by one year to October 26, 2004. This amendment allows the Congress more time to appropriate the necessary funds, and help to ensure adequate time for the State and Justice Departments to meet these deadlines.

Our efforts to tighten our border defenses will require the long-term support of the American people. It is an effort that will require the trust and confidence of the American people. We should not place that trust at risk by setting deadlines we know to be unrealistic. So it is for that reason Senator KENNEDY and I and the other authors of this amendment have worked together to fashion this amendment. I urge adoption of this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise in support of the Byrd amendment. This is a positive amendment in the overall bill, it is appropriate, and it was the topic of a great deal of discussion previously as we were putting together this bill overall. The bill, in its design, had a number of people working together to try to figure it out. One of the most contentious issues was this issue about the time deadline in which we would be able to accomplish these biometric identifiers.

The administration had a great deal of concern about meeting the very aggressive dates set in the overall bill. A number of our colleagues involved in the negotiation said: We realize this may be aggressive, but we need to push it because this is such an important issue. A lot of people within the executive branch were saying: I don't know that we can meet this deadline.

This amendment will be well received by a number of people who believed the time deadlines put forward in the original bill were just too aggressive to be accomplished. This will set a far more realistic date as to when we accomplish it. I know people in the executive branch will try to do this as quickly as possible. They are clearly going to be far more comfortable with this date as being more realistic, one that can be accomplished.

For those reasons, I urge my colleagues to support this Byrd amendment to the bill.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I have a different take on it. I urge my colleagues to support this amendment, but I think we need to send a message to the INS that it can't be business as usual any longer and that instead of a ''can't do'' attitude, they have to have a ''can do'' attitude.

I personally spoke with Governor Ridge about this deadline and asked him what he thought. He said: Let me get back to you. When he did get back to me, he said: We have to move forward as quickly as possible. I support the date that Senators KENNEDY, BROWNBACK, and FEINSTEIN and I agreed upon. We have to show the American people we will get on with this and the delay will no longer be acceptable.

Senator BROWNBACK is correct when he says that this will make some people a lot happier. There were people who were saying: We are not sure we can meet this deadline in the bill. To that extent, the amendment of the Senator from West Virginia will be well received.

I want to make it clear, we are not sending a signal by agreeing with the Senator from West Virginia tonight—and I know he doesn't mean to, either, as I understand this amendment—because we have decided it is OK to sit back and relax because we have extra time. It is simply a reflection of the fact that it will not be easy. It will take time. Nobody knows for sure exactly how much. However, all five of us, I am sure I can say, are strongly of the view that we have to get on with this. Business as usual is not going to cut it.

The good news is that while technology may be a little more difficult to implement in the very beginning, and a little costly, in the long run it will be both cheaper and much more efficient in enabling analysis of the data in this huge country of ours with all of the millions of people who come into it by visas and other means. The technology will help enforce the provisions of this bill and other legislation on the books.

Technology will be the answer eventually. It will take time to get going. But by agreeing to the amendment of the Senator from West Virginia, I can speak for everyone by saying to those folks who have to implement it, we do not mean for you to relax; we mean for you to get on with it. We have to do our part by giving you the resources to do it.

I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I, too, hope our colleagues will support the amendment. There really is not any difference in the views that are being shared on the Senate floor this evening. That is, we want to get the best technology, and we want to then get a process so that it can be utilized effectively in order to protect our security.

I want to give assurances to those who favor the earlier date that our committee will be meeting with the Commissioner, with Mr. Ziglar, and we welcome other colleagues, to try to monitor this as aggressively as we possibly can. This is the final date, but it is certainly the sense here for the INS to understand we want it done as early as possible. But we want to make sure it is complete, and we are going to have the best technology. Then we are going to have the best technology in terms of the implementation of the legislation.

We give assurance to our colleagues that our committee will monitor this very carefully and periodically give reports back to the Senate because this is enormously important.

What we are basically saying is with 550 million people moving in and out of the United States, there is a limited number who pose a security threat. The immigrants are not the danger, terrorists are the danger. We have to be able to use that knowledge to detect them. We have great opportunities to do it. We want to get the right technology and implement it and we want to do it in the shortest possible time.

This legislation will establish sending that message. I agree with those who say we want to get started, we want to get it done right, but we have altered the date to take into consideration those who believe we would not have done the right job if we had the earlier date. We think this makes sense, and we hope colleagues will support the amendment.

Mrs. FEINSTEIN. Mr. President, I rise to join my colleagues supporting this amendment. There is one thing I would like to point out. I have serious concerns about the visa waiver program. I have concerns about its wisdom in the first place.

When you have 23 million people coming in without visas, from 29 different countries, it becomes so easy for passports to be misplaced and for people who are threats to get into this program. I think we have to watch it very carefully. We have to depend on the fact that the strictures in this bill are meant to be carried out.

I, for one, would not have a problem with doing away with the program if we find any more irregularities in it. We have actual instances where terrorists have used this visa waiver program. We know 100,000 passports were missing. We know they were not reported in a timely way. This bill requires, first of all, the thefts of passports, or that passports are missing, be reported immediately. Then the INS, within 72 hours, would have to enter them into an interoperable database, assuming we get to that interoperable database. Until that system is established, the INS would enter the information into an existing data system.

I, for one, am going to ask my staff to watch very carefully as to how these passport numbers get entered, and I will try to do my level best to see it is carried out. If it is not, I think we will have to go back and assess the wisdom of this entire program.

I yield the floor.

Mr. BYRD. Mr. President, I am happy to yield the remainder of my time.

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment.

The amendment (No. 3163) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3164

(Purpose: To increase the penalty for noncompliance with the requirements to provide manifest information)

Mr. BYRD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3164:

On page 39, line 25, strike ''$300'' and insert ''$1,000''.

Mr. BYRD. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BYRD. Mr. President, the border security bill before the Senate requires ships and aircraft entering the United States to provide to our immigration officials a manifest of all passengers and crew on the vessel before they arrive in U.S. ports. If a commercial carrier fails to do so, this bill imposes on the carreer a $300 fine for each person not mentioned, or for each person incorrectly identified, in the manifest.

This penalty is wholly inadequate in my judgment. It is really a slap on the wrist for an airline or sea carrier that fails to provide important information to our immigration officials. This amendment would increase this penalty to $1,000 for each person that a commercial carriers fails to list accurately on the passenger manifest.

Airlines and sea carries must be more than a passive conduit for information between ticket agents and our border defense agencies. We need the commercial carriers that bring people to this country to be partners in identifying persons who might have suspicious travel documents or travel plans.

Increasing the fine for noncompliance is one way to emphasize to commercial carriers that they have an important role in border security.

This amendment has the support of the managers of the bill and I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself such time as I may use.

I support the amendment. I think it demonstrates support for a very important provision in the legislation, and that is for the INS to receive the manifests of those who are coming into the United States in a timely fashion. It demonstrates, by increasing the penalty, that we are serious about this issue.

The American carriers, as I understand it, do this regularly, routinely. In any event, there are a number of carriers that do not. What the amendment does is underline the importance of this function and establishes the seriousness with which we take this function of information by increasing the penalty. I think it helps the legislation and I support it.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, this is another strengthening amendment. We have teeth in this provision. They get bigger with the Byrd amendment. I think that is a good provision for us on the prearrival of aircraft coming into this country. For whatever reason, we have had some difficulty with airlines providing this manifest ahead of time. This is going to make this a more significant penalty.

We need to have this information. We should have this information ahead of time. This is a key security issue. It is part of this extension to try to deal with terrorists trying to enter our land.

This is a good strengthening amendment. I urge my colleagues to support it.

