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# Senate

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

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Father, You are always the same. Help our legislative leaders to be honest and fair. May our lawmakers labor for justice and peace. As You use them for Your purposes, deliver them from moral paralysis and spiritual inertia.

Make them voices for those who are captives of injustice and oppression. Use them to rescue the hopeless, to help the hurting, and to have pity on the weak. Because of their faithfulness, let this Nation prosper like flowers in a well-kept garden.

As we praise You, Our Father, show Your glory throughout our world.

We pray in Your glorious Name. Amen.

## PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 1 hour, with the first half of the time under the control of the Democratic leader or his designee and the second half of the time under the control of the majority leader or his designee.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

## PROGRAM

Mr. FRIST. Mr. President, we have a period of 1 hour of morning business to start today's session. Following morning business, we have 1 hour of debate prior to a scheduled cloture vote on the pending amendment relating to military tribunals, to the military commissions. Before that cloture vote begins, the Democratic leader and I will continue to work toward an agreement that would allow us to consider the military tribunal legislation as a free-standing measure under a specific time agreement. We started talking about that yesterday and worked through the night, and we will continue over the course of the morning to reach that agreement. We are working in good faith toward an understanding on this bill and hope we will be able to work that out prior to that 11:30 a.m. vote. I will keep our colleagues posted as to the outcome of those talks.

If we are able to reach a consent agreement, then I will vitiate the order for the cloture vote, and we will proceed directly to the military tribunals, the so-called Hamdan legislation, today. Votes will likely occur throughout the afternoon either on the cloture vote on that issue or on amendments that may be considered to the free-standing bill.

We have a number of other important items to consider this week. The Defense appropriations conference report has been filed, and we do not expect that to take very much time at all. It may even be that we can do that at some point later today.

We have the Homeland Security appropriations that will shortly be completed, as well as other conference reports that are underway, such as port security, which may become available.

I remind my colleagues that we have a policy meeting on this side of the aisle to occur from 12:30 p.m. to 2:15 p.m. today. If we can schedule debate on one of these issues during that time, we will likely be able to remain in session in order to make progress.

I have a brief statement. Does the Democratic leader have comments?

## RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

## WORKING ON A UNANIMOUS CONSENT AGREEMENT

Mr. REID. Mr. President, I appreciate the majority leader yielding. So everyone understands where we are, let me repeat what the majority leader said. As things now stand, we are going to have a cloture vote on the Hamdan matter, the Supreme Court detainee situation that now confronts the country, sometime this evening.

What we are going to try to do in the next hour or so is work out a unanimous consent agreement that there will be amendments allowed to be offered on the Hamdan matter. There would be amendments. We would agree between the leader and me as to how much time will be on the amendments.

I have cleared this matter with most everyone. As I told the leader today, I still have to work things out with two other members of the Judiciary Committee. Hopefully, I can do that. If not, what will happen is cloture will be invoked on Hamdan and then 30 hours will start, and there will be cloture on the fence bill, the barrier bill, sometime tomorrow. We are trying to work our way through this so the Hamdan matter will have some debate on it and some amendments offered on it. We are doing our best to do that.

As I said yesterday, late in a session such as this, everyone becomes a

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Charles Atlas—one person can stop anything. They have the right to do that. We understand that. But procedurally that is where we are now. Hopefully, we can work our way through this and have some debate on this detainee matter and move on to the fence bill, hopefully work something out on that, and put us on a glidepath to completing the work of the body, as the majority wants to do, in the next couple of days.

Mr. LEAHY. Mr. President, will the Senator yield on that point for a couple of moments?

Mr. REID. Of course.

Mr. LEAHY. Mr. President, I commend the two leaders for trying to work out these issues. Over the years, I have seen leaders try to do it at the end of a session. I don't consider myself a Charles Atlas, but I do consider myself a U.S. Senator. I have taken an oath to uphold the Constitution of the United States.

Some of us have sat in this Chamber and in committee for 5 years while what was being done in detaining the prisoners violated our Constitution and our traditions in the United States. Seven of the nine Members of the Supreme Court are Republicans, incidentally, and have said the same thing in the Hamdan decision.

We tried for 5 years to get the administration to listen to us, to tell us there are ways we could have worked this out so the United States would follow its own laws, would follow its own Constitution, would follow the ideals on which this country was founded, and give that kind of example, a shining light to the rest of the world. And now suddenly the administration, after meeting behind closed doors, predominantly just with the Republicans, says: Here, in 2 hours' time, we have a solution; accept it. I have some problems with that. I will discuss this with the leaders.

As I said, I don't stand here as Charles Atlas, but I stand here as a U.S. Senator with my rights and to protect the rights of Americans.

Mr. REID. Mr. President, reclaiming the floor for just a moment, I say to my friend from Vermont, I consider him a Charles Atlas today and any time I have ever served with him in the Senate. He is one of the most senior Members in the Senate. He is the person the Democrats have designated to be the arbiter of issues that go on in the Judiciary Committee, the busiest committee in the Senate.

I also say to my friend that he is not only a U.S. Senator but a very good one, and I look forward to working with him to work through this issue, and with other members of the committee, as I mentioned, not in name, but there are others I need to work with on the Judiciary Committee.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, we will continue our discussions. The goal will be to make sure Senators do have the opportunity to debate and amend this bill. We are just trying to put together an agreement to do that. If not, we will have the cloture vote and still have that debate and that opportunity as we go forward.

## NATIONAL COMPETITIVENESS INVESTMENT ACT OF 2006

Mr. FRIST. Mr. President, I wish to comment briefly on another issue, the National Competitiveness Investment Act of 2006, a bill that was introduced yesterday with bipartisan sponsorship—myself and Senator REID—a bill that focuses on our global competitiveness by focusing on education, by focusing on the resources we should be investing right here at home to make sure we are globally competitive with nations such as China and India. If we don't act, our Nation is going to lose our competitive edge.

The United States today has the strongest scientific and technological enterprise in the world, including the best universities and the best corporations investing in research. But there is growing evidence and recognition that our educational system is failing to equip our young people and older people today to compete in this increasingly global economy. We are failing in the very areas that have in the past underpinned our strength, in areas such as mathematics, science, and engineering.

We are going to have to invest in the future in those specific areas if we are going to preserve our competitive edge, what has made this country great, as we have competed with other nations around the world. We are in a 21st century global economy which depends on mathematics, science, and technology. Those are the foundations. They are the engine to create that economic security for the next generation.

Two years ago, the Senate Energy Committee asked the National Academies to identify policies that would enable the United States to successfully compete and prosper. The National Competitiveness Investment Act of 2006, a bipartisan bill we introduced yesterday, incorporates the recommendations made by the National Academies and a number of other very similar studies that have been produced over the last 2 to 3 years.

The bill reflects the bipartisan leadership of many Senators, including those of the three major Senate committees responsible—Energy, Commerce, and the HELP Committee.

In these few moments, I wish to comment on what this bill does because it is important for people to understand how we invest and where we invest to improve that global competitiveness in this 21st century economy.

The bill doubles our investment for basic Federal research over the next 5 years at the National Science Foundation and increases investment for basic research at NASA and other science-related agencies.

It creates a new teachers institute to improve teaching techniques—how we teach math and science—focusing on education, on teachers who are responsible for putting forth that knowledge.

It creates a DARPA-modeled advanced research projects agency at the Department of Energy dedicated to the goal of increasing innovation and competitiveness breakthroughs in technology.

It expands scholarship programs that are aimed to recruit and train math and science teachers—teachers who really need to focus on the K–12 area.

It encourages more students, more high school students, to take advanced placement courses and enter the international baccalaureate programs.

It will take an increased investment. Over the next 5 years, our economy will exceed $76 trillion—$76 trillion is how big our economy will grow. A 1-percent investment for the future is really a small price to pay for that continued security and leadership in the world.

I did not have the opportunity to speak to this bill yesterday when it was introduced. I encourage our colleagues to join the bipartisan leadership—again, myself and Senator REID who are sponsors of this legislation.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Vermont is recognized.

## RETIRING FROM THE SENATE

Mr. JEFFORDS. Mr. President, even a diehard Red Sox fan has to give the devil his due. Probably the most moving moment in the history of baseball was when longtime New York Yankees first baseman Lou Gehrig walked on the field to accept the tribute of his fans and teammates. On Independence Day in 1939, he told the crowd at Yankee Stadium that he considered himself the luckiest man on the face of the Earth.

I consider myself pretty lucky, too. I was elected to the House of Representatives in 1974. That was not the best year to be a Republican candidate. Out of an enormous freshman class of 92 new Members, which included CHRIS DODD and TOM HARKIN, only 17 of us were Republicans. And as CHUCK GRASSLEY and I walked down the aisle of the House, he with crutches and I with a neck brace, one Democrat muttered: There's two we almost got.

Time has gotten just about all of us. With my retirement and that of HENRY HYDE in the House, CHUCK GRASSLEY next year will become the last remaining Member of the Republican class of

1974, an iron horse in his own right. The silver lining for me in the electoral losses suffered by the Republicans was a chance to land senior positions on the Agriculture and Education Subcommittees that would quickly throw me into the thick of things. Throughout my career in the House, I focused on those two issues.

In 1988, with the retirement of Bob Stafford, I ran for and won a seat in the Senate. Senator Stafford was a tough act to follow. He had held just about every office in the State of Vermont and had an enormous impact on the Federal policy for education, the environment, and elsewhere. I was lucky when I got to the Senate that there were openings on both the Education and Environment Committees.

Early on, I learned what the Senate can be at its best. In 1989, Congress was in the midst of reauthorizing the Clean Air Act. Even though I was a freshman, the door was open for anyone who had the time and interest. As John Chafee, George Mitchell, and the rest of us forged a strong renewal of the Clean Air Act, I realized these were the moments I enjoyed most. I realized these were the moments I enjoyed most when smart and committed people worked together to solve tough problems and improve the lot for Americans. Every year since has provided similar moments, from rebuilding our roads to rewriting our food and drug laws.

Probably the biggest and the most rewarding challenge for me has been in the area of education. From my first year in the House when we enacted the Education of the Handicapped Act, to work that continues today on the Higher Education Act, I have tried to do my best to ensure that every child is given the opportunity to reach his or her potential.

There is plenty of work left to be done to reach this goal, and nowhere is that more true than in the District of Columbia. A decade ago, Congress stepped in to try and help the District resolve the problems plaguing its overall budget and its schools in particular. As chair of the DC Appropriations Subcommittee, I helped lead that effort. The city is to be commended for its record of fiscal responsibility in the years since, and I hope the superintendent, the new mayor, the council, and the school board will be able to make similar progress in improving the city's school system.

While Vermont has always been home, I have lived in the District of Columbia since coming to Washington. Luckily, I have never lost the ability to be moved by the sight of the Capitol dome. Its majesty struck me when I first came to Washington and it still does today. Under that dome and in the buildings around it work thousands of good people. We are all privileged to work with a whole host of people who get too little recognition, from the person recording my words, to the people who put them in the CONGRESSIONAL RECORD while we sleep—not always easy tasks, in my case.

Ours, too, is not always an easy task. I know it is hard for the public to understand the reality of life in the Congress, but the continual travel, the campaigns, and the unpredictable hours of our jobs can take a toll on our families. I have been blessed with two wonderful children, Laura and Leonard, who are here with me today, and a feisty, funny, and an incredibly strong wife, Liz. They have had to put up with an awful lot over the years so that I could serve Vermont.

Three decades is a blink of an eye in history, but what a tremendous period of change in our country we have been through. When I came to Washington, we were only three decades removed from the Second World War. My childhood heroes were heroes of that war, and it seemed as though every family had a father or son or uncle who served and sacrificed in that war. But when I came to Washington, an entirely different war was being waged in Southeast Asia. Vietnam has colored much of our thinking since. Whether Vietnam had too much or too little influence upon the ensuing three decades is a much larger debate, but we would be better served in world affairs today by being less haughty and more humble.

I regret that my departure from Congress, like my arrival, finds our country at war. Young and even not so young Americans are sacrificing life and limb while the rest of us are making little or no sacrifice. It seems to me the very least we should do is pay today for the fiscal costs of our policies. Instead, we are floating IOUs written on our children's future. This year we have no budget, and we are unwilling even to debate most of our basic spending bills before the November election. Thirty years from now, we could well face the biggest crisis in government since the Civil War, if Congress and the White House do not adopt a more honest approach to government.

The basic compact between generations is being broken. F.D.R. was right to borrow heavily to finance World War II, but are we justified in doing so today?

Earlier this month, I was privileged to attend the dedication of a monument in Virginia commemorating the sacrifice of more than 1,200 men of the Vermont Brigade during the battle of the wilderness. The tangled thickets of the 19th century have given way to mature forests. The individuals are largely forgotten, but our collective memory must endure. Today, we use blocks of granite to remind us of the sacrifices of the Civil War. In its immediate aftermath you would think no such reminder would have been needed. But 140 years ago, so the story goes, a northern Congressman literally waved a bloody shirt before his colleagues to inflame them against the South for alleged misdeeds. True patriotism is the incredible bravery of those men whose too-brief lives ended on that wilderness battlefield. Waving the bloody shirt then or today is anything but patriotic.

The beautiful Capitol dome above us, completed even as the Civil War concluded, should serve to inspire us. I am an optimist and have been every day of my life. With Lincoln, I hope that the mystic cords of memory will stretch from every battlefield and patriot grave to the hearts of the living, and that we will soon again be touched by the better angels of our nature.

Mr. President, I wish you and all of my colleagues good luck and Godspeed.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The minority leader is recognized.

Mr. REID. Mr. President, Senator JEFFORDS has been a friend and colleague for many years. We had the opportunity to serve together in the House of Representatives. We served together in the Senate. To say that he has made history during his time in Congress is an understatement. But more important, he has made a difference. I have always been impressed by his knowledge of the issues, his dedication to the public well-being, and the environment. I have had the good fortune of serving with him on the Environment and Public Works Committee. He is a stalwart. He is a true believer that the environment is in distress and things need to be done to change our environment.

He has worked to preserve the middle class and to provide for the safety of the American people in so many different ways. Senator JEFFORDS is a man of conscience. No one can question that. He grew up in Vermont where the Jeffords family first settled in the 18th century. His father was a longtime member of the Supreme Court. After JIM JEFFORDS graduated from Yale, he served in the Navy on active duty for 4 years. He served then in the Naval Reserve, retiring as a captain. Senator JEFFORDS studied law at Harvard—Yale and Harvard—which shows his intellect. He returned after having finished law school to Vermont to practice law. Shortly thereafter, he was elected to the Vermont State Senate and then attorney general. He was elected to the House of Representatives in 1975 and served there until he came to the Senate in 1989.

In walking in here I grabbed a book that has a lot of definitions. I flipped to courage. Whatever definition you have of courage, you can pick one here going back to two centuries ago:

> I love the man who can smile on trouble, who can gather strength from distress and grow brave by reflection. It is the business of little minds to shrink, but he whose heart is firm and whose conscience has approved his conduct will pursue his principles unto death.

That really is JIM JEFFORDS, and that, Mr. President, is a quote from Thomas Payne. I have seen up close JIM JEFFORDS' courage. Everyone knows, as it has been written about in books, the conversations that Senator JEFFORDS and I had prior to Senator JEFFORDS deciding that he wanted to

change course and become an Independent. That was not an easy decision. It involved years of friendship, and it involved years of his being a member of two different legislative bodies on Capitol Hill.

Most of our discussions took place on the Senate floor as people were walking around, but we had conversations in private. I know firsthand, I repeat, of the courage of this man. I in my now long public career have been involved in a number of things that I will always remember, but I will never, ever remember anything more vividly than the Senator from Vermont, as a matter of principle and courage, changing not only his course but the course of this country.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I have listened to my friend, JIM JEFFORDS, the Senator from Vermont speak here this morning. I couldn't help but think as I heard Senator JEFFORDS speak with wit and clarity, and you might say even some emotion, that JIM JEFFORDS, given the opportunity to make a speech—and many of us will do so on this Senate floor as we leave—did it being true to himself, with his own good nature, his own sense of history, and his own justifiable pride in what he has accomplished.

I have known JIM JEFFORDS from his days as a State senator in Rutland. I have known his wonderful wife, Liz Daley Jeffords. They are both dear friends of mine and my wife Marcel. Mrs. Jeffords was referred to as a great lady the other night by the anchor of our State's largest TV station. Some of us who have known JIM for years would say she gets that greatness for putting up with him for all these years. But we Vermonters found no difficulties in putting up with JIM JEFFORDS. He has been elected overwhelmingly to the offices he has held and he has done it with support from Republicans, Democrats, and Independents alike. He has gotten these votes the old-fashioned way—he earned them.

We came here together 32 years ago. I like to talk about the Leahys coming to Vermont in the 1850s. JIM reminds me his family came to Vermont a century before. We both live in small towns in Vermont; we have had that sense of Vermont. He has never lost it. He has been a good friend.

His career highlights are legendary. Let me tell you why he is supported so. First and foremost, Senator JEFFORDS is known as an environmental champion. In Vermont, they say, If you scratch a Vermonter you scratch an environmentalist, no matter the party.

He has done it in the great tradition of Senator Bob Stafford. Senator Bob Stafford is also from the same county as JIM JEFFORDS—actually JIM grew up near him. He mentioned Bob today.

He carved out a legend on education and the environment when he was here. But then JIM JEFFORDS had done that as attorney general and as a State senator in our State. For the past three decades he has left his fingerprints on nearly every environmental law enacted, from the Clean Air Act and the Clean Water Act to the Superfund program to acid rain reduction.

In fact, when others in his position would be thinking about where are the papers going and how will we retire, just a matter of months ago he offered the boldest solution to combat global climate change this body has ever considered.

He has championed legislation to strengthen our Nation's education system and increase the opportunities for individuals with disabilities.

In 1975, as a brandnew Member of the House of Representatives, as he said, coming in with a neck brace—the walking wounded from an election where both of us ran in Vermont—he coauthored what would later be known as the Individuals with Disabilities Education Act, IDEA. It was strongly supported by his colleagues here in the Senate and before that in the House. It has provided equal access to education for millions of students with disabilities, students who otherwise would have been shunted aside and this country would not have had the value of their achievements.

As chairman of the Health, Education, Labor and Pension Committee, he worked tirelessly on education, job training, and disability legislation. Most recently, his leadership in the Senate Environment and Public Works Committee was essential to the passage of the highway bill. Of course, Vermont and the rest of the country will benefit from that.

I might say there has been no greater leader for Vermont's dairy industry than Senator JEFFORDS. In his work on the Northeast Dairy Compact and the milk programs, he has fought tough battles for Vermont dairies—and won. He actually knows as much about our dairy industry as most dairy farmers.

It is what he has done for future generations. All of us can talk about what we do here. It is what we leave for our children and our grandchildren that counts. Future generations of Vermonters will honor JIM's legacy when they see the work that he began as attorney general and continued throughout the Senate—helping to restore Lake Champlain to its brilliance, its magnificence; or witness the bald eagles abounding in the wilderness areas, thanks to JIM.

I applaud him for this statement as he takes leave of the Senate—although it seems this year we will never know when we leave. None of us are getting our final airplane reservations yet. But he has done it with his usual grace and good humor. I applaud him for that and I hope all of us when we come to leave, whenever that may be, will have the opportunity to show that same grace. He served Vermont well and, just as importantly, he served the Senate well.

After a long career I might violate the rules somewhat, addressing my friend and colleague directly: For a long career, JEFF, you can leave with your head held high. You have served Vermont and your Nation proudly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I rise for the purpose of telling my colleagues that I am going to miss my colleague.

The PRESIDING OFFICER. I will interrupt the good Senator. Because the minority controls the next 7 minutes, it is necessary to gain consent from the minority.

Mr. DURBIN. I ask consent the Senator from Iowa be recognized.

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

Mr. GRASSLEY. Mr. President, I rise to tell the Senator from Vermont that I am going to miss him in the Senate and still consider him a friend. I hope to have a long relationship with him, even in his retirement. I am that Senator that JIM JEFFORDS, the Senator from Vermont, referred to as the one remaining Republican of the class of 1974. There were 17 of us. I think there were about 70 Democrats. It was a bad year for Republicans. You couldn't even put the word Republican on your literature. It was the year Nixon resigned.

There were only 140 of us in the House of Representatives at that time. I don't know whether Senator JEFFORDS felt this way, but I felt this way, that it was probably the end of the Republican Party. Well, I was wrong. He and I have been reelected to serve together, to serve our respective constituents.

I remember Senator JEFFORDS as an outstanding member of the Agriculture Committee in the House of Representatives the 6 years I served on that committee. Then there was a period of time where I was a Member of the Senate and he still stayed in the House of Representatives. Our friendship still held. But working together—you know how it is in Congress, the House and Senate; there is a Grand Canyon between us sometimes, and we don't communicate as much as we ought to. Consequently, it was like getting reacquainted with Senator JEFFORDS again when he came to the Senate. I was glad then and I am very glad now that he continued his service.

I think he is an outstanding example of probably what is an unacknowledged principle of political science—at least it is a feeling I have about the people of our country—that if you serve honorably where you are at a certain time and do the best job possible, you are going to have opportunities to enhance your position within public service. So as a State senator, then as an attorney general, then as a Congressman, and then as a Senator for the people of Vermont, I believe he got to be a Senator because people in Vermont recognized him, as a State senator, as a Congressman, and as an attorney general,

as a person who was not there because of political ambition, wanting to rise to the top, but a person, in each stage of his public service life, who did what that job required and did it well. People recognized that and in the end of the process, he came to the Senate.

In every relationship I have had with Senator JEFFORDS, whether he was Republican or an Independent, it has always been one that has been friendly and honorable and honest, and, most importantly, to describe him as a humanitarian as he approached public policy.

It seemed to me that as a Member of the Senate, whether as an Independent or as a Republican, Senator JEFFORDS brought forth what it takes to get things done in the Senate, and that is moderation. It doesn't matter whether it is a bill that is representing the philosophy of the extreme left or a bill that represents the philosophy of the extreme right, nothing such as that is going to get through the Senate. Eventually you have to have people come together seeking a middle ground, a bipartisan approach to get things done. It seems to me, in every respect, that is what Senator JEFFORDS did—he sought moderation because that is how you get solutions and that is the only way the Senate produces.

I compliment him on his dedicated public service. I congratulate him on his long service to the people of the United States and the people of Vermont. I will miss working with him. I will miss him, but I hope we have opportunities to have great relationships for the rest of our lives.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, could I inquire of the Chair, do we have a limited period of time? I see a number of our colleagues here. I am just inquiring of the Chair.

The PRESIDING OFFICER. There is 7 minutes 20 seconds remaining in this block of time for the minority.

Mr. KENNEDY. Well, I see the floor leader. I will take 2 or 3 minutes, then, because I see half a dozen of our friends here.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I believe there are at least four or five Members here who would like to speak about Senator JEFFORDS' retirement. I ask unanimous consent those Members currently on the floor, Senators ROCKEFELLER, BOXER, HARKIN, DODD and KENNEDY, be recognized for such time as they consume, and I would like to add myself to that list, and then extend whatever time we use on the minority side, if they would like to use it as well.

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

Mr. KENNEDY. Mr. President, it is entirely appropriate that we take these few moments on the floor of the Senate to listen carefully and take the measure of an extraordinary Senator, Senator JIM JEFFORDS. In these next several weeks, this Nation is going to be focused in many, many States on trying to select who is going to represent them in the Senate. And if the people of those States just took a few moments to listen to the eloquence of this Senator, they would know what the standard should be in selecting someone to represent them in this body. It is JIM JEFFORDS. He sets the standard. So we thank JIM JEFFORDS for his service—his service to the State of Vermont and his service to all of our States and to the country. We thank him for that service.

We also thank the people of Vermont for their wisdom in selecting this extraordinary talent and giving him the kind of support that they gave over a long and distinguished career, especially in those times when he was willing to take positions and stand up on issues as a matter of conscience. They understood their native son. They respected him, and they supported him. So thank you to the voters of Vermont.

Thank you to his family, Elizabeth that Senator JEFFORDS mentioned, Laura, and Leonard—a family that gave him great support. I think those of us who have been fortunate enough to know that family and meet that family understand what a strong influence it has been in terms of his service.

And thank you, Senator JEFFORDS, for that simple eloquence that we heard from you today on the floor of the Senate, going back into the history of our country, providing inspiration as we listen to you talk about the history of the Nation, mentioning with great pride the role of Vermonters in the time of the Civil War—and his understanding of history, talking about the Greatest Generation, which were inspiring figures to him and many of us continuing to the present.

He typically understated his own achievements and accomplishments. I think many of us on this floor are well familiar with them. I certainly am as someone who has had the good opportunity to serve with him on the Education Committee. I know the difference that he has made in the education of children in this country, particularly those with special needs, accomplishments which are memorable and historical. He mentioned just causally his interest in the education of the children here in the District of Columbia. A number of us who are here on the floor now remember JIM JEFFORDS speaking in our caucus not many years ago how that we, as members of the Senate who happen to either live here in the District or work here, even though we are working in this body, have a responsibility for the education of the children here. He was the inspiration of a program, a literacy program called ''Everybody Wins!'' And JIM JEFFORDS led a number of us to Brent School here near the Capitol to read with the second and third graders each week to ensure that those children were going to have an opportunity to learn to read. It was just a simple illustration, once again, that JIM JEFFORDS does not just talk the talk, he walks the walk. And on so many different times, he has been there doing just that.

So, JIM, we admire your service. You have demonstrated here—and we do not understand perhaps well enough—that you can speak with a quiet and soft voice, but you speak with a great passion and a compelling argument, and with a simplicity and effectiveness that has enriched and enhanced the quality of life and opportunity, particularly for children but also for all Americans. It is a distinguished career, and it is one I know that you should be—and are—proud of. All of us have had our own lives enriched and inspired because of our friendship with you and the type of Senator you have been.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I add my voice to my colleagues who have spoken and those who will speak in thanking our wonderful friend from Vermont for his remarkable service to our country.

I begin as well by thanking his family, Elizabeth and the children, as well as the people of Vermont, as Senator KENNEDY has said so eloquently.

Let me also include in enumeration his wonderful staff people, over the years, who have been very much a part of JIM's family. In fact, I note from the interns to senior staff people, everyone refers to him not as ''Senator'' or ''Mr. Chairman''—but just ''JIM.'' That is certainly a symbol of the kind of relationship he has had with his constituents and with his family over the years.

I have had the privilege of serving my entire time in the Senate—in the Congress—with this remarkable person from Vermont. We arrived in the House of Representatives on the very same day, 32 years ago. As JIM pointed out, he had that neck brace on, and I had a head of black hair. We have aged over those 3 decades. But my respect for JIM JEFFORDS has only grown.

He has taught us America will listen to you even if your voice is soft. His achievements in the Senate and the House are the envy of all who wish to improve a quality of life in this great country of ours. JIM's body of work is truly admirable.

But it looks even more admirable when you remind yourself that it was all the doing of a man unpretentious enough to be fond of mismatched socks, frugal enough to spend his earliest days in Washington sleeping in a parked van, and humble enough to be universally known, as I've said, as just ''JIM.'' The people of Vermont returned him to office over and over again on the strength of his plainspoken integrity and his indefatigable Yankeeness. That's what JIM brought to this body of discussion; and that was more than enough.

JIM came to Washington knowing what he wanted to accomplish, and his success is clear to us today. No one has worked with more dedication for a clean environment. JIM was an environmentalist practically before we had a word for it. In fact, he got his start in the Vermont State Senate in the 1960s, fighting the efforts of the paper mills to pour sludge right into Lake Champlain. He was a long-time nuclear watchdog and among six Congressmen to found the Congressional Solar Coalition years ago. It is telling that when he had his pick of chairmanships, Senator JIM JEFFORDS chose the Environment and Public Works Committee. Perhaps most importantly, he helped clean up the air we breathe. He mentioned it briefly. But the work of John Chafee, George Mitchell, and JIM JEFFORDS truly created the great Clean Air Act of 1990, a huge accomplishment. I want to thank JIM immensely for the tremendous effort he made years ago in improving the quality of air in this country. If he had done nothing else in 32 years, that alone would have been a significant achievement. Of course, his body of work is far more than that.

Like JIM's dedication to the environment, his work for children who come from special education needs is decades long. In 1976, he was essential to the passage of legislation guaranteeing local school districts that the Federal Goverment would pay 40 percent of the costs of educating the disabled. And if that guarantee remains unfunded today, never let it be said that it was for lack of JIM's passionate work.

I would be remiss if I didn't mention of TOM HARKIN, another fellow classmate of 1974, working with JIM and many others who cared about this issue over the years. No one contributed more to the Individuals with Disabilities Education Act than JIM JEFFORDS. Few Senators are as tied to special education, and that is a title to be very proud of. It has been my honor to work along with him in the House and the Senate on the issues that meant the most to him—on afterschool programs, on higher education, and, most especially, to secure funding for IDEA.

It Vermont, commitment to education is a longstanding tradition. Right in the middle of the Civil War, we building the dome on the Capitol to show our determination to keep this Union together; but we showed it in another way, too. A Senator from Vermont by the name of Justin Smith Morrill created the land grant colleges—the University of Connecticut is one; there are many all across the country—and his work was one more demonstration of the remarkable people who come from that State of Vermont to help build this country, defend this country, and secure this country for our children. Senator Stafford and Morrill passed on that proud tradition, and Senator JEFFORDS stands in its forefront today.

JIM has taught at every opportunity the difference between education as a privilege and education as a right. It is a right, and its worth is measured in our willingness to educate even—especially—where it is inconvenient.

There weren't many Senators shyer than JIM JEFFORDS, but there wasn't a single one fuller of quiet purpose and courage. Politics was always a means to JIM's purpose—never the other way around. And the way JIM practiced politics, the way he spent his power, was never calculated to bring him money, or fame, or even particularly glamour. It was only the quiet satisfaction of a job very well done.

That is what I think of when I recall the more than three decades of our service together. But, to tell the truth, through all those 30 years I had a privileged seat right here with him. Those without that vantage point are probably going to remember, first of all, something very different. We all know how JIM crossed this aisle for good 5 years ago, and how he has served as an an Independent ever since. JIM entered the national spotlight full of honest regret, and fully aware of how difficult his choice was for colleagues, his staff, and his supporters.

I saw JIM upclose as he struggled with a decision as few men or women ever have to. But whatever one thinks of it, there is a fact beyond dispute, which all of us appreciate in this body: JIM JEFFORDS has never followed anyone but his conscience.

If we insist, 5 years later, on reasoning out the need in votes or dollars or any other measure of practicality, we only reveal our failure to understand what that man did on the day he made his choice. Sometimes what goes on in this Chamber cannot be reasoned away. JIM taught us that, too.

So, I would like to close with a happy thought. Two years before the American Revolution, Edmund Burke gave a speech on the relationship between a representative and those whom he tries to represent.

"It is his duty," said Burke, "to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interests to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence."

JIM, you have kept your trust over these many years, in both the Senate and public life, in your State and in the Congress. We send you back to Vermont with your work in the Senate accomplished, with your conscience still clean, and with our best wishes to you and your lovely family. God bless you.

I yield the floor.

Mr. DURBIN. Mr. President, it took an act of courage for JIM JEFFORDS to declare himself an Independent. It took an act of courage for a lifelong Red Sox fan to quote a New York Yankee in his farewell address to the Senate.

JIM JEFFORDS is an extraordinary public servant. Fewer than 2,000 men and women in the history of the United States of America have served in the Senate. We all understand the great privilege of being in this body representing our great States. But people are not noted in the history of the Senate for longevity alone. People are noted for singular acts of courage. And when it comes to JIM JEFFORDS, his public career has been a singular act of courage.

I hail from the State of Abraham Lincoln, where he lived most of his adult life, and where we claimed him as part of our national heritage. When I think of JIM JEFFORDS and the political party he identifies with more than any other name, I will say he identifies with the party of that great leader Abraham Lincoln who stood up for principles often against public and popular will.

This last week, Time Magazine noted they were going to designate Senator JIM JEFFORDS of Vermont as "Person of the Week." They said in his one principled decision to become an Independent, "He demonstrated to the White House and the United States Senate that revolutionaries often come in surprising packages."

We all know what happened after JIM made his decision to become an Independent. He told me about walking home to his apartment at night down Pennsylvania Avenue. And people who were outside restaurants and cafes would stop and stand and start to applaud, and JIM would be startled by it at first. But he received more recognition then he, I am sure, expected. A lot of it came in positive terms; some in negative terms. People wanted to name their babies after him.

In Burlington, VT—I think this is probably the greatest tribute a politician could ever expect—they named a beer after him—"Jeezum Jim" they called it. I hope it was a popular brew because he has been a popular Senator.

When they asked him why he changed his affiliation to become an Independent, he replied very simply: "It is all about education." I remember it well, because I know that was the deciding factor.

Your commitment to particularly those students who struggled with disabilities, students who have these difficulties, your commitment to those kids led you to this decision. Many of us make these decisions on votes on the floor. But as has been said, for JIM JEFFORDS education went way beyond a vote or a speech. Several years ago, he established this tutoring program in Washington, DC, encouraging us, as Members of Congress, the House and the Senate, to walk just a few blocks from here, as he did so many times, to tutor the inner-city youth of Washington, DC.

He is a true Vermonter and a true Independent. When we look at his record, he was the only House Republican who voted against the Reagan tax

cut because he was afraid it would lead to dangerous deficits. How right he was. In 1993, he was the only Republican Senator to cosponsor President Clinton's health care plan. He worked for years for regulation of tobacco by the Food and Drug Administration, a goal which I share with the Senator. And he sponsored the Employment Nondiscrimination Act, banning employment discrimination on the basis of sexual orientation.

Some politicians in their career find ways to divide us. JIM JEFFORDS always looked for ways to bring us together. A strong supporter of Federal funding for AIDS research and the arts, justifiably proud of the role he played in passing the Work Incentives Improvement Act, and, of course, his record on the environment is without parallel.

I know historians will also record all these accomplishments and courageous battles when they write about JIM JEFFORDS. On July 4, 2001, several weeks after he made his decision to become an Independent, he sat down at his home in Vermont and wrote these words:

> I hope my decision will move the two parties to the center, where the American people are. The American people want an active, responsible, Federal Government.

He went on to say:

> There seems to be a hunger in country for heroes, especially for the political variety.

Not only with this one historic act of conscience but throughout his career in the House and the Senate, in public life JIM JEFFORDS has been a living example of these hopes and beliefs. I am proud to have been able to serve with him. I am proud to count him as one of my colleagues, even prouder to count him as a friend.

I thank his family for giving him this opportunity to serve and giving this wonderful man to public life.

I thank you, JIM JEFFORDS, for all you have meant.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, it is, indeed, a privilege to be here this morning to personally hear the words of our good friend, Senator JEFFORDS, and to hear other Senators get up and talk about JIM in such glowing terms.

However, I must say that all the years I have known JIM JEFFORDS, he is an old-fashioned New Englander, which means he is very modest. That means he is embarrassed to receive this kind of praise and adulation. Senator JEFFORDS will just have to endure it because we love you, we respect you, we admire you, and you are one of the most beloved Members of the Senate.

Thirty-two years ago, we came together in the House. You talked about that. Our colleague, CHRIS DODD, was in that class, and also my colleague from Iowa, Senator GRASSLEY. I didn't know Senator JEFFORDS at that time, obviously. We had just come in as freshmen Members. I found myself on the Committee on Agriculture with Senator JEFFORDS. We both sat down at the end. He was on one side and I was on the other side because we were just freshmen.

We had a farm bill coming up. After a few weeks on the Agriculture Committee, we dubbed Senator JEFFORDS ''the Senator from Dairy.'' He was tenacious in fighting for his dairy farmers of Vermont and, of course, New England. Those from Iowa and Minnesota and Wisconsin—we had dairy farmers, too, and there was, shall I say, a little bit of a conflict in how we viewed the world of milk and dairy. That was my first experience with Senator JEFFORDS because we had to work things out. And we did. That was the first time I got to see the kind of person JIM JEFFORDS is and always has been. He was tenacious in fighting for his dairy farmers but willing to understand that we all have to live together; somehow we have to seek our compromises. And we did. We reached a compromise and we moved the legislation forward. That was the first time I came to really know and respect JIM JEFFORDS.

As we moved ahead in agriculture, I found another area in which I respected and admired Senator JEFFORDS. That was the area of environment and conservation. In those days, people were thinking mostly about all the commodity programs, how much money we could get in the commodity programs. We were all protecting our interests. I was protecting my Iowa interests and Senator JEFFORDS was protecting his Vermont interests.

However, conservation transcended everything. That began back in the late 1970s, in the House Agriculture Committee. We began the move toward more conservation in our farm bills, which led to more of a ''greening'' of America. He did that work also on Environment and Public Works. When I think about the environment, cleaning up the environment—clean water, clean lakes, clean streams—I have to think of JIM JEFFORDS. He was there at the beginning.

Then in 1975, on the Committee on Education, JIM JEFFORDS coauthored what later became the Individuals with Disabilities Education Act. I was not on the Committee on Education, but because of my family and because of my intense interest in disability rights, especially as it pertained to the hard-of-hearing and the deaf, I learned about this bill with JIM JEFFORDS and with Paul Simon—at that time, Senator Simon—and sort of stuck my nose in their business, if you don't mind my saying that, because I was not on the committee. I talked about how we had to help do some of these things. My focus was narrow at that time, just in hard-of-hearing and deafness at that time. My great respect for Senator JEFFORDS, or JIM, at that time grew because he was focused on how we make sure every kid in America gets an education, make sure kids with disabilities were mainstream, make sure they got the support in our schools.

It was Senator JEFFORDS who made sure that in the bill we passed, the Federal Government committed itself to providing at least 40 percent of the additional costs to States and local communities in educating kids with disabilities. Forty percent was the goal we set in the bill Senator JEFFORDS coauthored in 1975.

That moves me up to the year 2001. In the year 2001, the budget came from the White House, President Bush's budget, which severely underfunded our commitment to increasing funding. We have never reached 40 percent. I think the highest we have been is 18 percent. We have never gotten the 40 percent. Senator JEFFORDS wanted to move that up. Yet the budget came down and had a severe cut in the funding for the Individuals with Disabilities Education Act. That is when Senator JEFFORDS said no, he wanted to make sure that money was in there. That happened, mostly, on the Republican side of the aisle. I was not privy to all of that. That is when Senator JEFFORDS made his declaration of independence. A matter of conscience—he could not turn his back on all these years of moving our society forward to educating kids with disabilities in our schools and then all of a sudden say: No, we are going to turn the clock back; we are not going to do it. He wanted to keep moving forward. The budget would not allow it; he fought hard for it. Based upon the fact that the administration would not move on that, he declared his independence and became an Independent and left his party. We can all imagine how wrenching that must be, to leave the party that nurtured us, that we grew up with, that supported us all our adult life. It is a matter of conscience. You can read about it in his book, ''My Declaration of Independence.''

After that, I invited Senator JEFFORDS to come out to speak at the steak fry I have in Iowa every year. It was after the book came out. I will never forget the scene. We had thousands of people. It was a beautiful sunny Sunday afternoon. Thousands of people came to meet this person, to hear him and to hear his message. They had all these little books they were waiving, ''My Declaration of Independence.''

He had a wonderful message. His message was: don't ever turn our back on making sure every child in America has a decent education. It was a simple, straightforward message. But you should read his book.

Senator KENNEDY mentioned another thing about Senator JEFFORDS that not too many people know about; that is, his support for a program called ''Everybody Wins.'' He brought it here to Washington in the late 1990s and then began badgering us to participate in it in his usual tenacious manner. So he got a lot of us hooked on it.

It is every Tuesday. I see Senator KENNEDY goes about every Tuesday; JIM, of course, goes all the time; I go

every Tuesday we are here, and a lot of staff members. We go to Brent Elementary School. We read to a child for 1 hour every Tuesday. It has been a wonderful experience for me and I know for everyone who participates in it. In fact, we now talk about JIM as being sort of the Johnny Appleseed of this movement because now it is starting in other States. We took the idea to Iowa, and now it is sprouting in Iowa. Other States and businesses are involved. ''Everybody Wins'' is now moving around the country. Senator KENNEDY said: Senator JEFFORDS doesn't just talk the talk, he walks the walk. When he brought it here, he was there every week reading to kids and getting us to go down and read to them, also.

I have in my office a big picture that is my favorite picture. It is a big picture taken at Tiananmen Square, a picture we all will remember of the young man holding a little briefcase, a young student holding a briefcase. There is a line of tanks. He is standing in front of the tanks, and the tanks have all stopped. To those of us who have seen the video of this, the tanks were coming down the street, the student went out in the street, he stopped, the tanks turned to go one direction and he moved over a few steps, then the tanks moved another direction to get around, and he moved over and stood there. Finally, the tanks stopped right in front of him. A hatch popped open, and a military guy got out and looked at him and stood there for a few minutes. The tanks all stopped, and then the young man turned and walked off the street.

A lot of people I talk to about that picture—did they ever know who he was? No, they never did find out his name. But I gave them the name. I call him JIM JEFFORDS. To me, that young man who did that represents the JIM JEFFORDS of the world, willing to stand on principle no matter what the odds are. No matter what is coming at them, they are willing to stand on principle.

So after 32 years, we will miss this soft-spoken and self-effacing New Englander who has a spine of steel. After 32 years, Senator JEFFORDS, you have left your mark: education, job training, disability rights, the environment and, lest we forget, the dairy farmers of New England, who will never forget JIM JEFFORDS.

JIM, we are going to miss you, your kindness, your leadership, your courage, your generosity of spirit, and your example. Know that our love, our admiration, our respect, and our best wishes go with you and with Elizabeth and your family. Know that you have left on our Nation and the world a mark for all of us to follow in how to make our Nation and our world a better place.

Senator JEFFORDS, JIM, Godspeed. Come back now and then. Come back on the floor. Retired Senators have the privilege of coming to the floor. Come back on the floor and remind us why we are here.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, this is a very poignant morning for so many. I am so glad I have been able to arrange my schedule to be here to listen to my colleagues and friends, whom I deeply respect, and to listen to the great Senator from Vermont, JIM JEFFORDS.

If I might say how blessed I have been, I got here in 1993 and went right to the Environment and Public Works Committee. I met JIM there, and now I get to sit next to him in the Senate. I got to know his staff.

We are going to miss you. But, JIM, I must say, you made a beautiful speech today. And in listening to TOM HARKIN talk about you and explain that you have always been motivated by what is right for the people, if ever you could take an opportunity to tout your accomplishments, it is when you say goodbye. People would say that is fair. But you did not do that. You did not say: This year I passed this legislation and this bill. The rest of us have been lauding your accomplishments, but it is just like you, instead, to talk about this country you love so much. And you cite to us what our challenges are. And, of course, they continue to be the challenges you have taken up: education, the environment, fiscal responsibility, war and peace. You have left a roadmap for us, and for that we are very grateful.