I congratulate and thank the Senator from West Virginia once again for helping to make what I think is a good bill better.

I yield the floor.

Mr. BYRD. Mr. President, I yield the remainder of my time on this amendment.

Mr. KENNEDY. Mr. President, I yield my time.

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

The amendment (No. 3164) was agreed to.

Mr. KENNEDY. Mr. President, I thank the Senator from West Virginia for the study that he has given to this issue, and for the recommendations that he has made on this legislation. We are urging our colleagues to support this.

I thank him for his cooperation and for the seriousness which he has given to this legislation. I thank him.

Mr. President, under the consent agreement we still have the additional item; that is, the managers' amendment. I ask that we now proceed to the consideration of the managers' amendment.

Mr. BYRD. Mr. President, will the distinguished Senator yield for a question prior to proceeding?

Mr. KENNEDY. Yes.

Mr. BYRD. Mr. President, I move to reconsider the vote on the previous amendment.

Mr. BROWNBACK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3160

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mr. BROWNBACK, Mrs. FEINSTEIN, and Mr. KYL, proposes an amendment numbered 3160.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. KENNEDY. Mr. President, I hope we will approve the managers' amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3160) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I understand that two rollcalls have been ordered. I ask unanimous consent that it be in order to ask for the yeas and nays on final passage of H.R. 3525, the underlying measure.

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

Mr. KENNEDY. 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.

Mr. LEAHY. Madam President, I am very pleased that the Senate is considering H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act. This bill mirrors S. 1749, which Senator KENNEDY introduced with Senators FEINSTEIN, BROWNBACK, KYL, and others. I am one of 58 cosponsors of S. 1749, which has commanded extraordinary bipartisan support and the sponsorship of most of the members of the Judiciary Committee, from which H.R. 3525 was discharged. Indeed, this bill reflects the results of sustained bipartisan negotiation, and represents the consensus view of Senators across the ideological spectrum. In other words, this is legislation the Senate should pass without delay.

As a Senator from Vermont, I know what a serious issue border security is. For too long, Congress has taken a haphazard approach to border security, meeting many of the needs of our southwest border but neglecting our border with Canada. Since the terrorist attacks of September 11, we have taken a far more comprehensive approach. Congress took its first steps to strengthen our borders in the USA PATRIOT Act, which authorized tripling the number of Border Patrol personnel, INS Inspectors, and Customs Service agents serving along our northern border, and $100 million in funding for improved technology for the INS and Customs Service's use in monitoring the border. As the author of those provisions, I am pleased that the administration has requested substantial increases in funding for border security personnel. I urge the Congress not only to fund this priority, but to ensure that the northern border receives at least half of any new supply of border security enforcement officers.

The legislation before us today builds on the first steps taken in the USA PATRIOT Act to strengthen substantially the security of our borders. It will further increase the number of INS Inspectors and INS investigative personnel, and authorize raises for Border Patrol agents and inspectors so that we can retain our experienced border security officers, who have been so overworked over the past 7 months. The bill also authorizes funding for training of INS personnel for more effective border management, and for improving the State Department's review of visa applicants abroad. In addition, it authorizes $150 million for the INS to improve technology for border security, another important follow-up to the USA PATRIOT Act.

Beyond authorizing badly needed funding for our borders, this legislation includes a number of important security provisions, a few of which I would like to highlight today. First, it requires the Attorney General and Secretary of State to issue only machine-readable and tamper-resistant visas, and travel and entry documents using biometric identifiers, by October 26, 2003. They must also have machines that can read the documents at all ports of entry by that date.

Second, the bill requires the Secretary of State to establish terrorist lookout committees within each U.S. mission abroad, to ensure that consular officials receive updated information on known or potential terrorists in the Nation where they are stationed.

Third, the bill will foster information sharing between other Government agencies and the State Department and INS, and shorten the deadline established in the USA PATRIOT Act to develop a technology standard to identify visa applicants.

Fourth, the legislation requires all commercial vessels or aircraft entering or departing from the United States to provide complete passenger manifests.

Fifth, this bill would substantially strengthen existing law for the monitoring of foreign students. The Government would be required to collect additional information about student visa applicants, and educational institutions would be obligated to report visa holders who did not appear for classes. In addition, the INS Commissioner would perform periodic audits of educational institutions entitled to accept foreign students.

I will vote for this bill because it will help protect our Nation and our borders. More than ever since September 11, those issues are fundamental priorities for this Congress. I urge my colleagues to join me in supporting this bill, and look forward to its becoming law.

Ms. CANTWELL. Madam President, today we are considering legislation on one of the most important issues in our fight against terrorism—how we can effectively secure our borders.

For me and for my State, one of the most critical things this bill does is to build on our efforts last year to increase staffing at the border by authorizing annual staffing increases on the borders for each of the next 5 years.

Those of us who represent States along the northern border knew before September 11 that the northern border was woefully understaffed. While we were able to double staffing across the border last year, the northern border will need a yearly infusion of staff to guarantee our security for the future.

This bill also incorporates many of the ideas of our colleague from California, Senator FEINSTEIN, to create a workable entry and exit system and better tracking of those in this country on student visas, and I would like to thank her for her many years of work on these issues.

Finally, this bill is about better use of technology to provide the enhanced security and border efficiency we need. But with every technological solution, comes the very real risk that the technology could be misused to invade personal privacy.

I have worked hard to make sure that provisions of this bill preserve the right to privacy. As we come to rely more on technology, including voluntary programs that require our citizens to provide personal information to government agencies, we will need to make very sure that we have sufficient

safeguards in place to protect how that information is stored and used.

Many of the provisions of this bill are based on and cross-reference a provision I was able to include in the USA PATRIOT Act. That provision requires the State Department and the Department of Justice to develop a technology standard for the purpose of exchanging law enforcement and intelligence information necessary to screen applicants for U.S. visas and individual's using visas to enter the country.

Within that standard, there are specific privacy safeguards to limit the application of the standard of aliens; limit the purposes the date collected could be used to background checks and border verification; limit the distribution of the data to consular officers and border inspectors; require that any changes to expand access to the data has to be done by regulation so that the public can have input; finally, we require Congressional oversight of the implementation of the technology standard.

I am pleased that this legislation incorporates these safeguards and adds others specific to the ''interoperable database system'' that facilitates the sharing of law enforcement and intelligence information with the State Department and INS.

The bill before us today limits re-dissemination of information accessed through the system; ensures that the information is used solely to determine the admissibility or deportability of an alien to the United States; requires accuracy, security and confidentiality; requires protection of any privacy rights of individuals who are subject of the information in the system; and requires the timely removal and destruction of obsolete or inaccurate information.

Even with these provisions, Congress must keep a watchful eye on the implementation of the provisions of this legislation. We need to be vigilant to make certain we are achieving the proper balance between the need for national security and the need to protect the privacy of our citizens.

I am concerned about protecting the privacy of my constituents and citizens across our country, and I thank the authors of this bill for working with me to address these concerns.

I support this legislation because I believe that the security measures are well balanced against privacy concerns—and both security and privacy must be served.

Mr. WELLSTONE. Madam President, I rise today to support H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2001. This bill includes important provisions that will enhance our overall security. As a member from a border State, I am especially supportive of provisions that improve our ability to provide security on the Northern border.

H.R. 3525 authorizes the addition of 200 Immigration and Naturalization Service agents on the border, raises their pay and improves their retirement benefits, increases funding for their training, and authorizes money for them to improve and buy new technology. In Minnesota, some of our borders crossings, such as the crossing at Crane Lake, are staffed only part-time in the summer and even then are not staffed around the clock. Some parts of the border are staffed via telephone and video. For example, a person wanting to cross into the United States from Canada arrives at a border station, picks up a telephone or videophone, and calls Border Patrol personnel located elsewhere to announce his arrival. We must address this security risk. We must address the vulnerability of our borders.

The situation on our northern border demands immediate attention but simply putting new staff there is not enough. We must retain experienced officials and provide adequate training to identify and intercept would-be terrorists. By raising the pay grade of INS border personnel and improving their retirement benefits, we can ensure the retention of dedicated, experienced officials. By providing them adequate training and improving their ability to share information, we can prevent the entry of people who intend to do this country harm.

The Enhanced Border Security and Visa Entry Reform Act of 2001 also has provisions to help us determine who is coming to the US before they arrive. It requires our consulates to transmit to INS officials electronic versions of the visas they issue so that information is available on the person prior to this arrival. It requires commercial flights and ships to provide manifests about each passenger prior to their arrival and it fills the gaps in the foreign student monitoring program to ensure we know who is coming to the United States to study at our universities before they get here. The more we can do to know who is coming to the United States before they actually arrive, the more secure we will be.

I would like to take a moment to address the issue of civil liberties. Many of us have concerns about the changes taking place in regard to our Federal agencies sharing intelligence information. Today, more than ever, we must ensure that Federal law enforcement and other agencies have the ability to share information in a timely and effective manner. Nothing is more distressing than to think that the horrible events of September 11 may have been prevented through better interagency communication and organization. Yet, we must ensure that we vigorously monitor the effects structural changes now underway will have on our civil liberties. We must continue to monitor implementation of laws that question the fundamental balance between our security and liberty.

We are doing that here today. The USA PATRIOT Act which we passed last October required the FBI to provide the State Department and INS with access to certain FBI databases. During the debate on that bill there were serious concerns over how to determine what information those agencies needed and how to protect that information. The bill before us requires the President to report to Congress on exactly what information the State Department and INS need, and to develop a comprehensive information-sharing plan with adequate privacy protections. I support this important provision and believe it is a good example of what needs to be done in the future. We must review, and improve legislation if necessary, to ensure protection of our fundamental freedoms.

Colleagues, H.R. 3525 is a comprehensive bill which will strengthen the security of our borders, secure our visa entry system and enhance our ability to deter potential terrorists. It is another important step towards ensuring that we will never again witness the tragic event of September 11. I urge my colleagues to support it.

Ms. SNOWE. Madam President, I am pleased to rise today in support of the Enhanced Border Security and Visa Reform Act of 2001.

I have worked with Senators KYL and FEINSTEIN, first on their Visa Entry Reform Act of 2001, and subsequently with them and Senators KENNEDY and BROWNBACK on this legislation. These sponsors have worked feverishly to bring this bipartisan bill to fruition and I have very much appreciated the opportunity to work with them in assembling a strong and meaningful package to help secure our homeland.

The bottom line is, at this extraordinary time, in the wake of horrific attacks from without against innocent lives within our borders, we must take every conceivable step with regard to those variables we can control in securing our Nation. How can we do anything less when it has become so abundantly and tragically apparent that admittance into this country cannot and must not be the ''X-Factor'' in protecting our homeland?

Entry into this country is a privilege, not a right, and it is a privilege that has clearly been violated by perpetrators of evil who were well aware of inherent weaknesses in the system. Just look at the story of Mohamed Atta, coming into Miami, he told the INS that he was returning to the U.S. to continue flight training, despite the fact that he presented them with a tourist visa, not the student required visa for his purposes, and they let him in. INS has since said that Atta had filed months earlier to change his status from tourist to student so they let him in, despite long-standing policy that once you leave the country, you're considered to have abandoned your change of status request.

What this bill is about is stopping dangerous aliens from entering our country at their point-of-origin and their point of entry by giving those Federal agencies charged with that responsibility the tools necessary to do

the job. Now, some say the tools we need are better technologies, some say better information, some say better coordination. The beauty of this bill is that it stands on all three legs, because I can tell you if there is one thing I learned from my experience in working on these issues on the House Foreign Affairs International Operations Subcommittee is that we are only going to get to the root of the problem with a comprehensive approach.

This was clear from the aftermath of our investigation of the comings and goings of the mastermind of the 1993 World Trade Center bombing, the radical Egyptian cleric Sheikh Rahman. We found that the Sheikh had entered and exited the country five times totally unimpeded, even after the State Department formally revoked his visa and even after the INS granted him permanent resident status. In fact, in March of 1992, the INS rescinded that status which was granted in Newark, NJ about a year before.

But then, unbelievably, the Sheikh requested asylum in a hearing before an immigration judge in the very same city, got a second hearing, and continued to remain in the country even after the bombing, with the Justice Department rejecting holding Rahman in custody pending the outcome of deportation proceedings and the asylum application, stating that ''in the absence of concrete evidence that Rahman is participating in or involved in planning acts of terrorism, the assumption of that burden, upon the U.S. government, is considered unwarranted.''

To address the trail of errors, I introduced legislation to modernize the State Department's antiquated Microfiche lookout system, but as we have painfully learned in the interim, such a system is only as good as the information it can access. That is why we fought tooth and nail to require information sharing between the FBI and the State Department. In 1994 Congress passed my legislation to give State Department officials access to FBI criminal records for every visa application, whether for immigrant or non-immigrant purposes. Addressing non-immigrants who enter the U.S. using student visas was particularly important, as was demonstrated by the inexplicable errors by INS, and in the case of the bomber who entered the U.S. on a student visa before dropping out of school, remaining undetected for two years on the expired visa, and driving a truckload of explosives into the World Trade Center in 1993. Unfortunately a revised provision limited this access only for purposes of immigrant visas, dropping my requirement for the non-immigrant visas initially used by all 19 of the September 11 hijackers.

So I am pleased that the USA PATRIOT counterterrorism bill we passed last year does require information sharing between the State Department and the FBI, but we can and must do more, we must also require information sharing among all agencies like the CIA, DEA, INS, and Customs.

And that is what this bill does, along with my measure that is included to establish ''Terrorist Lookout Committees'' at every embassy, which are required to meet on a monthly basis and report on their knowledge of anyone who should be excluded from the U.S.

I am also pleased to have worked further with Senators KENNEDY and KYL to include in the managers' amendment a provision increasing accountability by requiring the Terrorist Lookout Committees to report to the Secretary of State after each monthly meeting and with reports from the Secretary to Congress on a quarterly basis.

We ought to ensure that the person standing in front of the INS agent at the border is the same person who applied for that visa. It does no good to do every background check in the world overseas, only to have someone else actually show up at our doorstep. The fact is, we have the so-called ''biometric technology'' available to close this gap, and I am pleased that my measure requiring the use of this biometric technology such as fingerprinting for visa applicants both abroad and at the border has been included, although not exclusively limited to fingerprinting. The information collected by the consular officer issuing the visa must then be electronically transmitted to the INS so that the file is available to immigration inspectors at U.S. ports of entry before the alien's arrival.

In addition to these protections, the bill provides funding for an increase in border patrol personnel and for training of those agents and other agency staffs at U.S. ports of entry and in our consular offices to improve the ability of these officers, our first line of defense on our borders, to more easily identify and intercept would-be terrorists.

As the President has said, ''We're going to start asking a lot of questions that heretofore have not been asked.'' By giving the Director of Homeland Security the responsibility of developing a centralized ''lookout'' database for all of this information, along with instituting tighter application and screening procedures and increased oversight for student visas, we will close the loopholes and help bring all our Nation's resources to bear in securing our Nation.