I mentioned that I was sworn in in 1993. That was the so-called year of the women, where we tripled the number of women in the Senate. That sounds great, but it was from two to six. We were still a very strong minority. Our leader, BARBARA MIKULSKI, the dean of the women here, always taught us, from day one—she said: You are going to have to work with the men because they control things here, and you are going to find that among these many men there are many Sir Galahads.

JIM, you are Sir Galahad. You have been a wonderful friend to us, treating us, from the minute we walked in, as equals and colleagues. We are very grateful to you for that.

I am not going to talk a long time at all. But I want to talk about three things quickly. One is, I went to your State of Vermont this last weekend. I had been there before and always marveled at how beautiful it is, but I was taken with it again.

Now, coming from California, we have our beautiful places, believe me. So I have come to appreciate beautiful places. We overlooked Lake Champlain when we were there. Knowing that you worked so hard to make that lake clean and beautiful, thank you for that. There is so much history there, JIM, that you have also helped to preserve—you and Patrick Leahy, and so many others who came before.

But what struck me about Vermont as much as the beauty is the incredible people in your State, how involved they are. It is that old New England townhall type of quality. They get it. They are involved. They love you, JIM. They love you. When I mentioned your name, oh, my goodness, the roars came up. You could hear it blocks away.

People love you here and they love you in Vermont. And your family loves you. As you said, you are blessed, as we are blessed in your presence.

The second point is your family and how much they care about you. They are so proud of you. I know how hard it was for them when you declared your independence. It rocked their world, just as it rocked your world, and just as it rocked the country. But when you do something for the right reasons, it all works out. And you did something for the right reasons, for the people of this country.

The last thing I want to say to you is, we do not know how things will work out this November, but either way, I will be taking a larger role on the committee you love, the Environment and Public Works Committee, where you have been an extraordinary leader. You have given us a roadmap on how to fight global warming—a huge challenge we face. We cannot turn away from it because if we do, we are neglecting our responsibility. You, thank goodness, have written a bill that will show us the way.

So I am here today not only to wish you well in your retirement, and joy with your family, but to tell you that I am going to follow your leadership on global warming. I am excited about the challenge. And because of the love your colleagues feel for you, I hope you will come back here, as TOM HARKIN said, to help me with that because we are going to have to move and get going on it.

Mr. President, thank you very much. And thanks to our colleagues for giving us this time we need to pay tribute to an extraordinary Senator, one who will be missed but never forgotten.

Thank you very much. I yield the floor.

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

Mr. ROCKEFELLER. Mr. President, I have to start off anything I say—and I will be short—about JIM JEFFORDS with the word ''friendship,'' based upon his unbelievable qualities of kindness, of goodness, of steadfastness, being the same person every day under any circumstance.

We sit together. We have sat together for quite a long time on the floor of the Senate. And we talk a lot. I have the honor of talking with his staff, too, a superb staff, who adores him.

The business of friendship in the Senate is underpracticed. If you know JIM JEFFORDS, then you know why you should take more time to know your colleagues better. Because the fact is—although it has been more so recently—it is not your politics or your party that determines how you vote, but your conscience and your sense of a moral compass that guides you. In that practice, you have to think of JIM JEFFORDS.

He is an extraordinarily wonderful human being. He has got a ferocious sense of humor, which is always delivered very quietly. And yet he is deep, he is profound, he sort of looks like Vermont: chiseled; his nose is just the right shape. And, of course, he talks that way. But he is humble, not because he wants to be, just because he is. Nothing about his record is humble. But his nature is humble. He is gentle; and he really is. He listens, does not interrupt, does not insist on his point of view—except when it counts, and then he is unmovable.

All of the subjects he has concentrated on—children, the environment, many other things that have been mentioned—there is also the matter of post-traumatic stress disorder. On the Veterans Committee, which is the one committee where I do get to—not the only committee, but I get to sit with him on that committee—he has been a champion of something which Americans still do not really understand; and that is, the ferocious nature of being wounded in war these days—an Iraqi improvised explosive device that implants shards of metal into people that will remain there for the rest of their lives; the whole question of How does somebody rehabilitate a life? and What is the VA doing about that? JIM is all over that subject.

When he switched parties to be an Independent, woe be the person who said: Switch parties from Republican to Democrat—no—Republican to Independent. And, yes, he got an enormous amount of cheering and praise based upon his moral compass. He also got a lot of death threats. Life was very hard for him for a period of time. So he understood that was going to happen. But with JIM JEFFORDS, the moral compass always prevails. I think it is one of the reasons all of us here respect him so, admire him so, look to him as to what the Senate ought to be.

I had never heard the word ''ANWR'' until it was explained to me by Senator JEFFORDS. He was there early because he was thinking, as always, of our children and grandchildren, and, as they say, their children too. We always take it one generation too far, but it is true.

Alternative fuels. Will the history books write about JIM JEFFORDS on alternative fuels? Yes, they will. Do people generally in the Senate or elsewhere know that he has spent a career working on that? Probably not.

Our air; they know about that. The groundwater; they probably know about that. But his work on alternative fuels is one of the most important things he's done.

The Title I, Head Start, improving the lives of children, all of that that has been talked about—Senator HARKIN talked about, in 1975, the Individuals with Disabilities Education Act—he has always been looking ahead. Does that make him a Good Samaritan? Does that mean he is a do-gooder or does it mean that he does good? It is the second. He does what is comfortable to him and what he feels is just for the people he serves, not only in Vermont but across the United States of America.

The work he has done with post-traumatic stress disorder is awesome in terms of those of us on the Veterans Committee. He is justifiably proud of the research and work done by Vermont's White River Junction Veterans' Administration Hospital to help veterans who are struggling, as they truly are, not just with the postwar physical problems of being wounded, but the psychological problems of that, as well.

He has never sought the limelight, and he does not care about the limelight. He has been elected time after time probably partly because of that. Because he is not like so many other people who run for public office who want to tick off everything they have done. He is JIM JEFFORDS. And with JIM JEFFORDS comes a certain set of principles, a certain set of commitments to people. The people of Vermont have understood that over the years. So he has not had to promote himself in ways that others have to do.

He has always done his work, in the words of Shakespeare, with the ''modest stillness and humility'' that becomes any human being. When you look back at his record, you can see this man from Shrewsbury, VT, has left his mark on virtually every single piece of legislation on education, job training, disability legislation, and on and on and on.

JIM has always had extraordinarily deep passions and convictions, but, at the same time, he has been a paragon of civility and humbleness. JIM has a gentle voice, but his resolve and commitment to stand up for vulnerable children, veterans in need, and our environment is assertive and strong.

Throughout his career, JIM has made some very tough personal decisions. Take his decision to switch parties to be an independent in the summer of 2001. Regardless which party you are a member of, I think all of us would agree that given the fact that his move fundamentally changed the governing structure of the Senate, it truly was a profile in courage. Time and time again, JIM has been willing to take risks for his beliefs, and he deserves our respect and admiration for such independence.

In terms of public service, JIM JEFFORDS has lived a life that many aspire to. He has spent nearly every day of his life working to make the lives of people better. In the 1950s, he served in the U.S. Navy, and until 1990 he was in the Naval Reserve, where he retired as a captain. In the 1960s, he began his political service, first as a Vermont State Senator, then as Vermont's Attorney General, and then, in the wake of the Watergate scandal, he became one of the very few Republicans elected to Congress in 1974.

JIM has been a true steward of the environment. Long before many of us knew what ANWR was, he was fighting to preserve the environment for our grandchildren and their grandchildren. He has been at the forefront of fighting to make sure our air and ground water are safe for our citizens, and he has fought for the use of alternative fuels. His efforts have truly cut a trailblazing path for many generations to come.

Over the years, JIM and I have worked on many issues together, and I am particularly proud of what we have done for our students and for our veterans. He understands how important it is to make sure that our citizens get started on the right foot. He believes that the first years of a child's life are absolutely critical in the life and future of that person, and that is why he has worked so hard to push for greater funding for Head Start and other early education programs. And that is why he has worked on Title I—to help low-performing students, who disproportionately live in the rural areas that make up much of West Virginia and Vermont, achieve the standards they must meet.

That sort of Good Samaritan principle has always guided JIM's life and career. He has been extraordinary in advocating for those whose needs are often forgotten. In fact, perhaps no American living today and certainly no American legislator—I want to echo here what Senator HARKIN has said—has done more to advance the educational success of those with disabilities. Almost from his arrival in Congress. JIM took extraordinary steps because he believed that the needs of others simply could not wait. In 1975, as a House freshman, JIM co-authored what would later be known as the Individual with Disabilities Education Act, IDEA. IDEA serves as a Federal commitment to give students with disabilities a better education.

It was an extraordinary legislative achievement, one that had even greater implications in terms of setting a moral baseline imperative that we must meet the needs of those who live difficult lives. JIM has worked, not for the well-heeled or the heavy-hitting lobbysist—he has tirelessly worked for the people who truly need help.

I have also been proud to serve with JIM on the Senate Veterans' Affairs Committee. He has been an important voice in calling for compassionate care for our veterans, especially those veterans returning from Afghanistan and Iraq.

We both have States with a very high number of soldiers and veterans, and we both know how important it is for our soldiers and veterans to have the health care they have earned and deserve. The two of us have been allies in pushing for greater funding and resources to help our soldiers with PTSD, and I know that JIM is justifiably proud of the research and work by Vermont's White River Junction to help veterans struggling with PTSD.

JIM JEFFORDS has never sought the limelight—he has sought results. He

has always done his work in the words of Shakespeare, with the modest stillness and humility that becomes any human. But when one looks back at his record, you can see that the modest man from Shrewsbury, VT, has left his mark on virtually every piece of education, job training, and disability legislation over the past quarter century. It is difficult to determine how many people JIM's efforts have helped, but if it were possible to quantify his efforts, I know we would find that hundreds of thousands of lives have been improved because of his actions in Vermont and across the country.

The Senate this year is losing a treasure, a man who in the best tradition of the Senate has never been afraid of taking heroic, principled stand without having to make a lot of noise. Sharon and I are personally losing good friends in JIM and his wife Liz. And Americans all over the country are losing one of the most dedicated fighters for the basic rights that too many disadvantaged people are shortchanged on. I wish my friend well in his retirement.

I close with the sadness of losing in our body somebody such as Senator JEFFORDS. People go to him. People are comforted by his presence. People are emboldened by his nature. They see what it is he does not say to promote himself or his ideas, and somehow they are attracted to those ideas because they understand if it comes out of JIM JEFFORDS, it is good for the public.

So I think of his family too, I say to Senator BOXER, and I think of how proud they must be. I also think of just myself, to be honest, how sad I am going to be not being able to sit next to JIM JEFFORDS and share his humor and to look upon his greatness—not just his nose, but his greatness: the classic Vermonter, the classic New Englander. He has been so incredibly good for the Senate.

Mr. President, I yield the floor.

Mr. OBAMA. Mr. President, I rise today to acknowledge the extraordinary career of Senator JIM JEFFORDS.

For the past 32 years, JIM JEFFORDS has served the citizens of Vermont and the American people with integrity, intellectual honesty, and diligence. When faced with the choice between political convenience or protecting the interests of his constituents, JIM JEFFORDS always stood for Vermont and the concerns of hard-working Americans. When others decided to do what was popular in Washington or among the chattering classes, JIM remained true to his values. He has been a model of principled leadership, often ahead of his time.

Long before protecting our environment and precious natural resources occupied America's consciousness, JIM was leading on these issues. Working across party lines throughout his career, including as chairman of the Senate Environment and Public Works Committee, JIM JEFFORDS urged the President to strengthen antipollution measures, investigated the effects of greenhouse gas emissions, and promoted increased fuel efficiency. During his time in the U.S. Senate he introduced the Global Warming Pollution Reduction Act, the High-Performance Green Buildings Act, and the Renewable Energy and Energy Efficiency Investment Act.

JIM JEFFORDS has never lost sight of his constituents and their needs. He loyally stood by farmers in Vermont and all over the Nation when he fought President Bush's dairy tax, extended the Milk Income Loss Contracts—MILC—program, and supported the Farm Security and Rural Investment Act.

JIM JEFFORDS has also committed his career to improving education, which he has treated as one of the great callings of our time. Speaking at a Rally for Education in 2002, JIM JEFFORDS said of education funding that ''it is not an option, it is a necessity, for our children, for our schools and for the future of our great Nation.'' JIM JEFFORDS championed the Head Start Program, increased funding for elementary, secondary, and higher education, and sponsored the Better Education for Students and Teachers Act. He has also provided unwavering support to American children with disabilities that face a unique set of challenges in navigating our education system. Even as a freshman Congressman some 30 years ago, JIM JEFFORDS managed to marshal his colleagues in order to pass the Individuals with Disabilities Education Act.

As a member of the Environment and Public Works Committee, I have had the opportunity to work closely with Senator JEFFORDS and his capable staff. His office and his standards of professionalism inspire great respect.

On a personal level, I continue to admire a public servant that has so consistently followed his conscience. Time magazine recognized JIM JEFFORDS as the ''Person of the Week'' for his ''revolutionary'' party switch in 2001. I do not believe that JIM necessarily set out to start a revolution; rather he invoked what might be considered a revolutionary idea to some in Washington: government ought to serve the concerns and interests of ordinary Americans instead of catering to fringe groups or election year antics. In hindsight, most will hail JIM JEFFORDS' principled decision to switch parties, though I know the decision was a difficult one for him and strained his relationship with many in this body. But JIM JEFFORDS did what he thought was right, and I applaud his courage and his example of leadership.

So I thank Senator JEFFORDS not only for his lifetime of service and accomplishments but for having raised the bar for all of us.

I wish JIM JEFFORDS and his family many happy years ahead.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I thank my colleagues for their very generous and kind comments. Their remarks remind me—all of us—the Senate is a family. I also thank my colleagues for their friendship. I am honored to be able to serve with you, especially you, I say to Senator ROCKEFELLER.

You have been very kind to me over the years. I have followed your guidance, and it has been good. I thank all of my colleagues for their friendship and am honored to serve with you. And as I go forward—I don't know—I am going to wonder why I am going forward and not just staying with you.

Mr. President, now I guess we should proceed with the process that is normal. I thank the leader.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

## NATIONAL SECURITY

Mr. COCHRAN. Mr. President, I am pleased to be able to advise the Senate that the Appropriations Committee has completed our work on the bill providing funds for the Department of Homeland Security and the Department of Defense for the next fiscal year which begins on October 1.

Yesterday, the other body approved the Defense appropriations conference report, which provides new spending authority for the Department of Defense. Included in this bill is $70 billion in additional appropriations to fund operations related to the global war on terror. I expect the majority leader will call up this conference report later today for approval by the Senate.

I commend the excellent leadership and hard work of the distinguished Senators from Alaska and Hawaii, the chairman of the Defense Appropriations Subcommittee and the ranking Democrat on that subcommittee, for putting together a bill that carefully considers the requests made by the administration for this massive undertaking of defending our country, identifying the challenges that we face, which threaten our security at home and abroad. It is a daunting task, but they have brought to this challenge a lot of experience, a lot of keen insight into the needs of our country, and the way the Department has to receive funding on a predictable and regular basis to achieve its goals and carry out its important mission.

It is also my hope that the Homeland Security conference report will soon be filed in the House. It includes $34.8 billion in discretionary spending. It also reflects hard work by the conferees on that subcommittee, the distinguished Senator from New Hampshire, Mr. GREGG, and the distinguished Senator from West Virginia, Mr. BYRD, who were the chairman and ranking minority member of that subcommittee. Our conferees completed work on this bill, and we expect that it will be filed in the House, as I have suggested, I hope, very soon.

The Homeland Security appropriations bill for fiscal year 2007 appropriates $1.8 billion, designated as emergency funding for border security, to help make our borders more secure. I commend the President and the Secretary of the Department of Homeland Security for their leadership and their efforts to help strengthen the capability of protecting our homeland. Four thousand new border agents have been added. Detention facilities have been constructed. Cargo inspection has been improved. Coast Guard equipment and capabilities have been upgraded and modernized. New vehicles for agents have been acquired. New technologies have been acquired, as well, to help control illegal immigration. The capacity to detect weapons of mass destruction have been improved.

The timely consideration of both of these appropriations conference reports is very important to our Nation's security. The bills provide the funding to protect our Nation from those who would threaten us.

I commend the conferees and the staff members who worked very hard to complete our work on these bills. I appreciate President Bush's leadership in sending the requests to Congress that were comprehensive, very carefully considered. I applaud the leadership of the administration for successfully protecting our homeland.

Protecting our homeland is a huge challenge. Every year there are over 500 million people who cross our borders. There are 118 million vehicles and 16 million cargo containers that enter the United States annually. We have 95,000 miles of coastlines, 2,000 miles of common border with Mexico, and 5,000 miles of common border with Canada. These are under the jurisdiction of U.S. Customs and Border Protection, the Transportation Security Administration, and the Coast Guard.

While efforts are being made at home to protect ourselves and our borders, demanding work is being done abroad by our military forces to defeat the terrorists. They have expressed their intention to kill Americans and anyone who stands in their way.

The Defense appropriations bill fully funds military pay for our troops and includes an across-the-board pay raise that was requested by the President, as well as procurement of necessary aircraft, ships, and ground equipment to ensure that our military forces are the best in the world.

The Defense appropriations bill contains $70 billion of supplemental funding to ensure that our troops have the resources needed to succeed in the global war on terrorism.

Mr. President, I commend the good work of our conferees, and I am hopeful that both conference reports will be passed by the Senate this week. It will permit the timely transition to the new fiscal year and prevent potential funding delays that could result in a disruption of programs that are very important to our national security.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, how much time is remaining on our side for morning business?

The PRESIDING OFFICER. Fifteen and a half minutes.

Mrs. HUTCHISON. Mr. President, I will take such time as I may consume, but I will be perfectly willing to vitiate our time if we are going to a cloture vote that was scheduled for 11:30 a.m. I will go with the flow.

The PRESIDING OFFICER. The Senator from Texas is recognized.

## NATIONAL INTELLIGENCE ESTIMATE

Mrs. HUTCHISON. Mr. President, there has been so much in the news since last Sunday regarding parts of a National Intelligence Estimate that was put out in a major American newspaper. The leaked report has been the subject of much discussion, supposedly saying that the war in Iraq is hurting the chances of our stopping the terrorist attacks on ourselves and other freedom-loving nations.

Yesterday, the President said he believed it was very important, rather than just having the leaked portions of the National Intelligence Estimate available to the public, to have the whole document be out in the public forum. Within a matter of hours, the President declassified the Key Judgments of the National Intelligence Estimate so that everyone in America—and indeed in the world—would be able to see the full text of the Key Judgments, which was an internal, classified document that was meant to assess the threats, the global threats from terrorists to ourselves and other western nations, or other democracies around the world.

I think it is so important that we get the full report out there. The Key Judgments are on the Web for everyone to see. Anyone with a computer or a FAX machine can get these Key Judgments. I think what it does is show, clearly, that what the President is trying to do, and what our strategy in America is, is the right one; that is, that we must continue to pursue the terrorists without equivocation, without a lessening in commitment, without any hesitancy. We must go after these terrorists, who are inhuman, who have no standards of any moral framework, and we must not be diffident in our efforts to wipe them out before they attack Americans and other freedom-loving people in the world—indeed, innocent women, children, and men who are being slaughtered daily with suicide bombs and kidnappings and beheadings.

Secondly, the major point that the President is trying to make—and most of us in Congress agree with—is that we need to have a very long term commitment to help bring freedom to the people who are living under the regimes that treat women as if they are subhuman, that treat their own people who might be of a different sect as if they are lesser people, or because I am a Sunni and you are a Shiite, or I am a Kurd and you are a Sunni—any of those combinations. They are treating each other with the same violence, and inhumane treatment as they do with Americans.

Mr. President, I think if you look at the entire report, you will see that the strategy of cut and run is not the way to wipe out the terrorists. The President's strategy is not to treat terrorists with kid gloves. The President's strategy is to go on the offensive to bring terrorists to justice. The President's strategy is to also work with the innocent people in the Middle East so they can have freedom, they can have democracy, they can have a quality of life that would make their children want to live, rather than blow themselves up in order to kill innocent people. And it is to confront the terrorists with the same determination that they bring to their assault on freedom. We must treat them with absolute clarity—that we will not give up the defense of freedom and be dictated to by people who do not even treat their own people with humanity, and who treat women as if they are not human beings.

Mr. President, I want to talk about some specific parts of the report. I want to put in the RECORD some of the significant Key Judgments that I have not seen reported in the press. Here are some of the key parts of the report under the ''Key Judgments'' section of the National Intelligence Estimate:

> United States-led counterterrorism efforts have seriously damaged the leadership of al-Qaida and disrupted its operations; however, we judge that al-Qaida will continue to pose the greatest threat to the Homeland and U.S. interests abroad by a single terrorist organization. We also assess that the global jihadist movement . . . is spreading and adapting to counterterrorism efforts.
>
> Greater pluralism and more responsive political systems in Muslim majority nations would alleviate some of the grievances jihadists exploit. Over time, such progress, together with sustained, multifaceted programs targeting the vulnerabilities of the jihadist movement and continued pressure on al-Qa'ida could erode support for the jihadists.

That is saying in the internal document that pursuing democracies, freedom, and self-governance is one of the ways that we will be able to eventually erode the al-Qaida terrorist network and other terrorist networks with which we are not even yet familiar. So it is verifying that education and the attempt to bring self-governance to the Middle Eastern countries that do not have it is the right approach.

It goes on to say:

> We assess that the global jihadist movement is decentralized, lacks a coherent global strategy, and is becoming more diffused. New jihadist networks and cells, with anti-American agendas, are . . . likely to emerge. . . .
>
> We assess that the operational threat from self-radicalized cells will grow in importance

to U.S. counterterrorism efforts, particularly abroad but also in the Homeland.

The jihadists regard Europe as an important venue for attacking Western interests. Extremist networks inside the extensive Muslim diasporas in Europe facilitate recruitment and staging for urban attacks, as illustrated in the 2004 Madrid bombings and the 2005 London bombings.

The report goes on to say:

We assess that the Iraq jihad is shaping a new generation of terrorist leaders and operatives; perceived jihadist success there—

In Iraq—

would inspire more fighters to continue the struggle elsewhere.

The Iraq conflict has become the ''cause celebre'' for jihadists, breeding a deep resentment of U.S. involvement in the Muslim world. . . . Should jihadists leaving Iraq perceive themselves, and be perceived, to have failed, we judge fewer fighters will be inspired to carry on the fight.

Let me reemphasize what they are saying in their estimate. Should the terrorists be perceived as failing, they would have fewer recruits for their continued terrorist activities.

The report goes on to say:

Concomitant vulnerabilities in the jihadist movement have emerged that, if fully exposed and exploited, could begin to slow the spread of the movement. They include dependence on the continuation of Muslim-related conflicts, the limited appeal of the jihadists' radical ideology, the emergence of respected voices of moderation, and criticism of the violent tactics employed against mostly Muslim citizens.

The jihadists' greatest vulnerability is that their ultimate political solution—an ultra-conservative interpretation of shari'a-based governance spanning the Muslim world—is unpopular with the vast majority of Muslims. Exposing the religious and political straitjacket that is implied by the jihadists' propaganda would help to divide them from the audiences they seek to persuade.

Recent condemnations of violence and extremist religious interpretations by a few notable Muslim clerics signal a trend that could facilitate the growth of a constructive alternative to jihadist ideology: peaceful political activism.

That is exactly what the strategy of the United States has been. It is not a strategy that can be pursued on a short-term basis. Education and enlightenment is a very long-term strategy and the Muslim clerics now stepping up to denounce violence against other Muslims is exactly what we are seeing emerge. As this National Intelligence Estimate has revealed these developments are the beginning of how we can make a difference.

The report goes on to say:

If democratic reform efforts in Muslim majority nations progress over the next five years, political participation probably would drive a wedge between intransigent extremists and groups willing to use the political process to achieve their local objectives.

I did not read all of the Key Judgments into the RECORD. I did read excerpts because I think the strategy of America today is a strategy that is being borne out by the report, which is the opposite of what the leaks purported to say; that our efforts in Iraq are undermining the Global War on Terrorism. When in fact, with regard to the situation in Iraq, it is actually essential for us to win in order to keep our commitment, in order to show that America will stand strong when the times are tough, and they are tough. To show that we will stand against these terrorists is the most important thing we can do, and that is our strategy.

We should not be undercut by leaks that will undermine that strategy. We must be united as a Congress, as the President is trying to do, in saying that we must do the right thing, we must keep our commitments, we cannot cut and run because times are tough. We must admit that times are tough. We must admit that this has been one of the most difficult times in our history. But we must continue to be vigilant because, according to the report, if we are perceived as weak, if we are perceived as leaving because we are defeated rather than leaving after we have kept our word and are the victors in freeing the Iraqi people to have self-governance, then the jihadists, the terrorists, the networks, about which we don't even know yet, will be emboldened to come forward and hurt Americans in our homeland, as well as wherever they see a perceived weakness in the defenses of the people.

I think the President of the United States did the right thing yesterday by immediately declassifying this document because if people will take the time to read it in its totality, people will see that it verifies the strategy in the short term of standing firm against these terrorists to show that we will not buckle, we will not cut and run, we will not be divided as a nation in our commitment to freedom and preservation of our society, and the long-term strategy of taking the time and the patience and the effort to work with the Muslim clerics and the Muslim leaders who are willing to stand up, who are willing to risk their lives for the future of their civilization and say violence against Muslims or other people who have not harmed us is wrong.

That is what we are doing, and it is the right strategy.

The President has had the current strategy against terrorism verified by the National Intelligence Estimate. Unfortunately, the National Intelligence Estimate was partially leaked last week but not in its full context. In the full context, we see the verification of the strategy, and we cannot relent. We know these terrorists want to spread terrorism and harsh, violent, inhuman regimes wherever they can get a foothold. It is the hope of peace and freedom and humanity that America and our allies carry to the battle. It is a battle, it is a war. It is every bit as much a fight for freedom as any war in which America has been involved.

This is a war we cannot lose. We have stopped communism from taking over the world. We have stopped socialism from taking over the world. We cannot allow terrorists to take over the world if we are worth anything as leaders in this country. The President of the United States is resolute on this issue. Congress must stand with him. We must not allow selective leaks of internal intelligence advisories to be misconstrued to say that vigilance against terrorism is a losing proposition.

I hope we can bring America together to speak with one voice. I hope we can bring America together to stay the very long term course that we must pursue in order to have the opportunities for our children that we have had, to grow up in the greatest country on Earth. That is our responsibility. We are the leaders of this country, and if we cannot protect freedom for our children, if we cannot protect the opportunities for them that we have had, we are not worthy. I think we are worthy, I think the President is worthy, and I think it is our responsibility to stand strong and to point out the facts where the facts have not been pointed out.

That is exactly what I intend to do. That is what the President intends to do. It is my hope that we do not have a divided Congress behind him but instead a united Congress with a united people to say to the terrorists who would break down the freedom we have built for over 200 years and the beacon of freedom that we are to the world: We will stand, we will not run, we will not be lackluster in our commitment. We do not have a 30-minute attention span in this country. We have a memory, and that memory will never let terrorists take away our freedom, nor will it allow us to walk away from our responsibility to the future generations of America.

We stand on the shoulders of giants who have protected freedom in this country. We cannot let the American people down, and we will not.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

## MILITARY COMMISSIONS ACT OF 2006

Mr. DURBIN. Mr. President, I rise to speak about the Military Commissions Act of 2006 which the Senate is likely to consider, possibly today, certainly this week.

For those who have been following it, the debate in Washington the last few weeks has been very interesting. It has now been 5 years since the attacks of 9/11. The present administration has finally come forward and asked Congress

to pass a bill authorizing military trials to try suspected terrorists. At this late date, the President is demanding the Congress act immediately after the administration waited 5 years to come to Congress.

It is welcome news that the President is now working with the Congress to bring the planners of 9/11 to justice. Why do we have to do it today? Why do we have to do it this week?

For some of us who have served in the Senate for a while, this reminds us of a debate that took place 4 years ago. Four years ago this Congress was told that before we could return home to face the November elections, we absolutely without fail had to vote on the question of authorizing the use of military force and giving the President the authority to invade Iraq. We were told there was a timetable that had to be met; that there was no time to spare.

Despite the fact that we had limited information about the situation in Iraq, despite the fact that we had only vague assurances from the President that he would use diplomacy before he ever considered military action, despite the fact that we didn't have a coalition of allies or forces, we were told the decision had to be made. It had to be made in October, before an election.

I recall it very well because I was up for reelection. Many of us were told: If you vote wrong on this one, you may not be reelected. It wasn't an easy vote. The toughest vote any Member of Congress can face is a vote for going to war. On that vote there were 23 Members of Congress who voted no—1 Republican, 22 Democrats—and I was one of that number. I look back on it now as the right vote. I have heard many Senators who voted to go to war that day who have said: We made a mistake.

I salute their courage for standing up and admitting that. I have yet to find a single Senator who voted against that war who has said the same.

Now we are being told, less than 2 months before another election, we absolutely have to have a vote this week on a—secure fence, they call it. See if you can catch the flaw in the logic.

The proposal is to build a 700-mile fence on the Mexican border, which is 2,000 miles long. Do you catch the flaw in this logic? Is it possible that those determined to come into the United States might go around the fence? Over it? Under it? This 700-mile fence is a 19th or early 20th century answer to a 21st century challenge. It has now become a question of political bragging rights. Which party has the longest fence to take to the American voters? Is that the best we can do on Capitol Hill?

I might add, this underlying bill says it is about time we get serious about building a fence between Canada and the United States—thousands of miles. I try to envision this, what we are talking about. The 700-mile fence on the southern border is the equivalent of a fence from the Washington Monument in the Nation's Capitol to the Sears Tower in Chicago—a fence of 700 miles.

We can argue the merits or demerits of this issue, but it is clear what it is all about. It is an effort to have a political vote as close to the election as possible. It is an effort to tap into voter sentiment on the issue of immigration. It is an effort to avoid our real responsibility, and that is to demand smart enforcement—tough enforcement at the border, and enforcement in the workplace so that those who are drawn to America to find a job will be discouraged because now there will be a tamper-proof ID to establish who a person really is before they have a chance to work in this country.

It is also ignoring the obvious, too. We need agricultural workers immediately. The crops, the fruit and produce, are rotting right now in many States such as California because the workers are not permitted to come here. That is not good for the growers, of course. It is certainly not good for America. But it is a fact.

We also face another reality. There are 10 to 12 million people here today who are undocumented. I know many of them in my city of Chicago, which I am honored to represent. Many come forward to talk about the challenges they face with current immigration laws, which are almost impossible to understand. Instead of looking at the whole picture and having an honest answer, even if it isn't that popular, the Republican leadership has decided that before we get out of town we are going to vote on a 700-mile fence, on the Mexican border and a study of a fence along the Canadian border. It tells you where we are politically.

The second part of this bill is not much different. It is an effort, I am afraid, by many political strategists, to create a political wedge issue, a replay of what we faced 4 years ago with the vote on authorizing the President to invade Iraq. The reality is that the Congress has stood ready to create commissions to try terrorists for a long time. It was 2002, when Senator ARLEN SPECTER, Republican of Pennsylvania, now chairman of the Judiciary Committee, came to me and asked me to cosponsor bipartisan legislation to authorize military commissions, and I did. The understanding was we should have commissions that are consistent with the rule of law and our constitutional values. That was 4 years ago. Nothing has happened, from the administration or in Congress. Now we are told we can't wait another day.

Instead of working with Congress, the President unilaterally created military commissions that are inconsistent with American values and the law. It was no surprise when the Supreme Court ruled in the Hamdan decision this administration's military commissions were illegal.

After the Hamdan decision, I had hoped that we could work with the administration by charting a new course, a bipartisan course, as we did with so many other things. When it came to the creation of the PATRIOT Act, it was a bipartisan effort after 9/11. When it came to reforming our intelligence agency, it was bipartisan. But, unfortunately, this effort has not been bipartisan. Instead, the Administration initially demanded that Congress pass a law simply ratifying the approach that the Supreme Court has already rejected. The Republican leadership of Congress rushed to rubberstamp the President's proposal.

We need to create military commissions so those who are guilty of terrorism and war crimes can be held accountable. But we need to do it in a way that will meet the test of the body right across the street, the U.S. Supreme Court. They will ultimately look at our product and decide whether it meets constitutional muster. If the Court rejects these new military commissions, justice for the victims of 9/11 will be delayed yet again.

It is fortunate that under the leadership of Chairman JOHN WARNER and ranking member CARL LEVIN, the Senate Armed Services Committee took a hard look at this issue and produced bipartisan legislation that is vastly superior to the bill proposed by the administration. It is disappointing, but not surprising, that the White House and Republican leadership of the Senate did not accept the Armed Services Committee bill. I am afraid that was our last best hope for a bipartisan effort. But perhaps many of them do not want a bipartisan bill. Many of those strategists want a partisan issue.

It is more important that the protection of America be done on a bipartisan basis and a sensible basis than that we posture in these last few moments before an election to try to win some advantage in the polls.

I want to salute a number of Republican Senators, one of whom is presiding at this moment, for their leadership on this issue: Senator JOHN WARNER of Virginia, Senator JOHN MCCAIN of Arizona, and Senator LINDSEY GRAHAM of South Carolina, who is presiding. Senator WARNER is a World War II vet and former Secretary of the Navy; JOHN MCCAIN, Vietnam, a Vietnam vet, former prisoner of war; LINDSEY GRAHAM, who was a judge advocate in the Air Force Reserves and is the only Senator currently serving in the National Guard or Reserves.

They spoke out, and I am sure they took some heat for saying the administration's proposal was not good enough. The chorus behind them was a strong one. General Colin Powell stepped forward and said the administration's proposal did not meet the moral test of a country that wants to fight terrorism on a global basis. He was joined by General Vessey and General Shalikashvili and other military leaders who were equally critical.

Thanks to their efforts, the bill we will consider is better than it otherwise would have been. For example, the bill would make it a crime to use abusive interrogation techniques like

waterboarding, induced hypothermia, painful stress positions, and prolonged sleep deprivation.

What it comes down to is this: How will we treat detainees and prisoners? Is there a limit to what we can or should do? Will the Geneva Conventions work? This administration, the Bush administration, said a few years ago they were quaint and obsolete in a war against terrorism. Thank goodness that point of view is no longer acceptable.

President Bush says he has one test for this legislation: Will it allow the administration's secret prisons and coercive interrogation techniques to continue?

Of course we must detain and aggressively interrogate suspected terrorists. We live in a dangerous world. There are people in this world who wish us ill. We learned it on 9/11. We learned it in countries around the world, that these are people who cannot be trifled with. They must be taken seriously, and I would not support any legislation that prevented our military or intelligence investigators from asking the hard questions of those they have detained.

But there are other tests we have to apply as well. First, is the legislation we are about to pass consistent with American values and law? What makes us better than the terrorists is that there are some lines we won't cross, even in war. I believe we can fight terrorism effectively and stay true to our Constitution.

Just as important: Will this legislation put our own troops at risk or make it more difficult to fight the war on terror. As dozens of military leaders have argued in recent weeks, this is not the last war we will fight, and the standards we set today for the treatment of detainees and prisoners will determine how our brave soldiers will be treated in this and future wars.

Despite the great efforts of Senators WARNER, MCCAIN, and GRAHAM, I am concerned that provisions in the bill that will come before us do not meet these tests.

Let's take one example. The bill would revise a law known as the War Crimes Act to give Bush administration officials and those who preceded them, back to 1997, amnesty, amnesty for authorizing illegal interrogation techniques.

Think about this for a second. This administration wrote a memo. The author of that memo is a gentleman who is now before us as a potential nominee for the Federal court. In that memo it was recommended that we might use, as part of interrogation techniques, using dogs to threaten and intimidate prisoners. That was in the memo.

Now, fast forward to Abu Ghraib and to those awful, horrific photographs we saw of the treatment of prisoners in that jail. You will recall, as I do, one of our soldiers holding on a leash a dog that was growling at one of the prisoners. That soldier is in jail today for using that dog and using that technique. The person who wrote the memo suggesting the use of dogs as an interrogation technique is not only facing no questioning, but the administration is proposing he be given a lifetime appointment to the second highest court in the land.

Where is the justice, when soldiers who use these techniques, as wrong as they are, end up in prison, and those who write the memos suggesting these techniques not only are not held accountable, they are rewarded? And now we are presented with this bill, which says we will give amnesty to those who conceived of these interrogation techniques.

Over 4 years ago, then-White House Counsel Alberto Gonzales recommended to the President that the Geneva Convention should not apply to the war on terrorism. In a January 2002 memo to the President, Mr. Gonzales concluded the war on terrorism ''renders obsolete'' the Geneva Conventions. Think of that. The Geneva Conventions, international agreements that have guided America for more than a century, were obsolete, we were told by the White House Counsel at that time, Mr. Gonzales.

In his memo to President Bush, Mr. Gonzales specifically warned that administration officials could be prosecuted under the War Crimes Act if the President did not set aside the Geneva Conventions. He argued that a presidential determination that the Geneva Conventions do not apply would ''substantially reduce the threat of domestic criminal prosecution under the War Crimes Act'' and ''would provide a solid defense to any future prosecution.''

It was during that period of redefining conduct that some terrible memos and terrible standards were generated by this administration, standards which led to some of our soldiers being imprisoned. Now this bill would say that the authors of those terrible standards cannot be held accountable.

General Colin Powell, who was Secretary of State at the time, strongly disagreed with the recommendation to set aside the Geneva Conventions. He had decades of military experience informing his judgment. He argued that complying with the Geneva Conventions and effectively fighting the war on terrorism were not only possible, it was the course America should follow. In a memo to Mr. Gonzales, Secretary Colin Powell concluded that setting aside the Geneva Conventions:

> . . . will reverse over a century of U.S. policy and practice in supporting the Geneva conventions and undermine the protections of the law of war for our own troops.

General Powell said:

> It will undermine public support among critical allies, making military cooperation more difficult to sustain.

Now look at what happened in the 4 years that followed. From Washington DC, to Guantanamo, to Abu Ghraib, damage has been done to America's image. It is clear that Secretary Colin Powell was right. Unfortunately, the President rejected his wise counsel. In February 2002 the President issued a memo directing that the Geneva Conventions would not apply to the war on terrorism.

Just this summer, in the Hamdan case, the Supreme Court ruled that the President's position on the Geneva Conventions is illegal. The Supreme Court reminded the President and all of us that we are a nation of laws, even in a time of war.

Now, 4 years after Gonzales warned President Bush about possible prosecutions under the War Crimes Act, the administration wants an amnesty, retroactive immunity for their actions. According to a recent Washington Post story, Alberto Gonzales told Republican Members of Congress:

> . . . a shield is needed for actions taken by U.S. personnel under a 2002 Presidential order which the Supreme Court declared illegal.

One reason the White House may be pushing for amnesty is because high-ranking administration officials have authorized the use of several controversial interrogation techniques that appear to violate the law. In late 2002, relying on the President's decision to set aside the Geneva Conventions, Defense Secretary Rumsfeld approved numerous interrogation tactics for use at Guantanamo. The commander of Guantanamo Bay's detention operations gave the Guantanamo policies to senior officers in Iraq, and they became the bedrock for interrogation tactics in Iraq, according to the Department of Defense's own investigation. The horrible images that emerged from Abu Ghraib have seared into our mind the nature of some of these techniques, including threatening detainees with dogs and forcing detainees into painful stress positions for long periods of time.

When other countries have used these techniques throughout modern history, the United States, through our State Department, has condemned them as torture. In a memo that has been publicly released, the Federal Bureau of Investigation concluded that the techniques authorized by the Defense Secretary but ''are not permitted by the U.S. Constitution.''

Senior military lawyers, known as Judge Advocates General, have also raised serious concerns. To take just one example, in a recent hearing of the Senate Armed Services Committee, MG Jack Rives, the Air Force JAG, said ''some of the techniques that have been authorized and used in the past have violated Common Article 3'' of the Geneva Conventions.

These are not human rights groups, partisans, or journalists. This is our own State Department, our FBI, and military lawyers saying the administration has authorized interrogation techniques that violate the law.

And who will accept responsibility for these mistakes? The soldiers. The soldiers will go to jail. But if this bill

passes, those who sent out the memos will be off the hook. So while the administration claims they want to do right by the victims of 9/11 and our brave men and women in uniform, it appears that they are not doing what justice requires.

This amnesty will protect someone else. Sadly, it will also protect those who commit war crimes against Americans. Let's not forget the original intent of the War Crimes Act, enacted in 1996 by a Republican-controlled Congress, adopted by a voice vote in the House and a unanimous vote in the Senate. Conservative Republican Congressman WALTER JONES proposed it after he met with a retired Navy pilot who spent 6 years in the Hanoi Hilton, the same Vietnamese prison where Senator JOHN MCCAIN was detained.

Congressman JONES wanted to give the Justice Department the authority to prosecute war criminals like the Vietcong who abused American POWs.

Here is what Senator Jesse Helms, a leading conservative on the Republican side of the aisle, said of the War Crimes Act:

> This bill will help to close major gaps in our Federal criminal law by permitting American servicemen and nationals, who were victims of war crimes, to see the criminals brought to justice in the United States.

So keep in mind that if we water down the War Crimes Act to immunize American government officials, we also make it harder to prosecute war criminals who abuse Americans.

There is another very troubling provision in this legislation. It would eliminate the writ of habeas corpus for detainees. Habeas corpus is a Latin phrase that means ''you have the body.'' It is the name for the procedure that allows a prisoner to challenge his detention.

Over 700 lawyers from Chicago sent me a letter strongly opposing the elimination of habeas corpus for detainees. Here is how they explained the importance of habeas corpus:

> The right of habeas corpus was enshrined in the Constitution by our Founding Fathers as the means by which anyone who is detained by the Executive may challenge the lawfulness of his detention. It is a vital part of our system of ''checks and balances'' and an important safeguard against mistakes which can be made even by the best intentional government officials.

To a nonlawyer, habeas corpus may sound like an abstract legal principle, but eliminating it would have practical and very damaging consequences: it would prevent courts from reviewing the lawfulness of the administration's detention and interrogation practices. This is yet another form of amnesty for the administration.

Why is the administration so interested in protecting itself from judicial review?

Perhaps it is because the courts have repeatedly ruled that the administration's policies violate the law.

After the September 11 terrorist attacks, the administration unilaterally created a new detention policy which applies to many hundreds who have been held in detention, some for years. The administration claimed the right to seize anyone, including an American citizen in the United States, and to hold him until the end of the war on terrorism, whenever that may be.

They claimed than even an American citizen who is detained has no rights. That means no right to challenge his detention, no right to see the evidence against him, and no right even to know why he is being held. In fact, an administration lawyer claimed in court that detainees would have no right to challenge their detentions even if they were being tortured or summarily executed.