This is a crucial bill in our war on terrorism and I urge my colleagues to support this bill. I yield the floor.

Mr. LEVIN. Madam President, I first want to commend the chairman of the Immigration Subcommittee, Senator KENNEDY, my colleague from Massachusetts, for his leadership on this bill. The Enhanced Border Security and Visa Entry Reform Act gives law enforcement and immigration authorities greater access to the tools they need to improve border security. The legislation enhances our ability to identify terrorists and other individuals who should not be allowed to enter the United States and establishes new programs to ensure that people whom we welcome as visitors live up to their responsibilities under our immigration laws.

I am particularly pleased that the bill contains two amendments that I authored: one extending training opportunities to Border Patrol agents and another requiring the Department of Justice to provide Congress information on aliens who fail to appear at removal hearings.

It is critical that every law enforcement agent who works on the border understands and correctly applies our immigration laws. The Enhanced Border Security and Visa Entry Reform Act authorizes appropriations for such training for various law enforcement and immigration personnel at the border. My first amendment ensures that these training opportunities are extended to Border Patrol agents.

My second amendment requires the Department of Justice to report to the Congress how many aliens arrested while entering the country outside ports of entry fail to show up for their removal hearings. The amendment is the result of a hearing I held last November at the Permanent Subcommittee on Investigations.

At that hearing, members of the subcommittee heard from current and past employees of the U.S. Border Patrol who came forward to express their concerns with INS practices involving the release on recognizance, that is on their promise to return, of people arrested while trying to gain illegal entry into the United States outside ports of entry. While the problems raised by the Border Patrol agents at the hearing would have been serious in normal circumstances, they carried particular weight following the attacks of September 11.

What the agents told my subcommittee is that when people are arrested by the Border Patrol, at places other than ports of entry, most who don't voluntarily return to their country of origin, usually Mexico or Canada, are given a notice to appear at a removal hearing. The Border Patrol initially decides whether the person should be detained, released on bond or released on his or her own recognizance while awaiting the hearing. The removal hearing can take several months to occur.

But detention decisions are not made by the Border Patrol alone. If the Border Patrol decides to detain a person or set a bond to help assure that a person shows up at the hearing, the INS deportation office can revise that decision and order the person released on a lower bond or on his or her own recognizance. It was revealed at the hearing that the Border Patrol and the INS simply release on recognizance a large percentage of people who are arrested for illegal entry. That means people who get caught and are arrested at the border while attempting to enter the country illegally are nonetheless allowed to move at will in this country

with no constraints other than a written instruction to appear at a hearing, the purpose of which is to remove them from the country.

This practice is absurd. And statistics from the Detroit Sector illustrate the extent of the absurdity. In fiscal year 2001, the Detroit Sector of the Border Patrol arrested slightly more than 2100 people. A significant percentage of these people were arrested while actually attempting to enter the country illegally. Of those 2100 or so, slightly less than two-thirds were voluntarily returned to their country of origin and 773 were issued notices to appear at a removal hearing. Pending their removal hearing, 595 or more than 75 percent of those issued notices to appear were released on their own recognizance. Many of these people were released without a criminal background check and some were not even able, or perhaps willing, to provide the Border Patrol with an address. We learned that people released on their own recognizance who don't have an address are simply given a form to mail to the INS when they get an address so the agency can mail them a notice of their hearing date. That is the extent of the follow-through by the INS.

So, how many of these 575 people actually showed up for their hearings? One former INS District Director and Border Patrol Chief has said that in one of his sectors he thought the percentage of persons arrested outside a port of entry and released on their own recognizance who don't show up for their hearing was 90 percent. When I asked the INS what the actual number was, the agency couldn't tell me. The INS doesn't even keep this statistic.

Moreover, we learned at November's hearing that there was no requirement that, before releasing them, the Border Patrol complete a criminal background on people arrested for crossing the border illegally. I found that situation unjustifiable, and apparently so did the INS when they were made aware of it. As a result of my November hearing, the INS issued a memorandum requiring that a criminal background check be conducted on all aliens arrested and released on bond or recognizance. That change is important but additional improvements in both policy and practice are necessary.

The manner in which the Border Patrol and INS process aliens arrested between ports of entry remains unacceptable. That is why my second amendment to the Enhanced Border Security and Visa Entry Reform Act requires the Department of Justice to provide the Congress an annual report containing the number of aliens arrested outside ports of entry who were served a notice to appear for a removal hearing and released on recognizance and who failed to attend their removal hearing. It is my hope that once the INS and the Congress comprehend the extent of the problem, we will change the way we process aliens who are arrested at the border while attempting to enter the country illegally.

We are an open and generous country and we welcome people from around the world who share our commitment to hard work, common decency and egalitarian values. But we are also a Nation of laws. And with the privilege of living in America comes an obligation to follow the law. The hearing I held at the Permanent Subcommittee on Investigations highlighted a situation where our immigration laws were simply not being followed. My amendment ensures that Congress is able to track whether or not this situation improves.

Mr. KYL. Madam President, this is a good day for the security of the United States. The terrorist attacks that so changed our nation occurred over seven months ago. Seven months is too long to wait to pass a measure as important, as potentially life-saving, as this one is.

After months of meetings about these issues, it is time to do what is right—to fix our immigration and via-processing systems so that terrorists cannot enter or remain in the United States in violation of our laws.

Congress took an important first step shortly after the terrorist attacks. The USCA PATRIOT Act, signed into law on October 26, 2001, provided us with better tools to fight terrorism. Among other provisions, that bill changed the definition of a terrorist—and, therefore, changed who is inadmissible to the United States. It clarified that the FBI can share information on its terrorist watch-list with other relevant Federal agencies. It provided the Attorney General with additional limited authority to detain would-be terrorists for a limited amount of time.

Our Nation, however, continues to face overwhelming infrastructure and personnel needs at our consular offices aboard, along both our southern and northern borders, in our immigration offices, and throughout other Federal law and intelligence offices throughout the United States.

The Border Security and Visa Entry Reform Act will provide for such resources, for such changes to existing law and infrastructure, the right way. As a result of this bill, resources will be efficiently targeted—funds, for example, will not be sent to the INS without a clear directive that explains to the agency exactly what it is responsible for producing. We have learned that it is only through direct instructions that we will see loopholes closed in our immigration system, our borders secured, intelligence shared appropriately and infrastructure modernized to achieve stated goals. If we do not provide this infrastructure and guidance, I fear that other unthinkable incidents will occur.

Sadly, the real-life terrorist incidents that we suffered gave us too many real-life reasons why this bill is so desperately needed.

In a hearing before the Senate Judiciary Committee's Subcommittee on Terrorism and Technology, Senator FEINSTEIN and I heard some very trenchant testimony from Mary Ryan, Assistant Secretary of State for Consular Affairs, about the gaping holes in the system. Secretary Ryan's statement points to the dire need for better intelligence-gathering and significantly improved intelligence-sharing among all relevant agencies. The Border Security Visa Reform Act will provide for better information-sharing among appropriate agencies.

Surprisingly to some, 18 of the 19 terrorists entered the country using B1/B2 tourist visas. According to State Department statistics, 47 foreign-born individuals, including the 19 terrorists, have been charged, have pled guilty, or have been convicted of involvement in terrorism over the past decade. All 47 had contact with an INS inspector. This, of course, points to the need for more inspectors, as the Border Security bill authorizes, and for better informed inspectors through the sharing of information, which the bill will facilitate as well.

Madam President, the Mohammed Atta case perhaps illustrates what is wrong with the system better than any other. Atta entered the country on a B1/B2 visa that expired at the end of 2000. According to several sources, he was placed on the FBI's watch list 6 weeks before the terrorist attacks but his name was not entered into INS's system. The border-security bill will help by facilitating the real-time sharing of this type of information to relevant Federal law-enforcement and intelligence agencies, including all Federal agents who are responsible for determining the admissibility of aliens to the U.S., and all officers investigating and identifying aliens.

An entry-exit system at our Nation's ports of entry, using biometric identifiers, linked to an interoperable data-sharing system, will go a long way toward ensuring that people like Mohammed Atta are never allowed to enter the country. This system, coupled with the significant increase in interior investigative personnel that this bill makes possible, will better enable authorities to find terrorists if they infiltrate our borders. Information about Atta would have been tapped at a port of entry's entry-exit system. And, three other terrorists among the 19 who overstayed their visas would have been identified at ports of entry as well.

Before his visa expired on December 2, 2000, Atta asked the INS to change his status to that of ''student.'' After that expiration, and even without the information that showed his placement on a watch list, he should not have been allowed to reenter the country. Yet, in January 2001, he arrived back in Miami and, after he was questioned by the INS for an hour, he was admitted back into the United States.

Another terrorist, Hani Hanjour, entered the country in December 2000 on an F1 student visa to study English but he never attended class. The school did

not notify authorities that Hanjour never attended class. He overstayed his visa and melted into obscurity in the United States. The Border Security and Visa Reform Act will address both of the loopholes that allowed Hanjour to stay in the country undetected by requiring strict reforms in our student-visa system and, again, by requiring that our entry-exit system employ biometric passports and other travel documents to protect against fraud and to find visa overstayers such as Hanjour.

Madam President, Senators KENNEDY, BROWNBACK, FEINSTEIN, and I have worked hard to craft this bill. The staff of each of those members, Esther Olavarria, Lavita Strickland, and David Neal, should also be personally commended. After Senators KENNEDY and BROWNBACK, and separately Senator FEINSTEIN and I, developed separate counter-terrorism bills, during a difficult time, while offices were closed on Capitol Hill, we all came together to produce the final product we now anticipate will be sent shortly to the President for signature.

This bipartisan, streamlined product, cosponsored by both the chairman and ranking Republican of the Senate Judiciary Committee, and the ranking Republican of the Senate Appropriations Committee, will significantly enhance our ability to keep terrorists out of the United States and find terrorists who are here.

Under the Border Security and Visa Entry Reform Act of 2001, at the direction of the President, all Federal law-enforcement and intelligence communities, the Departments of Transportation, State, Treasury, and all other relevant agencies will develop and implement a comprehensive, interoperable electronic data system for these governmental agencies to find and keep out terrorists. That system should be up and running by October 26, 2003, 2 years after the signing into law of the USA PATRIOT Act.

Under our bill, terrorists will be deprived of the ability to present fake or altered international documents in order to gain entrance, or stay here. Foreign nationals will be provided with new travel documents, using new technology that will include a person's fingerprint(s) or other form of ''biometric'' identification. These cards will be used by visitors upon entry into and exit from the United States, and will alert authorities immediately if a visa has expired or a red flag is raised by a Federal agency. Under our bill, any foreign passport or other travel document issued after October 26, 2004, will have to contain a biometric component. The deadline for providing a way to compare biometric information presented at the border is also October 26, 2004.

Another provision of the bill will further strengthen the ability of the U.S. Government to prevent terrorists from using our ''Visa Waiver Program'' to enter the country. Under our bill, the 29 participating Visa Waiver nations will, in addition to the USA PATRIOT Act Visa Waiver reforms, be required to report stolen passport numbers to the State Department; otherwise, a nation is prohibited from participating in the program. In addition, our bill clarifies that the Attorney General must enter stolen passport numbers into the interoperable data system within 72 hours of notification of loss or theft. Until that system is established, the Attorney General must enter that information into any existing data system.

Another section of our bill will make a significant difference in our efforts to stop terrorists from ever entering our country. Passenger manifests on all flights scheduled to come to the United States must be forwarded in real time, and then cleared, by the Immigration and Naturalization Service before the flight's arrival. Our bill also removes a current U.S. requirement that all passengers on flights to the United States be cleared by the INS within 45 minutes of arrival. Clearly, in some circumstances, the INS will need more time to clear all prospective entrants to the U.S. These simple steps will give appropriate officials advance notice of foreigners coming into the country, particularly visitors or immigrants who pose a security threat to the United States.

The Border Security and Visa Entry Reform Act will also improve our lax U.S. foreign student visa program, which has allowed numerous foreigners to enter the country without ever attending classes and, for those who do attend class, with little or no oversight of such students by the Federal Government. Our bill will change that, and will require that the State Department within 4 months, with the concurrence of the INS, maintain a computer database with all relevant information about foreign students.

America is a nation that welcomes international visitors—and should remain so. But terrorists have taken advantage of our system and its openness. Now that we face new threats to our homeland, it is time we restore some balance to our consular and immigration policies.

As former chairman and now ranking Republican of the Judiciary Committee's Terrorism Subcommittee, I have long suggested, and strongly supported, many of the antiterrorism 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 on all fronts to fight against terrorism. That means delivering justice to those who are responsible for the lives lost on September 11, and reorganizing the institutions of government so that the law-abiding can continue to live their lives in freedom.

Madam President, as I said, 7 months is too long a period of time for the American people to wait for action on legislation that will make it tougher for terrorists to infiltrate the United States. I, therefore, urge my colleagues to act quickly to pass this bill. It really could mean the difference between a secure nation and one that continues to be vulnerable to infiltration by those who mean us no good. Time is absolutely of the essence.

Mr. DASCHLE. Madam President, last September—5 days before the terrorist attacks on our Nation—President Vicente Fox delivered an historic address to this Congress on the importance of U.S.-Mexican relations.

On both sides of the political aisle, and on both sides of the U.S.-Mexican border, there was wide agreement that reforming our Nation's outdated immigration laws was an essential step in strengthening the relationship between our two countries.

Then came September 11.

One of the important lessons we learned on that horrific day is that border security is not simply a matter of immigration policy. It's a matter of urgent national security.

In the months since September 11, we have seen that the INS and the FBI lack the tools and resources to effectively track foreign nationals in our country. This includes even individuals with known links to terrorist networks. Not only are we unable to expel people who have violated their visas, very often we can't even find them.

Then last month, we were stunned to learn that the INS had just mailed confirmations of visa extensions to two of the terrorist hijackers responsible for the September 11 attacks.

I am proud to be one of the 61 sponsors of the bipartisan Enhanced Border Security and Visa Entry Reform Act, and I urge my colleagues to vote for it.

This act will strengthen America's border security and improve our ability to track visa holders—including foreign students.

It gives law enforcement agencies new tools and technology to share critical information, and to identify and intercept visitors who threaten our national security.

It also increases staffing and training for border security officers.

I want to thank Senator KENNEDY, the Chairman of the Subcommittee on Immigration, and Senator FEINSTEIN for their leadership. Without their hard work and determined persistence, we would not be here today.

I also thank Senator BYRD for his efforts to improve this bill—and for his invaluable leadership on the larger challenge of strengthening America's homeland security in general.

We all know that authorizing legislation is important. But it takes resources to turn policies into workable laws. No one in Washington has fought harder to protect America from future terrorist attacks than ROBERT C. BYRD. I look forward to working with him to ensure that this and other homeland security measures are given the resources they need to work.

We cannot strengthen America's homeland security on the cheap, and

we should not try. We need to do this right.

Just before President Fox's visit last September, Congressman GEPHARDT and I outlined principles for comprehensive immigration reform. Enhanced border security is one of those principles.