Using their new detention policy, the administration has detained thousands of individuals in secret detention centers around the world. While it is the most well-known, Guantanamo Bay is only one of these detention centers. Many have been captured in Afghanistan and Iraq, but people who never raised arms against us have been taken prisoner far from the battlefield, in places like Bosnia and Thailand.

Who are the detainees in Guantanamo Bay? Back in 2002, Defense Secretary Rumsfeld described them as ''the hardest of the hard core'' and ''among the most dangerous, best trained, vicious killers on the face of the Earth.'' However, the administration has since released hundreds of the detainees and it now appears that Secretary Rumsfeld's assertion was false.

According to media reports, military sources indicate that many detainees have no connection to al-Qaida or the Taliban and were sent to Guantanamo over the objections of intelligence personnel who recommended they be released.

There have been all sorts of studies.

I recall visiting Guantanamo recently where Admiral Harry Harris said to me—I asked him about the prisoners there. He said, ''They are not being punished—they are only being detained.''

They haven't been charged with anything—and that is the point. Habeas corpus allows these people being held for years to ask why they are being held. They are not automatically released, but under habeas corpus they can ask: On what basis are you keeping me as a prisoner?

I hope my colleagues will stop and think about this for a moment. If there is a dangerous person in Guantanamo who threatens an American soldier or any American citizens with an act of terrorism, if they have been complicit in any act of terrorism involving al-Qaida or Taliban, from my point of view they should be incarcerated and held until there is no danger to the United States. But if we are simply holding 455 people with no charges, indefinitely, and no right to challenge the basis for their detention, until this war on terrorism, which has no definable end to it, comes to an end, that is not consistent with the principle of justice.

In 2004, in the landmark decision of Rasul v. Bush, the Supreme Court rejected the administration's detention policy. The Court held that detainees can file habeas corpus claims in court to ask why they are being detained.

Rather than changing their policies to comply with the Court's decision, the administration has asked the Republican-controlled Congress to change the law to eliminate habeas corpus for detainees. This would overturn the Court's decision in Rasul v. Bush and immunize the administration's detention policies from judicial review.

Tom Sullivan is a prominent attorney in Chicago and a friend of mine. Tom served in the Army during the Korean war. He is a former U.S. Attorney. On a pro bono basis, he and his law partner Jeff Colman have taken on the cases of several Guantanamo detainees.

Tom says that his clients were not detained on the battlefield and that they are not even accused of engaging in hostilities against the United States. He believes they are innocent and are in Guantanamo because of mistakes that were made in the fog of war. Tom has been a lawyer for more than 50 years. He believes habeas corpus is the bedrock of the American legal system because it is the only recourse available when the government has mistakenly detained an innocent person.

ADM John Hutson was a Navy judge advocate for 28 years. Admiral Hutson testified yesterday at a Senate Judiciary Committee hearing. Here is what he said about eliminating habeas for detainees:

It is inconsistent with our own history and tradition to take this action. If we diminish or tarnish our values, those values that the Founders fought for and memorialized in the Constitution and have been carefully preserved by the blood and honor or succeeding generations, then we will have lost a major battle in the war on terror . . . We don't need to do this. America is too strong. Our system of justice is too sacred to tinker with in this way.

Admiral Hutson also testified that eliminating habeas will put our own troops at risk:

> If we fail to provide a reasonable judicial avenue to consider detention, other countries will fell justified in doing the same thing. . . . It is U.S. troops who are forward deployed in greater numbers and on more occasions than all other nations combined. It is our troops who are in harm's way and deserve judicial protections. In future wars, we will want to ensure that our troops and those of our allies are treated in a manner similar to how we treat our enemies. We are now setting the standard for that treatment.

When I visited the detention facility at Guantanamo, I saw American soldiers doing their duty in a very bleak and desolate spot. I salute them for serving their country. Every day they wake up, put on the uniform of the United States and serve us with honor and distinction. Congress should not do anything to make their job more difficult.

We should not have a double standard where our brave men and women in uniform go to jail and high-ranking political appointees are not held accountable. What kind of message does that send to our soldiers?

If we eliminate habeas corpus for detainees at Guantanamo, we will put our troops in the impossible position of serving as jailers for men who are indefinitely detained with no ability to challenge their detention.

Think about that for a moment. If there were an American employee or an American citizen or an American soldier being held in a foreign place with no charges against them, indefinitely, with no recourse under the law, we would be protesting in the strongest terms.

The American people want us to bring the planners of 9/11 to justice. That should be the focus of our legislation, not giving amnesty to administration officials and not immunizing the administration's policies from judicial review.

These provisions fail two crucial tests. They are inconsistent with American values, and they would put our troops at risk. They must be changed.

I look forward to the consideration of this bill on the Senate floor with amendments to be offered to make these changes so that we can come forward with a bipartisan bill, a bill that will make America safer but not at the expense of our basic values.

I yield the floor.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 3962 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Mississippi.

## MILITARY COMMISSIONS ACT OF 2006

Mr. LOTT. If I could speak on this very important issue addressed previously by the Senator from Illinois, the Military Commissions Act of 2006, I have been restrained in making comments on this process, although I admit I have had to bite my lip a few times because I believed the process that was underway was responsible.

Let me go back and talk a little bit about the beginnings of why this act is necessary and where we are now. We have been in some very difficult times and some uncharted waters when it comes to the war on terror since September 11. It has challenged us in many ways to deal with problems we have not had to deal with before, with an amorphous enemy which does not line up in uniform, in rank, but takes the vehicle of suicide bombers or roadside bombs—the worst of all possible attacks on innocent men and women and children—with no uniform, with no concern for what it does to these innocent people, not to mention those who are trying to bring about greater peace and democracy and opportunity and security in the world, in Afghanistan and Iraq and the Middle East and, yes, here at home.

We are working through this as we go forward. These are unique times. In this process, we have been able to capture and deter some of the worst of the worst jihadists in the world, intent on killing our soldiers and innocent men and women. We have had to deal with them. These are not people who ordinarily have been captured who would be covered by the Geneva Conventions. They are not serving in a country's military; they are murderers of the worst sort.

We have had to deal with this issue. This administration has dealt with it. They have done it responsibly. Have they made some mistakes? Why, of course; we are human beings.

All of this led to a very unfortunate Supreme Court decision, referred to—again, unfortunately—as the Hamdan decision. The Supreme Court clearly made a mistake. I must admit I was disappointed in some of the rulings of the judges, but it has forced our hand to try to make it clear in the law and with the administration how we are going to deal with this question of interrogating these terrorists, how we are going to deal with some of the evidence that is acquired through that process. The administration has been working with the lawyers, with the Congress, and with the Senate to try to work through this issue.

Some people were very distraught last week that we seemed to be having disagreement within our own ranks on the Republican side of the aisle where three or four Senators or some Senators had some concerns. I felt very differently. Finally, we were dealing with issues that really matter. Questions of law, how we deal with the terrorists, how we deal with the evidence—these are very serious discussions, the kinds of things the Senate should be doing a lot more of.

While one can disagree with who was doing what, we went through a process, took up legitimate questions of the law—how to deal with the Geneva Convention; how is it perceived—and came to an agreement. I still had my doubts. There are parts I still do not particularly like. I thought it was a very good process, with a lot of different people, a lot of lawyers, a lot of military people, a lot of leadership in the Congress, and they came up with a conclusion. I have had occasion now to take a look at what they came up with, had questions about, and it is pretty good. However, it is an area where we must act because if we do not act, we are not—the administration, the Government—going to know how to deal with interrogation or with the terrorists or how to deal with the evidence. This is a case where we do not have the luxury of not dealing with this issue. We have to do it.

In some other areas, we should act. The electronic wiretaps matter—we should deal with that, but we don't have it. We can go forward on the law as it is. In this case, we have to clarify the situation, or these people who are being held in Guantanamo Bay are going to be hanging in limbo. If you are worried about them, which I am not particularly, there needs to be a process of how we will deal with them.

That is how we got where we are. That is now pending as an amendment to the border security bill that provides for a fence along our southern border with Mexico. That is not the way it should be done. It should be considered clean. But it is typical of what has happened all year long in the Senate. The whole operation from the other side of the aisle is delay it, drag it out, don't cooperate. Why can't we at least debate? Why have we gone through a day and a half of nothingness instead of considering and debating the substance of the amendment which should be a bill and also the substance of border security? Does anyone here want to leave to go home for an election period—and that is what this is really all about—without having addressed how we do the military trials and without having done something more significant about border security? Not me, although I suspect there are some who say: Yes, let's don't let anything happen; then we can blame Senators, certain people, leaders, whatever, the administration, because nothing happened. Nice deal if you can pull it off. I don't believe the American people will buy that deal.

Also, in listening to some of the comments in the Senate, it stuns me. First of all, I am an attorney. I have not practiced for a long time. I find myself now involved in a lawsuit. Whenever they say, ''Bring on the lawyers,'' look out, because now we are going to get into a huge, big discussion of the niceties of trials and evidence and all of that, and we are guaranteed to have a lot of confusion moving forward.

I wish to again emphasize what we are dealing with. We are dealing with, I believe Colin Powell was quoted as saying, the most vicious killers in the world. These are bad people. These are the people who admit they are jihadists. And if they get out, they would do everything to kill Americans, Europeans, Asians—anyone they think does not agree with their religious positions. These are not citizens, these are not employees of the government, and these are not soldiers. These are extremist jihadists of the worst sort.

Now we have people worrying about how they are going to be incarcerated or interrogated or what evidence would be admissible. Lawyers can work that out. I know enough about the law to know that judges and juries can decipher the legitimacy of evidence and how it was obtained. The parsing we have been through is a disgrace, in my opinion.

In terms of the interrogation, yes, we have to be concerned about our treaty obligations. Our President and our Government have to be concerned

about that. Senators, too. We have already voted, and I voted, to clarify our position that we are opposed to torture. I voted for the McCain position. But now, what we are arguing over, I am concerned. What are we going to do in terms of interrogation to get information that can save one marine's life or thousands of innocent people? Are we going to ask them: Please, pretty please? When they let on like some of the techniques that have been used are such horrible things—being threatened by a dog? Come on. Have they never delivered laundry to someone's house and had a dog come after them? Have they never lived? Now being threatened by a dog is considered what—torture? Oh, by the way, we can't have them in stressful positions. What is that? You mean like standing up? Some of these complaints are absolutely ludicrous. Are we going to be careful not to insult them in some way? How are we going to get this information?

And by the way, now our men and women who have to find a way to get information from these worst of the worst vicious killers in the world could be liable, and even worse than that, when they thought they were complying with the law as they understood it and as their superiors told them, they could be liable to be tried—after the fact.

This legislation at least says that prospectively, here is going to be what is expected. If you exceed this, if you get over into the torture area, yes, you will be liable. But to go back and say, now, wait a minute, what you did could make you liable, when we have people trying to do their job for the American people—our soldiers in Iraq and Afghanistan now could be sued, and there are complaints that we are not going to make sure these people are not going to be, after the fact, ex post facto, tried? These same people are talking about amnesty for people illegally in America. Yet when they talk about amnesty for people doing their job as best they could, as they understood the law, no, we do not want to give them amnesty. That would be a horrible mistake, if we do not provide some clarity and some protection for those who may have exceeded that clarity in the past even though they understood what they were doing was wrong.

Now we have this huge discussion about habeas corpus. Bring on the lawyers. What a wonderful thing we can do to come up with words like this. Our forefathers were thinking about citizens, Americans. They were not conceiving of these terrorists who are killing these innocent men, women, and children. These are not citizens. These are not people in America. We want them turned loose arbitrarily and then on the other hand turn around and, say, criticize the administration because some people who were caught in this process were subsequently released when you find out maybe they shouldn't have been?

Ladies and gentlemen, this is the political season, I am sorry to say. I would have thought the Senate could rise above all this partisan political stuff. Everybody is trying to rewrite history or rewrite the law or prove a mistake was made or this intelligence was available which was different from that intelligence. Who is taking the time and looking at where we are now? Where do we want to be? How are we going to handle interrogations? How are we going to handle evidence? How are we going to do a better job for our men and women in the decisions we make in Iraq and Afghanistan? Who is looking for the future around here? No, we are all throwing political spears at each other. I don't think the American people appreciate that. It is embarrassing, quite frankly, to me.

I have been on the Intelligence Committee for 4 years, and for 4 years we have been going back trying to refigure the intelligence. We have found out the intelligence we were receiving in that committee—the Senators, Congressmen, and the President—was not as good as it should have been. Okay, good. Admit that. Now what are we going to do about it? How many hearings do we have where the CIA and the Director of National Intelligence were asked: What are you doing to implement the law we put in place to address the problems we found? Where are we going to be in the future? What have we done to actually go to meet with our CIA agents around the world and hear what the real country situation is in critical parts of the world? Not one time have we done that.

No, even the Intelligence Committee, which for years the Senate worked to make sure it stayed nonpartisan, bipartisan, and worked together for the good of the country, in close quarters, now is just another partisan committee. Staff fight each other; intelligence information is leaked; classified intelligence information is leaked to the New York Times and the Washington Post. No one is identified. No one is punished for that.

What worries me, this is not just about politics; this is about people's lives. People get killed based on the intelligence we get or don't get or the oversight we have.

I hope we can complete our work. Hopefully, it will be good work by the end of the week.

Let's go home and get this political period over with, but when we come back next year, I think it is time we assess where we are. How are we going to do a better job? What is America's agenda? What can we do together in a bipartisan way? Is there anything left? And if we do not, I think there will be a pox on all of our houses.

So on this particular subject of the Military Commissions Act of 2006, let's get it up, let's debate it, and let's have a vote. We have to do it. I think they have done pretty good work. If I could get in a room with my lawyers, yes, I would write it differently. I think more of that evidence should be admissable with less restraints. I think more of the techniques that have been used in the interrogation of terrorists should be used than are in this provision. Once again, it is not perfect, but it is good enough. It is the right thing to do.

Madam President, observing no Senator wishing to speak at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. MURRAY. Madam President, I ask unanimous consent to be allowed to speak as in morning business.

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

## DEMANDING ACCOUNTABILITY

Mrs. MURRAY. Madam President, the hardest decisions we make in the Senate involve asking our fellow Americans to risk their health and their lives in defense of our country. The cost to our country, to our communities, and to our families is so great that in any war we have an obligation to make sure we are doing right by our service members, by our veterans, and by our country.

That is why we in this Congress need to ask questions. We need to ask questions such as: Do our troops have a clear mission? Is there a plan to achieve that mission? Do our troops have the support and equipment they need to succeed? Do we have the right people in place? And are we taking care of our veterans when they return home from military service?

For too long, this Congress has not done its job of asking those questions and demanding answers. Here in Congress, we have a responsibility. We have a responsibility to make sure the Bush administration, or any administration, is fulfilling those critical requirements. So today I rise to offer an update on where we stand on some of these questions and to share some disturbing news from recent reports. The evidence I am going to share with my colleagues today points to five disappointing conclusions, and they all demand hearings and they demand accountability.

First of all, the Bush administration misled Congress about its failures in planning for the care of America's veterans.

Secondly, the Bush administration still does not have a plan to care for our veterans.

Third, we do not have a clear mission in the war in Iraq. And that fight has greatly impacted our ability to prosecute the broader war on terror and, according to the latest intelligence estimate, has helped to fuel new terrorist recruits.

Fourth, the Bush administration has put politics over progress in Iraq and at home. In Iraq, it sent political cronies to staff the provisional government instead of experienced professionals who could get the job done. From ''Brownie'' at FEMA to new reports about the HUD Secretary, the Bush administration put politics over competence.

Finally, Congress—us—we are not doing our job of oversight. Unless we hold hearings, until we demand answers, and until we require accountability, we will just keep muddling through with the same poor results.

We can do a lot better. We can be safer. And we can be more successful. But it has to start with an honest assessment of what is working, what is not, and what we need to change.

In that spirit, I want to discuss those five conclusions I mentioned, starting with the fact that the Bush administration misled Congress about its inadequate efforts to care for our veterans.

Over the past 2 budget years, the Bush administration was dramatically wrong in its planning for veterans health care. The result was a $3 billion shortfall last summer. And this was not just a failure in planning. It meant failing to get our veterans the services they required in a timely fashion. It meant veterans had to face long waits to see a doctor. And it meant they did not get the care they deserved.

That horrible planning is no way to care for the veterans who have sacrificed so much for us. We can do better. That is why after that failure I joined with Senators AKAKA, DURBIN, and SALAZAR. Together we asked the Government Accountability Office to investigate what happened at the VA. Well, this is the report we got back. Frankly, the answers are pretty damning, and they cast doubt on whether we can rely on this VA for accurate numbers and straight answers.

I wish to focus on the four findings in this report.

First of all, the GAO found that the VA knew it had serious problems with its budget, but they failed to notify Congress, all of us here. Even worse, they misled us. The report suggests that the VA could still, today, be sending us inaccurate information in its quarterly reports.

Secondly, the GAO found that the VA was basing its budgets on ''unrealistic assumptions, errors in estimation, and insufficient data.''

Third, the Pentagon failed to give the VA up-to-date information about how many service members would be coming down the pipeline and into the VA.

Finally, the GAO found that the VA did not adequately plan for the impact of service members coming home from Iraq and Afghanistan.

For me, I think one of the most disturbing findings is that the VA kept assuring us here in Congress that everything was fine, while inside the VA—at the same time it was assuring us things were fine—it was very clear that the shortfalls were growing. The VA, in fact, became aware it would have a problem. In October of 2004, inside the VA, they knew they had problems, but they did not admit those problems until June of 2005. Veterans were telling me of long lines and delays in care. For months, I tried to give the VA more money, but the administration fought me every step of the way. And who paid the price for those deceptions? America's veterans, and that was just wrong.

Let me walk through some of the deceptions found in this GAO report. It shows a very troubling gap between what the VA knew and what the VA told us.

According to the GAO report, starting back in October 2004, the VA knew that money was tight. It anticipated serious budget challenges, and it created, inside the VA, a ''Budget Challenges'' working group.

Two months later, in December of 2004, that budget group made internal recommendations inside the VA to deal with the shortfall they knew they had. They suggested delaying new initiatives and shifting around funding.

Two months later, in February of 2005, the Bush administration released its budget proposal for 2006. The GAO found that budget was based on ''unrealistic assumptions, errors in estimation, and insufficient data.''

A week later, at a hearing on February 15, here, I asked the VA Secretary if the President's budget was sufficient. He told me:

> I have many of the same concerns, and I end up being satisfied that we can get the job done with this budget.

Let's remember what was happening back at that time. I was hearing from veterans that they were facing delays in care and that the VA system was stretched to capacity. But the VA kept saying: Everything is fine.

On March 8, Secretary Nicholson told a House committee that the President's fiscal year 2006 budget ''gives VA what it needs.'' Well, I was hearing a much different story as I spoke with veterans in my home State and around the country. So that is why on March 10 I offered an amendment in the Senate Budget Committee to increase veterans funding by 3 percent so we could hire more doctors and provide faster care for our veterans. Unfortunately, the Republican majority said no.

Now, that same month, while that was happening, the VA's internal monthly reports showed that demand for health care was exceeding projections. That was another warning sign that the VA should have shared with us, but it did not.

On March 16, Senator AKAKA and I offered an amendment here on the Senate floor to increase veterans funding by $2.85 billion. Once again, the Republican majority said no.

The next month, on April 5, Secretary Nicholson wrote to Senator HUTCHISON:

> I can assure you that the VA does not need emergency supplemental funds in FY 2005.

A week later, on April 12, I offered two amendments on the Senate floor to boost veterans funding. First, I asked the Senate to agree that the lack of veterans funding was an emergency and we had to fix it. The Republican majority said no. So I asked the Senate to agree that supporting our veterans ought to be a priority. Again, the Republican majority said no. As a result, veterans did not get the funding they needed and the deception continued.

On June 9, I asked Secretary Nicholson at a hearing if he had enough funding to deal with the mental health challenges of veterans returning from Iraq and Afghanistan. He assured me the VA was fine.

So for 6 months, we had happy talk that everything was fine within the VA. Then, in June, just 2 weeks after the Secretary's latest assurance, the truth finally came out.

On June 23, the VA revealed a massive shortfall of $3 billion. Well, I went to work with my colleagues and we came up with the funding. But we could have solved that problem much earlier and saved our veterans the delays they were experiencing.

By misleading us the entire time, the Bush administration hurt our American veterans. We could have provided the money when it was needed. We could have been hiring the doctors and nurses we needed. We could have been buying the medical equipment that was needed. And we could have been helping thousands of veterans who were sitting on waiting lists waiting for care.

Here is the bottom line. The Bush administration knew about this problem in October of 2004. They saw it getting worse month by month, but here in the Senate, in the House, they assured us everything was fine. They worked adamantly to defeat my amendments to provide funding, and they did not come clean until June of 2005.

That is unacceptable. I think our veterans deserve real answers.

This GAO report shows that the VA was not telling us in Congress the truth and was fighting those of us who were trying to help. I think we need to bring Secretary Nicholson before the Veterans Affairs' Committee so we can get real answers. We need to ensure that the VA doesn't repeat the same mistake of the past 2 years. We owe that to our current and future veterans who sacrifice so much for us.

We need an explanation of why the VA lied to us about the so-called ''management efficiency.'' The GAO found those alleged savings were nothing but ''hot air.'' This report clearly shows the Bush administration misrepresented the truth to us in Congress for 4 fiscal years, through 4 budgets, and 4 appropriations cycles about those bogus savings. When they could not make these efficiencies a reality, they took the funds from veterans' health care. That, too, is unacceptable.

This report also suggests that even in its latest quarterly reports to us, the

VA is slow to report and doesn't provide key information we required, such as the time required for veterans to get their first appointment.

The GAO report also says that the Department of Defense failed to provide the VA up-to-date information on how many service members would be separating from service and seeking care at the VA.

That is frustrating to me because I have been asking every general who comes up here if they are doing enough to ensure a smooth transition from the Pentagon to the VA. In fact, on February 16 of last year, I questioned Secretary Rumsfeld directly. I got him to agree that caring for our veterans is part of the cost of a war. But he had no real answer when I asked why his request for the war did not include funding to care for our veterans.

Finally, the GAO report verifies that the VA failed to plan for the impact of the veterans who are coming back from Iraq and Afghanistan. I am very concerned that the Bush administration still, today, right now, does not have a plan to meet the needs of our returning service members.

Look at the gap between what the VA told us it needs and what we are actually spending on veterans' health care. In July, a few months ago, the VA sent an estimate to the Congressional Budget Office. The VA said it would need $1 billion a year for 10 years to care for veterans from Iraq.

But here is the problem. We are already spending more than $1 billion this year, and we still have not seen the lion's share of veterans return home. There will be more veterans needing help, and $1 billion a year is not going to cut it.

I have heard some of my colleagues speak about the generous increases to VA programs, and I agree they have been helpful. But unless the dollars we provide meet the needs of our veterans, we will not have fulfilled our responsibility to those we have asked to go to war for us.

Let's focus on one area of veterans health care—support for mental health challenges, such as post-traumatic stress disorder. Here is what the Associated Press said recently:

> More than one-third of Iraq and Afghanistan veterans seeking medical treatment from the Veterans Health Administration report symptoms of stress or other mental disorders—a tenfold increase in the last 18 months, according to an agency study.

That is from the Associated Press. It is a good thing that veterans are coming home and seeking help. I hope it means we have made it easier to get care and we have reduced the stigma associated with the invisible impacts of war. During the Vietnam war, I saw those challenges firsthand when I volunteered in the psychiatric ward of the Seattle VA hospital.

I think it is good that our veterans are coming home and asking for care, but we have to make sure it is our responsibility in this Congress that we have the funding to meet that need.

The AP article I mentioned talks about a soldier from Virginia Beach, VA, who was having a hard time sleeping when he came home from Iraq. Do you know what he was told? He was told he would have to wait 2½ months for an appointment at the VA facility.

Here is a service member who has gone to war in Iraq, done what his country asked, and he comes home and asks for help, and all he is told by the VA is to get in line and wait 75 days. I find that pretty disgraceful.

I have held a number of discussions in my home State of Washington with our veterans and with mental health experts. I was recently in Everett, WA, on August 17. I heard about the challenges they are facing on the ground.

Whether it is dealing with a large number of veterans with severe physical injuries, or traumatic brain injuries, the VA has no plan to deal with this.

Whether it is dealing with the 16 percent of wounded service members coming back from Iraq with eye injuries, which Walter Reed reported in August, the VA has no plan to deal with this.

Whether it is dealing with one-third of all service members to return home and separate from the military, who are seeking mental health services, the VA has no plan. And we in Congress are still not getting straight answers.

In that AP article, a VA official said he is not aware of problems with veterans getting mental health services. Dr. Michael Kussman is quoted as saying:

> We're not aware that people are having trouble getting services from us in any consistent way or pattern around the country.

A lot of our veterans advocates disagree with that. In fact, another VA official pointed to serious problems in meeting the mental health need of our veterans.

In the May edition of the Psychiatric News, Dr. Frances Murphy, the Under Secretary of Health Policy Coordination at the VA, said the agency is ill-prepared to serve the mental health needs of our Nation's veterans.

In that article, Dr. Murphy notes that some VA clinics don't provide mental health or substance abuse care, or if they do, ''waiting lists render that care virtually inaccessible.''

The Bush administration has failed to deliver our veterans the care they need, denying them the respect they deserve. Given the VA's bad track record and misleading statements, we need to demand in Congress a real plan from the VA to ensure that our veterans get the care they have earned.

Another question we need to be asking in the Senate is about our mission in Iraq today. Unless we have clarity and purpose of mission, we are not going to know when we have achieved it and when our troops can come home.

We all want the same thing in Iraq—for our troops to complete their mission successfully and come home safely. But today our troops' mission in Iraq lacks clarity. What are they accomplishing there today? Overthrowing Saddam Hussein? They already accomplished that. Looking for weapons of mass destruction? They looked; no weapons were found. Are they supposed to be setting up an Iraqi government? We have done that. The Iraqi people have created a constitution, elected leaders, and filled their Cabinet.

Our troops have done everything we have asked them to do. What is left? Will the President's policies get us there? That is the discussion we ought to be having in the Congress. But every time we ask these questions, we get the same empty response from the President, his Cabinet, and the Congress: Stay the course.

Stay the course is not a good plan, if the course you are on is not working. We also have to get to the truth about the relationship between Iraq and the broader war on terror.

On September 6, on the floor of the Senate, I warned that the President's focus on Iraq has distracted us from the larger war on terror. I said the President took a detour from the war on terror and invested the majority of our resources into Iraq—seemingly forever.

That weakens our ability to fight the broader war on terror and it leaves us vulnerable. We have not made the investments here at home to protect ourselves, and we have not finished our work against al-Qaida. Bin Laden is still on the loose. Afghanistan is a mess, and United States troops are imperiled.

Today, 3 weeks after I gave that speech on the Senate floor, we learned that the National Intelligence Estimate concluded that the war in Iraq helped to fuel the recruitment of new terrorists. The administration's failure to plan and face the truth in Iraq demands congressional hearings so we can chart a better course.

We also need to examine how the Bush administration bungled Iraqi reconstruction. On September 17, the Washington Post ran a story titled ''Ties to GOP Trumped Know-How Among Staff Sent to Rebuild Iraq.'' That article describes how Americans were selected to work in Iraq for the Coalition Provisional Authority. That article said:

> Applicants didn't need to be experts in the Middle East or in post-conflict reconstruction. What seemed most important was loyalty to the Bush administration.

It goes on to say:

> The decision to send the loyal and the willing, instead of the best and the brightest, is now regarded by many people involved in the 3 and a half year effort to stabilize and rebuild Iraq as one of the Bush administration's gravest errors.
>
> Many of those selected because of their political fidelity spent their time trying to impose a conservative agenda on the postwar occupation, which sidetracked more important reconstruction efforts and squandered good will among the Iraqi people, according to many people who participated in the reconstruction effort.

They had a political loyalty test instead of a competence test, and that

may be responsible for how long we have had to stay in Iraq and the problems we now face. Congress—us—we need to look at that and we need to hold people accountable.

Unfortunately, this pattern and practice of political favoritism within the administration extends beyond Iraq to how the Bush administration handles Government contracts here at home. Just last week, we got new evidence that a member of the President's Cabinet has made a series of statements that highlighted the importance of politics in awarding Government contracts in his agency.

In May, I asked the Inspector General at HUD to look into Secretary Alphonso Jackson's public statements that he deliberately denied a contract to a firm that had been critical of President Bush. Now, last week, the IG sent me the results of that investigation. This report is 340 pages long, with hundreds of pages of sworn testimony from dozens of HUD officials. This report includes sworn statements from HUD personnel, stating that Secretary Jackson told his staff to monitor the political affiliation of contract competitors and consider those affiliations in the awarding of contracts.

Secretary Jackson said that a HUD contractor had strong political affiliations that were not supportive of the President, and the Secretary said he did not want the contractor to receive any additional HUD contracts. As a result, the contractor's award was subjected to an unusual extent of delay and review.

So we have a Cabinet Secretary telling his staff to issue contracts based on politics, not based on who can do the best job for us, the American taxpayers. It is true that, in looking at the record, the Justice Department concluded:

> that no apparent criminal violation could be discerned based on evidence to date.

But the Justice Department came to that conclusion only because HUD staff actually ignored the Secretary's inappropriate instructions.

When you combine what has been going on at HUD with what happened at the CPA in Iraq and reports about similar issues at the Department of the Interior, it is clear that this Congress—all of us—needs to demand accountability.

That is why, last week, I wrote to White House Chief of Staff Josh Bolten and urged him to take immediate steps to ensure that political favoritism and discrimination do not play a role in Federal contracts.

I recognize we cannot rely on the White House Chief of Staff to clean up the Bush administration, which brings me to my final point this morning.

We need real oversight. In this Congress, there has been very little oversight of this administration. The President has basically had free reign because of this Republican-controlled Congress, and we have failed to do the job in asking tough questions and demanding answers.

Norman Ornstein is an expert on Congress at the conservative American Enterprise Institute, and he said this Congress is the worst he has seen in terms of oversight.

He told the Philadelphia Inquirer:

> These people have long thought of themselves as foot soldiers in the President's army, and their view is that oversight is something to avoid, lest they find something that might embarrass the administration. I don't see a single sign that this attitude will substantially change.

That was congressional expert Norman Ornstein on the Republican failure to oversee the Bush administration.

Democrats are trying to provide the oversight that Republicans so far have been unwilling to provide. On Monday, in fact, the Democratic Policy Committee held a hearing on preparations for the war in Iraq. Retired military leaders at that hearing told us that the Bush administration failed to plan for the war and that the administration misled the American people.

We had to hold those hearings under a policy committee banner because Republicans would not hold real committee oversight hearings. We have to have oversight here, no matter what the administration is, Republican or Democratic, so that we as Members of this body who represent people across the country can learn the facts and we can fix things that are not going well. That is our job. If we never have real hearings, if we never demand real accountability, well, we will never get good results.

I believe America can do a lot better. I believe we can be more secure. I believe our troops can be safer. But it has to start with the truth, not rosy predictions of how things will be, not declarations of will that gloss over the facts on the ground, not corruption in politics holding back progress. Simply the truth. And, so far, this Congress has been unwilling to let our citizens learn the truth.

I think the American people deserve better, and I hope each one of us goes home and thinks about what our responsibility is to the people we represent and to the future of this country.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. THUNE) Without objection, it is so ordered.

## ORDER OF PROCEDURE

Mr. FRIST. Mr. President, for the information of our colleagues, we will engage in a unanimous consent request which will set out the activity for the afternoon and possibly early evening on the Supreme Court Hamdan decision.

I ask unanimous consent that the cloture motion with respect to amendment No. 5036 be withdrawn, and that further, the cloture vote scheduled in relation to H.R. 6061 be delayed to occur following the disposition of S. 3930, and that the Senate now proceed to the consideration of Calendar No. 634, S. 3930, relating to military tribunals; provided further, that the substitute amendment, the text of which is at the desk, be considered and agreed to as original text for the purpose of further amendment; provided further, that the only other amendments in order, other than any managers' amendments which are to be cleared by both managers and the two leaders, be the following:

Levin, substitute; Rockefeller, congressional oversight; Kennedy, interrogation; Byrd, sunset; Specter, habeas.

I further ask unanimous consent that the listed amendments be limited to 60 minutes equally divided between the two leaders or their designees, other than the Specter amendment and the Levin amendment which will be limited to 2 hours equally divided, as stated above, and that there be 3 hours for general debate equally divided, again, between the two leaders or their designees. I further ask unanimous consent that following the disposition of the above amendments and the use or yielding back of time, the bill be read a third time and the Senate proceed to a vote on passage, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, this is in keeping with our agreement. I wanted the record to reflect—in case Senator LEAHY is watching us because he wanted to make sure he would have 45 minutes on his amendments and 15 minutes on the bill—it is my understanding Senator SPECTER will be giving him 15 minutes of his time, but if he doesn't, I will take it from the bill. So Senator LEAHY will have his 45 minutes, 15 minutes on this bill.

So I think this is an opportunity to improve this bill. We would all like to have had more time for hearings and debate on the floor, but we are where we are. I am thankful and grateful that we have an opportunity to improve this bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, I will have an opening statement on the bill. But what we have done is set out, with a time agreement, a way to address a very important piece of legislation. I appreciate the Democratic leader and his caucus, our leadership and our caucus all agreeing upon this outline of how we will address an issue that will make us safer and more secure.

We will turn to the bill, and then I will make an opening statement, and then we will start right in with the amendment process following my opening remarks.

MILITARY COMMISSIONS ACT OF 2006

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

The assistant legislative clerk read as follows:

A bill (S. 3930) to authorize trial by military commission for violations of the law of war, and for other purposes.

The amendment (No. 5085) was agreed to.

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

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, for 5 years we have been a nation at war. It is a war unlike any we have ever before fought. It is an ideological war against radicals and zealots. We are fighting a different kind of enemy—an enemy who seeks to destroy our values, to destroy our freedom, and to destroy our way of life, people who will kill and who will actually stop at nothing to bring America to its knees. It is a war against an enemy who won't back down, ever, telling interrogators: I will never forget your face. I will kill you. I will kill your brothers, your mother, your sisters. It is a war against an enemy who undertakes years of psychological training to consciously resist interrogation and to withhold information that could be critical to thwarting future threats, future attacks. But it is also a physical war. On the field of battle, it is a war that demands quick thinking and creativity. It demands tactics that entice the enemy to reveal his weaknesses.

As we learned 5 years ago, safety and security aren't static states; they are dynamic, constantly shifting, constantly moving. We consistently and repeatedly have to be able to adjust and take stock and reassess and, when necessary, implement changes in response.

In the past 5 years alone, in this body we have passed more than 70 laws and other bills related to the war on terror, but they haven't been enough. They haven't kept pace with the ever-changing field of battle. There is more we can do and, indeed, we must do. That is why over the last month we have focused the Senate agenda on security, and that is why today we address our Nation's security by debating one of the most serious and most urgent security issues currently facing the Nation: the detainment, questioning, and prosecution of enemy combatants—terrorists captured on the battlefield.

A few weeks ago, I traveled with several of my colleagues to Guantanamo Bay. That is where the mastermind of 9/11 currently resides—Khalid Shaikh Mohammed. This man, the man the 9/11 Commission calls the principal architect behind the 9/11 attacks, didn't stop with 9/11. Not 1 month after 9/11, he was busy again plotting and planning, orchestrating, scheming, and conspiring to strike us again while we were still down. His next plot targeted the tallest buildings on the west coast with hijacked planes, buildings that house businesses and organizations absolutely critical to our economic and our financial stability, including the Library Tower in Los Angeles, CA. But this time, we were ready. We thwarted that plot, and Khalid Shaikh Mohammed now resides at Guantanamo. But he wouldn't reside there and we wouldn't have stymied his evil designs at that Library Tower if not for the ability to question detainees.

Soon after 9/11, we detained an al-Qaida operative known as Abu Zubaydah. Under questioning, he yielded several operational leads. He revealed Shaikh Mohammed's role in the 9/11 attacks. Coupled with other sources, the information he gave up led to Shaikh Mohammed's capture and detainment. Khalid Shaikh Mohammed currently awaits prosecution. That prosecution cannot happen until we act. Our great Nation will know no justice—and his victims' families will know no justice—until Congress acts by passing legislation to establish these military commissions.

Before we recess this week, we will complete this bill. We could complete it possibly today but if not, in the morning. The bill itself provides a legislative framework to detain, question, and prosecute terrorists. It reflects the agreement reached last week: Republicans united around the common goal of bringing terrorists to justice. It preserves our intelligence programs—intelligence programs that have disrupted terrorist plots and saved countless American lives.

When we capture terrorists on the battlefield, we have a right to prosecute them for war crimes. This bill establishes a system that protects our national security while ensuring a full and fair trial for detainees. The bill formally establishes terrorist tribunals to prosecute terrorists engaged in hostilities against the United States for war crimes. Terrorist detainees will be tried by a 5- or 12-member military commission overseen by a military judge. They will have the right to be presumed innocent until proven guilty, the right to military and civilian counsel, the right to present exculpatory evidence, the right to exclude evidence obtained through torture, and the right to appeal.

The bill also protects classified information—our critical sources and methods—from terrorists who could exploit it to plan another terrorist attack. It provides a national security privilege that can be asserted at trial to prevent the introduction of classified evidence. But the accused can be provided a declassified summary of that evidence.

Moreover, the bill provides legal clarity for our treaty obligations under the Geneva Conventions. It establishes a specific list of crimes that are considered grave breaches of the Geneva Conventions.

Ultimately, these procedures recognize that because we are at war, we should not try terrorists in the same way as our uniformed military or common civilian criminals. We must remember that we are fighting a different kind of enemy in a different kind of war. We are fighting an enemy who seeks to destroy our values, our freedoms, and our very way of life.

To win this war, we must provide our military, intelligence, and law enforcement communities the tools they need to keep us safe. By formally establishing terrorist tribunals, the bill provides another critical tool in fighting the war on terror, and it provides a measure of justice to the victims of 9/11.

Until Congress passes this legislation, terrorists such as Khalid Shaikh Mohammed cannot be tried for war crimes, and the United States risks fighting a blind war without adequate intelligence to keep us safe. That is simply unacceptable, and that is why this bill must be passed.

I look forward over the next few hours to an open and civilized debate in the best traditions of the Senate. I urge my colleagues—Republican, Democrat, and Independent alike—to work together to pass this bill. The American people can't afford to wait. Even though we are in the midst of an election year, this issue—the safety and security of the American people—should transcend partisan politics. The time to act is now.

Mr. President, I yield the floor.

Mr. LEVIN. Mr. President, I yield myself 15 minutes off the bill itself.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first let me begin by commending our colleagues on the Armed Services Committee, Senator WARNER, Senator MCCAIN, and Senator GRAHAM, for their effort earlier this month to produce a military commissions bill that will protect our troops, withstand judicial review, and be consistent with American values. The administration of their own party had prepared a bill that would authorize violations of our obligations under international law, permit the abusive treatment of prisoners, and allow criminal convictions based on secret evidence. The three Senators drafted a different bill, in consultation with our senior military lawyers. When the administration objected to this bill, Senator WARNER scheduled a markup in the Senate Armed Services Committee anyway, and we reported that bill out with a bipartisan vote of 15 to 9.

Unlike the administration bill, the committee bill would not have allowed convictions based on secret testimony that is never revealed to the accused. The committee bill would not have allowed testimony obtained through cruel or inhuman treatment. The committee bill would not have allowed the use of hearsay where a better source of evidence is readily available. The committee bill would not have attempted to reinterpret our obligations under international law to permit the abuse of detainees in U.S. custody.

While the committee bill was not perfect—in particular, it included a very problematic provision on the writ of habeas corpus—the military commissions it established would have met the test of the Supreme Court's decision in the Hamdan case and provided for the trial of detainees for war crimes in a manner that is consistent with American values and the American system of justice. It provided standards we would be able to live with if other countries were to apply similar standards to our troops if our troops were captured. And, of course, the committee bill provided for the interrogation, for the detention, and for criminal trials of detainees.

Unfortunately, the committee bill was not brought to the Senate. Instead, the three Republican Senators entered into negotiations with an administration that has been relentless in its determination to legitimize the abuse of detainees and to distort military commission procedures to ensure criminal convictions. The bill before us now is the product of these negotiations. I will be offering the committee-approved bill as a substitute a little later today. The bipartisan committee bill, which came from our committee just about a week ago on a vote of 15 to 9, will be offered by me as a substitute to the bill which is now before us.

The bill before us does make a few significant improvements over the administration bill. I want to begin by outlining what those improvements are.

First, while the bill before us is not as clear as the committee bill in committing us to a standard that will protect our troops by conforming to our obligations under the Geneva Conventions, it is far preferable to the administration bill in this regard. In particular, the bill before us does not reinterpret U.S. obligations for the treatment of detainees under Common Article 3 of the Geneva Conventions. It does not place a congressional stamp of approval on an executive branch reinterpretation of those obligations. All it does in this regard is to state the obvious: that the President is responsible for administering the laws and that this gives him the authority to adopt regulations interpreting the meaning and application of the Geneva Conventions in the same manner and to the same extent as he can issue such regulations interpreting other laws.

Common Article 3 of the Geneva Conventions, the Detainee Treatment Act, and the new Army Field Manual all prohibit such interrogation abuses as forcing a detainee to be naked, to perform sexual acts or pose in a sexual manner; prevent such abuses as sensory deprivation, placing hoods or sacks over the head of a detainee, applying beatings, electric shock, burns, or other forms of physical pain; waterboarding, using military working dogs, inducing hypothermia or heat injury, conducting mock executions, or depriving the detainee of necessary food, water, or medical care. Nothing in this bill would change any of the standards of the Geneva Conventions, the Detainee Treatment Act, or the Army Field Manual. Nothing in this bill would authorize the President to do so.

Second, the bill does not permit the use of secret evidence that is not revealed to the defendant. Instead, the bill clarifies that information about sources, methods, or activities by which the United States obtained evidence may be redacted before the evidence is provided to the defendant and introduced at trial. Any material redacted from the evidence provided to the defendant cannot be introduced at trial. The defendant would have the right to be present for all proceedings and to examine and respond to all evidence considered by the military commission.

This approach is consistent with the approach taken to classified information in the Manual for Courts Martial, and it ensures that a defendant could not be convicted on the basis of secret evidence, evidence that is not known to him.

Those are two positive changes from the approach which the administration has argued for and demanded, in these two cases without success.

Unfortunately, at the insistence of the administration, the bill before us contains a great many ill-advised changes from the approved bill of the Armed Services Committee. For example, on coerced testimony, the committee-approved bill prohibited the admission of statements obtained through cruel, inhuman, or degrading treatment. The bill before us prohibits the admission of statements obtained after December 30, 2005, through ''cruel, inhuman or degrading treatment,'' but, inexplicably, contains no such prohibition for statements that were obtained before September 30, 2005. As a result, military tribunals would be free to admit, for the first time in U.S. legal history, statements that were extracted through abusive practices.

On the question of hearsay, the committee bill permitted the admission of hearsay evidence not admissible at trials by court-martial, if direct evidence, which is inherently more probative, could be procured ''through reasonable efforts, taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.''

The bill before us makes hearsay evidence admissible unless the defendant can demonstrate that it is unreliable or lacking in probative value. Hearsay evidence is not only inherently less reliable, its use also deprives the accused of the ability to confront witnesses against him. The approach taken by this bill not only relieves the Government of any obligation to seek direct testimony from its witnesses, it also appears to shift the burden to the accused by presuming that hearsay evidence is reliable unless the accused can demonstrate otherwise.

On the question of search warrants, the committee bill, the bill which I will be offering as a substitute later on today—the committee bill provided that evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant. The bill before us deletes the limitation so that it no longer applies to evidence seized outside the United States. As a result, the bill authorizes the use of evidence that is seized inside the United States without a search warrant. This provision is not limited to evidence seized from enemy combatants; it does not even preclude the seizure of evidence without a warrant from U.S. citizens. As a result, this provision appears to authorize the use of evidence that is obtained without a warrant, in violation of the U.S. Constitution.

On the definition of unlawful combatant, the committee bill defined the term ''unlawful combatant'' in accordance with the traditional law of war. The bill before us, however, changes the definition to add a presumption that any person who is ''part of'' the ''associated forces'' of a terrorist organization is an unlawful combatant, regardless of whether that person actually meets the test of engaging in hostilities against the United States or purposefully and materially is supporting such hostilities.

The bill also adds a new provision which makes the determination of a Combatant Status Review Tribunal, or CSRT, that a person is an unlawful enemy combatant—it makes that determination dispositive for the purpose of the jurisdiction of a military commission, even though the CSRT determinations may be based on evidence that would be excluded as unreliable by a military commission.

On the issue of procedures and rules of evidence, the committee bill provided that the procedures and rules of evidence applicable in trials by general courts martial would apply in trials by military commission, subject to such exceptions as the Secretary of Defense determines to be ''required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.'' That approach, in our committee bill, was consistent with the ruling of the Supreme Court in the Hamdan case, but built in flexibility to address unique circumstances arising out of military and intelligence operations. The bill before us reverses the presumption. Instead of starting with the rules applicable in trials by courts martial and establishing exceptions, the Secretary of Defense is required to make trials by commission consistent with those rules only when he considers it practicable to do so. As one observer has pointed out, this provision is now so vaguely worded that it could even be read to authorize the administration to abandon the presumption of

innocence in trials by military commission.

On the issue of habeas corpus, the habeas corpus provision in the committee bill stripped alien detainees of habeas corpus rights, even if they had no other legal recourse to demonstrate that they were improperly detained. It also stripped those detainees of any other recourse to the U.S. courts for legal actions regarding their detention or treatment in U.S. custody. If the committee bill had been brought to the floor, I would have joined in offering an amendment to address the obvious problems with this provision. But at least the court-stripping provision in the committee bill was limited to aliens who were detained outside of the United States. The bill before us expands that provision to eliminate habeas corpus rights and all other legal rights for aliens, including lawful permanent residents detained inside or outside the United States who have been determined by the United States to be the enemy. The only requirement is that the United States determine that the alien detainee is an enemy combatant—but the bill provides no standard for this determination and offers the detainee no ability to challenge it in those cases which I have identified.

Consequently, even aliens who have been released from U.S. custody, such as the detainee that the Canadian Government recently found was detained without any basis and was subjected to torture, would be denied any legal recourse as long as the United States continues to claim that they were properly held.

I yield myself an additional 3 minutes.

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

Mr. LEVIN. In other words, a determination by the United States could not be contested, even if there is overwhelming evidence that the claim was incorrect.

These changes in the committee bill, a bill which was approved on a bipartisan basis in our committee, the changes that appear in the bill which is now before us, taken together, will put our own troops at risk if other countries decide to apply similar standards to our troops if they are captured and detained. These changes in the bill before us from the committee bill are likely to result in the reversal of convictions on appeal, and that means that efforts to convict these people of crimes can be readily reversed on appeal because of the changes that were made in the committee bill and the fact, which seems to me to be quite clear, that they do not comply in many instances with the requirements set forth in Hamdan, and the changes in the bill before us from the committee bill are inconsistent with American values.

I particularly again highlight the search and seizure requirements of our fourth amendment and the way that seems to be abandoned in the bill before us.

I close by applauding, again, Senators WARNER, MCCAIN, and GRAHAM for their willingness to stand up to the administration and at least at the Armed Services Committee produce a bill that we were able to approve in the Armed Services Committee on a strong bipartisan vote.

However, the administration has been even more relentless in their effort to legitimize the mistreatment of detainees and to undermine some of the cornerstone principles of our legal system. While the bill before us is a modest improvement over the language originally proposed by the administration, it has adopted far too many provisions from the administration's bill. The substitute which we will be offering later on today is the committee-approved bill. That will do a much better job, if we adopt it, of protecting our troops who might become detainees in the future and does a much better job of upholding our values as a nation.

I yield the floor.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged to both sides.

The Senator from Michigan.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, I ask unanimous consent that of the time under the control of the Democratic leader, Senator REID, that 45 minutes be allocated to Senator LEAHY.

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

Mr. LEVIN. I suggest the absence of a quorum and ask that the time be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. Parliamentary inquiry: At this time the Senate is now proceeding on the Hamdi bill; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. Mr. President, I rise to speak in support of the Military Commissions Act of 2006 which would authorize military commissions for the trial of an alien enemy unlawful combatant.

I take a moment to say my colleagues and others with whom I have served in the Senate the last 28 years stand at a moment of critical importance in the history of our Nation. What we do today will impact how we conduct the war on terror for as long as it lasts. In the estimate of this humble Senator, that could be for decades. It will fundamentally impact our relationships with our allies. It will fundamentally impact the image of the United States of America in the eyes of the world. It is crucial to our ability to keep America safe. It will speak most loudly about the core values, the principles of this great Republic known as the United States of America.

From the outset, I make it clear I respect the views of all participants in this dialog, from the President and his team, to those particularly in the Congress, but elsewhere in the Congress, on both sides of the aisle. I have certain core principles I share with several of my colleagues. I have endeavored to see this particular bill reflects those principles to the best of my ability, as have they. Nevertheless, I respect the views of others who may differ.

The goal of this legislation, from my point of view, and I think it is shared by others, is first and foremost to meet the challenge for withstanding review by the Supreme Court. Out of respect for that Court, the Hamdi decision, which was quite an interesting decision in many of its findings, divided by different panels within that Court, it is quite likely in one or more instances, if this becomes law, the bill now presently before the Senate, that will likewise be taken to the Supreme Court. That is the way we do things in the United States of America.

We hope we who have labored to craft this, and the 100 Senators who will finally cast their votes, together with the other body, will give to the President a bill that will effectively enable him to do those things to keep America free, to fight the war on terrorism and, at the same time, pass the Federal court review—whether it is the district, appellate, or the Supreme Court—such as likely will take place.

In late June, the Supreme Court struck down the President's initial plan to try detainees by military commissions. In its opinion, Hamdi v. Rumsfeld, the Court held by a fractured five-Justice panel that the present system for trials by military commission violated both the Uniform Code of Military Justice and particularly Common Article 3 of the 1949 Geneva Conventions. There were some four conventions put together in 1949. In particular, the Common Article 3 was common to all four of those conventions.

That historic moment in world history was a culmination from the learning experience of what took place all across our globe during World War II in an effort to see that certain injustices, in terms of the basic core values of the free world, would never occur again.

It is my fervent hope and conviction that whatever the Congress does, the

legislation we produce must be able to withstand further security review and scrutiny of the Federal court system, particularly the Supreme Court.

From my own personal perspective, it would be a very serious blow to the credibility of the United States—and I have said this a number of times in connection with the debate—not only in the international community but also at home, if the legislation as prepared by the Congress now and enacted by the President failed to meet another series of Federal court reviews.

To meet the mandate of the Court in its decision, Hamdi v. Rumsfeld, this legislation provides for a military commission that, in the words of Common Article 3, affords ''all the judicial guarantees which are recognized as indispensable by civilized peoples.''

That is what we are striving to obtain. The Military Commissions Act of 2006 provides these essential guarantees in the following ways. The bill generally follows the current military rule on the use of classified information at trial. That has been an area of concern probably to each and every Senator but most particularly to this Senator and others who worked closely in our group. We have, to the satisfaction of all interested parties, resolved that.

That is a very fundamental thing we must maintain; that is, the ability of our continued gathering of evidence, the protection of source and methods—nevertheless, to provide, on a real-time basis intelligence for our fighting men and women and, indeed, intelligence to protect us here at home.

However, our bill goes further by creating a privilege that protects classified information at all stages of a trial and prohibits disclosure of classified information, including sensitive intelligence sources and methods, to an alleged terrorist accused.

As a fundamental matter—and one we feel is crucial for this bill to survive judicial review—the bill would not allow an accused, however, to be tried and sentenced—perhaps even being given the death penalty—on evidence that the accused has never been allowed to see. That, in my judgment, and I think in the judgment of many, would be establishing a precedent that is without foundation in American jurisprudence or, indeed, the jurisprudence of the vast majority of nations in the world.

Further, the bill would prohibit the use of evidence that was allegedly obtained through the use of torture. A statement obtained before the date of enactment of the Detainee Treatment Act of 2005—December 30, 2005—in which the degree of coercion is in dispute could be used only—and I repeat—only at trial if the military judge finds that it is reliable and tends to prove the point for which it was offered.

A statement obtained after the date of enactment of the Detainee Treatment Act of 2005, in which the degree of coercion is in dispute, may only be admitted in evidence if the military judge finds that the first two tests are met and finds that the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment prohibited by the Detainee Treatment Act of 2005.

The bill would generally follow the rules of evidence that apply to courts-martial. However, the Secretary of Defense, in consultation with the Attorney General, would be authorized to make substantial exceptions due to the unique circumstances presented by the conduct of military and intelligence activities so long as those exceptions are not inconsistent with the statutory provisions provided by this new law.

Most importantly, this bill achieves the President's benchmark objective by clearly defining those grave breaches of Common Article 3 of the Geneva Conventions that would be a criminal offense under the U.S. domestic law in the War Crimes Act.

That term, ''grave breaches,'' is set forth in that Convention of 1949. And in conjunction with working on this, we extensively examined the legislative history. Doing so allows our military and intelligence interrogators to know what conduct is prohibited under U.S. law. Moreover, this bill provides that no foreign sources of law may be used to define or interpret U.S. domestic criminal law implementing Common Article 3.

This bill does not provide as a matter of law that this legislation fully satisfies Common Article 3 of the Geneva Conventions. My colleagues and I feel that to make such a statement a matter of statute would amount to a reinterpretation of our obligations under the Geneva Conventions some 57 years after the United States signed those treaties. Such an action could open the door to statutory reinterpretation by a host of other nations with less regard for human rights than the United States, and would result in possibly our U.S. troops being put at greater risk should they become captives in a future conflict.

However, in addition to clearly defining grave breaches of Common Article 3 that are war crimes under the War Crimes Act, this bill acknowledges the President's authority under the Constitution to interpret the meaning and application of the Geneva Conventions, and to promulgate administrative regulations for violations of our broader treaty obligations which are not grave breaches of the Geneva Conventions. To ensure transparency, such interpretations are required to be published in the Federal Register and are subject to congressional and judicial oversight.

We have had a robust discussion of these issues among Members and with administration officials for some several months, most particularly the last few weeks. I strongly believe this bill achieves the best balance for our country. It will allow terrorists to be brought to justice in accordance with the founding principles and values that have made our Nation the greatest democracy in the world.

This bill will also provide the clarity needed to allow our essential intelligence activities to go forward—I repeat: go forward—under the law. And this bill is consistent with the Geneva Conventions, which have helped protect our own forces in conflicts over the past 57 years.

I thank my colleagues for their support. I wish at this time to thank the many staff members who have worked on this thing tirelessly. And I might add, in my 28 years here I have never known the legislative counsel's office to literally work 24 hours around the clock. Perhaps they have, but certainly they did in this instance. I want to give a special recognition and thanks to that office for assisting the Senate in preparing this bill.

Now, Mr. President, my understanding is the Senator from Michigan may well have an amendment he would like to bring forward.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 5086

(Purpose: In the nature of a substitute)

Mr. LEVIN. Mr. President, I now call up amendment No. 5086, which is an amendment in the nature of a substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 5086.

Mr. LEVIN. 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. LEVIN. Mr. President, the amendment which I have just called up would substitute a bill which was adopted by the Senate Armed Services Committee on a bipartisan vote of 15 to 9 for the pending language.

Before I outline the differences between the bill which the committee adopted and the bill before us, I want to thank my good friend from Virginia for the work he and a number of other colleagues on the Republican side put into the committee bill to make it possible for that bill to be adopted.

In my earlier statement, when the Senator was not on the floor, I commended him and Senator MCCAIN and Senator GRAHAM for their effort earlier this month to produce a military commissions bill that would protect our troops in the event they were captured at some point down the road that would withstand judicial review and be consistent with our values.

They produced this bill in the committee, despite huge administration opposition. The chairman of the committee actually scheduled a markup, as I indicated in my prior statement, despite the opposition of the administration. The administration did then and

continues to want to permit the treatment of prisoners which is abusive. They did then and they still want to allow criminal convictions to be based on secret evidence.

But what the chairman and a number of other Republican Senators were able to do was to make some accomplishments in those two areas: in the area of secret evidence, and in the area, to an extent, of coercive statements, statements that were obtained by coercion, depending on when the statement was obtained. I will get into that in greater detail because there is a distinction in the bill that is on the floor now as to whether the statement was obtained before or after December 30, 2005, as to whether certain types of coercive treatment would be allowed and that statement, nonetheless, be admitted into evidence. I think that distinction between a statement obtained by coercion before or after December 30, 2005, is a distinction which is totally unsustainable. But I will get into that again in a moment.

But before I begin, because my friend, Senator GRAHAM, who is also on the floor now, and my friend from Virginia were not on the floor before—before I list a number of major differences with the pending bill that I and a number of others have with the pending bill—I want to again compliment my good friend from Virginia, Senator MCCAIN, and Senator GRAHAM because they had to withstand a huge amount of administration pressure to get the bill out of committee. It is a far better bill than the one which is now before us. That is why I am going to attempt to substitute it for the bill that is now before us. But, nonetheless, their effort has produced some significant gains over the administration language. I acknowledge that and I thank them for that effort before I proceed to offer the committee bill that is a substitute.

Mr. WARNER. Mr. President, will the Senator kindly yield for me to address his comments?

Mr. LEVIN. I am happy to.

The PRESIDING OFFICER. Without objection.

Mr. WARNER. Mr. President, the Senator has recited that our committee had a markup on a bill. That was after receiving from the administration its own bill. So in a sense, the Senate had before it two bills. Perhaps the formalities I will not go into. But the Senate had the administration's bill and the draft of the committee bill at the time we went into the markup.

The Senator referred to the administration's huge pressure, but those are matters we can go into at another time. But I want you to know the group I was working with, and other Senators, were working with the administration right up until the hours before the markup started.

As the Senator proceeds with his amendment, I am going to ask that the Senator from South Carolina, at the conclusion of your remarks on the amendment, be recognized for the purpose of giving his statement which, indeed, addresses the current bill in the context of the bill that was drafted by the committee, as I understand it from the Senator from South Carolina. And then we will proceed further with discussion on your bill.

We have 3 hours to consider matters here. But I point out, we have your substitute bill, which is basically a 60-minute proposition; the Rockefeller congressional oversight, which is 60 minutes; the Kennedy interrogation, which is 60 minutes; the Byrd sunset which is 60 minutes; and the Specter-Leahy habeas corpus—and I expect you might be a part of that habeas corpus amendment—which is 120 minutes.

Mr. LEVIN. If the Senator will yield?

Mr. WARNER. Yes.

Mr. LEVIN. Without losing his right to—

The PRESIDING OFFICER. Without objection.

Mr. LEVIN. The time limit on the substitute amendment is also 120 minutes.

The PRESIDING OFFICER. Correct.

Mr. WARNER. Yes, correct. I don't know if I stated that, but it should be here as a part of it.

Mr. LEAHY. Will the Senator yield, without losing his right to the floor?

Mr. WARNER. Yes.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. My understanding is the Senator from Vermont has an hour reserved on the bill, with up to 45 minutes of that on the Specter-Leahy habeas amendment.

Mr. WARNER. Mr. President, I would have to inquire of the Chair if the Chair has knowledge of that.

The PRESIDING OFFICER. That is not part of the agreement.

Mr. WARNER. Does the Senator from Michigan wish to address that request?

Mr. LEVIN. I know that I did ask unanimous consent to protect the Senator from Vermont for 45 minutes on the habeas amendment.

The PRESIDING OFFICER. The Senator from Michigan is correct. Under the consent agreement, 45 minutes has been reserved to the Senator from Vermont out of the leadership time.

Mr. LEVIN. That is on the bill itself. And on the habeas amendment, that would be up to you and Senator SPECTER—right?—to control.

Mr. LEAHY. No. Mr. President, I am confused by this. It was my understanding the Senator from Vermont had up to 45 minutes specifically reserved, not from anybody else's time, but from his own time, on the Specter-Leahy, et al., amendment, and a total—out of which the 45 minutes would have to come—of 1 hour on the bill. Is that incorrect?

Mr. WARNER. Mr. President, I would suggest the following to work our way through this: I call on the Chair to inform the Senate as to the time agreement which I understand has been agreed upon by our leaders.

The PRESIDING OFFICER. Under the previous order, there is to be 2 hours equally divided for the Levin amendment, 2 hours equally divided for the Specter amendment on habeas, 1 hour equally divided on the Rockefeller, Kennedy, Byrd amendments each; general debate is 3 hours equally divided, 90 minutes on each side, of which 45 minutes on the minority side had been allocated to the Senator from Vermont.

Mr. WARNER. At this time, I advise my colleagues that I would oppose any change to that unanimous consent and ask any Members who so desire to address the UC to do so to their respective leadership.

Mr. LEAHY. Will the Senator yield for a question?

Mr. WARNER. Yes.

Mr. LEAHY. The senior Senator from Virginia has an absolute right to object to anything further. This is not what I understood had been agreed to. It is the unanimous consent that the Chair has so stated. I will not seek to change it. I don't suggest that it is the fault of the Senator from Virginia. This is not what I understood the agreement to be.

I ask unanimous consent that the senior Senator from Connecticut, Mr. DODD, be added as an original cosponsor to the Specter-Leahy habeas amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Virginia controls the floor.

Mr. WARNER. Do I see another Senator wishing to speak?

Mr. DORGAN. Mr. President, I ask unanimous consent to be added as an original cosponsor to the Specter-Leahy-Dodd amendment.

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

Mr. WARNER. Mr. President, I will yield the floor, and the Senator from Michigan will regain his right to the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, on September 14, the Senate Armed Services Committee favorably reported S. 3901, the Military Commissions Act of 2006, to the Senate floor with a bipartisan vote of 15 to 9. Supporters of the committee bill on both sides of the aisle emphasized that the bill met two critical tests:

First, that we would be able to live with the procedures we established if the tables are turned and our own troops were subject to similar procedures.

Second, that the bill was consistent with our American system of justice and would stand up to scrutiny on judicial review.

On the first point, the committee bill did not authorize departure from the requirements of the Geneva Conventions, did not authorize the abuse of prisoners in U.S. custody, did not authorize the use of testimony obtained

through abusive practices, because the standards for detention, interrogation, and trial in the bill were consistent with international norms. The bill contained no procedures that we could not live with if they were applied to our own troops who might be captured at some future time.

On the second point, the committee bill established legal procedures consistent with basic principles of the American system of justice, such as the right to examine and respond to all evidence presented, and the exclusion of unreliable categories of evidence, such as coerced statements. Because the bill took the approach outlined by the Supreme Court in the Hamdan case, a trial process based on rules and procedures applicable in trials by courts martial, subject to such exceptions as might be required by the unique circumstances of military and intelligence operations in an ongoing conflict, committee members could have confidence that these provisions would be upheld by the courts on appeal.

The committee bill was not brought to the Senate floor. Indeed, the majority leader reacted to the action of the Armed Services Committee by telling the press he would filibuster the bill if the Senate Armed Services Committee bill was brought to the Senate floor. Consequently, the three Republican Senators who had drafted the committee bill, Senators WARNER, MCCAIN, and GRAHAM, entered into negotiations with an administration that has been unrelenting in its determination to legitimize the abuse of detainees and to distort military commission procedures to ensure convictions.

The bill before us, which is the product of those negotiations, has been changed from the committee bill in so many ways that the bill is a very different bill from the one that was adopted by the Armed Services Committee. It is the Armed Services Committee bipartisan bill that I have now offered as a substitute to this new version that is being offered today.

Let me give you some examples of the differences between the committee-adopted bill and the bill that is before us. On coerced testimony, the committee bill prohibited the admission of statements obtained through cruel, inhuman, or degrading treatment. The bill before us prohibits the admission of statements obtained after December 30, 2005, through ''cruel, inhuman, or degrading treatment'' but inexplicably contained no such prohibition for such statements that were obtained before December 30, 2005.

As a result, military tribunals would presumably be free to admit, for the first time in U.S. legal history, statements that were extracted through cruel or inhuman practices.

By the way, on that issue, if anybody wants to read the actual difference in the way in which the December 30, 2005, date was provided in this bill as a dividing line between statements that could be admitted into evidence, although they were obtained through cruel and inhuman treatment, they can refer to sections 948(R)(c), on a statement obtained before December 30, 2005, the date of the enactment of the Detainee Treatment Act of 2005, which says:

> The degree of coercion in dispute may be admitted if the military judge finds the following: Totality of the circumstances renders the statement reliable in possessing sufficient probative value; and, 2, the interest of justice would best be served by the admission of the statement into evidence.

But subsection (d) reads:

> If the statement is obtained after December 30, 2005, the date of the enactment of the Detainee Treatment Act of 2005, the degree of coercion may be disputed and may be admitted under those same two circumstances.

It then adds a third finding that is required:

> That the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment, prohibited by section 1003.

So if the statement is obtained after December 30, 2005, then if it is obtained through cruel and inhuman treatment, it is not allowable into evidence. But because that requirement is missing relative to statements obtained prior to December 30, 2005, presumably, even though a statement is obtained through cruel and inhuman treatment, it is nonetheless admissible into evidence if it meets the other two tests provided. That is an unsustainable provision. It would be the first time in American legal history that we would, in effect, be authorizing statements that were obtained through that type of coercion—cruel treatment, inhuman treatment—to be admitted into evidence. That is something we should not accept.

On the issue of hearsay, the committee bill permitted the admission of hearsay not admissible at trials by court-martial if direct evidence, which is inherently more probative, could be procured ''through reasonable efforts,'' taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.

The bill before us, unlike the committee bill, makes hearsay evidence admissible, unless the defendant can demonstrate that it is unreliable or lacking in probative value. Well, hearsay evidence is not only inherently unreliable, it is used to deprive the accused of the ability to confront the witnesses against him.

The approach taken by this bill not only relieves the Government of any obligation to seek direct testimony from its witnesses, it also appears to shift the burden to the accused by presuming that hearsay evidence is reliable, unless the accused can demonstrate otherwise.

Relative to search warrants, the committee bill provided that evidence seized outside of the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant. The bill before us deletes the limitation to evidence seized outside of the United States. As a result, the bill authorizes the use of evidence that is seized inside the United States without a search warrant. I note that the chairman of the Judiciary Committee is on the floor. I particularly point out this provision to him—that because the words ''outside of the United States'' were deleted, the bill before us would allow into evidence, for the first time in history, I believe—it authorizes the use of evidence seized inside the United States without a search warrant. It is not limited to evidence seized from enemy combatants. It does not even preclude the seizure of evidence without a warrant from U.S. citizens. That is a major departure from the committee-adopted bill. It would appear to authorize the use of evidence obtained without a warrant, in violation of the United States Constitution.

The next problem I want to address is the definition of ''unlawful combatant.'' The committee bill defines the term ''unlawful combatant'' in accordance with the traditional law of war. The bill before us changes the definition to add a presumption that any person who is ''part of'' the associated forces of a terrorist organization is an unlawful combatant, regardless of whether that person actually meets the test of engaging in hostilities against the United States or purposefully and materially supporting such hostility.

In addition, the bill also adds a new provision which makes the determination of a Combatant Status Review Tribunal, CSRT, that a person is an unlawful enemy combatant, dispositive for the purpose of the jurisdiction of a military commission, even though CSRT determinations may be based on evidence that would be excluded as unreliable by a military commission.

We should not make those findings dispositive, particularly where the CSRT findings can be based on such very unreliable evidence.

Next is procedures and rules of evidence. The committee bill provided that the procedures and rules of evidence applicable in trials by general courts-martial would apply in trials by military commissions, subject to such exceptions as the Secretary of Defense determines to be ''required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.''

So the committee bill starts with the courts-martial, the manual, and then says that the Secretary of Defense may make such exceptions as he determines are ''required by the unique circumstances of the conduct of military and intelligence operations or by practical need.''

This approach is consistent with the ruling in Hamdan. It builds in some flexibility to address unique circumstances arising out of military and

intelligence operations. The bill before us reverses the presumption, and instead of starting with the rules applicable in trials by court-martial and establishing exceptions, the Secretary of Defense is required to make trials by commission consistent with those rules only when he considers it practicable to do so. As one observer has pointed out, this provision is now so vaguely worded that it could even be read to authorize the administration to abandon the presumption of innocence in trials by military commission.

On the issue of habeas corpus, the habeas corpus provision in the committee bill stripped alien detainees of habeas corpus rights, even if they have no other legal recourse to demonstrate that they were improperly detained. It also stripped those detainees of any other recourse to U.S. courts for legal actions regarding their detention or treatment in U.S. custody.

If the substitute amendment we are offering is approved, a further amendment will be necessary to address the obvious problems with the committee habeas corpus amendment. That habeas corpus amendment is going to be offered in either event, whether or not the bill before us remains or whether or not the committee bill is substituted for it. But at least in the committee bill, the court-stripping provision was limited to aliens who were detained outside the United States. The bill before us expands that provision to eliminate habeas corpus rights and all other legal rights of redress for wrongs committed by aliens, including lawful permanent residents detained inside or outside the United States who have been determined by the United States to be enemies.

The only requirement under the bill before us is that the Government determines that the alien detainee is an enemy combatant, but the bill provides no standard for this determination and offers the detainee no ability to challenge it. Consequently, even aliens who have been released from U.S. custody, such as the detainee that the Canadian Government recently found was detained without any basis and subjected to torture, even those kinds of aliens, such as that Canadian citizen, would be denied any legal recourse as long as the United States continues to claim in a way which cannot be contested that they were properly held.

No matter how overwhelming the evidence, there is no way to contest it, and there is no legal recourse under the bill before us. That was not true of the committee bill.

The committee bill had lots of problems, in my judgment, on habeas corpus, but the bill before us, for the reasons I just outlined, goes way beyond what the committee bill provided.

As a result of these changes, the bill that is before us does not meet either of the two tests used by the majority of members at the Armed Services Committee markup. The two tests that are not met: The bill before us places our own troops at risk if others apply similar standards, and it is likely to result in convictions by military commissions that are overturned on appeal.

For example, the provision in the bill addressing coerced testimony would prohibit the use of statements that are obtained through cruel and inhuman treatment if those statements were obtained after December 30, 2005, but again, it inexplicably contains no such prohibition on statements obtained through those same methods prior to this date. This provision, in other words, expressly authorizes military commissions to consider evidence that was obtained through cruel and inhuman treatment of defendants and other witnesses.

By expressly omitting the principle that statements obtained through cruel and inhuman treatment of detainees should be precluded from evidence—even if they were obtained before December 30, 2005—this provision would set an absolutely unacceptable and frightening standard if the rest of the world adopts this same standard. This is a standard under which our own troops could be subjected to abuse and mistreatment of all kinds in order to force them to sign statements that would then be used to convict them of war crimes.

The provision also sets a standard which will be used by our terrorist enemies as evidence of U.S. hypocrisy when it comes to proclamations of human rights. Our failure to conclusively exclude statements obtained through cruel and inhuman methods are all too likely to be seen through much of the world as a confirmation of negative views of Americans and what we stand for and that have been shaped by their views of what happened at Abu Ghraib and Guantanamo.

The administration and its supporters have argued that our military judges can be counted on to exclude statements that are based on extreme forms of abuse. That may be; that may be. We have many fine military judges, and I share the hope that these judges will be willing to stand up for the humane treatment of detainees, even where Congress has failed to do so and even when the administration is unwilling to do so.

Indeed, our top military lawyers have told us that evidence obtained through coercive techniques is inherently unreliable. The Army Deputy Chief of Staff for Intelligence, LTG John Kimmons, said the same thing when he released the new Army Field Manual on interrogation procedures. He stated:

> No good intelligence is going to come from abusive practice. I think history tells us that. I think the empirical evidence of the last five years, hard years, tell us that. And moreover, any piece of intelligence which is obtained under duress . . . through the use of abusive techniques would be of questionable credibility.

I am hopeful that our military judges will likewise reject testimony that is obtained through abusive techniques as inherently unreliable and of questionable credibility.

However, our military judges cannot protect our troops in future conflicts. If an American soldier, sailor, airman, or marine is put on trial by a hostile power, he or she will not have an American military judge to stand up for his or her rights. Our troops will face foreign judges, and if the standard applied by those judges is similar to the one proposed in this bill for statements obtained prior to December 30, 2005, they are a lot less likely to get either fair treatment or fair trials.

If statements obtained through cruel and inhuman treatment of detainees are allowed into evidence, as this provision provides, any resulting convictions are unlikely to withstand scrutiny on judicial review in our own courts.

The Supreme Court specifically addressed this issue in the Hamdan case earlier this year. In that case, the Court pointed out that Common Article 3 of the Geneva Conventions prohibits the passing of sentences ''without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.''

The Supreme Court concluded that ''[t]he regular military courts in our system are the courts-martial established by congressional statutes'' and ''can be 'regularly constituted' by the standards of our military justice system only if some practical need explains deviations from court-martial practice''; and the language requiring ''judicial guarantees which are recognized as indispensable by civilized peoples'' must require, at a minimum, that any deviation from procedures governing courts-martial be justified by ''evident practical need.''

The rules of evidence reviewed by the Supreme Court in the Hamdan case, such as the rules we are considering today, would have permitted the admission of statements obtained through coercion—other than torture—into evidence if a military commission determines the statements to be probative and reliable. The plurality opinion of the Court notes that under these procedures, ''evidence obtained through coercion [is] fully admissible.'' Similarly, Justice Kennedy's concurring opinion observes that the procedures in place ''make no provision for exclusion of coerced declarations save those 'established to have been made as a result of torture.' ''

The Supreme Court expressly rejected those procedures. The procedures established by the President, according to the Supreme Court, ''deviate from those governing courts-martial in ways not justified by any 'evident practical need,' and for that reason, at least, fail to afford the requisite guarantees'' that are recognized as indispensable by civilized peoples.

Like the procedures previously rejected by the Supreme Court, this bill

would make evidence obtained through coercion, other than torture, admissible, at least in the case of evidence obtained prior to December 30, 2005. Given that the Supreme Court has already struck down procedures that similarly failed to preclude coerced testimony once, it is surely likely that the Court will strike them down again. Whatever minimal due process may be required in the case of an alien enemy combatant, it certainly cannot be met by procedures that, as a majority of the Supreme Court has already determined, fail to provide the ''judicial guarantees which are recognized as indispensable by civilized people.''

We should also reject this provision because it is inconsistent with American values and what we stand for as a nation. During the Revolutionary War, the British mistreated many American prisoners. But as described by David Hackett Fischer in his book ''Washington's Crossing,'' General Washington ''ordered that . . . the captives would be treated as human beings with the same rights of humanity for which Americans were striving,'' and those ''moral choices in the War of Independence enlarged the meaning of the American Revolution.''

We have always believed that we hold ourselves to a higher standard than many other nations. Others may abuse prisoners; we do not. Others may engage in cruel and inhuman practices; we do not. Others may believe that the ends justify the means; we do not. It is contrary to what we stand for as a nation.

Former Navy general counsel Alberto Mora bravely fought against efforts by others in this administration to approve cruel and inhuman interrogation techniques. Mr. Mora explained his stand when he was awarded the 2006 John F. Kennedy Profile in Courage Award on May 22. He said:

> We need to be clear. Cruelty disfigures our national character. It is incompatible with our constitutional order, with our laws, and with our most prized values. Cruelty can be as effective as torture in destroying human dignity, and there is no moral distinction between one and the other. To adopt and apply a policy of cruelty anywhere within this world is to say that our forefathers were wrong about their belief in the rights of man because there is no more fundamental right than to be safe from cruel and inhuman treatment. Where cruelty exists, law does not.

If we enact this provision into law, giving a congressional stamp of approval to the use of cruel and inhuman methods to extract testimony from detainees, we will diminish ourselves as a people and, as Colin Powell stated in a recent letter to Senator MCCAIN, add to the world's doubts about the moral basis of our fight against terrorism.

The bill, as reported by the Armed Services Committee, will protect our troops, will be more likely to result in convictions that are upheld on appeal, and will be more in keeping with our values as a nation. That bill allows for interrogation, it allows for detention, it allows for prosecution, and it allows for conviction.

The issue isn't whether we interrogate or detain people. We are going to do it. We need to do it. The question is whether we do it in a way which is in keeping with our values, which is in keeping with rules we have established in the Army manual, for instance, for the treatment of people who are captured by our Army. It is whether we do it in a way that is in keeping with what we would insist others follow if they capture our people, what we insist upon in the committee substitute—that committee bill which we adopted on a bipartisan basis—our standards and rules for which we will argue if our people are captured or detained by others.

We cannot make the distinction this bill before us makes—that cruel and inhuman treatment which leads to a statement or confession is not going to be the basis for excluding a statement if that statement is made before December 30, 2005. Only after December 30, 2005, are statements excluded where they are the product of cruel and inhuman treatment. But before December 30, 2005, according to the bill in front of us now, those statements are not excluded unless they meet two other tests. We have to be very clear on this issue. After December 30, 2005, any of three tests, if met, will result in the exclusion of those statements but not before December 30, 2005, when we know as a fact that so much of the abuse took place.

So I urge our colleagues to support the substitute amendment. Again, I wish to make clear that this substitute amendment is the Senate Armed Services Committee bill which the chairman and others labored so hard to produce. It is a bill which avoids many of the pitfalls of the bill that is before us. I hope our colleagues will vote to substitute that bill for the pending language.

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

The PRESIDING OFFICER (Mr. MARTINEZ). Twenty-four minutes 10 seconds.

Mr. LEVIN. I thank the Chair, and I yield the floor.

Mr. WARNER. Mr. President, I was particularly taken by Senator LEVIN's reference to General Washington and what General Washington said with regard to prisoners. But we must be mindful that General Washington was facing the King's Army. Those were uniformed individuals. Those were individuals acting on behalf of the Crown. That is totally different—totally different—from what we as a nation and many other nations today are facing with these terrorists.

Consequently, as a part of the evolution of this extraordinary proliferation of terrorism across the world has come the definitions and terms relating to the unlawful enemy combatant—I repeat, unlawful—because those individuals are not wearing uniforms, they are not following any code of laws or conduct that has overseen much of warfare in the history of the world. They are not affiliated with any state. They are driven, in my judgment, by convictions, much of it religious convictions which are totally antithetical to their own religion, and willing to sacrifice their own lives to foster their ambitions and goals.

We expanded this definition of ''unlawful enemy combatant'' when we went from the committee bill to a bill that was worked on by, again, Senator MCCAIN, Senator GRAHAM, and myself, and in conjunction with the White House and our leadership and other colleagues.

It was pointed out to us that perhaps our bill is drawn so narrowly that we would not be able to get evidence and support convictions from those who are involved in hiding in the safe houses, wherever they are in the world, including here in the United States.

It is wrong to say that this provision captures any U.S. citizens. It does not. It is only directed at aliens—aliens, not U.S. citizens—bomb-makers, wherever they are in the world; those who provide the money to carry out the terrorism, wherever they are—again, only aliens and those who are preparing and using so many false documents.

There were a lot of categories which we, with the best of intentions, perhaps did not fully comprehend when we were working through that markup session. So at this time, I yield the floor because I see my distinguished colleague from South Carolina. I thank the Senator. He is recognized for his knowledge as an officer in the U.S. Air Force, a colonel who has practiced and studied military law for many years, and we are fortunate to have had his services and continue to have them in addressing this legislation.

I would also point out to my colleagues that Senator MCCAIN, who worked with us throughout this process, is away attending a funeral of a very dear and valued colleague, and he will be returning later this afternoon and will be fully engaged from that point on.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield such time as he may consume to the Senator from South Carolina.

Mr. GRAHAM. Mr. President, I would like to return the compliment that Senator LEVIN gave to myself, Senator MCCAIN, and Senator WARNER. I have found Senator LEVIN and his staff to be very good to work with. Sometimes we reach agreement and sometimes we don't, but all the time we try. As to my staff, I appreciate the tons of time they have spent trying to give us the best product we can get in the legislative process that will adhere to our values and allow the war effort to move forward in an effective way.

As to the difference between the committee bill, which we wrote and supported, and the compromise we reached

with the White House, which we wrote and support, there are some differences. I think some of them we have addressed with Senator LEVIN's staff. They were very helpful. He found some language which was dropped inadvertently which made the bill stronger.

I would just like to suggest that whatever military experience I have had pales in comparison to the men and women who are in charge of today's military legal system. I am a reservist. I come in and out of military law. I spent 6½ years on active duty, and I really enjoyed my time. I dealt a lot in the court-martial process as a prosecutor and a defense attorney. But as a reservist and Guard member, it has been a part-time job. But those who do this full time supported the administration's proposal when it came to the admission of evidence by the military judge. I will, at an appropriate time, introduce that into the RECORD.

I believe the JAGs are a good source of advice. That doesn't mean they are the only source of advice. That doesn't mean that because the Judge Advocate Generals of all four branches say so, we need to do what they say. It would be wise to just listen, and I have tried to listen. Sometimes I agree; sometimes I don't. But they have said unanimously, it is my understanding, that the evidentiary standards in terms of admission of evidence, where the judge will determine whether the evidence is reliable and probative using the totality of circumstances to create justice, was a sufficient legal standard, and they were supportive of that standard. So this idea that we are going to allow coerced evidence into a trial purposely, that we made a conscious decision from the committee bill to the compromise to change course and take everything we had said before and just throw it over in a ditch, quite honestly, makes no sense.

Whatever motives you would like to attribute to the effort here, I can assure my colleagues I want to create a process that would be acceptable if our troops found themselves subject to it. And every military Judge Advocate, every admiral, and every general, believes the evidentiary standard in this committee bill is legally acceptable and appropriate.

Why the difference between December 30, 2005, and before? The reason we have a two-tiered system is because in 2005, due to the hard work of Senator MCCAIN and Senator LEVIN—who was a champion in trying to bring this about on the Democratic side—we were able to make a policy statement of the United States that says: Cruel and inhumane and degrading treatment as a policy will be forbidden. And we referenced the 5th, 8th, and 14th amendments standard called ''shock the conscience'' that existed in the convention on torture. All bills have excluded evidence that violates the torture statute. It is a per se exclusion. If the military judge, in their discretion, believes that the conduct in front of the court amounts to torture, in violation of the torture statute, it does not come into evidence.

The committee bill had a per se exclusion for a violation of the Detainee Treatment Act, and it has been changed, and here is why: The Detainee Treatment Act is a policy statement, not an evidentiary standard. The Detainee Treatment Act says that the Government and its agents and agencies will not engage in cruel, inhumane, and degrading treatment. I would argue that to exclude evidence in a military commission that may run afoul of degrading treatment would create a higher standard for a terrorist than our own military members have in their own courts-martial. So I think the policy statement ''cruel and inhumane and degrading'' should not be an evidentiary standard, and it is not.

But what we did do to bolster that policy statement is we took the 5th, 8th, and 14th amendment ''shock the conscience test'' and said: From the date of the Detainee Treatment Act forward, that will be an area that the judge has to make an inquiry into regarding the admission of evidence. The reason we didn't want to go backward is because before the Detainee Treatment Act passed in 2005, no one had recognized the 5th, 8th, and 14th amendment concepts applying to enemy combatants. So what we are trying to do is start over after Hamdan and incorporate into the military commission model as many protections as we can that also protect America. So going forward, from the Detainee Treatment Act forward, any evidence gathered after the Detainee Treatment Act will have to comply with the 5th, 8th, and 14th amendments requirements that make up the heart and soul of the Detainee Treatment Act. To make it retroactive and exclude statements where that concept was not known, was not part of our legal system regarding enemy combatants, in my opinion, was unwise.

So we are going forward, reinforcing the Detainee Treatment Act, and the standard of admission of evidence of reliable and probative meets the standards of justice and totality of the circumstances test, stays in place, covers all statements before and after. Our Judge Advocate Generals, to a person, have said that if you take the Detainee Treatment Act out of the equation, what is left still is acceptable. And the courts will make that decision.

I am confident that the standard that we had, the administration had when it came to the admission of evidence, was acceptable, and the judge advocates who have objected to many things did not object to that.

So the idea that we made a conscious decision to allow cruel and inhumane treatment to become a player defies what we did in totality.

The title 18, War Crimes Act, was rewritten. One of the crimes that we put in title 18 that would constitute a grave breach of the Geneva Conventions, a felony under our own law, is cruel or inhumane treatment: The act of a person who commits or conspires or attempts to commit an act intended to inflict severe or serious physical or mental pain or suffering, other than pain or suffering incidental to lawful sanctions, including serious physical abuse upon another within his custody or control. And we defined those terms. It is a felony in U.S. law to engage in cruel or inhumane treatment, not just torture. It is a felony in U.S. law to mutilate or maim.

What we did—intentionally causing serious bodily harm, rape, sexual assault or abuse, taking hostages—what we did is we took what the Geneva Conventions have defined as being a grave breach of the conventions, we put it in title 18 of the War Crimes Act, and made it a felony. So if you are a military member or CIA agent and you run afoul of the title 18 War Crimes Act, you can be prosecuted. When it comes time for the military judge to rule upon the admissibility of evidence in a military commission, the standard that we will be using has been blessed by every Judge Advocate General that we have, those in charge of our military legal system.

So I think it is a good standard. I think the fact that we put the DTA 5th, 8th and 14th amendment standard into the statute in a perfective way enhances and emboldens what we are trying to do with the DTA and will make us a better nation.

The other areas of concerns: enemy combatant definition. The enemy combatant definition that is changed from the compromise and committee bill allows us to, subject to military commission, try those people who intentionally and knowingly aid terrorism; materially support terrorism. To me, that makes sense. I want to prosecute the person who sells the guns to al-Qaida as much as the people who use the weapons. I want to go after the support network that supports terrorism. To me, that makes perfect sense. I am glad we expanded the definition because those who are assisting terrorists in a knowingly purposeful way should be held accountable for their actions.