Unfortunately, another of our principles—extension of section 245(i) of the immigration code—is not included in this bill.

Section 245(i) would allow immigrants who are in this country, who have applied to become permanent residents and who are contributing to our society, to remain in this country while they wait for their ''green card.''

Many of these immigrants are married to Americans, and have children who were born in this country. Without Section 245(i), many of them face the impossible choice of leaving their families for up to 10 years, taking their families back with them to a country they may have fled to escape poverty or terror, or breaking the law, thus forgoing the chance to ever become a lawful permanent resident.

The Senate voted to extend section 245(i) last year, the same week President Fox spoke to Congress.

We had hoped and expected that the House would quickly do the same. Instead, it delayed for six months. By the time it finally acted, key deadlines contained in the bill had become unworkable.

I remain strongly committed to a meaningful 245(i) extension—one that gives long-time, tax-paying residents a genuine opportunity to remain in this country—with their families—while they wait to become permanent legal residents.

My colleagues and I look forward to working with Senators LOTT, HAGEL and BROWNBACK and others, on a bipartisan basis, to send President Bush a 245(i) extension bill with realistic deadlines.

America needs an immigration system that is pro-family, pro-business and fair. Together, we can create such a system—one that sacrifices neither our security nor our ideals.

The new border security bill on which we are about to vote, and a meaningful extension of 245(i), are essential parts of such a system.

We also look forward to working with our Republican colleagues, and with the administration, to restructure and strengthen the INS, end the backlogs, provide meaningful access to earned legalization, and reunite families. We look forward to creating a new and better temporary worker program that treats workers with the respect they deserve and provides businesses with the employees they need.

Within hours after the twin towers collapsed, we heard some people say that America should close its doors to immigrants. Some people even said we should force out immigrants who are already here, working and contributing to our society.

People who say such things need to understand that our enemy is not immigrants, it is intolerance and hatred. America is strong not in spite of our diversity, but because of our diversity.

By passing this bill today, we are strengthening not only our border security, but our basic American values. It is the right thing to do, and I thank all of our colleagues who helped get us to this point.

Mr. BROWNBACK. Mr. President, as we are getting this matter wrapped up, I wish to recognize four key staff members who really helped shepherd this bill through. This is important safety legislation.

I, first, recognize Senator KENNEDY's lead staff on this, Esther Olavarria, who is a humble, diligent servant of the State and who does a wonderful job on these sorts of issues. She worked closely with my staff member, David Neal, who is relatively new to the process but has diligently worked to shepherd this legislation on through.

Also, for Senator FEINSTEIN and for Senator KYL, two wonderful staff members who helped make the core nucleus in negotiating this through; Elizabeth Maier and LeVita Strickland are excellent people.

I think at the end of the day when we look to strengthen the borders of this country to protect our people, these four great citizens really dedicated a lot of time and a lot of soul to be able to get this through. I want to note their tremendous activity in this regard.

Mr. BYRD. Mr. President, before we proceed to this series of votes, I would like to make a few remarks concerning the bill.

I believe there is a certain amount of time on the bill. Is there?

The PRESIDING OFFICER. There is time under the control of Senators Kennedy and Brownback.

Mr. KENNEDY. Mr. President, I ask unanimous consent to give whatever time we have remaining to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, in my long career of serving in various and sundry legislative branches, I have from time to time been awarded the honor of being the ''legislator of the year'' in connection with something. Let me say that as one who has served now in my 50th year in Congress this year, and having served as majority leader in this body during the years 1977, 1978, 1979, and 1980, and again during the years 1987 and 1988, and also having served as minority leader over a period of 6 years, and having served in the leadership in the Senate for 22 years, including my stint as majority whip and my stint as secretary of the Democratic Conference, I have had occasion to note some very successful and outstanding legislators. I would include among the most outstanding of those legislators Senator KENNEDY.

The late Senator Henry Jackson was another one of the outstanding legislators with whom I served. He was responsible for bringing a great deal of legislation to the floor dealing with energy, with the environment, and on various and sundry other matters. He was an outstanding legislator.

Senator KENNEDY is one who has proved to be an outstanding chairman of the committee. I think Senators will agree with me in observing that when Senator KENNEDY comes to the floor with a bill, especially if it is a bill that has been reported by his committee, a committee which he chairs, or by a committee on which he sits, he is always prepared. He has done his homework, and he makes a very forceful expression. He makes a very forceful expression of support of the managers of the amendment thereon. He is a formidable opponent of one who opposes a bill. Senator KENNEDY brings to the floor a formidable opponent of any Senators who offer amendments in opposition thereto. He is a well-rounded legislator in that his experience, and his knowledge of the subject matter of the legislation which he promotes, is, indeed, remarkable. As far as I am concerned, he is an outstanding legislator in the 50 years in which I have served in Congress.

Senator KENNEDY and I have not always been together on matters. We have been opponents in some instances. We have not necessarily, in the early days, held each other in terms of endearment.

But we have passed through those years and in the subsequent years—especially in the years when I served as majority leader, and the first time I served as majority leader in 1977, during those years, and in subsequent years, Senator KENNEDY has been one of my most supportive friends and fellow Senators. And I have counted his support as invaluable, particularly when I was majority leader. As the majority leader or the majority whip, sometimes one looks around and wonders where the troops are. And there are times when we look back over our shoulders and find that the troops are not necessarily there.

But Senator KENNEDY was always very supportive of me. There were times when he perhaps could not vote with me or could not exactly support a particular amendment of mine, but he was always most courteous and most considerate to me.

As we close the debate on this bill, I want to say once more, as I have said before, that Senator KENNEDY is a Senator who could well have graced the Senate at any moment of the Senate's long history, dating back to March 4, 1789. He would have been a worthy protagonist or antagonist, whatever the case might have been. I have learned to respect him and appreciate him as the years have come and gone. I have learned to appreciate him and respect him more and more.

So, Mr. President, I take this occasion to thank Senator KENNEDY for his

courtesies during this debate. He invited me to testify before his Immigration Subcommittee last week. He visited my office several times over the last 4 months to listen to my concerns. He has always been very gracious to me, and I thank him for that.

I thank the other proponents of this legislation—Senator BROWNBACK, Senator KYL, and Senator FEINSTEIN. They have all been very fine authors of amendments. In particular, I think with respect to this bill, they have done an excellent job. They have been very kind to me, and they have been considerate. I want to take this occasion to thank them for their work on the bill. No one could be more patriotic than these Senators. No one could pay more attention to their duties in the Senate, their duties to their constituents whom they represent.

This is a bill that may still have some flaws in it. No piece of legislation, I would say, ever passes the Senate that is perfect, but they certainly have done their best in trying to improve it as we have gone along. I thank them all for the courtesies they have extended to me and the support they have expressed for these amendments I have offered.

So let me say, again, that with one of these Senators I have served since November 1962. And Senator KENNEDY well understands my interest in the institution of the Senate. To me, that is why I am here today, because of my interest in this institution and the Constitution. That is why I am here. I did not have to run last time to put bread and butter on my table. I could have retired and probably earned a bigger check in retirement. Since I have been paying into the retirement fund now for 50 years, this year, I could probably have earned a bigger check in retirement than I will have earned as a Senator.

But I am here to defend this institution. That is the only reason I am here. That is the only reason. I could have been better off if I had retired. Perhaps somebody would have had pity on me and asked me to serve on some board, and I could have raked in a little additional money. But that is neither here nor there.

I chose to serve here. This has been my career. I have loved this Senate from the first day I walked into it. And so I am proud to serve in it. The only reason I am here is that I believe in the Senate. I am not here because of any particular legislation. As a matter of fact, I am here because I love the Senate and want to do what I can to preserve the Senate prerogatives.

I believe there are three separate and distinct coordinate branches of Government. I believe that the legislative branch is the branch of the people. I think it is the people's branch. I believe that the Senate is the premier institution, the premier legislative institution—the U.S. Senate—in the world today. And there have been many senates. Perhaps the next greatest of all was the senate of the Roman people.

I am proud the people of West Virginia have seen fit to send me here, and send me back from time to time, and overlooked the warts and all in my makeup, politically and otherwise. But I reverence the Senate, honor it, and respect all Members of the body. It doesn't make a difference whether they are Republicans or Democrats or Independents; I respect them. We may not agree, but they are Senators. They are my equal any day. They are entitled to their viewpoint as much as I am entitled to mine.

So having said that, let me say, far too often Members of this body are willing to give up their right to debate and to amend legislation. I am pleased that at least some public debate has been generated on this bill and that the right of Senators to offer amendments was respected. I think the end product is a better piece of legislation than it was heretofore.

With regard to the amendment I offered on the importation of goods, especially Chinese goods, that are made using forced labor, I, of course, have determined not to press to include that amendment in this bill. But I continue to believe that the Congress needs to pass legislation to prevent goods made in foreign prisons and detention camps from crossing our borders. We also have a responsibility to protect our businesses from this unfair and reprehensible trade practice. I expect to raise the issue again at some point on some bill because much more needs to be done to discourage this blatant violation of our trade laws.

Senators should also be aware that we still do not have a cost estimate of this bill from the Congressional Budget Office. The INS estimates that the bill will cost $1 billion in the first year and $3.2 billion over 3 years, but those estimates likely underestimate the true costs. It is very well to authorize these funds—and I intend to vote for the bill—but this bill will require the appropriation of funds and the support of its proponents, and the support of the administration, for those appropriations if its provisions are to be implemented.

Again, I thank Senators KENNEDY, BROWNBACK, FEINSTEIN, and KYL for their interest in improving our Nation's border defenses. I thank them and I love them. I salute them for the work they have done in this respect. I hope we can maintain the bipartisan support we have seen on this bill when it comes time to appropriate the funds necessary to implement these provisions.

Mr. President, with that, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from West Virginia. He is my friend. I know I really can speak for all Members in saying he is the defender of all of the constitutional prerogatives of this great institution. We have heard him speak this evening. We have listened to that clear and compelling voice tonight, as we have heard it in defending the institution at other times.

I am wondering if I could ask a special favor of the Senator. He has been extremely kind. But what we have not heard tonight is the poem about the ambulance in the valley. I know it is late in the evening, but could the Senator—if we were to yield the Senator a few more minutes—recite that poem? Or would he prefer to wait for another time? If he would prefer not to, I would certainly understand.

Mr. BYRD. Mr. President, the distinguished Senator honors me by calling on me to repeat the lines of the poem by Joseph Malins titled "A Fence or an Ambulance." I am not sure I am really up to it at this point in the day. I am not sure I can do it on this short notice, but I will certainly try. It will not be the first time I have failed on a poem. Occasionally I do fail.

Let me think for a minute. Perhaps I could do that.

"Twas a dangerous cliff, as they freely confessed,
Though to walk near its crest was so pleasant;
But over its terrible edge there had slipped
A duke and fall many a peasant.
So the people said something would have to be done,
But their projects did not at all tally;
Some said, "Put a fence around the edge of the cliff,"
Some, "An ambulance down in the valley."
But the cry for the ambulance carried the day,
For it spread through the neighboring city;
A fence may be useful or not, it is true,
But each heart became brimful of pity
For those who slipped over that dangerous cliff;
And the dwellers in highway and alley
Gave pounds or gave pence, not to put up a fence,
But an ambulance down in the valley.
"For the cliff is all right, if you're careful," they said,
"And, if folks even slip and are dropping,
It isn't the slipping that hurts them so much,
As the shock down below when they're stopping."
So day after day, as these mishaps occurred,
Quick forth would these rescuers sally
To pick up the victims who fell off the cliff,
With their ambulance down in the valley.
Then an old sage remarked: "It's a marvel to me
That people give far more attention
To repairing results than to stopping the cause,
When they'd much better aim at prevention.
Let us stop at its source all this mischief," cried he,
"Come, neighbors and friends, let us rally;
If the cliff we will fence we might almost dispense
With the ambulance down in the valley."
"Oh, he's a fanatic," the others rejoined,
"Dispense with the ambulance? Never!
He'd dispense with all charities, too, if he could;
No! No! We'll support them forever.
Aren't we picking up folks just as fast as they fall?
And shall this man dictate to us? Shall he?
Why should people of sense stop to put up a fence,

While the ambulance works down in the valley?''
But a sensible few, who are practical too,
Will not bear with such nonsense much longer;
They believe that prevention is better than cure,
And their party will soon be the stronger.
Encourage them then, with your purse, voice, and pen,
And while other philanthropists dally,
They will scorn all pretense and put up a stout fence
On the cliff that hangs over the valley.
Better guide well the young than reclaim them when old,
For the voice of true wisdom is calling,
''To rescue the fallen is good, but 'tis best
To prevent other people from falling.''
Better close up the source of temptation and crime
Than deliver from dungeon or galley;
Better put a strong fence round the top of the cliff
Than an ambulance down in the valley.''

Mr. KENNEDY. Hear. Hear. I thank the Senator.

Madam President, it is my understanding now that we will proceed to three votes.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator is correct.

Mr. KENNEDY. The order of the votes will be the two amendments of the Senator from West Virginia in the order in which they were offered.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I ask unanimous consent that there be no intervening business in between the votes.

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

Mr. KENNEDY. I further ask unanimous consent that after the first vote, the remaining two votes be 10 minutes in duration.

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

Mr. KENNEDY. So that would include final passage; am I correct?

The PRESIDING OFFICER. The Senator is correct.

The Senator from Nevada.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Madam President, I ask unanimous consent that following final passage of H.R. 3525, the Senate then proceed to executive session to consider the following nomination: Calendar No. 761, Legrome D. Davis to be United States District Judge; that Senator SPECTER be recognized for up to 5 minutes, and the Senate then vote on the nomination; the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action; that any statements thereon be printed at the appropriate place in the RECORD, and the Senate return to legislative session, without any intervening action or debate.

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

Mr. REID. Madam President, I ask unanimous consent to ask for the yeas and nays on that nomination.

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

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I ask unanimous consent to address the body for 1 minute.

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

Mr. BROWNBACK. Madam President, I note a word of thanks to Senator BYRD. He has dealt with many of us for some period of time on this particular issue in some contentious situations. He has dealt with us privately, publicly, and in other forums. At the end of the day, we do come out with a better piece of legislation. For that I thank the Senator. At the time, going through it, I was not quite as thankful for that.

He has done a service to the country. And at the end of the day, we will have a better piece of legislation. I thank my colleagues, Senators KENNEDY, KYL, and FEINSTEIN. Together we crafted a good piece of legislation. I am thankful to be a part of it. I think it will be a very positive move for our country.

I yield the floor.

VOTE ON AMENDMENT NO. 3161

The PRESIDING OFFICER. Under a previous order, the question is on agreeing to amendment No. 3161. The yeas and nays have been ordered. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Nebraska (Mr. NELSON) are necessarily absent.

Mr. LOTT. I announce that the Senator from Oklahoma (Mr. NICKLES) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 73 Leg.]