Under no circumstance can an American citizen be tried in a military commission. The jurisdiction of military commissions does not allow for the trial of American citizens or lawful combatants, and those who say otherwise, quite frankly, have not read the legislation because there is a prohibition to that happening.

The hearsay rules that are in the compromise very much mirror the committee bill, but that we are allowing a burden shift, to me, makes sense given the global nature of the war. I can spend a lot of time explaining the differences between the two bills, but I will basically summarize by saying that the purpose of the committee bill has been met by the compromise. If it were not so, I would not vote for it. We are not allowing into evidence coerced

statements unless the judge makes the decision they are reliable, probative, and in the totality of circumstances they meet the ends of justice.

At the end of the day you are going to have a judge applying a legal standard to a request to admit evidence. The administration, in my opinion, in their first product, was trying to legislate a conviction. In many ways they were trying to set up the rules when it came to the military commission format that would allow evidence to go to the jury never seen by the accused. That would make it very hard to defend yourself.

We have changed that. Anything the jury gets to convict, the accused can examine and rebut. To me, that was a huge accomplishment that put the trials back on sound footing within our value system, and legally I think they will pass muster now.

So at the end of the day, in my opinion we do not need to try to legislate how the judge should rule. Everybody has their pet peeve about where the administration has failed or succeeded, about how the CIA has conducted its business. I have found an effort to tie the judges' hands to the point that we have no flexibility when it comes to admitting evidence. The judge is in the best place—better than anybody here—to make a decision as to what should come into that trial. What are we asking the judges to do? To use their experience, their knowledge of the law, their sense of right or wrong to determine: Is that statement reliable? Is it probative? Given everything around it, would the interests of justice be met if it came into the trial?

That is an acceptable legal standard, not only to every Judge Advocate General who serves today in our military, it should be a standard that every American is proud of because I am proud of it.

I bet you dollars to doughnuts when the Supreme Court gets hold of our work product they are going to approve it.

Finally, Hamdan is about applying the Geneva Conventions to the war on terror. Everybody I know of in the administration believed that the Geneva Conventions did not apply to these unlawful enemy combatants. I shared that belief. We were wrong. The Supreme Court—whether I agree or not—ruled. After their ruling, we had two things that we had to accomplish to get this country back on track within the rule of law. We had a challenge: to take the CIA interrogation program that existed and will exist and make sure that it was Geneva Conventions compliant.

What do the Geneva Conventions require of every country that signs the document? It requires that, domestically, that country will outlaw, within its own domestic law, grave breaches of the treaty. Every country has an affirmative duty to set out within their laws and prosecute their own people for grave breaches of the Geneva Conventions.

Title 18 is the War Crimes Act. Under title 18 we have listed nine crimes that would be considered grave breaches of the Geneva Conventions. To the CIA: Your program, whatever it may be in classified form, must comply with the War Crimes Act. And the War Crimes Act runs the gamut from torture to cruel, inhumane treatment, intentional infliction of serious bodily injury, or mental pain.

We have taken nine well-defined felonies and told the CIA and every other agency in the country: Whatever you do, if you violate these statutes you will be subject to being prosecuted.

I want a CIA program to be classified when it comes to interrogating high-value terrorist targets. I think it would be foolhardy to tell the terrorist community everything that comes your way when you join al-Qaida or some other terrorist organization. But it is important to tell every American, every CIA agent, their family, and the international community what we do will not only be within the Geneva Conventions, it is going to be beyond what the Conventions require, and I think we have accomplished that.

There are six specified events in article 129 and article 130 of the Geneva Conventions that constitute grave breaches. We have adopted all six, and we have added to that list. Whatever the CIA is doing and wherever they do it, whatever the Department of Defense is doing and wherever they do it, they now have the notice and the clarity that they did not have before to do their job within the law.

This idea that we have rewritten the statute and given immunity to people who have violated the statute is absurd. There is nothing in the compromise or the committee bill that would give immunity or amnesty to someone who violated the felony provisions. But what we did do, that I am proud of, is that we took a 1997 War Crimes Act that was so ill-defined that no one understood it and gave clarity and purpose to it so those whom we are asking to defend us from the most vicious people in the world will have a chance to know the law.

Abu Ghraib was about policies that cut legal corners, that migrated from one side of the Government to the other, that got everybody involved confused as to what you could and could not do. It was a mixture of individual deviance and bad policy, poorly trained people, not enough folks to do the job, and not trained well enough to understand what the job was. It was a mess. For 2 years we have been trying—and I have been as helpful as I know how to be—to create some sense of balance to bring order out of chaos, and we are on the verge of doing it.

This is a product, not only that I support, that I had but one that I am proud of. Every military lawyer who sits on the top of our military legal system has had input on every issue. They have had the guts to go to the House and Senate and say some things about the President's proposal are flat wrong. That took a lot of guts, and I am here to tell you the final product took their input and what their concerns were and has been changed.

But if you want a CIA program that is not classified, you lost. I want the program to be classified. But I want it to run within the obligations of the Geneva Conventions, and we have accomplished that.

Finally, what did we do in the compromise that we didn't do in the committee bill? We said that every obligation under the Geneva Conventions that our country has, outside of the War Crimes Act, will be fulfilled by our President. Under our constitutional democracy, it is the obligation of the executive branch to implement and interpret treaties. This whole debate, what I have been working on for 2 weeks and getting beat up on in every talk radio show in the country, was about how can you comply with the Geneva Conventions in a way that will be seen by the world as not getting out of the Conventions.

The proposal for the Congress to redefine the treaty terms, in my opinion, would have created a precedent for every other country, in a war that they are in the middle of, to change the treaty in the middle of a war. The conventions have been closed for years. It would have been wrong, ill-advised for the Congress to sit down with the President and rewrite the treaty obligations for domestic purposes because clearly then we would have been changing the treaty terms without notifying the other parties.

What we did to avoid that is we, Congress, defined nine crimes that would constitute grave breaches, honoring our commitment under the Geneva Conventions, to outlaw grave breaches, felonies. We have done our job, and we turned to the Executive and said in this legislation: It is your job, Mr. President, consistent with our constitutional democracy, to implement and fulfill the obligations of the treaty outside of title 18. And when you make a decision, publish what you have decided. And any decision you make cannot take power away from the courts or the Congress that we have in the same arena.

Those people who want to overturn the election, who do not like President Bush, are upset that we recognized he has a role to play. Let me tell you, he does have a role to play. Any President has the same role that we are going to give President Bush—to implement a treaty, not change a treaty.

So I think we have done a very good job of putting into law our obligations under the Geneva Conventions defining, constitutionally, who has what responsibility so that no reasonable person could say the United States has abandoned its longstanding obligations to the Geneva Conventions because we have not. And that is what we have

been sweating over for weeks. No reasonable person can say that this compromise condones torture, cruel, or inhumane treatment because we make it a felony. What we have done is given the military judge the tools he or she will need to render justice. And I have tried to embolden and strengthen the Detainee Treatment Act in a way that I think makes sense.

The military court-martial system will be the model. The military commission will deviate. And the authority given to the Secretary is the same authority given to the President: to make differences between the district courts and the military justice system as a whole. It is compliant with article 36 of the Uniform Code of Military Justice. This compromise is compliant with Hamdan. It is compliant with the values we are fighting for. And it has the flexibility we need to fight an enemy that knows no bounds.

The work product is the result of give and take, is the result of being more than one branch of Government, is the result of having to deal with a court decision that was new and novel. I can say from my point of view that not only will I vote for the compromise, I am very proud of it.

I yield the floor.

Mr. WARNER. Mr. President, my distinguished colleague from South Carolina will be placing in today's RECORD the correspondence from the judge advocate generals. I think that is very important. I think for those following this debate, it would be of great interest to give an example of how in response to the letter sent by the distinguished Senator from Michigan to a judge advocate they respond. I ask unanimous consent to have printed in the RECORD first at this juncture a letter from Senator LEVIN to Bruce MacDonald, Judge Advocate General of the Navy, on this point of what we call the two categories of evidence.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
*Washington, DC, September 25, 2006.*

Rear Admiral BRUCE MACDONALD,
*The Judge Advocate General, Department of the Navy, Washington, DC.*

DEAR ADMIRAL MACDONALD: The Senate will soon begin consideration of a bill entitled the Military Commissions Act of 2006, which would add a new Chapter 47A to title 10, United States Code, addressing trials by military commission. Section 948r of the proposed new chapter would address the issue of compulsory self-incrimination and statements obtained by torture or other methods of coercion.

Under this provision, a copy of which is attached, a statement obtained on or after December 30, 2005 through coercion that is less than torture would be admissible if the military judge finds that: (1) the totality of the circumstances renders it reliable and possessing sufficient probative value; (2) the interests of justice would best be served by admission of the statement into evidence; and (3) the interrogation methods used do not violate the cruel, unusual, or inhumane treatment of punishment prohibited by the 5th, 8th, and 14th Amendments to the United States Constitution.

Under the same provision, a statement obtained before December 30, 2005 would be subject to the first two requirements, but not the third. Consequently, a statement obtained before December 30, 2005 through cruel, unusual or inhumane treatment prohibited by the U.S. Constitution would be admissible into evidence, as long as the other conditions in the provision are met.

I would appreciate if you would provide your personal views and advice as a military officer on the merits of this provision and the impact that it would have on our own troops, should they be captured by hostile forces in the future. Because this issue will be debated on the Senate floor this week, I request that you provide your views by no later than the close of business on Tuesday, September 26, 2006.

Thank you for your assistance in this matter.

Sincerely,

CARL LEVIN,
*Ranking Member.*

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DEPARTMENT OF THE NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL
*Washington, DC, September 26, 2006.*

Hon. CARL LEVIN,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR LEVIN: Thank you for your letter of September 25, 2006, requesting my personal views on the admissibility of coerced statements at military commissions.

My consistent position before the Congress is and has been that the presiding military judge should have the discretion and authority to inquire into the underlying factual circumstances and exclude any statement derived from unlawful coercion, in order to protect the integrity of the proceeding.

This approach is consistent with the practice of international war crimes tribunals sanctioned by the United States and United Nations and addresses the concern regarding reciprocal treatment of U.S. armed forces personnel in present or future conflicts.

Sincerely,

BRUCE MACDONALD,
*Rear Admiral, JAGC, U.S. Navy.*

Mr. WARNER. Mr. President, it is a clear indication by those who are currently given the responsibility of defending the men and women of the United States military how this provision in the bill now before the Senate is consistent with their understanding of international and domestic law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. WARNER. Mr. President, I inquire of our distinguished colleague, is he now drawing time on the Levin amendment?

The PRESIDING OFFICER. The Senator's time is from the Democratic leader's time on the measure itself.

Mr. LEAHY. Mr. President, how much time is there to the Democratic leader on this?

The PRESIDING OFFICER. The Senator from Vermont has 47 minutes; 45 minutes of the 57 minutes remaining to the Democratic leader.

Mr. LEAHY. Mr. President, as I said earlier, I understood that the consent agreement was to give me 45 minutes on the Specter-Leahy-Dodd amendment and 15 minutes on the bill. That seems to not have been the agreement entered into by leadership. I ask that I take 10 minutes from the Democratic leader's time and the remaining time from my own 45 minutes of time.

I see the concern by the Senator from Michigan. I will take it from my 45 minutes. I also note that I will not consent to any other time agreements on this bill insofar as the time agreement I understood I had was not entered into. I will take the 45 minutes.

Mr. President, this administration has yet to come clean to the Congress or the American people in connection with the secret legal justifications it has generated and secret practices it has employed in detaining and interrogating hundreds if not thousands of people in the war on terror. Even they cannot dismiss the practices at Guantanamo as the actions of a few ''bad apples.'' With Senate adoption of the anti-torture amendment last year and the recent adoption of the Army Field Manual, I had hoped that 5 years of administration resistance to the rule of law and to the U.S. military abiding by its Geneva obligations might be drawing to a close. Despite the resistance of the Vice President and the administration, the new Army Field Manual appears to outlaw several of what the administration euphemistically calls ''aggressive'' tactics and that much of the world regards as torture and cruel and degrading treatment. Of course, the President in his signing statement undermined enactment of the anti-torture law, and now the administration is seeking still greater license to engage in harsh techniques in connection with the military tribunal legislation before us now.

What is being lost in this debate is any notion of accountability. Where are the facts of what has been done in the name of the United States? Where are the legal justifications and technicalities the administration's lawyers have been seeking to exploit? Senator LEVIN's amendment, which restores the bipartisan legislation passed by the Senate Armed Services Committee, would maintain some accountability for this administration's actions and some standards of justice and decency. The Republican leadership's legislation which is before us now strips away all accountability and erodes our most basic national values.

If the administration had answered me when I asked over and over about the Convention Against Torture and about rendition, we could have come to grips with those matters before they degenerated, as they have, into international embarrassment for the United States. As Secretary Colin Powell wrote recently, ''The world is beginning to doubt the moral basis of our fight against terrorism.'' It did not need to come to that.

If FBI Director Mueller had been more forthcoming with me at or after the May 2004 hearing in which I asked him about what the FBI had observed at Guantanamo, we could have gotten to a detention and interrogation policy

befitting the U.S. years sooner than we have.

If the administration would have responded to my many inquiries over the years regarding the rendition of Maher Arar, I would not have had to send yet another demand for information to the Attorney General this week, and we would not have been embarrassed by the Canadian commission report about his being sent by U.S. authorities to Syria where he was tortured. Mr. Arar is the Canadian citizen who was returning to Canada through New York when he was arrested by American authorities at JFK airport and held for 12 days without access to a Canadian consular official or lawyer. He was then rendered, not to Canada, but to Syria, without the knowledge or approval of Canadian officials, where he was tortured. Last week, a Canadian commission inquiry determined that Mr. Arar had no ties to terrorists, he was arrested on bad intelligence, and his forced confessions in Syria reflected torture, not the truth. Sadly, the administration is still seeking to avoid accountability by hiding behind legal doctrines. The administration continues to thwart every effort to get to the facts, to get to the truth and to be accountable. I am worried that the legislation before us is one more example of that trend.

Unfortunately, Senator LEVIN's amendment, like the Armed Services Committee's bill, retains the extremely troubling habeas provision. I will be submitting an amendment to strip that provision.

We are rushing through legislation that would have a devastating effect on our security and on our values, and we need to step back and think about what we are doing. The President recently said that ''time is of the essence'' to pass legislation authorizing military commissions. Time was of the essence when this administration took control and did not act on the dire warnings of terrorist action. Time was of the essence in August and early September 2001 when the 9/11 attacks could still have been prevented. This administration ignored warnings of a coming attack and even proposed cutting the anti-terror budget. It focused on Star Wars, not terrorism. Time was of the essence when Osama bin Laden was trapped in Tora Bora.

After 5 years of unilateral actions by this administration that have left us less safe, time is now of the essence to take real steps to keep us safe from terrorism like those in the Real Security Act, S. 3875. Instead, the President and the Republican Senate leadership call for rubberstamping more flawed White House proposals in the run up to another election. I hope that this time the U.S. Senate will act as an independent branch of the government and finally serve as a check on this administration.

We need to pursue the war on terror with strength and intelligence, but also to do so consistent with American values. The President says he wants clarity as to the meaning of the Geneva Conventions and the War Crimes Act. Of course, he did not want clarity when his administration was using its twisted interpretation of the law to authorize torture, cruel and inhumane treatment of detainees and spying on Americans without warrants and keeping those rationales and programs secret from Congress. The administration does not seem to want clarity when it refuses even to tell Congress what its understanding of the law is following the withdrawal of a memo that said the President could authorize and immunize torture. That memo was withdrawn because it could not stand up in the light of day.

It seems that the only clarity this administration wants is a clear green light from Congress to do whatever it wants. That is not clarity; it is immunity. That is what the current legislation would give to the President on interrogation techniques and on military commissions. Justice O'Connor reminded the nation before her retirement that even war is not a ''blank check'' when it comes to the rights of Americans. The Senate should not be a rubberstamp for policies that undercut American values and make Americans around the world less safe.

In reality, we already have clarity. Senior military officers tell us they know what the Geneva Conventions require, and the military trains its personnel according to these standards. We have never had trouble urging other countries around the world to accept and enforce the provisions of the Geneva Conventions. There was enough clarity for that. What the administration appears to want, instead, is to use new legislative language to create loopholes and to narrow our obligations not to engage in cruel, degrading, and inhuman treatment.

In fact, the new legislation muddies the waters. It saddles the War Crimes Act with a definition of cruel or inhuman treatment so oblique that it appears to permit all manner of cruel and extreme interrogation techniques. Senator MCCAIN said this weekend that some techniques like waterboarding and induced hypothermia would be banned by the proposed law. But Senator FRIST and the White House disavowed his statements, saying that they preferred not to say what techniques would or would not be allowed. That is hardly clarity; it is deliberate confusion.

Into that breach, this legislation throws the administration's solution to all problems: more Presidential power. It allows the administration to promulgate regulations about what conduct would and would not comport with the Geneva Conventions, though it does not require the President to specify which particular techniques can and cannot be used. This is a formula for still fewer checks and balances and for more abuse, secrecy, and power-grabbing. It is a formula for immunity for past and future abuses by the Executive.

I worked hard, along with many others of both parties, to pass the current version of the War Crimes Act. I think the current law is a good law, and the concerns that have been raised about it could best be addressed with minor adjustments, rather than with sweeping changes.

In 1996, working with the Department of Defense, Congress passed the War Crimes Act to provide criminal penalties for certain war crimes committed by and against Americans. The next year, again with the Pentagon's support, Congress extended the War Crimes Act to violations of the baseline humanitarian protections afforded by Common Article 3 of the Geneva Conventions. Both measures were supported by a broad bipartisan consensus, and I was proud to sponsor the 1997 amendments.

The legislation was uncontroversial for a good reason. As I explained at the time, the purpose and effect of the War Crimes Act as amended was to provide for the implementation of America's commitment to the basic international standards we subscribed to when we ratified the Geneva Conventions in 1955. Those standards are truly universal: They condemn war criminals whoever and wherever they are.

That is a critically important aspect of the Geneva Conventions and our own War Crimes Act. When we are dealing with fundamental norms that define the commitments of the civilized world, we cannot have one rule for us and one for them, however we define ''us'' and ''them.'' As Justice Jackson said at the Nuremberg tribunals, ''We are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us.''

In that regard, I am disturbed that the legislation before us narrows the scope of the War Crimes Act to exclude certain violations of the Geneva Conventions and, perhaps more disturbingly, to retroactively immunize past violations. Neither the Congress nor the Department of Defense had any problem with the War Crimes Act as it now stands when we were focused on using it to prosecute foreign perpetrators of war crimes. I am concerned that this is yet another example of this administration overreaching, disregarding the law and our international obligations, and seeking to immunize others to break the law. It also could well prevent us from prosecuting rogues who we all agree were out of line, like the soldiers who mistreated prisoners at Abu Ghraib.

The President said on May 5, 2004 about prisoner mistreatment at Abu Ghraib: ''I view those practices as abhorrent.'' He continued: ''But in a democracy, as well, those mistakes will be investigated, and people will be brought to justice.'' The Republican leader of the Senate said on the same day: ''I rise to express my shock and

condemnation of these despicable acts. The persons who carried them must face justice.''

Many of the despicable tactics used in Abu Ghraib the use of dogs, forced nudity, humiliation of various kinds do not appear to be covered by the narrow definitions this legislation would graft into the War Crimes Act; of course, despite the President's calls for clarity, the new provisions are so purposefully ambiguous that we cannot know for sure. If the Abu Ghraib abuses had come to light after the perpetrators left the military, they might not have been able to be brought to justice under the administration's formulation.

The President and the Congress should not be in the business of immunizing people who have broken the law, making us less safe, turning world opinion against us, and undercutting our treaty obligations in ways that encourage others to ignore the protections those treaties provide to Americans. We should be very careful about any changes we make.

If we lower our standards of domestic law to allow outrageous conduct, we can do nothing to stop other countries from doing the same. This change in our law does not prevent other countries from prosecuting our troops and personnel for violations of the Geneva Convention if they choose; it only changes our domestic law. But it could give other countries a green light to change their own law to allow them to treat our personnel in cruel and inhuman ways.

Let me be clear. There is no problem facing us about overzealous use of the War Crimes Act by prosecutors. In fact, as far as I can tell, the Ashcroft Justice Department and the Gonzales Justice Department have yet to file a single charge against anyone for violation of the War Crimes Act. Not only have they never charged American personnel under the act, they have never used it to charge terrorists either.

We can address any concerns about the War Crimes Act with reasonable amendments, as the Warner-Levin bill did, without gutting the Act in a way that undermines our moral authority and makes us less safe. Senator LEVIN's amendment goes back to the Warner-Levin bill's formulation, and I urge Senators of both parties to support it.

The proposed legislation would also allow the admission into military commission proceedings of evidence obtained through cruel and inhuman treatment. This provision would once again allow this administration to avoid all accountability for its misguided policies which have contributed to the rise of a new generation of terrorists who threaten us. Not only would the military commission legislation before us immunize those who violated international law and stomped on basic American values, but it would allow them then to use the evidence gotten in violation of basic principles of fairness and justice.

Allowing in this evidence would violate our basic standards of fairness without increasing our security. Maher Arar, the Canadian citizen sent by our government to Syria to be tortured, confessed to attending terrorist training camps. A Canadian commission investigating the case found that his confessions had no basis in fact. They merely reflected that he was being tortured, and he told his torturers what they wanted to hear. It is only one of many such documented cases of bad information resulting from torture. We gain nothing from allowing such information. The Armed Services Committee bill, which the Levin amendment restores, would not allow the use of this tainted evidence.

The military commissions legislation departs in other unfortunate ways from the Warner-Levin bill. Early this week, apparently at the White House's request, Republican drafters added a breathtakingly broad definition of ''unlawful enemy combatant'' which includes people—citizens and non-citizens—alike—who have ''purposefully and materially supported hostilities'' against the United States or its allies. It also includes people determined to be ''unlawful enemy combatant'' by any ''competent tribunal'' established by the President or the Secretary of Defense. So the government can select any person, including a U.S. citizen, whom it suspects of supporting hostilities—whatever that means—and begin denying that person the rights and processes guaranteed in our country. The implications are chilling. We should go back to the reasonable definition the Senate Armed Services Committee came up with. That is what the Levin amendment does.

I hope that we will take the opportunity before us to consider and pass bipartisan legislation that will make us safer and help our fight on terrorism, both by giving us the tools we need and by showing the world the values we cherish and defend, the same values that make us a target. We should amend the legislation before us to keep the War Crimes Act strong and to require some accountability from the administration. The Levin amendment does just that, and I urge all senators to vote for it. Let us join together on behalf of real security for Americans.

Mr. President, before we stand here congratulating ourselves too much about all the wonderful things we did in these closed-door meetings and these back-room meetings and the Bush-Cheney statements about what we are allowed to do or not allowed to do in what has become an increasingly rubberstamp Congress—the most rubberstamp Congress I have ever seen in 32 years here—I want to talk about the habeas stripping provisions, what I call un-American provisions, which are regrettably in the bill before us and unfortunately contained in the committee bill, and even included in the amendment before us now. The Specter-Leahy-Dodd amendment will eliminate those provisions from the bill pending before the Senate.

It will be interesting to see whether the Bush-Cheney administration will allow Republican Senators to vote for it. Lord knows there have not been many votes made here that have been by independent Senators.

As currently drafted, section 7 of the military commissions bill would wrongfully, and in my view, unconstitutionally eliminate the writ of habeas corpus for anyone detained by this administration on suspicion of being what they call an ''enemy combatant,'' which is a dangerous concept that is being expanded by a vague and ever-expanding definition.

The President could basically say I think you are an enemy combatant, and lock you up, and you can't even contest it.

I think of the hundreds of pages of statements made by Senators on both sides of the aisle when other countries have done something this arbitrary, or this vague, and locked up people inside their borders, and we said how un-American it is. If we pass this, we can no longer call it un-American. We can call it codified American law.

Important as the rules for military commissions are, they will apply to only a few cases. In this war on terror, you may wonder how many people have been brought to justice. We are holding about 500 people in Guantanamo. We are so committed to this war that we have charged a total of 10 people in the nearly 5 years that the President declared his intention to use military commissions. That is two a year. They just announced plans to charge an additional 14 men. At this rate, I will be about 382 years old when they get around to charging all the people they are detaining. But for the vast majority of the almost 500 prisoners at Guantanamo, and the thousands it has detained over the last 5 years, the administration's position remains as stated by Secretary of Defense Donald Rumsfeld 3 years ago: There is no interest in trying them.

It is not just a question of we have no interest in trying those we have determined to be enemy combatants. If we have dozens and dozens or even hundreds of people who are picked up by mistake or turned over by bounty hunters to get the bounty and not because they might have done something, we are not going to try them either. Sorry, we are just going to lock them up.

Perhaps the single most consequential provision of the so-called military commissions bill can now be found buried nearly 100 pages in to curtail judicial review and any meaningful accountability. This provision would perpetuate the indefinite detention of hundreds of individuals against whom the Government has brought no charges and presented no evidence, without any recourse to justice whatsoever. Maybe some of them are guilty.

If they are, try them. But we have to understand that there may be people in there who have no reason to be there and there are no charges and no evidence. This is un-American, it is unconstitutional, and it is contrary to American interests. This is not what a great and wonderful nation should be doing.

Going forward, the bill departs even more radically from our most fundamental values. I am proud to be an American, and I am proud to be a Senator. But mostly I am proud of what has been in the past our American values. Provisions that were profoundly troubling a week ago when the Armed Services Committee marked up the bill have gotten much worse in the course of the closed-door revisions over the past 5 days, including the last round of revisions, which were put in behind closed doors and sent around late yesterday, and that the majority now demands we pass immediately. Five years they sit, doing nothing, and then all of sudden, whoops, the polls look bad this fall for the election: Quick, pass anything, no matter how unconstitutional it might be.

For example, the bill has been amended to eliminate habeas corpus review even for people inside the United States, and even for people who have not been determined to be enemy combatants. Quick, pass it; quick, do it now; quick, pass it out of here so we can rubberstamp it in a signing ceremony before anybody reads the fine print.

We have done this in the past. As a witness said before our committee this week, we did this in the past. We did it with the Tonkin Gulf Resolution. We did it with the internment of Japanese Americans. Now we are about to do it again.

As the bill now stands, it would permit the President to detain indefinitely—even for life—any alien, whether in the United States or abroad, whether a foreign resident or a lawful permanent resident, without any meaningful opportunity for that person to challenge his detention. The administration would not even need to assert, much less prove, that the alien was an enemy combatant; it would suffice to say that the alien was awaiting a determination on that issue, even though they may wait 20, 30, 40 years and wait until the grave gives them their escape.

In other words, the bill would send a message to the millions of legal immigrants living in America, participating in American families, working for American businesses, and paying American taxes. Its message would be that our Government may at any minute pick them up and detain them indefinitely without charge and without any access to the courts or even to military tribunals unless and until the Government determines that they are not enemy combatants—even though they have no ability to help in that determination themselves. In turn, the bill now defines the term enemy combatants in a tortured and unprecedented broad manner.

Detained indefinitely, and unaccountably, until they are proven innocent; even though they have no right to stand up and offer proof. It is like the Canadian citizen Maher Arar, shipped off to a torture cell in Syria by the Bush-Cheney administration, despite what the Canadian Government recently concluded, that there is no evidence that he ever committed a crime or posed a threat to either the United States or Canadian security. Pick him up. He looks bad. Ship him to Syria. Torture him. Maybe he will confess to something and prove we were right.

Now it has been documented the Bush-Cheney administration did the wrong thing to the wrong man. When asked about it, what do they do? As usual, they evade all accountability. This is an administration that makes no mistakes. A rubberstamp Congress will never ask them what they did, they make no mistakes, and they hide behind a purported State secrets privilege.

The administration's defenders would like to believe Mr. Arar's case is an isolated blunder, but it is not. We have numerous press accounts that have quoted administration officials themselves who believe a significant percentage of those detained at Guantanamo Bay have no connection to terrorism. They have been held by the Bush-Cheney administration for several years and the administration intends to hold them indefinitely without trial or any recourse to justice, even though a substantial number of them are innocent people who were turned in by anonymous bounty hunters or picked up by mistake in the fog of war.

The most important purpose of habeas corpus is not to give people extra rights. No one is asking to give people special rights. Habeas corpus does not do that. Habeas corpus is intended to correct errors such as this to protect the innocent. It is precisely to prevent such abuses that the Constitution prohibits the suspension of the writ of habeas corpus ''unless when in cases of rebellion or invasion public safety may require it.''

I would assume the Bush-Cheney administration is not saying we are handling this question of terrorists so poorly that we are under invasion now. And I have no doubt this bill, which will permanently eliminate the writ of habeas corpus for all aliens within and outside the United States whenever the Government says they might be enemy combatants, violates that prohibition. I believe even the present Supreme Court, seven of the nine members now Republican, would hold it unconstitutional.

When former Secretary of State Colin Powell wrote of his concerns with the administration's bill, he wrote: ''The world is beginning to doubt the moral basis of our fight against terrorism.''

Talk to anyone who travels around the world anywhere, even among some of our closest allies, our best friends. We are asked, What are you doing? Have you lost your moral compass? And these are countries that faced terrorist attacks long before we did.

General Powell, former head of the Joint Chiefs of Staff, was right.

We have heard from current and former diplomats, military lawyers, Federal judges, law professors, law school deans, and even a former Solicitor General under the first President Bush, Kenneth Starr, that they have grave concerns with the habeas corpus stripping provisions of this bill. I have letters that come from across the political and legal spectrum saying this is wrong.

I ask unanimous consent that some of these letters be printed in the RECORD.

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

SEPTEMBER 25, 2006.

To United States Senators and Members of Congress.

DEAR MADAMS/SIRS: This letter is written in the name of the former members of the diplomatic service of the United States listed below.

We urge that the Congress, as it considers the pending detainee legislation, not eliminate the jurisdiction of the courts to entertain habeas corpus petitions filed on behalf of those detainees.

There is no more central principle of democracy than that an officer of the executive branch of government may restrain no one except at sufferance of the judiciary. The one branch is vital to insure the legitimacy of the actions of the other. Habeas corpus is the ''Great Writ.'' It is by habeas corpus that a person—any person—can insure that the legality of his or her restraint is confirmed by a court independent of the branch responsible for the restraint. Elimination of judicial review by this route would undermine the foundations of our democratic system.

Weare told that the central purpose of our engagement in that ''vast external realm'' today is the promotion of democracy for others. All nations, we urge, should embrace the principles and practices of freedom and governance that we have embraced. But to eliminate habeas corpus in the United States as an avenue of relief for the citizens of other countries who have fallen into our hands cannot but make a mockery of this pretension in the eyes of the rest of the world. The perception of hypocrisy on our part—a sense that we demand of others a behavioral ethic we ourselves may advocate but fail to observe—is an acid which can overwhelm our diplomacy, no matter how well intended and generous. Pretensions are one thing; behavior another, and quite the more powerful message. To proclaim democratic government to the rest of the world as the supreme form of government at the very moment we eliminate the most important avenue of relief from arbitrary governmental detention will not serve our interests in the larger world.

This is the first and primary reason for rejecting the proposal. But the second is almost as important, and that is its potential for a reciprocal effect. Pragmatic considerations, in short, are in this instance at one with considerations of principle. Judicial relief from arbitrary detention should be preserved here else our personnel serving abroad

will suffer the consequences. To deny habeas corpus to our detainees can be seen as prescription for how the captured members of our own military, diplomatic and NGO personnel stationed abroad may be treated.

As former officials in the diplomatic service of our nation, this consideration weighs particularly heavily for us. The United States now has a vast army of young Foreign Service officers abroad. Many are in acute and immediate danger. Over a hundred, for example, are serving in Afghanistan. Foreign service in a high-risk post is voluntary. These officers are there willingly. The Congress has every duty to insure their protection, and to avoid anything which will be taken as justification, even by the most disturbed minds, that arbitrary arrest is the acceptable norm of the day in the relations between nations, and that judicial inquiry is an antique, trivial and dispensable luxury.

We urge that the proposal to curtail the reach of the Great Writ be rejected.

Respectfully submitted,

William D. Rogers, former Under Secretary of State; Ambassador J. Brian Atwood; Ambassador Harry Barnes; Ambassador Richard E. Benedick; Ambassador A Peter Burleigh; Ambassador Herman J. Cohen; Ambassador Edwin G. Corr; Ambassador John Gunther Dean; Ambassador Theodore L. Eliot, Jr.; Ambassador Chas W. Freeman, Jr.; Ambassador Robert S. Gelbard.

Ambassador Lincoln Gordon; Ambassador William C. Harrop; Ambassador Ulric Haynes, Jr.; Ambassador Robert E. Hunter; Ambassador L. Craig Johnstone; Ambassador Robert V. Keeley; Ambassador Bruce P. Laingen; Anthony Lake, former National Security Advisor; Ambassador Princeton N. Lyman; Ambassador Donald McHenry; Ambassador George Moore.

Ambassador George Moose; Ambassador Thomas M. T. Niles; Ambassador Robert Oakley; Ambassador Robert H. Pelletreau; Ambassador Pete Peterson; Ambassador Thomas R. Pickering; Ambassador Anthony Quainton; Helmut Sonnenfeldt, former Counselor of the Department of State; Ambassador Roscoe S. Suddarth; Ambassador Phillips Talbot; Ambassador William Vanden Heuvel; Ambassador Alexander F. Watson.

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TO MEMBERS OF CONGRESS: The undersigned retired federal judges write to express our deep concern about the lawfulness of Section 6 of the proposed Military Commissions Act of 2006 (''MCA''). The MCA threatens to strip the federal courts of jurisdiction to test the lawfulness of Executive detention at the Guantanamo Bay Naval Station and elsewhere outside the United States. Section 6 applies ''to all cases, without exception, pending on or after the date of the enactment of [the MCA] which relate to any aspect of the detention, treatment, or trial of an alien detained outside of the United States . . . since September 11, 2001.''

We applaud Congress for taking action establishing procedures to try individuals for war crimes and, in particular, Senator Warner, Senator Graham, and others for ensuring that those procedures prohibit the use of secret evidence and evidence gained by coercion. Revoking habeas corpus, however, creates the perverse incentive of allowing individuals to be detained indefinitely on that very basis by stripping the federal courts of their historic inquiry into the lawfulness of a prisoner's confinement.

More than two years ago, the United States Supreme Court ruled in Rasul v. Bush, 542 U.S. 466 (2004), that detainees at Guantanamo have the right to challenge their detention in federal court by habeas corpus. Last December, Congress passed the Detainee Treatment Act, eliminating jurisdiction over future habeas petitions filed by prisoners at Guantanamo, but expressly preserving existing jurisdiction over pending cases. In June, the Supreme Court affirmed in Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006), that the federal courts have the power to hear those pending cases. These cases should be heard by the federal courts for the reasons that follow.

The habeas petitions ask whether there is a sufficient factual and legal basis for a prisoner's detention. This inquiry is at once simple and momentous. Simple because it is an easy matter for judges to make this determination—federal judges have been doing this every day, in every courtroom in the country, since this Nation's founding. Momentous because it safeguards the most hallowed judicial role in our constitutional democracy—ensuring that no man is imprisoned unlawfully. Without habeas, federal courts will lose the power to conduct this inquiry.

We are told this legislation is important to the ineffable demands of national security, and that permitting the courts to play their traditional role will somehow undermine the military's effort in fighting terrorism. But this concern is simply misplaced. For decades, federal courts have successfully managed both civil and criminal cases involving classified and top secret information. Invariably, those cases were resolved fairly and expeditiously, without compromising the interests of this country. The habeas statute and rules provide federal judges ample tools for controlling and safeguarding the flow of information in court, and we are confident that Guantanamo detainee cases can be handled under existing procedures.

Furthermore, depriving the courts of habeas jurisdiction will jeopardize the Judiciary's ability to ensure that Executive detentions are not grounded on torture or other abuse. Senator John McCain and others have rightly insisted that the proposed military commissions established to try terror suspects of war crimes must not be permitted to rely on evidence secured by unlawful coercion. But stripping district courts of habeas jurisdiction would undermine this goal by permitting the Executive to detain without trial based on the same coerced evidence.

Finally, eliminating habeas jurisdiction would raise serious concerns under the Suspension Clause of the Constitution. The writ has been suspended only four times in our Nation's history, and never under circumstances like the present. Congress cannot suspend the writ at will, even during wartime, but only in ''Cases of Rebellion or Invasion [when] the public Safety may require it.'' U.S. Const. art. I, §9, cl. 2. Congress would thus be skating on thin constitutional ice in depriving the federal courts of their power to hear the cases of Guantanamo detainees. At a minimum, Section 6 would guarantee that these cases would be mired in protracted litigation for years to come. If one goal of the provision is to bring these cases to a speedy conclusion, we can assure you from our considerable experience that eliminating habeas would be counterproductive.

For two hundred years, the federal judiciary has maintained Chief Justice Marshall's solemn admonition that ours is a government of laws, and not of men. The proposed legislation imperils this proud history by abandoning the Great Writ to the siren call of military necessity. We urge you to remove the provision stripping habeas jurisdiction from the proposed Military Commissions Act of 2006 and to reject any legislation that deprives the federal courts of habeas jurisdiction over pending Guantanamo detainee cases.

Respectfully,

Judge John J. Gibbons, U.S. Court of Appeals for the Third Circuit (1969–1987), Chief Judge of the U.S. Court of Appeals for the Third Circuit (1987–1990).

Judge Shirley M. Hufstedler, U.S. Court of Appeals for the Ninth Circuit (1968–1979).

Judge Nathaniel R. Jones, U.S. Court of Appeals for the Sixth Circuit (1979–2002).

Judge Timothy K. Lewis, U.S. District Court, Western District of Pennsylvania (1991–1992), U.S. Court of Appeals for the Third Circuit (1992–1999).

Judge William A. Norris, U.S. Court of Appeals for the Ninth Circuit (1980–1997).

Judge George C. Pratt, U.S. District Court, Eastern District of New York (1976–1982), U.S. Court of Appeals for the Second Circuit (1982–1995).

Judge H. Lee Sarokin, U.S. District Court for the District of New Jersey (1979–1994), U.S. Court of Appeals for the Third Circuit (1994–1996).

William S. Sessions, U.S. District Court, Western District of Texas (1974– 1980), Chief Judge of the U.S. District Court, Western District of Texas (1980–1987).

Judge Patricia M. Wald, U.S. Court of Appeals for District of Columbia Circuit (1979–1999), Chief Judge of the U.S. Court of Appeals for District of Columbia Circuit (1986–1991).

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MALIBU, CA,
*September 24, 2006.*

Hon. ARLEN SPECTER,
*Chairman, Senate Committee on the Judiciary, Washington, DC.*

DEAR CHAIRMAN SPECTER: I write to express my concerns about the limitations on the writ of habeas corpus contained in the compromise military commissions bill, The Military Commissions Act of 2006 (S. 3930). Although S. 3930 contains many laudable improvements to military commission procedure, section 6 of the bill effectively bars detainees at the U.S. Naval Base at Guantanamo Bay, Cuba from applying for habeas corpus review of their executive detention. I am concerned that limitation may go too far in limiting habeas corpus relief, especially in light of the apparent conflict between the holdings of *Rasul* v. *Bush*, 124 S. Ct. 2684 (2004), and *Johnson* v. *Eisentrager*, 339 U.S. 763 (1950).

Although the *Rasul* Court limited its holding to statutory habeas rights, which may be limited by the Congress, the Supreme Court nevertheless viewed Guantanamo Bay, Cuba as a territory within the control and jurisdiction of the United States. Accordingly, the *Eisentrager* case may no longer be relied upon with confidence to rule out constitutional habeas protections for Guantanamo detainees. One of the *Eisentrager* factors that limited constitutional habeas rights for aliens in military custody was whether the detainee was held outside of the United States. Based on the finding of the *Rasul* case that Guantanamo Bay falls within U.S. territorial jurisdiction, Guantanamo detainees likely have a different constitutional status than the alien detainees in *Eisentrager*, who were held in Landsberg, Germany.

Article 1, section 9, clause 2 of the United States Constitution provides that ''[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.'' The United States is neither in a state of rebellion nor invasion. Consequently, it would problematic for Congress to modify the constitutionally protected writ of habeas corpus under current events.

I encourage the Senate Judiciary Committee to study the constitutional implications of S. 3930 on the habeas corpus rights of detainees in United States territory. Although no one wants the War on Terror to be litigated in the courts, Congress should act cautiously to strike a balance between the need to detain enemy combatants during the present conflict and the need to honor the historic privilege of the writ of habeas corpus. I thank you for holding a hearing on this topic and hope that it helps to strike that balance.

Sincerely,

KENNETH W. STARR.

Mr. LEAHY. Monday we rushed to hold a hearing before the Judiciary committee on this important issue, and what happens? The surrogate for the administration, former White House associate counsel Brad Berenson, who testified before us, defends the habeas corpus stripping provisions of this bill by arguing that the United States has been and still is suffering from an invasion that requires the suspension of habeas corpus.

What are we doing? What is going on? That is outrageous. That is running scared. That is so wrong. Is he saying that for 5 years this administration has been allowing an ongoing invasion in the United States and we are not aware of it? Are we going to suspend the great writ on this basis?

To quote Kenneth Starr:

The United States is neither in a state of rebellion nor invasion. Consequently, it would [be] problematic for Congress to modify the constitutionally protected writ of habeas corpus under current events.

I suppose the administration would say we are not modifying it. Heck, no, we are eliminating it. We are not modifying the writ of habeas corpus, we are knocking it out for all aliens.

I agree with those from the right to the left, we should not modify, and we certainly should not eliminate, the great writ of habeas corpus. I agree with hundreds of law professors who described an earlier, less extreme version of the habeas provisions of this bill as ''unwise and contrary to the most fundamental precepts of American constitutional tradition.'' And I agree with the former ambassadors and other senior diplomats who wrote to us saying that eliminating habeas corpus for aliens does not help America, it does not make America safer, but rather it harms our interests abroad and makes us less safe.

Maybe some of those who want to pretend how powerful they have been in military matters ought to talk to those who have been in the military and actually understand a time when we are reaping the mistakes of our folly in Iraq. Let us not expand it further. The United States, especially since World War II and the Marshall Plan, has been a beacon of hope and freedom for the world. How do we spread a message of freedom abroad if our message to those who come to America is that they may be detained indefinitely without any recourse to justice?

In the wake of the attack of September 11, and in the fact of the continuing terrorist threat, now is not the time for the United States to abandon its principles. Admiral Hutson was right to point out that when we do, there would be little to distinguish America from a banana republic or the repressive regimes against which we are trying to rally the world and the human spirit.

Now is not the time to abandon American values and to shiver and quake as though we are a weak country and we have to rely on secrecy and torture. We are too great a nation for that. Those are the ways of weakness. Those are the ways of repression and oppression. Those are not the ways of America. Those are not the ways of this Nation I love.

The habeas provisions of this bill are wrongheaded. They are flagrantly unconstitutional. Tinkering with them would not make them less wrongheaded but might make them less flagrantly unconstitutional. I see no reason to save the administration from itself and from the inevitable defeat when the Supreme Court strikes them down.

Why should those who take our oath to uphold the Constitution seriously, who understand the fundamental importance of habeas to freedom, find ourselves compromising with such an irresponsible provision?

That is why at the appropriate point the chairman of the Senate Judiciary Committee and I will offer just one amendment, to remove the habeas provisions from the bill in their entirety. That is the right thing to do. I should also add, that is the American thing to do. We would still be left with the disgraceful but less extreme habeas stripping provisions that we enacted earlier this year in the Detainee Treatment Act. But we would at least not make one bad mistake even worse. By not totally eliminating habeas for all aliens, we can reduce the damage to America's credibility as a champion of freedom and show the American people and the courts that Congress is not entirely cavalier when it comes to its constitutional obligations. We can show the world that this great Nation is not so frightened and so shaky and so quaky that we are going to have to give up the principles that made us a great nation.

Our amendment would reduce the grave harm that will be done if the bill before the Senate passes. It was not too late last night for the Republicans to make yet more revisions to this unconstitutional bill. It is not too late today for the Senate to make the bill a little less bad, a little less offensive to the values and freedom for which America stands.

This is one American who is not going to run and hide. This is one American who is not willing to cut down the laws of our Nation. This is one American who thinks these laws and our protections have made us great not only here but abroad. This is one American who thinks that our freedoms, our laws, our protections, are what attracted people from other countries, people from other countries who have fled oppression in their own country and fled a lack of rule of law in their own country, to come to America, where we have a rule of law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we are anxious to go on with the matters before the Senate this afternoon in connection with this pending bill.

As I understand it, the amount of time remaining on the Levin substitute amendment is how much?

The PRESIDING OFFICER. The Senator from Michigan has 24 minutes 10 seconds; the Senator from Virginia has 24 minutes.

Mr. WARNER. It had been my hope we could set this amendment aside pending instructions from the leadership as to a time of vote and proceed to another amendment.

At this point in time, I see another colleague who is seeking recognition.

I yield the floor.

Mr. REED. Mr. President, I ask for 12 minutes from the time.

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

Mr. REED. Mr. President, we are engaged in a very important debate about the way we will bring to justice very heinous individuals who committed terrorism. I will put in context first what I think the situation is.

First, our most essential mission in the war on terror is to find these individuals, to attempt to capture them, and if they have refused to be captured, to take extreme measures to eliminate them as terrorist threats to the United States.

If they are in our hands as detainees or in any capacity, we have an obligation to interrogate them and we have to be consistent with international norms while also recognizing that as we treat people in our custody we can expect if our military personnel fall in the hands of a military power, they will be similarly treated. We must be very conscious of this.

But an important point that is often overlooked in the entire debate, all of the individuals we are talking about today—the 14 detainees at Guantanamo Bay and others—are enemy combatants. Under international law, they can be held indefinitely. There is a big difference between an individual who is an enemy combatant and someone who is in a criminal justice situation someplace else. Even if these individuals are acquitted of their crimes, they are still in the custody of the United States and still will remain in the custody of the United States.

So as we debate this issue of military tribunals, we have to recognize what we are talking about is not allowing people to walk out the door because our procedures are inadequate, because some clever attorney can take advantage of the rules of evidence. They will

never walk out the door. What we are talking about is whether we will have legitimacy to impose the most difficult sanction on an individual, the most severe sanction. To be consistent with our value as a nation, I believe we have to have procedures that are procedurally legitimate, that are fair and are perceived that way.

There is another issue here, not just in terms of our moral standing. It is a very practical one. I have suggested it before. How we treat these people will be the standard with which our military personnel will be treated overseas. We will surrender the right to condemn those people who may in the future hold our soldiers if they choose to use procedural gimmicks, if they want to stage show trials rather than real trials, if they want to punish an American fighting man or woman without any regard for the principles and practices of international law. That is, I think, the issue before us today.

The substitute Senator LEVIN has offered today is one we supported on a bipartisan basis in the committee. It was a strong, good bill. It represented not only our best principles, but it recognized that these principles could also and would also be applied in the future—we hope not—but certainly we have to recognize the possibility that American military personnel will be in the hands of hostile forces in the future.

The bill we had in the Armed Services Committee did things this legislation before us undoes. For example, the committee bill prohibited the admission of statements obtained through cruel, inhuman, or degrading treatment. The bill before us prohibits the admission of statements obtained after December 30, 2005, through ''cruel, inhuman or degrading treatment,'' but it contains no prohibition against using statements so obtained prior to December 30, 2005.

I do not think the Geneva Conventions were in abeyance up until December 30, 2005. I do not think the standards we should insist upon did not exist there. And very practically speaking, ask yourself, would we accept the response from a foreign power who said: Oh, of course, we are going to follow the Geneva Conventions. Of course we are not going to use abusive treatment to obtain a confession, prior to December 30, 2020 or 2015? I think this seriously weakens not only the legitimacy of this approach but also our ability to argue with compelling legal and moral force in the future that other nations have to play by the rules.

There are other provisions here in this bill, and there are many of them that I think alter dramatically what we accomplished on a bipartisan basis, what was applauded by General Powell and General Vessey and others.

For example, the committee bill provided that evidence seized outside of the United States shall not be excluded from trial by military commissions on the grounds the evidence was not seized pursuant to a search warrant. That was a very practical provision. We are not going to require a soldier, a special forces operator who is running through the woods of some foreign land, to produce a search warrant when he picks up valuable intelligence material.

But the bill before us deletes the limitation to evidence seized outside the United States. As a result, the bill authorizes the use of evidence that is seized inside the United States without a search warrant. This provision is not limited to evidence seized from enemy combatants. It does not even preclude the seizure of evidence without a warrant when that evidence is seized from United States citizens.

If you want an invitation to irresponsible conduct within the United States, disregarding our principles of justice and the Constitution of the United States, it might be found here because, frankly, we have the obligation to establish rules we can live with. No one is arguing with trying to create some type of situation in which a soldier has to pull out his Black's Law Dictionary and have his warrant and do all these things, but it is quite a bit different from police authorities here in the United States.

Additional problems with this bill: The committee bill, the one we supported in the Armed Services Committee, provided that the procedures and rules of evidence applicable in trials by general courts martial would apply in trials by military commissions, subject to such exceptions as the Secretary of Defense determines to be ''required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.'' Establish a rule saying: Listen, we are going to use the procedures for courts martial except if the Secretary says there is some expedient circumstance. Because of hostilities, we have to make changes. This approach is consistent with Hamdan and the Supreme Court.

The bill before us reverses the presumption. Instead of starting with the rules applicable in trials by courts martial as the governing provision, and then establishing exceptions, the Secretary of Defense is required to make trials by commission consistent with those rules only when he considers it is practical. The exception has swallowed up the rule.

As one observer has pointed out, this provision is now so vaguely worded that it could even be read to authorize the administration to abandon the presumption of innocence in trials by military commissions, with the claim that military expedience requires a determination that the individual is guilty, and then he or she may prove their innocence. That, I think, is a significant retreat from the standards we established.

There is another major issue here that is so important, and it is often confused; and that is with respect to Common Article 3. In Hamdan, the Supreme Court held that Common Article 3 applies to all members of al-Qaida, terrorists, anyone who comes into our control, not only in the areas of fair trials, but also in the areas of treatment.

But I want to clarify this because this is often, I think, distorted and perhaps deliberately so. Many opponents of this legislation have stated that ''terrorists should not be given the same rights as our military personnel.'' What they are, I think, imprecisely but deliberately, perhaps, suggesting is that we are attempting to treat these individual terrorists as prisoners of war. And that is not the case. There are four Geneva Conventions. The first two protect sick and injured soldiers. The fourth protects civilians in areas of hostilities.

The third convention—not the third Common Article—the third Geneva Convention deals with prisoners of war, our soldiers who fall into the hands of hostile forces. These provisions are very clear about how POWs must be treated. You only have to give your name, rank, and serial number. That is it. Beyond that, there is no question. You cannot have any mental or physical coercion. ''[P]risoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.''

That is the way soldiers should be treated—all of our soldiers. But the Supreme Court never said that is the way we have to treat these terrorists. What they said is Common Article 3, which is in every Convention. It establishes a general baseline of the treatment of individuals. POWs are treated at a much higher status because of their uniformed participation in armed conflict, because of their discipline, because of the fact that we expect them to follow rules, too. But people who fall into our hands who are enemy combatants do not deserve that treatment. They are not going to get it here. But they have to be afforded Common Article 3 protection. It has been described as ''a convention within a convention.''

Common Article 3 of the Geneva Conventions mandates that all persons taking no active part in hostilities, including those who have laid down their arms or been incapacitated by capture or injury, are to be treated humanely and protected from ''violence to life and person,'' and any ''outrages upon personal dignity, in particular, humiliating and degrading treatment.'' Anyone in our custody has to be afforded the protections of Common Article 3.

The PRESIDING OFFICER. The Senator has used 12 minutes.

Mr. REED. Mr. President, I know there are others who wish to speak. I ask unanimous consent for 2 additional minutes to simply summarize.

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

Mr. REED. We have to follow Common Article 3. However, the bill we are

considering today authorizes the President to interpret the Geneva Conventions and provides that such interpretations ''shall be authoritative . . . as a matter of U.S. law, in the same manner as other administrative regulations.'' I think we are verging on a situation where the President, by definition, by clarification, and by regulation, could eviscerate these Common Article 3 protections.

As I mentioned before, Secretary Powell and others have stated this is the core ideal, principle, we have to use in dealing with all of these individuals.

Let me simply conclude, there is, I think, the presumption here that if we do not establish procedures that basically make it a slam dunk case, that we somehow are going to see these terrorists walk away, snub their noses at us, and start actively conspiring against us again.

They will never see the light of day. No President will release these individuals. And no President will be forced under any international law to do so. But we will be judged whether, when we impose punishment—not detention, punishment—on these individuals, we have done it according to our principles that we can argue before the world and the American people represent our values; and we can insist that other nations that may hold our forces or civilians abide by the same principles. That is the issue here today. That is why I support Senator LEVIN's substitute amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. COBURN). Who yields time?

Mr. LEVIN. Mr. President, how much time do I have?

The PRESIDING OFFICER. Ten minutes 16 seconds.

Mr. LEVIN. Mr. President, I yield 9 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 9 minutes.

Mr. BINGAMAN. Mr. President, I thank my colleague from Michigan for yielding me time and I also thank him for bringing forth this amendment.

I strongly support his proposal, essentially, to take the legislation, the agreement that was worked out in the Armed Services Committee by our colleagues, and to substitute that for what is now before us.

This overall military commissions bill has three general areas of focus: first, the rules pertaining to the interrogation of prisoners; second, the procedures we should have in place for the trial of individuals who are brought before military commissions; and, third, the rights of those prisoners who under this bill will continue to be held without being charged at Guantanamo or elsewhere in the world, or even in this country.

Let me take a moment to briefly comment on these first two issues before I discuss the third issue, which I believe has not received the attention that it deserves.

With regard to interrogation techniques, I have been deeply troubled by the administration's insistence on weakening the prohibition on the use of torture and cruel and inhumane treatment. I strongly believe that we can give our military and intelligence officers the tools they need to protect the American public without abandoning our basic decency. The use of torture and other abusive techniques are not only morally repugnant, but they are ineffective and do great damage to our Nation's credibility with respect to our commitment to human rights. They also put our soldiers at risk of being subjected to similar treatment.

Rather than redefining the Geneva Conventions to permit harsh interrogation techniques by the CIA, as the administration had proposed, the Republican compromise legislation retroactively revises the War Crimes Act so that criminal liability does not result from techniques that the United States may have employed, such as simulated drowning, exposure to hypothermia, and prolonged sleep deprivation.

Under the Detainee Treatment Act, which we passed last year to reaffirm the prohibition on torture, the military is clearly prohibited from engaging in torture or cruel, degrading or inhumane treatment, as specified in the recently issued Army Field Manual. However, under the bill we are debating today, the CIA would be allowed to continue to subject detainees to harsh interrogation techniques without fear of criminal liability. As the President has stated, the ''program'' can continue.

In essence, the legislation defines prisoner abuse and criminal liability in such a way that the administration is able to argue that it is complying with international and domestic legal restraints while at the same time continue to use techniques that amount to abuse under international treaty obligations.

There is also a fundamental lack of clarity with respect to what conduct this legislation forbids. For example, when asked if water-boarding is permitted under this bill, Senator MCCAIN has said that it would not be allowed. But if one asks the administration, it will only say CIA interrogation techniques are classified and that the bill allows the CIA to continue to use so-called alternative interrogation techniques—techniques which our military is prohibited from employing.

I think there is little doubt that these disturbing practices continue. This type of legal ambiguity has not served us well with respect to the treatment of detainees, and we should be taking this opportunity to provide greater legal clarity, not further muddying the water.

I am also concerned about the rules and procedures of the newly constituted military commissions. The bill permits statements allegedly derived through coercive means to be used if the statements are probative and were obtained prior to December 2005, which coincides with the enactment of the Detainee Treatment Act. Statements obtained after the enactment of the Detainee Treatment Act cannot be admitted as evidence if they have been derived through interrogation techniques that amount to cruel, unusual, or inhumane treatment as prohibited by the fifth, eighth, and fourteenth amendments to the U.S. Constitution. Essentially we are saying that you can't admit statements derived from coercive methods except for those statements derived when we were using coercive methods. Having these two different standards may be beneficial from the prosecution's perspective in terms of increasing the likelihood that statements will be found admissible, but it is not exactly the clarity we should have with regard to standards of justice.

There are also a variety of problems regarding the rules on hearsay, the appeals process, the definition and retroactive application of crimes, and the admission of secret evidence, among others. Overall, the rules and procedures contained in the proposed legislation fall short of the basic fairness required in any criminal trial.

I wish to talk about the provisions that relate to habeas corpus. One of the most disturbing provisions in the underlying legislation pertains to the disposition of those prisoners who will never be charged before a military commission or any court but who, instead, will be held indefinitely—or at least that option exists for our executive and our military to hold those individuals indefinitely in confinement.

The current bill endorses the administration's practice of designating people, including U.S. citizens, I would point out, as ''enemy combatants.'' It eliminates the ability of aliens—non-U.S. citizens—to bring habeas claims or other claims related to their detention or their treatment or their conditions of confinement.

Whereas the previous attempt to strip the Federal courts of jurisdiction over these individuals under the Detainee Treatment Act applied only to individuals held by the Department of Defense at Guantanamo, this current legislation applies to any alien who is detained by the United States anywhere in the world, including those who are held within the United States. The current language also makes it clear that the elimination of judicial review is retroactive. It applies to all cases involving the detention of individuals since September 11, 2001.

Various of my colleagues have already talked about the right of habeas corpus and its importance in our system of justice. Simply stated, the ability to file a writ of habeas corpus is the right of a person to challenge the legal basis for their detention.

Habeas, which is also known as the Great Writ, is one of the most fundamental protections against arbitrary

governmental power. This right dates back to the Magna Carta of 1215, and is enshrined in Article I, section 9, clause 2 of the U.S. Constitution. Filing a habeas petition doesn't entitle a person to a full-blown trial, but it does provide a means to ask whether the person's confinement is in compliance with the law. It doesn't confer any additional constitutional rights; it simply allows a person to ask whether their depravition of liberty is consistent with the Constitution.

One of the principal arguments proponents for removing this protection have put forward in the past was that maintaining habeas rights leads to unnecessary and frivolous litigation. The fact is that these arguments misconstrue the nature of habeas petitions. The reality is, in my view, that court-stripping provisions will not, in fact, lead to less litigation. For example, if this measure is passed, the courts will be forced to consider whether this provision amounts to a suspension of the writ of habeas corpus. If it is determined that it does suspend the writ of habeas corpus, the courts will determine whether the suspension clause of the Constitution has been satisfied. Our Constitution is very clear. It says Congress is afforded the authority to suspend habeas in cases of rebellion and invasion. At a time when our courts are open and functioning, I think a person would be hard-pressed to argue that public safety requires removing judicial review. One would be hard-pressed to argue that we are in a period of rebellion, or that we have suffered an invasion, as that phrase was intended by our Founding Fathers.

The one other issue, of course, that I think is important is that the Constitution gives Congress the power to suspend the writ. Here we are not just suspending the writ; this proposal is to abolish the writ, to permanently eliminate this right, this protection for this group of individuals. In my view, it makes more sense to simply allow the courts to hear the cases that are pending in the courts and determine the legality of the detention that is occurring. It makes more sense to do that than it does to litigate over whether those individuals who are incarcerated, in fact, have a right to have their cases heard.

If what the administration says is true and the indefinite imprisonment of individuals at Guantanamo or elsewhere is legal, then why does the administration continue to fight so hard to eliminate the ability of the courts to hear those cases? If these individuals are in fact ''the worst of the worst,'' which we have been assured, then why is it so difficult to provide some factual basis for continuing to detain them?

The likelihood is that some, and maybe many, of these prisoners have very little to do with terrorism. According to a 2002 CIA report, most of the Guantanamo prisoners ''did not belong there.'' According to a Wall Street Journal article earlier this year, an estimated 70 percent of the individuals held at Guantanamo were wrongfully imprisoned. BG Jay Hood, the former commander at Guantanamo, was quoted as saying, ''Sometimes, we just didn't get the right folks.''

I don't believe that all of those being held at Guantanamo are innocent. Clearly, they are not. Those who are a threat need to be held accountable for their actions, need to be tried before properly constituted military commissions or criminal courts. Those who are not a threat need to be released and returned to their country of origin. The point is that judicial review allows us to sort the good from the bad and focus our efforts on those who in fact do pose a threat to our country.

It is during times like these that our Founding Fathers envisioned habeas corpus rights needed to be preserved. If judicial review is not required as a matter of law, it makes sense from a policy standpoint to preserve these essential rights in the law. Having a court determine whether a person's detention by the executive branch is consistent with our Constitution and laws does not inhibit this Nation's ability to fight terrorism. To the contrary, ensuring that we are holding the right people not only allows us to focus on those who truly pose a threat, it also will help to reduce criticism in the world community that the United States is not complying with its own laws and Constitution.

In a letter I received from over 30 former diplomats, they stated:

> To proclaim democratic government to the rest of the world as the supreme form of government at the very time that we eliminate the most important avenue of relief from arbitrary governmental detention will not serve our interest in the larger world.

I agree with that statement.

It is also important to note that should the current habeas language be removed from the bill, Guantanamo prisoners would still be prohibited from bringing habeas claims in the future under current law. In the Rasul decision, the Supreme Court held that U.S. courts have jurisdiction to hear habeas claims of Guantanamo prisoners. Congress subsequently passed the Detainee Treatment Act, which contained the Graham-Levin compromise language regarding the elimination of habeas. Graham argued that the language was retroactive and barred all pending cases, and Levin argued that the language only eliminated cases initiated after the enactment of the act.

In assessing whether the Supreme Court had jurisdiction to hear the Hamdan case, the Court found that because congressional intent was unclear it would be inappropriate to view the statute as retroactive. As such, if the status quo is maintained, we would still have language on the books that prohibits any future habeas claims from being filed on behalf of Guantanamo prisoners. Although I disagree with the law as it currently stands, Senators should know that if the language in the existing bill is removed, this Congress has already drastically limited judicial review.

It is important to look at the big picture. As general matter, this bill puts in place procedures to try suspected terrorist by military commissions whereby the only ones who will have an opportunity to prove their innocence will be the high-level prisoners. The suspected low-level prisoners will continue to linger in indefinite imprisonment without charges. Before the previous military commissions were found unconstitutional, the administration charged approximately 10 detainees with crimes. None were ever tried. The President has indicated that he now intends to charge the 14 CIA prisoners, or at least some of them, under the newly constituted military commissions.

Therefore, the reality is that of the approximately 450 prisoners now at Guantanamo only about 25 will likely receive trials. Under the compromise legislation, the remaining prisoners, many of whom have been imprisoned for more than 4 years, will not be held accountable nor will they be able to prove their innocence—instead, they will be denied the right to challenge the legality of their continued confinement.

As Rear Admiral John Hutson, Rear Admiral Guter, and Brigadier General Brahms, pointed out in a letter to the Senate Armed Services Committee, the effect of this legislation would be to give greater protections to the likes of Khalid Sheikh Mohammed than to the vast majority of the Guantanamo detainees, who claim that they have nothing to do with al-Qaida or the Taliban.

Mr. President I ask unanimous consent that this letter be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. BINGAMAN. Most troubling of all, with this legislation Congress is giving its consent to the executive branch to continue to unilaterally designate individuals as enemy combatants and imprison them indefinitely. We are saying that the President can pick up whoever he wants, designate them an enemy combatant and hold them without substantive judicial review.

I know that many of my colleagues have worked to ensure that the military commission procedures comply with our international legal obligations under the Geneva Conventions and that our Nation's soldiers are not put at risk by diminished standards. I support these efforts, and believe that the trial of these suspected terrorists is long overdue. However, passing this flawed bill is not the solution.

Mr. President, this debate is about who we are as a people and whether we are going to continue to adhere to the rule of law and basic human rights. It

is about our fundamental values as a people. The U.S. Constitution was crafted by men who were keenly aware of the potential abuse that could result from providing the executive branch with unrestrained powers with respect to individuals' liberties. The Constitution was crafted to be relevant in the good times, as well as in the times when our Nation faces domestic or foreign threats.

It deeply concerns me that with this bill we are sanctioning the indefinite imprisonment of people without charges. This is wrong. Should this legislation pass as currently drafted, history will not look kindly on this mistaken endeavor.

Frankly, the notion that Congress is willing to provide the President with the authority to indefinitely imprison people without ever having to charge them is quite astonishing. What is more amazing is that the Senate appears prepared to do so after one brief hearing in the Senate Judiciary Committee on the issue and with little substantive debate on the Senate floor.

We must also remember that in establishing these military commissions we are not solving the Guantanamo problem. This legislation will result in a flurry of legal challenges. The administration's handling of detainee issues has brought us Guantanamo, Abu Griab, and a series of Supreme Court decisions rejecting the administration's legal positions. Let us not complicate the problem by enacting the provisions.

Mr. President, I yield the floor.

EXHIBIT 1

SEPTEMBER 12, 2006.

Senator JOHN WARNER,
*Chairman, U.S. Senate Committee on Armed Services, U.S. Senate, Washington, DC.*
Senator CARL LEVIN,
*Ranking Member, U.S. Senate Committee on Armed Services, U.S. Senate, Washington, DC.*

We find it necessary yet again to communicate with you about issues arising out of our policies concerning detainees held at Guantanamo Bay. It would appear that each time the U.S. Supreme Court speaks, efforts are taken to reverse by legislation the decision of the Court. We refer, of course, to the Supreme Court's *Rasul* and *Hamdan* decisions and to the provision in the Administration's proposed Military Commissions Act of 2006 that would strip the federal courts of jurisdiction over even the pending habeas cases that have been brought by the detainees at Guantanamo to challenge the basis for their detention. We urge you to reject any such habeas-stripping provision.

As we have argued and agreed since 9/11, it is necessary for Congress to enact legislation to create military commissions that recognize both the basic notions of due process and the need for specialized rules and procedures to deal with the new paradigm we call the war on terror. This effort must cover those already charged with violating the laws of war and those newly transferred to Guantanamo Bay.

But the military commissions we are now fashioning will have no application to the vast majority of the detainees who have never been charged, and most likely never will be charged. These detainees will not go before any commissions, but will continue to be held as ''enemy combatants.'' It is critical to these detainees, who have not been charged with any crime, that Congress not strip the courts of jurisdiction to hear their pending habeas cases. The habeas cases are the only avenue open for them to challenge the bases for their detention—potentially life imprisonment—as ''enemy combatants.''

We strongly agree with those who have argued that we must arrive at a position worthy of American values, i.e., that we will not allow military commissions to rely on secret evidence, hearsay, and evidence obtained by torture. But it would be utterly inconsistent, and unworthy of American values, to include language in the draft bill that would, at the same time, strip the courts of habeas jurisdiction and allow detainees to be held, potentially for life, based on CSRT determinations that relied on just such evidence. The effect would be to give greater protections to the likes of Khalid Sheikh Mohammed than to the vast majority of the Guantanamo detainees, who claim that they had nothing to do with al Qaeda or the Taliban.

We are on a course that should have been plotted and navigated years ago, and we might be close to consensus. We ask that, in the closing moments of your consideration of this vital bill, you restore the faith of those who long have been a voice for simple commitment to our longstanding basic principles, to our integrity as a nation, and to the rule of law. We urge you to oppose any further erosion of the proper authority of our courts and to reject any provision that would strip the courts of habeas jurisdiction.

As Alexander Hamilton and James Madison emphasized in the Federalist Papers, the writ of habeas corpus embodies principles fundamental to our nation. It is the essence of the rule of law, ensuring that neither king nor executive may deprive a person of liberty without some independent review to ensure that the detention has a reasonable basis in law and fact. That right must be preserved. Fair hearings do not jeopardize our security. They are what our country stands for.

Sincerely,

JOHN D. HUTSON,
*Rear Admiral, JAGC, USN (Ret.).*
DONALD J. GUTER,
*Rear Admiral, JAGC, USN (Ret.).*
DAVID M. BRAHMS,
*Brigadier General, USMC (Ret.).*

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, we are prepared to yield back the time on this side. First, I simply say to my colleagues that this has been a good debate. But I assure colleagues that the bill now before them has been very carefully reviewed by the Department of Justice, and I have even reached out to scholars—lawyers who I know have a considerable depth of knowledge about international matters as well as our own fabric of law as it relates to criminal prosecution. I myself served as assistant U.S. attorney for close to 5 years.

We bring before this Chamber a work product which we believe is consistent with international as well as domestic law. It strikes a balance. We have no intention to try to accord aliens engaged as unlawful combatants with all the rights and privileges of American citizens, but we recognize that they are human beings, and this country has standards that respect life and human beings. But at the same time, we are engaged in a war on terror. Let there be no mistake about that.

One of the challenges in this war on terror is with these individuals who are willing to act as human bombs. It doesn't have a lot of precedent. We have been very careful to try to strike a balance between the standards and principles that guide this Nation, at the same time recognizing that we need the tools to fight this war on terror—fighting it in a way that not only enables our men and women in the Armed Forces in forward deployments to carry out their missions but to preserve and protect us here at home from tragic incidents like we experienced on 9/11.

As I have worked through each of these provisions and consulted with my colleagues, I always bring up the images of 9/11. I think our President has done his best to try to prepare this Nation, in many ways, to protect ourselves from the repetition of that or any incident like it—a lesser incident or a greater incident. It is a constant challenge.

But the bill before this body represents our best product that we could achieve, working together and in consultation with a wide range of individuals who have an expertise in these complicated legal matters and can provide to us their own corroboration of our judgments as to how best to structure this legal document and strike the balance that we must between our standards of law and our recognition of international law. I think that is the hallmark of what Senators MCCAIN, GRAHAM, and myself set out to do—to make sure this Nation cannot be perceived as trying to rewrite in any way Common Article 3, which is the law of our land, I remind citizens who are following this debate. It is the international treaties to which we, with the advice and consent of the Senate and that of the President, acceded and signed, and it has become part of the law of the land. I am proud of the work we have done, certainly, in that complicated area, as well as others.

Mr. President, at this time, I am prepared to yield back all the time on this side and 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. LEVIN. Mr. President, there is no question that we have to fight the war on terrorism, and we can win that war, but we can do so without compromising the very principles that govern this Nation and have given us strength and attract us to so many other nations. Those principles are compromised in the bill before us. They were not compromised in the committee bill that passed on a bipartisan vote.

Here are two quick examples of how our basic principles are compromised

in this bill: Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant. In other words, in the United States of America, evidence can be seized from an American citizen, not an enemy combatant—it can be seized from any one of us without a search warrant and used in one of these trials. This language in the bill which is before us would authorize the use of that evidence so seized. That is a fundamental compromise with the principles that have governed this Nation. We have never allowed testimony and statements that have been obtained through cruel and inhuman treatment to be introduced into evidence. Yet that is the way the bill is written.

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

Mr. LEVIN. Mr. President, I ask unanimous consent for 30 additional seconds to finish that statement.

Mr. WARNER. I have no objection.

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

Mr. LEVIN. I thank the Chair.

A second example of how a fundamental principle is compromised in the bill before us is, if a statement is obtained through cruel and inhuman treatment of somebody, for the first time in American jurisprudence, this bill would apparently say that statement is allowable in evidence if it was acquired before December 30, 2005. That is unlike statements that are acquired after December 30, 2005, where there are no ifs, ands, or buts, there are no other tests that need to be applied—if it was obtained through cruel and inhuman treatment, it is not admissible into evidence. That is a fundamental principle which is not followed for statements obtained before December 30, 2005, in the bill before us. That is another example of why the substitute, I hope, will be adopted, which is the committee bill—a bipartisan bill—that is now before us.

Mr. WARNER. Mr. President, I ask to reclaim about 6 minutes of my time so that I can engage my colleague in a colloquy.

The PRESIDING OFFICER. The Senator has that right and may reclaim his time.

Mr. WARNER. Mr. President, I wish to make clear that category of evidence cannot reach those established standards of torture. No evidence that was gained by means that are tantamount to the torture can be admitted.

Mr. President, I ask my colleague, am I not correct in that statement?

Mr. LEVIN. That is correct. That is not in dispute.

Mr. WARNER. Does the Senator concur in that statement?

Mr. LEVIN. I surely do. We are talking here about cruel and inhuman treatment.

Mr. WARNER. Correct, but the judge of the court is going to look at that evidence. We have set forth certain standards that have to be met, but one standard that judge cannot violate is the standard of torture. If that case can be made, then that judge has no ability to admit any evidence which is tantamount to torture. I ask my colleague, is that not correct?

Mr. LEVIN. The statement is correct. The issue, of course, which we are debating is why, relative to statements obtained prior to December 30, 2005, is another test omitted, which is present for statements obtained after December 30, 2005, which are statements that are obtained through cruel and inhuman treatment. That is the issue which I raised.

Mr. WARNER. Lastly, Mr. President, I ask my colleague, he makes reference to the illegal searches and seizures, which is the fourth amendment to the U.S. Constitution. That Constitution does not give protection to aliens who are the subject of these trials; am I not correct in that?

Mr. LEVIN. I think that is true. It may or may not protect aliens, but it does protect American citizens. And the language on page 21 does not protect American citizens from seizures that are illegal. It says:

> Anything which is seized without a search warrant is allowable into these trials.

It is not limited to material that is seized from aliens or material which is seized from enemy combatants. It says illegally obtained material can be admitted into this trial, period.

We had such a restriction in the bill which came out of committee so that it was limited to evidence which was seized abroad, for instance. That would be fine because they may not have the fourth amendment that we do. But in the bill which is now before us, there is no such limitation.

I will read the one sentence:

> Evidence shall not be excluded—

Shall not be excluded—

> from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

In the substitute bill, that allowance of illegally seized evidence is limited to evidence which is not seized from American citizens here. So that distinction has been obliterated in the bill which is before us.

Mr. WARNER. Mr. President, we have clearly debated it, but I want to make, in conclusion, the observation that no evidence which is the consequence of torture can be admitted. The aliens are not entitled to the constitutional provisions of the fourth amendment and, therefore, I urge our colleagues to think carefully through those arguments which we believe we have fully answered and carefully written this bill to be in conformity with our Constitution.

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

The PRESIDING OFFICER. The question is on agreeing to amendment No. 5086. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Arizona (Mr. MCCAIN) and the Senator from Maine (Ms. SNOWE).

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

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

The result was announced—yeas 43, nays 54, as follows:

[Rollcall Vote No. 254 Leg.]

YEAS—43

| | | |
|---|---|---|
| Akaka | Durbin | Mikulski |
| Baucus | Feingold | Murray |
| Bayh | Feinstein | Nelson (FL) |
| Biden | Harkin | Obama |
| Bingaman | Jeffords | Pryor |
| Boxer | Johnson | Reed |
| Byrd | Kennedy | Reid |
| Cantwell | Kerry | Rockefeller |
| Carper | Kohl | Salazar |
| Chafee | Lautenberg | Sarbanes |
| Clinton | Leahy | Schumer |
| Conrad | Levin | Stabenow |
| Dayton | Lieberman | Wyden |
| Dodd | Lincoln | |
| Dorgan | Menendez | |

NAYS—54

| | | |
|---|---|---|
| Alexander | DeWine | Martinez |
| Allard | Dole | McConnell |
| Allen | Domenici | Murkowski |
| Bennett | Ensign | Nelson (NE) |
| Bond | Enzi | Roberts |
| Brownback | Frist | Santorum |
| Bunning | Graham | Sessions |
| Burns | Grassley | Shelby |
| Burr | Gregg | Smith |
| Chambliss | Hagel | Specter |
| Coburn | Hatch | Stevens |
| Cochran | Hutchison | Sununu |
| Coleman | Inhofe | Talent |
| Collins | Isakson | Thomas |
| Cornyn | Kyl | Thune |
| Craig | Landrieu | Vitter |
| Crapo | Lott | Voinovich |
| DeMint | Lugar | Warner |

NOT VOTING—3

| | | |
|---|---|---|
| Inouye | McCain | Snowe |

The amendment (No. 5086) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, the managers, working with our leadership, of course, have a designated number of amendments. My understanding at this time is that the Senator from Pennsylvania will be recognized for the purpose of proposing an amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

AMENDMENT NO. 5087

(Purpose: To strike the provision regarding habeas review)

Mr. SPECTER. Mr. President, I call up amendment No. 5064.

The PRESIDING OFFICER. The Senator is advised we have No. 5087 at the desk?

Mr. SPECTER. The amendment which I seek to call up, Mr. President, is one which proposes to strike section 7 of the Military Commission Act entirely.

Mr. WARNER. Mr. President, if the Senator will yield for a moment, I ask

the Chair to recite the unanimous consent agreement with regard to the amendment of Senator SPECTER, the time limitation being?

The PRESIDING OFFICER. The amendment has 2 hours equally divided on it.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. LEAHY, Mr. DODD, and Mr. FEINGOLD, proposes an amendment numbered 5087:

On page 93 strike line 9 and all that follows through page 94, line 13.

Mr. LEAHY. Mr. President, will the Senator yield for a couple of clarifications?

Mr. SPECTER. I do yield.

Mr. LEAHY. Mr. President, in stating the time, isn't there also the remainder of the time? I did not use my full 45 minutes this afternoon. Doesn't the Senator from Vermont have some remaining time on this amendment?

The PRESIDING OFFICER. The Senator from Vermont has remaining time on the bill.

Mr. LEAHY. How much time is that?

The PRESIDING OFFICER. The Senator from Vermont has 23 minutes on the bill.

Mr. LEAHY. Mr. President, am I correct that the amendment is offered on behalf of the distinguished senior Senator from Pennsylvania and myself, the distinguished senior Senator from Connecticut, and the distinguished Senator from Wisconsin, Mr. FEINGOLD?

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

Mr. LEAHY. I ask and also the distinguished Senator from North Dakota, Mr. DORGAN.

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

Mr. REID. If the Senator from Pennsylvania will yield just for a question?

Mr. SPECTER. I do.

Mr. REID. I have had conversations—I have not spoken with the Senator from Pennsylvania, but I have spoken with his staff on a number of occasions. I had the understanding that the Senator would be able to give Senator LEAHY a few minutes off of his time to speak on this amendment?

Mr. SPECTER. I will consider that, depending on how the argument goes. I appreciate very much the contribution of the distinguished ranking member. I do not know how many people on this side are going to seek time, but I do believe we can accommodate the request of Senator LEAHY. But I want to see how the argument goes before making a commitment.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, substantively, my amendment would retain the constitutional right of habeas corpus for people detained at Guantanamo. The bill before the Senate strips the Federal district court of jurisdiction to hear these cases. The right of habeas corpus was established in the Magna Carta in 1215 when, in England, there was action taken against King John to establish a procedure to prevent illegal detention.

What the bill seeks to do is to set back basic rights by some 900 years. This amendment would strike that provision and make certain that the constitutional right and the statutory right—but fundamentally the constitutional right of habeas corpus—is maintained. The core provision is contained in article I, section 9, clause 2 of the U.S. Constitution, which states:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

We do not have either rebellion or invasion, so it is a little hard for me to see, as a basic principle of constitutional law, how the Congress can suspend the writ of habeas corpus in the face of that flat language. When you have an issue of constitutionality, how can constitutionality be determined and interpreted except in the Court?

We had a very extended discussion of this in the confirmation of Chief Justice Rehnquist, and the Chief Justice said that the Congress of the United States lacked the authority to remove the jurisdiction of the Federal courts on issues involving the first amendment.

The same thing would apply generally. It is a constitutional question. But here you have it buttressed in addition by an express provision by the Framers, focusing on the writ of habeas corpus in and of itself, and saying you can't suspend it, so that anyone who can make an argument about stripping jurisdiction—I don't think it lies on a constitutional issue generally because if it does, who is going to interpret the Constitution if the Court does not have jurisdiction? But the writ of habeas corpus is so important and so fundamental and so deeply ingrained in our tradition, going back to 1215 against King John, that the Framers made it expressed and explicit.

It appears to me that this is really dispositive and you don't really need several hours to develop it. But I shall proceed on the matter as to how we got where we are and what the Supreme Court has had to say in four major cases in the course of the last 18 months.

The Congress of the United States has the express responsibility under article I, section 8 of the U.S. Constitution to establish rules governing people captured on land and sea. But the Congress of the United States did not act after 9/11, and we had people detained at Guantanamo. Legislation was introduced by many Senators. Senator DURBIN and I introduced a bill. Senator LEAHY introduced a bill. Many Senators introduced legislation, but the Congress did not act on it. Congress did not act on it because it was too hot to handle. What resulted is what results many times—Congress punted. It didn't act, left it to the Supreme Court of the United States. That took a long time, to have these cases come through the judicial process.

Finally, in June of 2005 the Supreme Court ruled in three major cases: Hamdi v. Rumsfeld, Rasul v. Bush, and Rumsfeld v. Padilla. The Supreme Court of the United States rejected the argument of the Government that the President had inherent power under article 2 and could act on that constitutional authority, and the Supreme Court said that habeas corpus was effective.

In Rasul v. Bush, the Supreme Court said that it applied even to aliens. It didn't have to be a citizen; that the Constitution draws no distinction between Americans and aliens held in custody and said the writ of habeas corpus applied.

In the case of Hamdi v. Rumsfeld, Justice O'Connor had this to say: All agree that absent suspension, the writ of habeas corpus remains available to every individual detained within the United States.

That was held to apply to Guantanamo, since the United States controlled Guantanamo.

Justice O'Connor went on to say that under the U.S. Constitution, article I, section 9, clause 2:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Justice O'Connor then goes on to delineate statute 2241, which sets the outline of the procedures, and then says habeas petitioners would have the same opportunity to present and rebut facts that court cases like this retain some ability to vary the ways in which they do so as mandated by due process.

What has happened in Guantanamo with respect to the proceedings under the Combat Status Review Tribunal, referred to as CSRT, demonstrates the importance of having some impartial judicial review to find what, in fact, has happened. These tribunals operate with very little information. Somebody is picked up on the battlefield. There is no record preserved as to what that individual did. If there was a weapon involved, it has been placed with many other weapons, and it can't be identified. The proceedings simply do not comport with basic fairness because the individuals do not have the right to know what evidence there is against them.

Repeatedly, the Combat Status Review Tribunal said the information is classified and the individual can't have it.

There was specific reference to the proceedings in the CSRT in the case action en re: Guantanamo Detainee Cases, 355 Fed. Sup. Section 443, 2005. The U.S. District Court for the District of Columbia criticized the way CSRTs required detainees to answer allegations based on information that cannot be disclosed to the detainees. The Court described what might be referred

to as a comical scene, where the detainee said he couldn't answer the allegations whether the detainee associated with a known al-Qaida operative because the tribunal could not provide the alleged operative's name.

The detainee said: Give me his name.

The tribunal said: I do not know.

The detainee said: How can I answer this?

The detainee's frustration reportedly led to laughter among all of the tribunal's participants. And the District Court then said:

> The laughter reflected in the transcript is understandable, and this exchange might have been humorous had the consequences of the detainee's enemy combatant status not been so terribly serious and had the detainee's criticism of the process not been so piercingly accurate.

How can you sanction that kind of a proceeding? If it is not a sham, it certainly is insufficient. As I reflect on it, it is more than insufficient. It is, in fact, a sham.

When it was apparent that both the committee bill and the administration's position was going to strike habeas corpus, the Judiciary Committee held on short notice a hearing on Monday. We had a distinguished array of witnesses appear. LCDR Charles Swift was present. The attorney who represented Hamdan before the Supreme Court gave very compelling evidence as to why habeas corpus was indispensable in order to have basic justice. Bruce Fein, ranking member of the Reagan administration in the Justice Department, was emphatic on his conclusion about the need to retain habeas corpus. The very distinguished retired U.S. Navy rear admiral, John Hutson, who is now the dean of the Franklin Pierce Law Center, testified about his experience and the importance of retaining habeas corpus. We called, as a matter of balance, other witnesses: David Rivkin and Bradford A. Berenson.

I commend to my colleagues the testimony of Thomas B. Sullivan, LCDR Charles D. Swift, Bruce Fein, David B. Rivkin, Jr., Bradford A. Berenson, and John D. Hutson.

Mr. President, the testimony that was given by Thomas B. Sullivan was especially poignant. Mr. Sullivan is a man in his late seventies. He was U.S. Attorney for 4 years in the late 1970s. He has a distinguished law practice with Jenner & Block. He has been to Guantanamo on many occasions and has represented many people who are detained in Guantanamo.

His testimony was, as I say, especially poignant when he said that long after all of those in the hearing room are dead, there would be an apology made if habeas corpus is denied, just as the apology was made after the detention of the Japanese in World War II being a denial of basic and fundamental fairness, where we in the United States pride ourselves on the rule of law.

He made reference to a number of individual cases where the proceedings before the Combat Status Review Tribunal were just totally insufficient, reflecting hearings where individuals were called in, they did not speak the language, they did not have an attorney, they did not have access to the information which was presented against them, and they were detained.

Mr. President, documentation presented to the committee speaks eloquently and emphatically about the procedures which lack the most fundamental of due process. These individuals did not know what their charges were; they were so vague and illusory, just like the detainee who was alleged to have an al-Qaida associate. They wouldn't even produce the man's name. How do you know what the charge is? Then they don't have attorneys. Then they don't know what the evidence is. It is classified, and they are not told what the evidence is.