YEAS—97

Akaka	Corzine	Hollings
Allard	Craig	Hutchinson
Allen	Crapo	Hutchison
Baucus	Daschle	Inhofe
Bayh	Dayton	Jeffords
Bennett	DeWine	Johnson
Biden	Dodd	Kennedy
Bingaman	Domenici	Kerry
Bond	Dorgan	Kohl
Boxer	Durbin	Kyl
Breaux	Edwards	Landrieu
Brownback	Ensign	Leahy
Bunning	Enzi	Levin
Burns	Feingold	Lieberman
Byrd	Feinstein	Lincoln
Campbell	Fitzgerald	Lott
Cantwell	Frist	Lugar
Carnahan	Graham	McCain
Carper	Gramm	McConnell
Chafee	Grassley	Mikulski
Cleland	Gregg	Miller
Clinton	Hagel	Murkowski
Cochran	Harkin	Murray
Collins	Hatch	Nelson (FL)
Conrad	Helms	Reed
Reid	Smith (NH)	Thurmond
Roberts	Smith (OR)	Torricelli
Rockefeller	Snowe	Voinovich
Santorum	Specter	Warner
Sarbanes	Stabenow	Wellstone
Schumer	Stevens	Wyden
Sessions	Thomas	
Shelby	Thompson	

NOT VOTING—3

Inouye	Nelson (NE)	Nickles

The amendment (No. 3161) was agreed to.

VOTE ON AMENDMENT NO. 3162

Ms. CANTWELL. The question is on agreeing to amendment No. 3162.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Nebraska (Mr. NELSON) are necessarily absent.

Mr. LOTT. I announce that the Senator from Oklahoma (Mr. NICKLES) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 74 Leg.]

YEAS—97

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Reed
Boxer	Graham	Reid
Breaux	Gramm	Roberts
Brownback	Grassley	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Sarbanes
Byrd	Harkin	Schumer
Campbell	Hatch	Sessions
Cantwell	Helms	Shelby
Carnahan	Hollings	Smith (NH)
Carper	Hutchinson	Smith (OR)
Chafee	Hutchison	Snowe
Cleland	Inhofe	Specter
Clinton	Jeffords	Stabenow
Cochran	Johnson	Stevens
Collins	Kennedy	Thomas
Conrad	Kerry	Thompson
Corzine	Kohl	Thurmond
Craig	Kyl	Torricelli
Crapo	Landrieu	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wellstone
DeWine	Lieberman	Wyden
Dodd	Lincoln	
Domenici	Lott	

NOT VOTING—3

Inouye	Nelson (NE)	Nickles

The amendment (No. 3162) was agreed to.

Mr. REID. Madam President, on the previous vote, amendment No. 3161, 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.

Mr. REID. On this vote, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read 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 yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator frm Nebraska (Mr. NELSON) are necessarily absent.

Mr. LOTT. I announce that the Senator from Oklahoma (Mr. NICKLES) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 75 Leg.]

YEAS—97

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Reed
Boxer	Graham	Reid
Breaux	Gramm	Roberts
Brownback	Grassley	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Sarbanes
Byrd	Harkin	Schumer
Campbell	Hatch	Sessions
Cantwell	Helms	Shelby
Carnahan	Hollings	Smith (NH)
Carper	Hutchinson	Smith (OR)
Chafee	Hutchison	Snowe
Cleland	Inhofe	Specter
Clinton	Jeffords	Stabenow
Cochran	Johnson	Stevens
Collins	Kennedy	Thomas
Conrad	Kerry	Thompson
Corzine	Kohl	Thurmond
Craig	Kyl	Torricelli
Crapo	Landrieu	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wellstone
DeWine	Lieberman	Wyden
Dodd	Lincoln	
Domenici	Lott	

NOT VOTING—3

Inouye	Nelson (NE)	Nickles

The bill (H.R. 3525), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

NOMINATION OF LEGROME D. DAVIS, OF PENNSYLVANIA TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session.

The nomination will be stated.

The legislative clerk read the nomination of Legrome D. Davis, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Mr. LEAHY. Madam President, the confirmation of Judge Legrome Davis to the District Court for the Eastern District of Pennsylvania will be the 17th judge confirmed since the beginning of this session. Under Democratic leadership, in less than 4 months the Senate has confirmed as many judges as were confirmed in all 12 months of the 1996 session under Republican leadership. In fact, included among the 17 judges whom we will have confirmed since January this year are 2 judges to our Courts of Appeals. That stands in sharp contrast to the 1996 session in which the Republican majority did not allow even a single Court of Appeals nominee to be confirmed—not one. I submit that we have already done better in less than 4 months than our predecessors and critics did during the entire 12 months of the 1996 session.

The confirmation of Judge Davis today illustrates the progress being made under Democratic leadership and the fair and expeditious way in which we have considered nominees. Judge Legrome Davis was first nominated to the position of U.S. District Court Judge for the Eastern District of Pennsylvania by President Clinton on July 30, 1998. The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned to the President on December 15, 2000, after 2 more years of inaction in a second full Congress while the Senate was controlled by a Republican majority. Under Republican leadership, Judge Davis' nomination languished before the Committee for 868 days without a hearing. Unfortunately, Judge Davis was subjected to the kind of inappropriate partisan rancor that befell so many other nominees to the district courts in Pennsylvania and to the Third Circuit during the years Republicans controlled the Senate. I want to note emphatically, however, that I know personally that the senior Senator from Pennsylvania, Mr. SPECTER, supported Judge Davis's nomination and worked hard to get him a hearing and a vote. The lack of Senate action on Judge Davis's initial nominations are in no way attributable to a lack of support from the senior Senator from Pennsylvania. Far from it. In fact, I give Senator SPECTER credit for getting President Bush to renominate Judge Davis earlier this year and want to commend him publicly for all he has done to support this nomination from the outset.

This year we have moved expeditiously to consider Judge Davis. Judge Davis was nominated by President Bush in late January 2002, the Committee received his ABA peer review on March 12, he participated in a confirmation hearing the next week on March 19, and he received a unanimous vote by the Judiciary Committee on April 11—less than 3 months after his nomination, and less than 1 month after his paperwork was completed. The saga of Judge Davis recalls for us so many nominees from the period of January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret anonymous holds by Republicans for reasons that were never explained.

At Judge Davis' recent confirmation hearing Senator SANTORUM testified that Judge Davis did not get a hearing after President Clinton nominated him because local Democrats objected. I was the ranking Democrat on the Judiciary Committee during those years and never heard that before. My understanding at the time, from July 1998 until the end of 2000, was that Judge Legrome Davis would have had the support of every Democrat on the Judiciary Committee and in the Senate. He was not included in the May 2000 hearing for a few other Pennsylvania nominees. His not being included was a part of the discussion on the record, a discussion about unwillingness of some to act on nominees in a presidential election year although Senator SPECTER emphasized his personal commitment to supporting Judge Davis. Senator HATCH never indicated to me that he thought Democratic opposition was the reason he could not include Judge Legrome Davis in a hearing over those 3 years.

Judge Davis has served as a Judge on the Court of Common Pleas in the First Judicial District in Pennsylvania for more than 13 years. Prior to serving as a judge, he had an extensive career litigating criminal cases in State courts. He has participated in numerous task forces and a variety of pro bono projects aimed to improve the judicial system. He is well-qualified and has broad bipartisan support. I know that Judge Davis and his family are glad that this day has finally arrived. I expect that the people served by the Eastern District of Pennsylvania will be happy with the Senate's action today.

Judge Davis will be the 45th judicial nominee to be confirmed since last July when the Senate Judiciary Committee reorganized after the Senate majority changed. With today's vote on Judge Davis, the Senate will confirm its 45th judicial nominee in the less