This goes back, again, to Justice O'Connor's opinion where she says:

> Habeas petitioners would have some opportunity to present and rebut facts.

Well, how can you rebut facts when you do not know what the facts are? How can you rebut facts when the material is classified and you are not told what the alleged facts are? That is why it is so important that the courts be open.

I have had considerable experience with habeas corpus when I was a prosecuting attorney. When a habeas corpus petition is presented, it requires the government—the Commonwealth of Pennsylvania when I was DA—to take a close look at the case and to focus on it.

One of the matters that was inserted into the RECORD from Mr. Sullivan, after he filed the petition for a writ of habeas corpus and was proceeding to gather evidence to present it, he says:

> Several months ago without notice to me and without explanation, compensation, or apology, the United States Government returned Mr. Abdul-Hadi al Siba to Saudi Arabia.

So when the Government had to defend, apparently they found out what the case was about. When they had to find out what the case was about, they sent the detainee back to Saudi Arabia.

But here we have a very explicit statement by Justice O'Connor about the right to rebut the facts. It simply is not present in the proceedings which happened before the Combat Status Review Tribunal.

Kenneth Starr, formerly Solicitor General, formerly judge on the Court of Appeals for the District of Columbia, could not be present at our hearing on Monday but submitted this letter dated September 24. I will not read it in its entirety but only the first sentence where he says:

> I write to express my concerns about the limitation on writ of habeas corpus contained in the comprehensive military commissions bill.

Then, in the third paragraph, he cites article I, section 9, clause 2, which I have referred to, about the privilege being suspended only in the case of invasion or rebellion, and again notes the obvious—that we do not face either an invasion or rebellion.

Mr. President, how much time of my hour remains?

The PRESIDING OFFICER. The Senator has consumed 21 minutes.

Mr. SPECTER. Mr. President, that states the essence of the proposition.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, if I could just use such time as I want, I will not take much because I am anxious for my colleagues to address this issue.

The distinguished Senator from Pennsylvania made the statement that they have constitutional rights. I wish to respectfully sort of differ with the Senator. The Supreme Court, in the Rasul case, ruled that rights of aliens held at Guantanamo Bay, Cuba, 28 U.S.C, 2241—the Court did not reach the question of the constitutional right of habeas corpus that applies to a U.S. citizen; of course, they being aliens. In the Rasul case, the Court interpreted the habeas corpus statute, section 2241, to apply to an alien held at Guantanamo Bay. That holding is based in large part due to the unique long-term lease that the Court took judicial notice of and other evidence brought before the Court, the long-term lease tantamount to U.S. territory.

For more than 50 years, the Court held that aliens in military detention outside the United States had no right to petition the Federal courts for review of their military detention. So I question whether you can elevate that to a constitutional status.

Mr. SPECTER. If I may respond, Mr. President, I didn't cite Rasul v. Bush for a constitutional proposition. I cited Hamdi v. Rumsfeld, and I cited the opinion of Justice O'Connor. But let me repeat it because it is the core consideration. She said:

> All agree that absent suspicion the writ of habeas corpus remains available to every individual detained within the United States. Of course, that does include Guantanamo.

Then Justice O'Connor goes on to say:

> United States Constitution, article I, section 9, clause 2, privilege of writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety requires it.

Then she says that all agree that suspension of the writ has not occurred here. Then she deals with the statute, 2241, and makes the comment that it sets the procedures, but Justice O'Connor puts detention in the Hamdi case squarely on constitutional grounds.

Mr. WARNER. There are a variety of divided opinions on that point.

At this time, I will regain the floor and discuss this issue. I am anxious to hear from my two colleagues, one from South Carolina and one from Texas, who seek recognition.

Mr. SPECTER. If I might be recognized.

Mr. WARNER. I yield the floor on my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, what the distinguished chairman says is accurate about Rasul, but you have Hamdi, which puts it on constitutional grounds. It is that simple.

I yield the floor.

Mr. WARNER. I yield such time as the distinguished Senator from South Carolina desires.

Mr. GRAHAM. Mr. President, this debate is a strength, not a weakness, in our country.

In my opinion, the fundamental question for the Senate to answer when it comes to determining enemy combatant status is, Who should make that determination? Should that be a military decision or should it be a judicial decision?

I am firmly in the camp that when it comes to determining who an enemy of the United States is, one who has taken up arms and who presents a threat to our Nation, that is not something judges are trained to do, nor should they be doing. That is something our military should do.

For as long as I have been a military lawyer, Geneva Conventions article 4, where it talks about a competent tribunal to decide whether a person is a civilian—lawful, unlawful, combatant—that competent tribunal has been seen in terms of military people making those decisions.

I have a tremendous respect for our courts. We will follow whatever they tell Congress to do because we are a rule-of-law nation, but this Congress has a role to play.

Unlike my chairman, Senator SPECTER, I believe the question before the Congress is not whether an enemy combatant noncitizen alien has a constitutional right to habeas corpus because I don't believe that is what the court has said. The issue for the Congress is whether habeas corpus rights should be given to an enemy combatant noncitizen under section 2241 and whether the military should make the determination of who an enemy combatant is versus judiciary.

What happens now is that when someone is brought to Guantanamo Bay, very shortly after they arrive, the military will create a combat status review tribunal that is supposed to be compliant with article 4 of the Geneva Conventions, a competent tribunal.

When we look at the history of competent tribunals, normally they are one person. We will have three people. Of the three people will be a military intelligence officer—and it could be other officers within our military who have expertise in determining what the battlefield situation is and who is involved with the enemy forces and who is not. That tribunal has an evidentiary standard to meet. The tribunal must make a finding by a preponderance of the evidence that the person before them indeed fits within the definition ''enemy combatant.'' There is a rebuttal of presumption in favor of the Government's evidence.

Our Federal courts will have the opportunity shortly to determine whether the combat status review tribunal is constitutional due process. The reason I say that is because under the Detainee Treatment Act we passed last year, every detainee at Guantanamo Bay will have their day in Federal court.

After the military renders their decision that they are an enemy combatant, as a matter of right each person can go to the DC Circuit Court of Appeals, and the Federal DC Circuit Court of Appeals will look at that case with two issues before them: Does this CSRT process, the annual review board, does it constitutionally pass muster as being adequate due process not only under the Geneva Conventions but under our Constitution to the extent it applies? Second, was the decision rendered by that board finding the person enemy combatant by the preponderance of the evidence—the standards and procedures involved, do they pass muster? And in the individual case, did they get it right? That is the structure for them to decide the issue set up in a constitutionally sound manner.

The reason I oppose my chairman, for whom I have great respect, is because the habeas process is a doctrine that is normally associated with criminal law, and we are in a war. The Japanese and German prisoners we interred in World War II never had access to our Federal courts to bring lawsuits against the people who confined them—our own troops—for a reason: it was a right not given in international law to an enemy prisoner, and it was not a right we gave to any prisoner we have held in the history of our country consciously as Congress.

The problem in this case is the Government argued that Guantanamo Bay was outside the jurisdiction of the United States. Why is it important? It is clear that our habeas statutes do not apply overseas. The Government lost that argument. Chairman SPECTER is absolutely right. The court said that for legal purposes, Guantanamo Bay falls within the confines of the United States. Section 2241, the habeas statute, unless Congress says otherwise, will apply to this environment.

Now it is time for Congress to decide, in its wisdom, whether the Federal courts should be determining who an enemy combatant is through a habeas action. Do we want that to reside in the military, where it has been for our whole history, and allow Federal courts to review the military decision, not substitute their judgment for the military?

It is not about who loves America and who is un-American. Mr. Sullivan came to my office yesterday. He is a lawyer representing detainees at Guantanamo Bay. He is a great American. He gave me four or five stories about how his client appeared before the Combat Status Review Tribunal, and he had nothing but bad things to say about the way his client was treated and the procedures in place.

Once a week, I get a call from somebody from South Carolina who says their family member was screwed in court. And then what I try to do is to make sure we listen to them respectfully but understand that there are a lot of complaints about any system.

Mr. Sullivan's complaints got me thinking, and I think there is a way to provide some remedies that do not exist now without substituting judges for military officers when it comes to wartime decisions. I will privately talk to him about that.

I urge this Senate to think in broad terms. Do we really want to allow the Federal judiciary to have trials over every decision about who an enemy combatant is or is not, taking that away from the military? Do we really want the people who have been housed by our military to bring every known lawsuit to man against the people fighting the war and protecting us?

I compliment Senator SPECTER because in this new version they take the conditions of confinement lawsuits off the table. There are 400-something cases that have been filed arising from Guantanamo Bay detention. There is a $300 million lawsuit against Secretary Rumsfeld. There are allegations that people do not get enough exercise. It goes on and on and on. Never in the history of warfare has the host country allowed an enemy prisoner to bring a court case against those people who are fighting the enemy on behalf of the host country. That needs to stop.

I am urging this Senate to dismiss under 2241 the right of habeas actions by enemy prisoners so that judges will not take the role of the military. Adopt anew what we did last year, allowing the military to use a process that I believe is Geneva Conventions compliant, and then some, and have as a backstop judicial review, where the DC Circuit Court of Appeals can review the military's decision. That way, we will have due process unknown to any other war. That will keep the roles of the responsible parties intact. The role of the military in a time of war, I earnestly believe, is to control the battlefield and to designate who is in bounds and out of bounds when it comes to the battlefield. The role of the courts in a time of war is to pass muster and judgment over the processes we create—not substituting their judgment for the military but passing judgment over the infrastructure the military uses to make these decisions.

The problem with this war—there is no capital to conquer, no navy to sink, no army to defeat. The people we are fighting owe an allegiance to an idea, not to a piece of property. They have no home to defend. They have an idea they would like to sell, and they are

selling that idea, whether you want to buy it or not. They are selling it in a very brutal way. They are trying to get good and decent people accepting their view of the world because they are terrified of the way the enemy behaves. This is a war unlike other wars in this regard. People do not wear uniforms, but the ideas the terrorists represent are not unknown to mankind. Hitler wore a uniform. He had the same view of mankind as these people do: there are some people not worth living because they are different.

We have to adjust, but we do not need to change who we are. I am not asking this Senate to change who America is because we are fighting barbarians. Quite honestly, we will never win this war if we move in their direction. Our goal is to get the world to move in our direction by practicing what we preach.

I believe the way to balance the interests of our need to protect ourselves and to adhere to the rule of law is to apply the law of armed conflict, not criminal law.

The act of 9/11, in my opinion, was an act of war, not a crime. And the problem with this country is the people we are fighting were at war with us a long time before we knew we were at war with them. Now we are at war.

This administration, on occasion, in my opinion, has tried to cut the corners of the law of armed conflict. I embrace the law of conflict. I want to fully apply the actions of the United States. I embrace the Geneva Conventions. I want to apply it fully to the war we are fighting even though our enemy will not. But I am insistent, with my vote and with my time in this Senate, that we fight the war and not criminalize the war.

No enemy prisoner should have access to Federal courts—a noncitizen, enemy combatant terrorist—to bring a lawsuit against those fighting on our behalf. No judge should have the ability to make a decision that has been historically reserved to the military. That does not make us safer.

There is due process in place for the enemy combatants at Guantanamo Bay, Afghanistan, and Iraq that I believe is Geneva Conventions compliant. There is judicial review consistent with the military being the lead agency. I urge this Senate to adopt that and to reject this amendment.

I yield the floor.

Mr. SPECTER. Will the Senator from South Carolina respond to a question?

Mr. GRAHAM. I will try.

Mr. SPECTER. I direct an inquiry to my colleague from South Carolina. Would the Senator respond to the question?

Mr. GRAHAM. Yes. I will try my best.

Mr. SPECTER. I didn't want you to yield for a question because I didn't want to interrupt your presentation.

I begin by complimenting the Senator from South Carolina for his excellent work. He and Senator WARNER and Senator MCCAIN have done exemplary work in maintaining the Geneva Conventions and appropriate rules and to classify evidence.

When you talk about constitutional issues and you talk about section 2241, I agree with the Senator, but how do you deal with the flat terms of the Constitution, ''the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion public safety may require it''? How do you deal with that if you do not have rebellion?

Mr. GRAHAM. Mr. Chairman, I guess one could make that argument. I have been assuming something from the beginning—that the Court's decision in Rasul and Hamdi is a statement by the Court that because Guantanamo Bay falls within the jurisdiction of the United States, it is section 2241 that we are dealing with. It is a statutory right of habeas that has been granted to enemy combatants. And if there is a constitutional right of habeas corpus given to enemy combatants, that is a totally different endeavor, and it would change in many ways what I have said.

I do not know what the Court will decide, but if the Court does say in the next round of legal appeals there is a constitutional right to habeas corpus by those detained at Guantanamo Bay, then the Senator is absolutely right. We would have to make a different legal determination. We would have to make a different legal analysis. And if the Court does that, I will sit down with the Senator and we will figure out how to work through that.

I am just being as honest with the Senator as I know how to be. I think this is a statutory problem, not a constitutional problem.

Mr. SPECTER. Well, Mr. President, the distinguished chairman of the Armed Services Committee says he does not want to come back and legislate again. If this bill is passed, we will be right back here at a later date.

When the Senator from South Carolina says it is not on constitutional grounds, the plain English of the decision says it is. But let me ask the Senator one further question; that is, you fought hard to have classified evidence available in the trials, albeit a war crimes trial. And you have Justice O'Connor saying they have to have the opportunity to rebut facts. When these proceedings are handled so much on classified information the detainees cannot see, would it not be consistent with your approach on classified information generally to at least have them know something about the charge so they can rebut the facts?

Mr. GRAHAM. If I may, I would invite the chairman—I cannot remember what paragraph the language is in, but Justice O'Connor gave some guidance to the military—I think it is Army Regulation 190-dash-something—that she indicated would be a proper mechanism or at least a guide of how to set up due process rights for this administrative determination. So after that decision, I know the military looked at the Army regulation that she cited and built the CSRT process off that concept. I am of the opinion that the Combat Status Review Tribunal does afford the rights Justice O'Connor indicated and is more than the Army regulation would allow that she cited, and it is fully compliant with article 5 of the Geneva Conventions—competent tribunal—but if you look in that decision, she mentions an Army regulation as a guide as to how to do this. I think the military, the Department of Defense, has gone beyond that.

Mr. SPECTER. Well, Mr. President, there is flexibility, I agree, but the determination as to whether that flexibility is adequate is up to the Court. That is what the Supreme Court has said.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I thank the Chair.

I would say to my colleague, there is an interesting thing we best watch here as we are trying to determine the rights of these people because it seems to me if there is such a fundamental right of constitutionality attached to this thing, then someone might argue: Well, if it is actionable in Guantanamo—this lease thing is to me a fairly weak basis on which to do it—what about 18,000 in our custody in Iraq now? So we just better exercise a little caution as we begin to use that because if we begin to extend habeas corpus to 18,000 in Iraq, we have a problem.

Mr. President, I yield the floor.

Mr. SPECTER. Mr. President, I stipulate that Senator WARNER is right about Iraq on this point.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I have a longer presentation, but what I would like to do is respond specifically to the argument Senator SPECTER is now making, and then Senator CORNYN has longer remarks to make.

Let me begin by saying that I have the utmost respect for the chairman of the committee, my friend, the Senator from Pennsylvania. And he is entitled to be wrong once in a while. In this matter, he is wrong. It was testimony before the committee on Monday that verifies that this is not a constitutional issue with respect to aliens. It is only a constitutional issue with respect to citizens.

This legislation has nothing to do with citizens. The decision cited by the Senator from Pennsylvania is the Hamdi decision, which dealt with a U.S. citizen. And, of course, the writ of habeas corpus applies to U.S. citizens. Our legislation does not.

Here is what David Rivkin, a partner at Baker & Hostetler law firm, testified to on Monday. He said in this legislation:

> We are giving [alien enemy combatants] a lot more . . . than they are legally entitled to under either international [law] or the law in the U.S. constitution.

Now, let me just proceed from that. Our Supreme Court has held that U.S. constitutional protections do not apply to aliens held outside of our borders. The Johnson v. Eisentrager case, for example, rejected the view that the U.S. Constitution applies to enemy war prisoners held abroad, saying:

> No decision of this Court supports such a view. None of the learned commentators on our Constitution has ever hinted at it. The practice of every modern government is opposed to it.

In 1990, the Supreme Court reaffirmed this view in the Verdugo case, saying:

> [W]e have rejected the claim that aliens are entitled to Fifth Amendment rights outside the sovereign territory of the United States.

That case also makes it clear that constitutional protections do not extend to aliens detained in this country who have no substantial connection to this country. The Supreme Court there said that aliens ''receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.''

The Verdugo Court further clarified that ''lawful but involuntary'' presence in the United States ''is not of the sort to indicate any substantial connection with our country.''

Now, the Rasul case took great pains to emphasize that its extension of habeas to Guantanamo Bay was only statutory. Some Justices may have wanted to make Rasul a constitutional holding, but there was no majority for such a ruling.

So both Eisentrager and Verdugo are still the governing law in this area. These precedents hold that aliens who are either held abroad or held here but have no other substantial connection to this country are not entitled to invoke the U.S. Constitution.

As committee witness Brad Berenson noted at Monday's hearing:

> [N]othing in the Constitution, including the Suspension Clause, confers rights of access to our courts for alien enemy combatants being held in the ordinary course of armed conflict.

He also refuted the argument that constitutional rights of habeas for enemy combatants is embedded in the Rasul decision. As he explained before, going through the logic of that opinion and its dependence on the 1973 Braden case, and I am quoting:

> If there were a constitutional right to habeas corpus relief for alien enemies held abroad, the implication would thus be that it sprang into existence some time after 1973, if not just two years ago in 2004, and received no mention in Rasul. No matter how robust a concept of the ''living Constitution'' one embraces, this sort of Miracle-Gro Constitution cannot fit within it.

He was trying to be clever there to point out the fact that never has the Court come close to holding that for alien enemy combatants there is a constitutional right of habeas. And no decision of the Supreme Court has ever grounded its decision on the Constitution—only the case with respect to U.S. citizens.

So I do not fear the Supreme Court overturning what we are trying to do here. One never knows what the Court might do. And Senator SPECTER certainly is correct that if it did, we would have to revisit this issue. I am totally confident, however, that this legislation would be upheld and certainly not be declared unconstitutional based upon a view that the habeas provisions apply to alien enemy combatants.

Mr. President, the Specter amendment strikes at the heart of the litigation reforms in this bill—it undercuts the entire bill. The amendment would undercut and override the carefully calibrated accountability and supervision mechanisms negotiated by the Armed Services committee. And it would give enemy soldiers challenging their detention unprecedented access to our courts. It should be strongly opposed.

Under the MCA, detainees already receive extremely generous process without habeas corpus lawsuits.

Every detainee held at Guantanamo currently receives a Combatant Status Review Tribunal (CSRT) review of his detention. The CSRT process is modeled on and closely tracks the Article 5 hearings conducted under the Geneva Conventions. In the 2004 Hamdi decision, the Supreme Court cited Article 5 hearings as an example of the type of hearing that would be adequate to justify detention of even an American citizen who has engaged in war against the United States. Moreover, under the Geneva Conventions, Article 5 hearings are given to detainees only when there is substantial doubt as to their status. In all American wars, only a small percentage of detainees have ever been given Article 5 hearings. Yet at Guantanamo, we have given a CSRT hearing to every detainee who has been brought there. And finally, it bears emphasis that the CSRT gives unlawful enemy combatants even more procedural protections than the Geneva Conventions' Article 5 hearing give to lawful enemy combatants. For example:

> A CSRT provides a detainee with a personal representative to help him prepare his case. An Article 5 tribunal does not.
>
> Under the CSRT procedure, the hearing officer is required to search government files for ''evidence to suggest that the detainee should not be designated as an enemy combatant.'' An Article 5 tribunal provides no such right.
>
> CSRTs give the detainee a summary of the evidence supporting his detention in advance of the hearing. Article 5 tribunals do not.
>
> CSRTs are subject to review by supervising authorities and may be remanded for further review. Article 5 provides no such rights.

Finally, after a CSRT is completed, the Detainee Treatment Act, DTA, and the Military Commissions Act, MCA, give an al-Qaida detainee the right to appeal the result to the DC Circuit. That circuit—staffed by some of the best judges in this country—is then authorized to make sure that all proper procedures were followed in the CSRT hearing, and to judge whether the CSRT process is consistent with the Constitution and with federal statutes—though no treaty lawsuits are authorized, pursuant to long-standing precedent.

Now I would grant, the DTA does not allow re-examination of the facts underlying a prisoner's detention, and it limits the review to the administrative record. I commented on these provisions more extensively in remarks submitted for the RECORD on December 21. But as committee witness Brad Berenson noted at Monday's Judiciary Committee hearing, quoting the Supreme Court's 2001 decision in St. Cyr, ''the traditional rule on habeas corpus review of non-criminal executive detentions was that 'the courts generally did not review the factual determinations made by the executive.'''' And under the original common-law writ of habeas corpus, the facts in the custodian's return could not be contested. Thus, although the DTA does not allow sufficiency-of-the-evidence challenges, neither did the common law writ of habeas corpus—especially for noncriminal executive detentions. DTA review is limited—it has to be, or we would face the same litigation burdens as under the Rasul-inspired litigation. But common-law habeas itself is a limited remedy. Under the DTA, prisoners are not denied anything that they would have been entitled to under the original common-law writ of habeas corpus.

Moreover, the fact that we are letting detainees go to court to challenge their conviction is totally unprecedented. At a hearing held on Monday before the Judiciary Committee, one of the witnesses who opposes the MCA, Rear Admiral John Hutson, nevertheless conceded in his testimony that ''[i]n World War II, when thousands and thousands of German and Italian POWs were imprisoned in various camps throughout the United States . . . there is only one recorded case of a POW using habeas to test his imprisonment. He was an Italian American and his petition was denied.''

Just to be clear: there were 425,000 enemy combatants held in the United States during World War II. Yet according to Senator SPECTER's own witness at his Judiciary Committee hearing, only one habeas petition challenging detention was filed—and that was filed by an American citizen. The MCA only applies to aliens—not American citizens, so even that case would not have been affected by this bill.

World War II did see several petitions challenging military trials, but the MCA and the DTA also allow judicial review of military commissions.

At Senator SPECTER's September 25, 2006, hearing on the MCA before the Judiciary Committee, committee witness Brad Berenson, a partner at the Sidley & Austin law firm, testified that ''[n]o nation on the face of the earth in any previous conflict has given people they

have captured anything like [the procedures provided by CSRTs and the DTA], and none does so today.'' Mr. Berenson reiterated: The MCA's procedures ''are in fact more generous than anything we or any other nation in the history of the world has previously afforded to our military adversaries.''

At the same hearing—Senator SPECTER's hearing on the MCA on Monday—we also heard from David Rivkin, a partner at the Baker & Hostetler law firm. This is what he had to say: ''[t]he level of due process that these detainees are getting [under CSRTs and the DTA] far exceeds the level of due process accorded to any combatants, captured combatants, lawful or unlawful, in any war in human history.'' Mr. Rivkin added: ''We are giving [alien enemy combatants] a lot more . . . than they are legally entitled to under either international [law] or the law in the U.S. Constitution.''

The Supreme Court has held that U.S. constitutional protections do not apply to aliens held outside of our borders. For example, in Johnson v. Eisentrager (1950), the Supreme Court rejected the view that the U.S. Constitution applies to enemy war prisoners held abroad, noting that ''[n]o decision of this Court supports such a view. None of the learned commentators on our Constitution has ever hinted at it. The practice of every modern government is opposed to it.'' In 1990, the Supreme Court reaffirmed this view in the Verdugo case, holding that ''we have rejected the claim that aliens are entitled to Fifth Amendment rights outside the sovereign territory of the United States.''

The Verdugo case also makes clear that constitutional protections do not extend to aliens detained in this country who have no substantial connection to this country. The Supreme Court noted that aliens ''receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.'' The Verdugo Court further clarified that ''lawful but involuntary'' presence in the United States ''is not of the sort to indicate any substantial connection with our country.'' That is *United States* v. *Verdugo-Urquidez*, 494 U.S. 259 (1990).

Rasul v. Bush took great pains to emphasize that its extension of habeas to Guantanamo Bay was only statutory. Some Justices may have wanted to make Rasul a constitutional holding, but there clearly was no majority for such a ruling.

Eisentrager and Verdugo are still the governing law in this area. These precedents hold that aliens who are either held abroad, or held here but have no other substantial connection to this country, are not entitled to invoke the U.S. Constitution. As committee witness Brad Berenson noted at Monday's hearing, ''nothing in the Constitution, including the Suspension Clause, confers rights of access to our courts for alien enemy combatants being held in the ordinary course of an armed conflict.'' Berenson also refuted the argument that a constitutional right of habeas for enemy combatants is embedded in the Rasul decision. As he explained, going through the logic of that opinion and its dependence on the 1973 Braden case:

> If there were a constitutional right to habeas corpus relief for alien enemies held abroad, the implication would thus be that it sprang into existence some time after 1973, if not just two years ago in 2004, and received no mention in Rasul. No matter how robust a concept of the ''living Constitution'' one embraces, this sort of Miracle-Gro Constitution cannot fit within it.

The Specter amendment would have led to a nightmare of litigation in other wars.

During World War II, the United States held millions of axis enemy combatants. During some periods, enemy war prisoners were shipped into this country at the rate of 60,000 a month. By the end of the war, over 425,000 enemy war prisoners were detained in prison camps inside the United States. Overall, the United States detained over two million enemy combatants during World War II. Prisoner camps for these combatants existed in all but three of the then-48 states.

If the Specter amendment had been law during World War II, all of these 2 million enemy combatants would have been allowed to file habeas corpus lawsuits in Federal district court against our Armed Forces. Just try to imagine what that would have meant. The vast majority of these 2 million enemy prisoners were not familiar with the American legal system and did not speak English. If they had habeas corpus rights, they surely would have had to be provided with a lawyer in order to effectuate those rights. Also, should each of these 2 million prisoners also have been given access to the classified evidence that might be used against them to justify their detention? Should all 2 million of these prisoners have been entitled to call witnesses on their behalf? Should they have been allowed to recall the U.S. soldiers at the front who captured them, and to cross examine them?

The consequences of the Specter amendment are unimaginable. We cannot allow enemy war prisoners to sue us in our own courts. Such a system would make it simply impossible for the United States to fight a war. But don't take my word for it. The United States Supreme Court came to the same conclusion in its landmark decision in Johnson v. Eisentrager. The Supreme Court in that case clearly and eloquently explained why we cannot allow alien enemy combatants to sue our military in our courts:

> A basic consideration in habeas corpus practice is that the prisoner will be produced before the court. This is the crux of the statutory scheme established by the Congress; indeed, it is inherent in the very term ''habeas corpus.'' And though production of the prisoner may be dispensed with where it appears on the face of the application that no cause for granting the writ exists, Walker v. Johnston, we have consistently adhered to and recognized the general rule. Ahrens v. Clark. To grant the writ to these prisoners might mean that our army must transport them across the seas for hearing. This would require allocation of shipping space, guarding personnel, billeting and rations. It might also require transportation for whatever witnesses the prisoners desired to call as well as transportation for those necessary to defend legality of the sentence. The writ, since it is held to be a matter of right, would be equally available to enemies during active hostilities as in the present twilight between war and peace. Such trials would hamper the war effort and bring aid and comfort to the enemy. They would diminish the prestige of our commanders, not only with enemies but with wavering neutrals. It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be a conflict between judicial and military opinion highly comforting to enemies of the United States.

The Specter Amendment would disrupt the operation of Guantanamo and undermine the war on terror. We already know that habeas litigation at Guantanamo has consumed enormous resources and disrupted day-to-day operation of the base. The United States February 17, 2006 Supplemental Brief in the Al Odah case in the DC circuit describes the burdens imposed on the military by the Guantanamo litigation and the frivolous nature of some of the claims being pursued. At pages 12–14, the brief describes the following:

According to the Justice Department: ''The detainees have urged habeas courts to dictate conditions on [Guantanamo Naval] Base ranging from the speed of Internet access afforded their lawyers to the extent of mail delivered to the detainees;'' More than 200 cases have been filed on behalf of 600 purported detainees. This number exceeds the number of detainees actually held at Guantanamo, which is near 500; Also according to the Justice Department: ''The Department of Defense has been forced to reconfigure its operations at Guantanamo Naval Base to accommodate hundreds of visits by private habeas counsel. . . . This habeas litigation has consumed enormous resources and disrupted the day-to-day operation of Guantanamo Naval Base;'' The United States also notes that this litigation has had a serious negative impact on the war with Al Qaeda. According to the U.S. brief:

> Perhaps most disturbing, the habeas litigation has imperiled crucial military operations during a time of war. In some instances, habeas counsel have violated protective orders and jeopardized the security of the base by giving detainees information likely to cause unrest. Moreover, habeas counsel have frustrated interrogation critical to preventing further terrorist attacks on the United States. One of the coordinating counsel for the detainees boasted about this in public:

The litigation is brutal for [the United States.] It's huge. We have over one hundred lawyers now from big and small firms working to represent the detainees. Every time an attorney goes down there, it makes it that much harder [for the U.S. military] to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

Brad Berenson, who testified at the September 25 Judiciary Committee hearing on this bill, offers what I think is a fitting comment on the habeas corpus litigation at Guantanamo Bay thus far. He concluded his testimony by noting, ''All freedom-loving people cherish the Great Writ. But we debase the writ, rather than honor it, if we extend it into realms where neither history nor tradition support its use.''

At Monday's Judiciary Committee hearing, some witness suggested that the bulk of the detainees held at Guantanamo are innocent. One witness at Monday's Judiciary Committee hearing, a lawyer who represents 10 Saudis held at Guantanamo, went so far as to assert that ''none of the ten . . . are enemies of the United States.'' This lawyer even told us that the men at Guantanamo ''do not appear any more dangerous . . . than my younger grandchild, who is 12.'' Another witness at the Judiciary Committee's September 25 hearing asserted that ''[n]ot a crumb of evidence has been adduced suggesting that the writ would risk freeing terrorists to return to fight against the United States.''

This characterization, and similar assertions that the bulk of the detainees at Guantanamo are innocent, simply do not comport with reality. The United States has already released a number of detainees. These are detainees who our own Armed Forces decided were not enemy combatants or were no longer dangerous. Our Armed Forces are obviously very cautious about whom they release—they have great reason to be cautious, since they bear the consequences of releasing anyone who is a threat. Yet we already know that even among those detainees whom our Armed Forces thought were not dangerous, a significant number instead turned out to remain committed to war against the United States and its allies. According to a October 22, 2004 story in the Washington Post, at least 10 detainees released from Guantanamo have been recaptured or killed fighting U.S. or coalition forces in Afghanistan or Pakistan. This is what the Washington Post described:

One of the repatriated prisoners is still at large after taking leadership of a militant faction in Pakistan and aligning himself with al Qaeda, Pakistani officials said. In telephone calls to Pakistani reporters, he has bragged that he tricked his U.S. interrogators into believing he was someone else.

Another returned captive is an Afghan teenager who had spent two years at a special compound for young detainees at the military prison in Cuba, where he learned English, played sports and watched videos, informed sources said. U.S. officials believed they had persuaded him to abandon his life with the Taliban, but recently the young man, now 18, was recaptured with other Taliban fighters near Kandahar, Afghanistan, according to the sources, who asked for anonymity because they were discussing sensitive military information.

* * * * *

The latest case emerged two weeks ago when two Chinese engineers working on a dam project in Pakistan's lawless Waziristan region were kidnapped. The commander of a tribal militant group, Abdullah Mehsud, 29, told reporters by satellite phone that his followers were responsible for the abductions.

Mehsud said he spent two years at Guantanamo Bay after being captured in 2002 in Afghanistan fighting alongside the Taliban. At the time he was carrying a false Afghan identity card, and while in custody he maintained the fiction that he was an innocent Afghan tribesman, he said. U.S. officials never realized he was a Pakistani with deep ties to militants in both countries, he added.

I managed to keep my Pakistani identity hidden all these years,'' he told Gulf News in a recent interview. Since his return to Pakistan in March, Pakistani newspapers have written lengthy accounts of Mehsud's hair and looks, and the powerful appeal to militants of his fiery denunciations of the United States. ''We would fight America and its allies,'' he said in one interview, ''until the very end.''

Last week Pakistani commandos freed one of the abducted Chinese engineers in a raid on a mud-walled compound in which five militants and the other hostage were killed.

The 10 or more returning militants are but a fraction of the 202 Guantanamo Bay detainees who have been returned to their homelands. Of that group, 146 were freed outright, and 56 were transferred to the custody of their home governments. Many of those men have since been freed.

Mark Jacobson, a former special assistant for detainee policy in the Defense Department who now teaches at Ohio State University, estimated that as many as 25 former detainees have taken up arms again. ''You can't trust them when they say they're not terrorists,'' he said.

* * * * *

Another former Guantanamo Bay prisoner was killed in southern Afghanistan last month after a shootout with Afghan forces. Maulvi Ghafar was a senior Taliban commander when he was captured in late 2001. No information has emerged about what he told interrogators in Guantanamo Bay, but in several cases U.S. officials have released detainees they knew to have served with the Taliban if they swore off violence in written agreements.

Returned to Afghanistan in February, Ghafar resumed his post as a top Taliban commander, and his forces ambushed and killed a U.N. engineer and three Afghan soldiers, Afghan officials said, according to news accounts.

A third released Taliban commander died in an ambush this summer. Mullah Shahzada, who apparently convinced U.S. officials that he had sworn off violence, rejoined the Taliban as soon as he was freed in mid-2003, sources with knowledge of his situation said.

I urge that anyone consider these facts before contending that the bulk of the detainees at Guantanamo are ''innocent.''

I would also like to respond to some of the attacks that have been made on the underlying DTA. One of the complaints made is that there is no mandate in the DTA, or in the MCA, that the military conduct CSRTs for enemy combatants that it captures. In a September 25 letter to Senators, for example, the ACLU urges opposition to the MCA on the ground, among other things, that ''[w]hile the bill does allow limited appeals for those who do go before a military commission or a Combatant Status Review Tribunal, CSRT, there is no guarantee that any person detained by our government be provided with either a trial or a CSRT.'' Similarly, at the September 25 hearing before the Judiciary Committee, committee witness Bruce Fein argued against the MCA on the ground ''the fact is that the statute would enable the executive branch to simply decline to hold CSRT proceedings . . . [I]t gives the executive branch, if it wishes, [the right] to hold detainees indefinitely without any access to the Federal courts. [Military commanders could] say, we do not want to hold a Combatant Status Review Tribunal, it is so clear that they [the detainees] are enemy combatants. If they do not hold the tribunal hearing, there is no access to Federal courts under the statute.''

My response to these critics is that what they have described does accurately describes the DTA and MCA—and also the Geneva Conventions. As I noted earlier, the Geneva Conventions require an Article 5 hearing on the status of a detainee, but only if there is doubt as to his status. Under the Geneva Conventions, I would submit, there is no need for any Article 5 hearing for any of the al-Qaida and Taliban detainees, because there is simply no question that these detainees are not entitled to privileged status under the Geneva Conventions. The Conventions allow the military to make blanket determinations, and our nation would certainly be within its rights to do so here. What the military currently is doing for Guantanamo detainees goes well beyond the process to which they are entitled. What these critics want Congress to apply to our Armed Forces is a rule of no good deed goes unpunished. Because the military, in response to criticism of Guantanamo, started giving everyone at Guantanamo a CSRT hearing, these critics contend, it should be compelled to do so for all future detainees, and for all future wars. What is now given as a matter of executive grace, they contend, should be transformed into a legislative mandate.

This the Armed Services committees and this congress declined to do. Aside from the fact that these detainees, aliens all, are not entitled to CSRTs or any Article 5 type hearing under the Geneva Conventions, it would be absurdly impractical to require the military to provide such hearings in all future conflicts. Consider, for example, the case of World War II. As I mentioned earlier, the United States detained over 2,000,000 enemy combatants during that conflict. How on earth could we possibly expect the military to conduct CSRTs for 2 million people?

And how could the DC Circuit be expected to handle 2 million appeals from CSRTs, even under the de minimis facial challenge authorized by the DTA? It is simply inconceivable.

The CSRTs and DTA review, I concede, would be insufficient to justify detention of a United States citizen accused of a crime. This is not civilian criminal justice due process. But these detainees are not entitled to civilian criminal justice due process. Nor are they entitled to such hearings under the Geneva Conventions.

What the DTA review standards do offer is judicial review that is consistent with military needs and with the executive branch's primacy among the branches of government in the conduct of war. It is judicial review in keeping with the traditional limited role of the courts in reviewing the conduct of war. As others have noted, DTA judicial review is limited to two narrow inquiries: did the CSRTs and commissions use the standards and procedures identified by the Secretary of Defense, and is the use of these systems to either continue the detention of enemy combatants or try them for war crimes consistent with the Constitution and federal statutes? The first inquiry I think is straightforward: did the military follow its own rules? This inquiry does not ask whether the military reached the correct result by applying its rules or whether a judge agrees that the evidence meets some particular standard of evidence. The inquiry is simply whether the correct rule was employed.

Former United States Attorney General Bill Barr, in his testimony before the Senate Judiciary Committee on June 15 of last year, described the understanding of judicial review of military decisions that the DTA's review standards are designed to reflect:

> It seems to me that the kinds of military decisions at issue here—namely, what and who poses a threat to our military operations—are quintessentially Executive in nature. They are not amenable to the type of process we employ in the domestic law enforcement arena. They cannot be reduced to neat legal formulas, purely objective tests and evidentiary standards. They necessarily require the exercise of prudential judgment and the weighing of risks. This is one of the reasons why the Constitution vests ultimate military decision-making in the President as Commander-in-Chief. If the concept of Commander-in-Chief means anything, it must mean that the office holds the final authority to direct how, and against whom, military power is to be applied to achieve the military and political objectives of the campaign.
>
> I am not speaking here of ''deference'' to Presidential decisions. In some contexts, courts are fond of saying that they ''owe deference'' to some Executive decisions. But this suggests that the court has the ultimate decision-making authority and is only giving weight to the judgment of the Executive. This is not a question of deference—the point here is that the ultimate substantive decision rests with the President and that courts have no authority to substitute their judgments for that of the President.

I think that last point is worth emphasizing. The DTA is not an invitation for the courts to substitute their judgment for that of the military. It is not for the courts to decide if someone is an enemy combatant, regardless of the standard of review. It is simply not the role of the courts to make that decision. It is not the courts, after all, who bear the burden of capturing an enemy combatant again if he is released and rejoins the battle. The only thing the DTA asks the courts to do is check that the record of the CSRT hearings reflect that the military has used its own rules. It is up to the military to decide what the result should be under those rules, or even how those rules should be modified in the future.

I would also reiterate a few words about the legality review that the DTA provides. This provision authorizes, in effect, a facial challenge to the CSRTs. I anticipate that once the District of Columbia circuit decides these questions with regard to a particular set of CSRT procedures in use, that decision will operate as circuit precedent unless and until the CSRT procedures are changed. Based on the long body of Supreme Court precedent governing judicial review of military affairs, I do not anticipate that any type of hearing is required by the Constitution or by Federal statute in order for the military to be allowed to detain alien enemy combatants. The Geneva Conventions do require hearings when there is doubt as to a detainee's privileged status, but those Conventions are not enforced through the courts, and the DTA does not disturb that limit on judicial enforceability. Allow me to quote the previous understanding of the scope of judicial review of military-commission trials that the DTA is designed to embody, as expressed in the Supreme Court's landmark decision in Johnson v. Eisentrager:

> It is not for us to say whether these prisoners were or were not guilty of a war crime, or whether if we were to retry the case we would agree to the findings of fact or the application of the laws of war made by the Military Commission. The petition shows that these prisoners were formally accused of violating the laws of war and fully informed of particulars of these charges. As we observed in the Yamashita case, ''If the military tribunals have lawful authority to hear, decide and condemn, their action is not subject to judicial review merely because they have made a wrong decision on disputed facts. Correction of their errors of decision is not for the courts but for the military authorities which are alone authorized to review their decisions. We consider here only the lawful power of the commission to try the petitioner for the offense charged.''

Finally, I would like to reiterate the most important reason why I believe that Congress needs to bring an end to the habeas litigation involving war-on-terror detainees. Keeping captured terrorists out of the court system is a prerequisite for conducting effective and productive interrogation. And it is interrogation of terrorist detainees that has proved to be an important source of critical intelligence that has saved American lives.

Giving detainees access to federal judicial proceedings threatens to seriously undermine vital U.S. intelligence-gathering activities. Under the new Rasul-imposed system, shortly after al-Qaida and Taliban detainees arrive at Guantanamo Bay, they are informed that they have the right to challenge their detention in Federal court and the right to see a lawyer. Detainees overwhelmingly have exercised both rights. The lawyers inevitably tell detainees not to talk to interrogators. Also, mere notice of the availability of these proceedings gives detainees hope that they can win release through adversary litigation, rather than by cooperating with their captors.

Navy Vice-Admiral Lowell Jacoby addressed this matter in a declaration attached to the United States's brief in the Padilla litigation in the Southern District of New York. Vice-Admiral Jacoby at the time was the Director of the Defense Intelligence Agency. He noted in the Declaration that:

> DIA's approach to interrogation is largely dependent upon creating an atmosphere of dependency and trust between the subject and the interrogator. Developing the kind of relationship of trust and dependency necessary for effective interrogations is a process that can take a significant amount of time. There are numerous examples of situations where interrogators have been unable to obtain valuable intelligence from a subject until months, or, even years, after the interrogation process began.
>
> Anything that threatens the perceived dependency and trust between the subject and interrogator directly threatens the value of interrogation as an intelligence gathering tool. Even seemingly minor interruptions can have profound psychological impacts on the delicate subject-interrogator relationship. Any insertion of counsel into the subject-interrogator relationship, for example—even if only for a limited duration or for a specific purpose—can undo months of work and may permanently shut down the interrogation process.

Specifically with regard to Jose Padilla, Vice Admiral Jacoby also noted in his Declaration that:

> Providing [Padilla] access to counsel now would create expectations by Padilla that his ultimate release may be obtained through an adversarial civil litigation process. This would break—probably irreparably—the sense of dependency and trust that the interrogators are attempting to create.

In remarks that I submitted for the RECORD when the original DTA was enacted, I described some of the valuable intelligence that the United States has gained as a result of the interrogation of al-Qaida detainees. The President made a similar case in a speech that he delivered on September 6, but much better than I had done. I would like to simply quote at length, so that it is available in the RECORD, what the President described—why it is important that our intelligence agents be able to conduct effective interrogations of al-Qaida members. On the sixth of this month, the President stated:

> Within months of September the 11th, 2001, we captured a man known as Abu Zubaydah. We believe that Zubaydah was a senior terrorist leader and a trusted associate of

Osama bin Laden. Our intelligence community believes he had run a terrorist camp in Afghanistan where some of the 9/11 hijackers trained, and that he helped smuggle al Qaeda leaders out of Afghanistan after coalition forces arrived to liberate that country. Zubaydah was severely wounded during the firefight that brought him into custody—and he survived only because of the medical care arranged by the CIA.

After he recovered, Zubaydah was defiant and evasive. He declared his hatred of America. During questioning, he at first disclosed what he thought was nominal information—and then stopped all cooperation. Well, in fact, the ''nominal'' information he gave us turned out to be quite important. For example, Zubaydah disclosed Khalid Sheikh Mohammed—or KSM—was the mastermind behind the 9/11 attacks, and used the alias ''Muktar.'' This was a vital piece of the puzzle that helped our intelligence community pursue KSM. Abu Zubaydah also provided information that helped stop a terrorist attack being planned for inside the United States—an attack about which we had no previous information. Zubaydah told us that al Qaeda operatives were planning to launch an attack in the U.S., and provided physical descriptions of the operatives and information on their general location. Based on the information he provided, the operatives were detained—one while traveling to the United States.

We knew that Zubaydah had more information that could save innocent lives, but he stopped talking. As his questioning proceeded, it became clear that he had received training on how to resist interrogation. And so the CIA used an alternative set of procedures. These procedures were designed to be safe, to comply with our laws, our Constitution, and our treaty obligations. The Department of Justice reviewed the authorized methods extensively and determined them to be lawful. I cannot describe the specific methods used—I think you understand why—if I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country. But I can say the procedures were tough, and they were safe, and lawful, and necessary.

Zubaydah was questioned using these procedures, and soon he began to provide information on key al Qaeda operatives, including information that helped us find and capture more of those responsible for the attacks on September the 11th. For example, Zubaydah identified one of KSM's accomplices in the 9/11 attacks—a terrorist named Ramzi bin al Shibh. The information Zubaydah provided helped lead to the capture of bin al Shibh. And together these two terrorists provided information that helped in the planning and execution of the operation that captured Khalid Sheikh Mohammed.

Once in our custody, KSM was questioned by the CIA using these procedures, and he soon provided information that helped us stop another planned attack on the United States. During questioning, KSM told us about another al Qaeda operative he knew was in CIA custody—a terrorist named Majid Khan. KSM revealed that Khan had been told to deliver $50,000 to individuals working for a suspected terrorist leader named Hambali, the leader of al Qaeda's Southeast Asian affiliate known as ''J-I''. CIA officers confronted Khan with this information. Khan confirmed that the money had been delivered to an operative named Zubair, and provided both a physical description and contact number for this operative.

Based on that information, Zubair was captured in June of 2003, and he soon provided information that helped lead to the capture of Hambali. After Hambali's arrest, KSM was questioned again. He identified Hambali's brother as the leader of a ''J-I'' cell, and Hambali's conduit for communications with al Qaeda. Hambali's brother was soon captured in Pakistan, and, in turn, led us to a cell of 17 Southeast Asian ''J-I'' operatives. When confronted with the news that his terror cell had been broken up, Hambali admitted that the operatives were being groomed at KSM's request for attacks inside the United States—probably [sic] using airplanes.

During questioning, KSM also provided many details of other plots to kill innocent Americans. For example, he described the design of planned attacks on buildings inside the United States, and how operatives were directed to carry them out. He told us the operatives had been instructed to ensure that the explosives went off at a point that was high enough to prevent the people trapped above from escaping out the windows.

KSM also provided vital information on al Qaeda's efforts to obtain biological weapons. During questioning, KSM admitted that he had met three individuals involved in al Qaeda's efforts to produce anthrax, a deadly biological agent—and he identified one of the individuals as a terrorist named Yazid. KSM apparently believed we already had this information, because Yazid had been captured and taken into foreign custody before KSM's arrest. In fact, we did not know about Yazid's role in al Qaeda's anthrax program. Information from Yazid then helped lead to the capture of his two principal assistants in the anthrax program. Without the information provided by KSM and Yazid, we might not have uncovered this al Qaeda biological weapons program, or stopped this al Qaeda cell from developing anthrax for attacks against the United States.

These are some of the plots that have been stopped because of the information of this vital program. Terrorists held in CIA custody have also provided information that helped stop a planned strike on U.S. Marines at Camp Lemonier in Djibouti—they were going to use an explosive laden water tanker. They helped stop a planned attack on the U.S. consulate in Karachi using car bombs and motorcycle bombs, and they helped stop a plot to hijack passenger planes and fly them into Heathrow or the Canary Wharf in London.

We're getting vital information necessary to do our jobs, and that's to protect the American people and our allies.

Information from the terrorists in this program has helped us to identify individuals that al Qaeda deemed suitable for Western operations, many of whom we had never heard about before. They include terrorists who were set to case targets inside the United States, including financial buildings in major cities on the East Coast. Information from terrorists in CIA custody has played a role in the capture or questioning of nearly every senior al Qaeda member or associate detained by the U.S. and its allies since this program began. By providing everything from initial leads to photo identifications, to precise locations of where terrorists were hiding, this program has helped us to take potential mass murderers off the streets before they were able to kill.

This program has also played a critical role in helping us understand the enemy we face in this war. Terrorists in this program have painted a picture of al Qaeda's structure and financing, and communications and logistics. They identified al Qaeda's travel routes and safe havens, and explained how al Qaeda's senior leadership communicates with its operatives in places like Iraq. They provided information that allows us—that has allowed us to make sense of documents and computer records that we have seized in terrorist raids. They've identified voices in recordings of intercepted calls, and helped us understand the meaning of potentially critical terrorist communications.

The information we get from these detainees is corroborated by intelligence, and we've received—that we've received from other sources—and together this intelligence has helped us connect the dots and stop attacks before they occur. Information from the terrorists questioned in this program helped unravel plots and terrorist cells in Europe and in other places. It's helped our allies protect their people from deadly enemies. This program has been, and remains, one of the most vital tools in our war against the terrorists. It is invaluable to America and to our allies. Were it not for this program, our intelligence community believes that al Qaeda and its allies would have succeeded in launching another attack against the American homeland. By giving us information about terrorist plans we could not get anywhere else, this program has saved innocent lives.

I don't think that it can be seriously doubted that this intelligence would not have been obtained if these men—Khalid Shaisk Muhammed and Abu Zubaydah—had been given the right to file a habeas petition and access to a lawyer immediately after they were captured. And had we not obtained this information, lives of Americans and other innocent people would have been lost.

The DTA and the MCA create a balanced and appropriate mechanism for managing the detention of alien enemy combatants. They are consistent with military tradition and our Nation's security needs. The Specter amendment would upend that system. I urge the Specter amendment's defeat.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I only need one sentence to refute the arguments of the Senator from Arizona, and it comes back to Justice O'Connor's opinion again. She says:

> All agree that, absent suspension, the writ of habeas corpus remains available to every individual—

Every individual—

> detained within the United States.

Guantanamo is held to be within that concept. But she talks about ''every individual.'' That includes citizens and noncitizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I congratulate the distinguished chairman of the Senate Judiciary Committee and my other colleagues who serve on the Judiciary Committee—Senator GRAHAM and Senator KYL—for the quality of the discussion and debate. This is the kind of debate I came to the Senate and hoped to participate in.

I want to try to address the concerns raised by the distinguished chairman of the Judiciary Committee about this constitutional issue. I happen to agree with what the Senator from Arizona said about the way the U.S. Supreme Court has interpreted the rights of an

alien with regard to their constitutional rights.

The difference is, the Hamdi case the chairman was citing really had to do with whether Guantanamo Bay—leased property in Cuba—was within the jurisdiction of the Court. It held because it was under a lease and under the control of the United States that it was subject to the laws pertaining to habeas corpus. But the way I read the case—and I believe this is correct and consistent with the way the Senator from Arizona interpreted it—it does not apply, they did not hold that it applied to an alien. But I want to say, even if he is right—and I disagree that he is—that aliens, particularly unlawful combatants captured on the battlefield, have all the rights an American citizen does under the Constitution, I believe his concerns are answered by the Swain case, decided by the U.S. Supreme Court, which held that if, in fact, there is an adequate substitute remedy, that in fact that satisfies any constitutional concerns with regard to the writ of habeas corpus.

I believe the Detainee Treatment Act, which we passed just last year, provides an adequate substitute remedy sufficient to meet Supreme Court scrutiny. Even if the Supreme Court woke up and decided that all of a sudden it would overrule all of its old cases and hold that an unlawful combatant, an alien—not a citizen of this country—was somehow entitled to the whole panoply of constitutional rights, that would satisfy the Supreme Court's concerns about the process to which that alien was due.

But I also want to question sort of the logic of applying the Constitution to unlawful combatants captured on the battlefield. Are we saying they are entitled to a fourth amendment right against unreasonable searches and seizures? Are we saying they have a fifth amendment right not to incriminate themselves? Well, surely not. We have all acknowledged the importance of being able to capture actionable intelligence through the interrogation process. And much of the debate we have been having in these last few weeks has been: How do we preserve this important intelligence-gathering tool which has allowed us to detect and disrupt terrorist attacks? How do we preserve that and at the same time meet our other legal obligations, constitutional and statutory?

I believe the Senator from South Carolina had a question. I would be happy to yield to him for a question.

Mr. GRAHAM. Mr. President, I appreciate that, and I am sorry to interrupt. But I went back to the Hamdi decision that referenced the exchange we had with the chairman in reference to the point the Senator just made.

Justice O'Connor said:

> Hamdi has received no process. An interrogation by one's captor, however effective an intelligence-gathering tool, hardly constitutes a constitutionally adequate fact-finding before a neutral decisionmaker.

When you turn to the next page, she says:

> There remains the possibility that the standards we have articulated could be met by an appropriately authorized and properly constituted military tribunal. Indeed, it is notable that military regulations already provide for such process in related instances, dictating that tribunals be made available to determine the status of enemy detainees who assert prisoner-of-war status under the Geneva Convention.

She is referring to Army regulation 190–8. And my question to Senator CORNYN is, do you agree that Justice O'Connor was telling the Department of Defense that if you will model a tribunal on Army regulation 190–8, you will have met your obligation to have a competent tribunal under the Geneva Conventions to make an enemy combatant status determination?

Mr. CORNYN. Mr. President, I say to the Senator from South Carolina, I think that is certainly a reasonable construction of what the opinion says.

Let me describe for our colleagues the kind of petitions for writ of habeas corpus we are talking about that are being filed at Guantanamo Bay.

A Canadian detainee who threw a grenade that killed an Army medic in a firefight and who comes from a family with longstanding al-Qaida ties moved for a preliminary injunction forbidding interrogation of him. That is one example.

Another one is a Kuwaiti detainee who seeks a court order that they must be provided dictionaries in contravention of the force protection policy at Guantanamo Bay, and that their lawyer be given high-speed Internet access at their lodging on the base and be allowed to use classified Department of Defense telecommunications facilities, all under the theory that otherwise their ''right to counsel'' is unduly burdened.

Then there is the motion by a high-level al-Qaida detainee complaining about base security procedures, speed of mail delivery, and medical treatment—even though they have abundant medical treatment and medical facilities at Guantanamo Bay. They further seek an order that he be transferred to the ''least onerous conditions'' at Guantanamo Bay and is asking the court to order that Guantanamo Bay authorities allow him to keep any books and reading materials sent to him and to ''report to the court'' on his opportunities for exercise, communication, recreation, and worship, among other things.

Then there is the ''emergency'' motion seeking a court order requiring the authorities at Guantanamo Bay to set aside its normal security practices and show detainees DVDs that are purported to be family videos.

Finally, I will mention, by way of absurd examples, the motion by Kuwaiti detainees who are unsatisfied with the Koran they are provided as standard issue by the Guantanamo authorities, and they seek a court order that they be able to keep various other supplemental religious material, such as a ''tafsir,'' or 4-volume Koran with commentary, in their cells.

To say there is ''no meaningful judicial review'' or adequate substitute remedy afforded unlawful combatants flies in the face of the facts.

The Senator from South Carolina described the fact that these detainees are, under current law, entitled to a combat status review tribunal, whose decision could then be appealed to the DC Circuit Court of Appeals to make sure the officials have actually provided the process to which these detainees are due, to make sure they have not been swept up in the fog of war and were innocent bystanders. This provides a fair process for them and adequate judicial review.

We also have an annual administrative review board that determines, on an annual basis, whether this remains a necessity to keep these individuals in detention. I will point out that sometimes we are too lenient in terms of who we let go. I will cite to you a story of October 22, 2004, in the Washington Post, entitled ''Released Detainees Rejoining the Fight.'' There are at least 10 detainees who were released from Guantanamo Bay that have been recaptured or killed while fighting U.S. or coalition forces after they were released.

The Supreme Court of the United States has talked about the impracticality of providing enemy combatants of the U.S. the full privilege of litigation. The Eisentrager court explained clearly and eloquently why we don't let enemy combatants sue the U.S. military and our soldiers in our own Federal courts. This is what the court said:

> Such trials would hamper the war effort and bring aid and comfort to the enemy. . . . It would be difficult to devise a more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him into account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be a conflict between judicial and military opinion highly comforting to enemies of the United States.

Those burdens placed on our military by enemy combatant litigation against our military effort persist today, and we have it within our power to eliminate that burden, to allow our men and women in uniform to fight the fight they volunteered to do on our behalf, to keep us safe and, at the same time, provide an adequate substitute remedy through the Detainee Treatment Act, as I have described a moment ago.

More than 200 cases have been filed on behalf of a purported 600 detainees. Strangely, that exceeds the number of detainees who are actually at Guantanamo Bay. So we have lawsuits for people who don't even exist, apparently.

According to the Department of Justice:

> This habeas litigation has consumed enormous resources and disrupted the day-to-day operation at Guantanamo Naval Base.

The United States of America, in a brief filed in the Al Odah case, said:

> Perhaps most disturbing, the habeas litigation has imperiled crucial military operations during a time of war. In some cases, habeas counsel have violated protective orders and jeopardized the security of the base by giving detainees information likely to cause unrest. Moreover, habeas counsel have frustrated interrogation critical to preventing further terrorist attacks on the United States.

This seems to have been validated—these criticisms—by the U.S. in briefs filed in Federal court by a lawyer who has filed those lawsuits on behalf of enemy combatants held at Guantanamo Bay. He boasted about disrupting U.S. war efforts in a magazine, where he said:

> The litigation is brutal for [the United States.] It's huge. We have over 100 lawyers now from big and small firms working to represent detainees. Every time an attorney goes down there, it makes it that much harder [for the United States military] to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

I know time is precious and I want to yield back to the chairman of the Armed Services Committee, but I believe those who argue for an extension of full habeas corpus rights, such as would be provided to an American citizen in civilian courts, are making a fundamental mistake by confusing two different realms of constitutional law. One would apply to an American citizen accused of a crime, where certainly the desire and the order of business is to protect that individual against unjust charges, and to make sure that the full panoply of the Bill of Rights applies to that individual. Different considerations apply when you are talking about a declared enemy of the U.S., and particularly an unlawful combatant, someone who doesn't wear the uniform, someone who doesn't respect the law of wars, and who targets innocent civilians in the pursuit of their ideology.

I don't think we should make that mistake. So I reluctantly oppose the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I address the Senate on this issue and pose a question to my distinguished colleague, the senior Senator from Pennsylvania. I will put into the RECORD, following the conclusion of my remarks and my colloquy with the Senator from Pennsylvania, additional material.

Before I yield the floor, it is my desire to conclude the time on our side with the Senator from Missouri, and then reserve the remainder of my time for tomorrow. It would be my hope that the Senator from Pennsylvania, likewise, would save such remarks he may wish to make for tomorrow. As he knows, there is a function going on now, which I think most of us are trying to attend.

With that, I yield the floor.

Mr. SPECTER. Mr. President, that is satisfactory to me. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 33 minutes remaining.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, the amendment to give unlawful combatant habeas corpus rights to mirror U.S. domestic procedures is unnecessary and inappropriate.

The amendment is unnecessary because the U.S. is already giving enemy unlawful combatants more rights to question their continued incarceration than they are entitled to under international law.

Under Geneva Conventions Article 5, combatants captured during wartime are due a hearing to determine their lawful status only if such status is in doubt.

The United States goes beyond this requirement to give every combatant a status hearing, even when there is no doubt as to their status.

The U.S. gives combatants Combat Status Review Tribunal hearings, known as CSRTs, to determine their status and review the need for their continued incarceration.

If this were not enough, there is a review process under the Detainee Treatment Act, passed last year, to which detainees are also subjected.

There is no need for further review processes for these enemy combatant detainees. An enemy combatant detainee sounds a little sterile, but take a look at the name that is often referred to dealing with this. The Supreme Court case which brought about the need for this legislation deals with Hamdan. Let's be clear, Hamdan was Osama bin Laden's body guard and driver. This is the kind of person about whom we are talking. Giving unlawful enemy combatants such as these U.S. domestic habeas rights is inappropriate. These people are not U.S. citizens, arrested in the U.S. on some civil offense; they are, by definition, aliens engaged in or supporting terrorist hostilities against the U.S., and doing so in violation of the laws of the war.

Some may not have been around long enough to remember that the U.S. detained hundreds of thousands of German and Japanese soldiers, captured on World War II battlefields. We didn't give these enemy combatants access to U.S. domestic courts or habeas corpus rights. Not only would that have been absurd, it would have totally bogged down the legal system.

There has never been a legal question over the appropriateness of a separate military process for enemy combatants. We should not now start admitting them to the U.S. domestic legal process.

Current military review processes are more than adequate. Indeed, they exceed international standards. Granting enemy combatants additional U.S. domestic habeas corpus rights is unnecessary and inappropriate.

I urge my colleagues to oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, at this time, I observe no other Senators desiring to address the subject with regard to the pending bill. Having said that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. VITTER). Without objection, it is so ordered.

## VOTE EXPLANATION

Mr. MCCAIN. Mr. President, due to the passing of a close friend, I was not present for the vote on amendment No. 5086, offered by Mr. LEVIN. With whis statement, I would like to inform the Senate that, had I been present, I would have voted against this amendment, which sought to strike the pending legislation on military commissions and insert the text of the bill reported out of the Armed Services Committee.

Senators WARNER, GRAHAM and I wrote and supported the bill that was reported out of the Senate Armed Services Committee. Over the past 2 weeks, however, we have been involved in negotiations with the White House and the House of Representatives and reached a compromise.

The compromise legislation, which I support, does not redefine the Geneva Conventions in any way. It amends the War Crimes Act—which currently says only that a violation of Common Article 3 is a war crime—by enumerating nine categories of offenses that constitute ''grave breaches of Common Article 3'' and thus are war crimes, punishable by imprisonment or death.

The bill authorizes the President to interpret the Geneva Conventions—a power he has already under the Constitution—as to what constitute nongrave breaches. These interpretations must be published in the Federal Register, and they will have same force as other administrative regulations, and thus may be trumped by law passed by Congress.

I am pleased with the agreement that we have reached with the administration and I support this legislation in the form pending on the floor. For this reason, if I had been present, I would have cast my vote against amendment No. 5086.

Mr. ROBERTS. Mr. President, I rise today in support of the timely passage of this legislation. In my view it is essential to the successful prosecution of our war against the terrorists.

Ever since the Supreme Court announced its decision in the case of Hamdan v. Rumsfeld, I have made clear that my three primary goals for legislation authorizing military tribunals were: (1) Adjudicating the cases of detained terrorists in proceedings that are consistent with our values of justice, (2) protecting classified information, and (3) ensuring that our military and intelligence officers have clear standards for what is, and is not, permissible during detention and interrogation operations.

After discussing these issues with National Security Adviser Hadley and officials at the Department of Justice, I am comfortable in saying that this legislation accomplishes each of those goals.

First, the legislation authorizes the President to establish military commissions for the trial of unlawful enemy combatants. Enemy combatants tried under this legal system will have the benefit of a comprehensive process that assures them of legal representation, access to witnesses and evidence, the ability to present a defense, and the ability to appeal any judgment to the Court of Military Commission Review, the DC Circuit Court of Appeals, and, ultimately, to the Supreme Court.

I dare say that some who may be tried by these military commissions will receive more due process and legal protection than they were ever willing to grant to others.

Second, while ensuring a full and fair process, the legislation also recognizes the important role that classified information is likely to play in these trials. The legislation expressly provides the government with a privilege to protect classified information. At the same time, the bill provides a number of ways for the trial court to ensure that the defendant is sufficiently apprised of the evidence to be used against him. I think this bill strikes the right balance between providing a full and fair process, and protecting classified information.

Third, and most important to me as chairman of the Intelligence Committee, the bill provides military and intelligence officers conducting detention and interrogation operations with clear standards.

Why is this so important? Because, there is a consensus in the intelligence community that terrorist interrogations are the single best source of actionable intelligence against the plots of a determined enemy.

Interrogation is a tool used by our brave men and women in the military and intelligence community to combat a continuing terrorist threat from those who are bent on attacking and killing Americans.

The majority of useable and actionable intelligence against al-Qaida comes from terrorist interrogations and debriefings. This tool is vital to keeping Americans safe—it is irreplaceable and it must be preserved.

Of particular note is the CIA's detention and interrogation program, which has been a supremely valuable source of information. This program has produced intelligence that has helped disrupt terrorist networks and prevent terrorist attacks. Furthermore, it has been carefully monitored to ensure that it complies with all our laws.

But, the Supreme Court's decision in Hamdan applied the Geneva Convention's Common Article 3 to unlawful enemy combatants. This threatened to shut down the CIA's detention and interrogation operations.

The standard articulated in Common Article 3 is extremely vague. This standard leaves military and intelligence officers in the dark as to what is, and what is not, permitted in detaining and interrogating unlawful enemy combatants. Moreover, because under current law any violation of Common Article 3 is a criminal violation, our interrogators potentially could be subjected to criminal prosecution for otherwise lawful actions.

Consequently, Congress must act to ensure that our military personnel and intelligence officers are not forced to operate, or be subjected to prosecution, under such a vague standard. It is our responsibility to provide clear guidance to military personnel and intelligence officers as to what is, and is not, permitted in interrogations. The standard must be clear enough so that our intelligence officers, who are making judgment calls in the field, can continue to operate.

The legislation currently before the Senate provides that clarity. It expressly provides for what acts constitute grave breaches of Common Article 3 and what acts would be subject to prosecution. It further allows the President to promulgate regulations for lesser violations of treaty obligations.

As a result, in passing this legislation, we will give the dedicated and honorable Americans on the front lines in the war on terror the clarity they need to fulfill their mission.

To win this war and keep Americans safe, our troops in the field and our law enforcement personnel here at home need timely and actionable intelligence. We get that intelligence in many forms such as satellite imagery, intercepted communications, financial tracking and human intelligence, including interrogations. In the past months, many of these intelligence collection tools have been damaged by deliberate leaks of classified information.

We can ill afford to lose any of these intelligence collection tools if we are to succeed. I am grateful that this bill will allow our Nation to continue its highly valuable interrogation programs.

I support the bill, and I urge my colleagues to do the same.

Mr. WARNER. Mr. President, we have had a very good debate. We have voted on one amendment. We have time remaining on the Specter amendment. We should be able to conclude that debate in the morning and proceed, I presume, to a prompt vote on the Specter amendment, and then proceed with the other two amendments.

## MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate now proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

## ULTRASOUND IMAGING

Mr. FRIST. Mr. President, I rise to speak about the use of ultrasound imaging by emergency physicians. October 2006 marks the 10-year anniversary of the establishment of the American College of Emergency Physicians, ACEP, Section of Emergency Ultrasound, which actively encourages research and training of emergency physicians in the use of emergency ultrasound. October 15, 2006, celebrates Emergency Ultrasound Day.

As a trauma surgeon, I spent many days and nights serving the emergency department. Emergency ultrasound, defined as the use of ultrasound imaging at the patient's bedside, is a critical component of quality emergency medical care. Ultrasound imaging enhances the physician's ability to evaluate, diagnose, and treat patients in the emergency department. It provides immediate information and can answer specific questions about the patient's physical condition, such as determining whether a presenting patient has thoracic and abdominal traumas, ectopic pregnancy, pericardial effusion, and many other conditions.

High-quality emergency care is dependent on rapid diagnostic tools, enhanced safety of emergency procedures, and reduced treatment time. Imaging technology has greatly improved quality of care and made invasive medical procedures safer.

Emergency physicians are trained in the use of imaging equipment during their residency as well as continuing medical education courses. Hospital privileges further validate this training.

Emergency ultrasound has moved outside the hospital due to its compact nature. In fact, emergency ultrasound technology is helpful onsite during military and disaster medical care. It has served in the care of America's brave military troops during both the gulf and Iraq wars. Also, emergency ultrasound was used to care for patients last year after Hurricane Katrina and will be helpful in responding to other disasters and mass casualty events.

Mr. President, I congratulate the work of the ACEP Section of Emergency Ultrasound. It has increased awareness of the contribution and value of emergency ultrasound by emergency physicians in the medical

care of emergency patients, survivors of disasters, and our military forces serving at home and abroad. Research in this field should continue to be encouraged to allow the adaptation of critical technologies to continually improve the quality of emergency care.

## BURMA

Mr. McCONNELL. Mr. President, I wish to mark an important milestone: the 18th anniversary of the founding of the Burmese National League for Democracy, NLD. As the world knows well, the NLD is the legitimate leadership of the country of Burma, as the party was elected overwhelmingly by the Burmese people in 1990.

Sadly, the 18th anniversary for the NLD is not a time for rejoicing. The NLD remains firmly under the boot of the Burmese ruling junta, the State Peace and Development Council, SPDC. Many of its leaders are imprisoned, including Nobel Laureate and democracy advocate Daw Aung San Suu Kyi, and NLD vice chairman, U Tin Oo. Thirteen elected NLD members of Parliament and over 400 party members currently serve in prison. Other NLD members have endured torture and have been killed as the SPDC continues to wage a campaign of harassment, intimidation—and worse—against party members and supporters.

In a testament to the courage and determination of its leadership, and despite these great hardships, the NLD remains unbowed. It continues to pursue nonviolent political change in Burma. I am proud to say that the Senate stands squarely alongside the NLD in its efforts. I am hopeful that the United Nations, U.N., Security Council will as well. Due to the determined efforts of many countries, including the United States, Burma is slated to be on the Council's agenda for the first time ever. It will then be time for member states to stand up and be counted in support of a nonpunitive resolution on Burma.

It should be noted that U.N. Under Secretary General Ibrahim Gambari's trip to Rangoon earlier this year was a complete failure. Mr. Gambari should not make a second trip to Burma unless and until the U.N. Security Council has considered and passed a resolution that, among other things, details the threats the SPDC poses to the people of Burma and the entire region. Such action would be a clear message to the SPDC that when it comes to Burma, the world is not satisfied with the status quo.

Similarly, I would encourage all relevant bureaus at the State Department and the National Security Council—particularly those relating to African affairs—to remain engaged and focused on this issue. The task of promoting democracy and reconciliation in Burma should not be left only to the East Asian and Pacific Affairs and the Democracy, Human Rights, and Labor bureaus at the State Department. With three African nations currently sitting on the U.N. Security Council, our African affairs specialists need to more actively engage in building support for such a resolution. Ghana has already demonstrated its solidarity with the cause of freedom. The Republic of Congo and Tanzania need to follow suit.

Finally, on this, the 18th anniversary of the founding of NLD, I call upon the Burmese military regime to release Suu Kyi and all political prisoners. Only then can discussions on a meaningful reconciliation process—one that includes the full and unfettered participation of the NLD and ethnic minorities—proceed.

I ask unanimous consent that a Boston Globe Editorial on Burma be printed in the RECORD.

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

[From the Boston Globe, Sept. 26, 2006]

AN AGENDA FOR BURMA

Having placed the case of Burma's military junta on the formal agenda of the Security Council earlier this month, the United Nations now has an opportunity to show that it can be something more than an impatient debating club. If in the waning days of his tenure UN Secretary General Kofi Annan exercises the right combination of firmness and finesse with Burma's military dictators, he can help protect human rights, democracy, and regional security in Asia.

Unlike the coercive measures contemplated to cope with Iran's pursuit of nuclear weapons or genocide in Darfur, the UN is not being asked to dispatch armed peacekeepers to Burma to impose risky economic sanctions on the narco-dictatorship there. Rather, moral suasian and diplomatic pressure are the means for dealing with the junta's violations of human rights and its threats to regional peace and security—threats manifest in the export of heroin, methamphetamine, HIV/AIDS, and the hundreds of thousands of refugees who have fled the military's brutal assaults on ethnic minorities.

Annan must be careful, however, in the way he exerts the UN's soft power. Last May, he sent UN undersecretary-general for political affairs, Ibrahim Gambari, to Burma, where he met with Nobel Peace Prize winner Aung San Suu Kyi as well as junta leaders. At the time, Gambari said he thought the junta bosses were ''ready to turn a new page.'' But Gambari and Annan looked gullible soon after, when the junta extended Suu Kyi's house arrest for another year and intensified its campaign of ethnic cleansing, rape, and murder in the region inhabited by 2 million people of the Karen ethnic group.

Annan shouldn't allow Gambari to undertake a return trip to Burma without a Security Council resolution that spells out clear and reasonable demands for the true turning of a new page. That should include the release of all 1,100 political prisoners in Burma, including Suu Kyi and fellow leaders of the National League for Democracy, the party that won 82 percent of Parliamentary seats in a 1990 election that the junta has refused to honor ever since.

The NLD, which commemorates the anniversary of its 1988 founding on Sept. 27, must be invited along with other parties and representatives of Burma's ethnic nationalities to participate in a genuine political dialogue. The resolution Gambari takes to Burma should specify that such a dialogue means working out terms for an agreement on a return to democracy. That resolution should also require the junta to end its attacks on ethnic minorities and to permit international aid organizations to have unimpeded access to all those in need within Burma. Nearly all the people of Burma need the world's help.

## RECOGNIZING SERGEANT LEIGH ANN HESTER

Mr. McCONNELL. Mr. President, I ask the entire Senate to join me today in congratulating one of Kentucky's amazing young heroes. SGT Leigh Ann Hester of Bowling Green, KY, is traveling to the Nation's Capital to receive the USO's Service Member of the Year Award at the organization's 2006 USO World Gala this September 28.

Sergeant Hester is being honored for her valorous service in combat in Iraq, which earned her the Silver Star medal. The Silver Star is the Army's third-highest award for gallantry, and Sergeant Hester is the first female soldier to win the medal for valor in combat since World War II.

A retail store manager in Bowling Green, Sergeant Hester joined the U.S. Army in 2001 and was assigned to the Kentucky National Guard's 617th Military Police Company, based in Richmond, KY. In March 2005, she was on the southeastern outskirts of Baghdad, shadowing a convoy of tractor-trailers carrying supplies for American forces.

The convoy was ambushed by about 50 heavily armed terrorists. They attacked from a trench alongside the road and rained down machine-gun fire and rocket-propelled grenades on the convoy for a sustained 3 minutes. Several truck drivers were killed, more were wounded. Thinking they had the upper hand, the terrorists moved towards the convoy, preparing to take hostages.

Suddenly three armored humvees roared up to the carnage. Sergeant Hester, as team leader of the second humvee, maneuvered her team into a position to draw the enemy's fire and begin fighting back with grenades and M203 rounds.

Sergeant Hester and her squad leader got out of their humvees and rushed the trench about 20 meters away from them to clear out the enemy. They worked their way through the insurgents, throwing grenades and firing M4s. When she ran low on ammunition, she ran back to a humvee to reload, exposing herself to enemy fire from multiple directions. Because this squad had been so well disciplined, Sergeant Hester was able to reach blindly into any of the humvees and know exactly where to grab more ammunition.

Finally, the soldiers of the 617th had put down enough fire that the enemy fell silent. It turns out that Sergeant Hester and her team, just 10 in all, had not only put themselves in the middle of a firefight against greater numbers and all survived, they had scored the highest death toll of insurgents in Iraq in many months. They killed 27, captured several wounded, seized a sizable

weapons cache, and secured valuable intelligence.

Sergeant Hester's actions were cited as having ''saved the lives of numerous convoy members.'' For her bravery, she was awarded the Silver Star medal on June 16, 2006.

Sergeant Hester's courage, dedication, and sacrifice on behalf of her country and her fellow soldiers make her a hero and a role model that every young Kentuckian can emulate. I am proud that a woman of such character and determination hails from the Bluegrass State, and I know the entire Senate joins me in thanking her for her service in defense of America and America's ideals.

## HONORING OUR ARMED FORCES

### SERGEANT FIRST CLASS RICHARD J. HENKES

Mrs. LINCOLN. Mr. President, it is my honor to pay tribute to the life of SFC Richard J. Henkes, a brave soldier who gave his life in support of Operation Iraqi Freedom. Sergeant Henkes will be remembered as a courageous soul, a proud father, and an inspiration to those who knew him best. The 200 people who gathered at his memorial service are a testament to the number of lives he touched. They are lives that he continues to touch through the legacy he leaves behind.

Sergeant Henkes wrestled and ran track in high school, but his true passion was snowboarding. He shared this passion with his 6-year-old daughter, Isabel, as well as with his 17-year-old niece, Cassidy, who fondly remembers the caring uncle who was always there to pick her up when she would fall. Above all, Sregeant Henkes was a compassionate, outgoing, and fun-loving guy with a great sense of humor. It was this compassion for others and desire to make a difference that drove him to carry on his family's rich history of military service, dating back to World War I.

Stationed out of Fort Lewis, WA, Sergeant Henkes served with C Company, 2nd Battalion, 3rd Infantry Regiment, 2nd Infantry Division. In Iraq, he was recently placed in command of his platoon—a challenge that he embraced. Tragically, Sergeant Henkes died on September 3 from injuries sustained from a roadside bomb in Mosul, Iraq. People say he knew of the dangers of war, but he believed his mission would make a difference in the lives of countless people and that it was worth the sacrifice. Mourners paid tribute to Sergeant Henkes in the Woodburn, OR, National Guard Armory on September 11. At the ceremony, he was posthumously awarded the Bronze Star and Purple Heart service medals by his battalion.

We grieve the loss of another soldier who made the ultimate sacrifice to defend the freedoms we all cherish. Sergeant Henkes leaves behind a legacy that will live on through the people he inspired and the young daughter who will grow up knowing that her father lived to make a difference in the world. My thoughts and prayers are with his daughter Isabel, his parents, Chris and Jim Stanton of Ashdown, AR, and Richard and Karen Henkes of Woodburn, OR, and to all those who knew and loved him.

Mr. SUNUNU. Mr. President, I rise today in support of S. 3549, the Foreign Investment and National Security Act. S. 3549 reforms the Committee on Foreign Investment in the United States, which is more commonly known as CFIUS. CFIUS is the entity of our Federal Government charged with reviewing any type of foreign investment in the United States, and reviews all corporate transactions involving foreign-owned companies. Its top priority has always been to protect America's national security interests, and that must remain its main focus. However, this foremost concern can and must be addressed without jeopardizing foreign investment in our country—a critical economic engine.

This CFIUS reform bill represents an effort by the Senate to ensure that the national security interests of the United States are protected in the context of foreign investment in U.S. industries. As a member of the Banking Committee, I supported this effort as a necessary way to restore the confidence of the American people in the CFIUS process, and I commend Chairman SHELBY and Ranking Member SARBANES and my colleagues on the committee for their work to date on this legislation. Though I supported Senate passage of the bill in an effort to keep this important legislation moving through the legislative process, I want to highlight two provisions in the bill with which I have significant concerns because they will have a chilling effect on foreign investment.

First, the provision that potentially extends the initial 30-day review period to a 60-day period would place all foreign investors, including those of our closest allies, at a competitive disadvantage. Under current law, most transactions, foreign and domestic, require an antitrust review under the Hart-Scott-Rodino Act which takes a minimum of thirty days. However, the foreign investor is also, appropriately, required to undergo a 30-day CFIUS review, which may occur concurrently with the HSR review. This process allows a thorough review without putting one type of investor at a disadvantage to another. S. 3549, however, would potentially expand the 30-day CFIUS review to 60 days, creating a much longer delay and one that is disconnected from the HSR-mandated time table. This would create a substantial competitive disadvantage. Our government ought to be able to quickly identify and clarify the national security implications of a given transaction certainly within the 30 days prescribed under current law.

The second provision with which I have concern would require repeated and detailed notifications about ongoing transactions to many Members of Congress and State Governors. Such notifications would only politicize transactions, do little to resolve national security concerns and undermine the CFIUS process.

This bill makes a strong attempt to strike the appropriate balance between national security, sound economic policy, and appropriate oversight. The two provisions I have highlighted upset this balance, but because I support this overall effort, I look forward to continued collaboration with Senators SHELBY and SARBANES and the other members of the Banking Committee as we address these issues in conference with the House.

## NOMINATION OF FRANCISCO AUGUSTO BESOSA

Mr. BAUCUS. Mr. President, I would have voted in support of the nomination of Francisco Augusto Besosa to the U.S. District Court for the District of Puerto Rico. However, I was on my way back from Montana and was unable to make it to the Senate floor before the vote ended.

Mr. Besosa is well qualified for the position and will be a good addition to the court.

Francisco Augusto ''Frank'' Besosa is partner and head of the litigation department of Adsuar Muniz Goyco Besosa, P.S.C. in San Juan, Puerto Rico. After graduating from Brown University in 1971, he served 5 years in active military service in military intelligence. He was honorably discharged from Inactive Reserve from the U.S. Army with the rank of captain in 1977. He earned a J.D. from Georgetown University Law Center in 1979. After law school, Mr. Besosa returned to Puerto Rico and joined the law firm of O'Neill & Borges.

With the exception of 3 years in the 1980s as an assistant U.S. attorney, Mr. Besosa has spent his entire legal career in private practice in several firms conducting civil and commercial litigation in Puerto Rico. His work has focused on banking and bankruptcy; securities regulation; admiralty; insurance; torts including personal injury, medical malpractice, and product liability; telecommunications and intellectual property both at the trial and appellate level.

Mr. Besosa is a member of numerous bars including the Puerto Rico Bar Association, the Federal Bar Association, American Bar Association, District of Columbia Bar Association, U.S. Court of Appeals for the First Circuit and the Federal Circuit, and the Hispanic National Bar Association. He has held a variety of leadership positions in the Federal Bar Association Puerto Rico Chapter including director, president-elect, vice president, secretary and treasurer.

The ABA has recommended Mr. Besosa for the position with a unanimous ''well qualified'' rating.

Given his qualifications and experience, Mr. Besosa is a good fit for the

U.S. District Court for the District of Puerto Rico. I would have supported his nomination.

Mr. COLEMAN. Mr. President, I rise today to discuss the Secure Fence Act of 2006 and the issue of securing our northern border. Without question, securing the border is our most vital need in dealing with illegal immigrants and as it stands, our borders lay vulnerable to not only an influx of illegal immigrants but also transportation of dangerous materials. The facts are clear—each year over 1 million unauthorized aliens are interdicted entering the country mostly on the southwest border. Testimony by the Border Patrol union chief places the estimate of illegal entrants not interdicted by Border Patrol to be two times those actually caught. Simply put, the Border Patrol is overwhelmed by the sheer volume of the traffic and it is time to take action.

The Secure Fence Act of 2006 requires the Secretary of Homeland Security to take all appropriate actions to achieve operational control over all U.S. international land and maritime borders within 18 months of its enactment. Additionally, the bill authorizes 700 miles of double-layered fencing at specified locations along the almost 2,000-mile southwest U.S. international border with Mexico.

This bill also takes the right approach in terms of northern border security. The legislation requires the Department of Homeland Security to conduct a study on the feasibility of a state of-the-art infrastructure security system along the northern international land and maritime border of the United States. The study shall include the necessity of implementing such a system, the feasibility of implementing such a system and the economic impact implementing such a system will have along the northern border.

In my home state of Minnesota, we share 547 miles of border with Canada and 458 of those miles are a water boundary. I want to make it clear to my constituents and our Canadian friends that this legislation should not be used to justify construction of a wall along the northern border but to take an inventory of the systems that are working and not working and ensure that we put in place the most effective approach. We are going to measure twice before building once.

The United States and Canada share a long history of working together on issues of mutual concern. Both countries share a common border and common objectives: to ensure that the border is open for business, but closed to crime. The Canada-United States Smart Border Declaration and Action Plan and programs such as the Security and Prosperity Partnership and the Integrated Border Enforcement Teams are great examples of cooperative initiatives that have proven successful.

I am fully confident this strong relationship and commitment to border security will continue as it is one of the cornerstones to securing our northern border.

## NATIONAL EMPLOY OLDER WORKERS WEEK

Mr. KOHL. Mr. President, I rise today to recognize National Employ Older Workers Week, a time to celebrate the many older workers who are redefining retirement and the employers that welcome their talents.

Many older Americans do not see retirement as just a period of leisure; they continue to contribute to our nation's businesses, communities, and economy. And some employers, facing a shortage of skilled and experienced workers, have recognized the value of older workers by changing their policies to attract and retain them.

One of those employers is Mercy Health System, which is based in Wisconsin and has 63 health care facilities across Wisconsin and Illinois. AARP recently ranked Mercy Health System the top employer for older workers in the country. Mercy Health System attracts and retains older workers by providing flexible work options, like its Work-to-Retire Program, which offers reduced and seasonal work schedules while maintaining health benefits.

Yet too few employers have followed Mercy Health System's lead in creating better work options for older Americans. While most older workers want to work past traditional retirement age, many do not want to work a traditional full-time schedule. Today, only about one-third of older workers have flexible work schedules. Even when employers offer flexible work options like part-time work schedules, most do not also offer benefits: only 22 percent of part-time workers have access to health benefits.

So while older workers and some employers have begun to reinvent retirement, we have a long way to go. That is why I authored the Older Worker Opportunity Act, which aims to expand opportunities for older Americans to work longer if they so choose. The centerpiece of this legislation is a tax credit for employers that offer flexible, reduced, or seasonal work schedules to older workers while maintaining their health and pension benefits. Such a credit would reward employers like Mercy Health System who are doing the right thing, while encouraging other employers to follow their lead. Greater workplace flexibility would not only benefit older Americans, but would also reduce employer costs by increasing productivity and job retention.

Just this week, the National Committee to Preserve Social Security and Medicare endorsed the Older Worker Opportunity Act. In its letter of support, president and CEO Barbara Kennelly offered that the bill ''could help pave the way for significant increases in older worker employment.'' I agree, and I am proud to have them join our other supporters, including the National Council on Aging, the National Older Worker Career Center, Watson Wyatt Worldwide, the Committee for Economic Development, the Association of Jewish Family and Children's Agencies, and United Jewish Communities. With their backing, this bill will continue to gain steam.

During National Employ Older Workers Week, we also celebrate the Senior Community Service Employment Program—SCSEP—which has provided community service and job training to low-income seniors for 40 years. As our baby boomers age and seniors become a growing share of the population, we must strengthen SCSEP so that all eligible seniors get the help they need. Many of us were concerned when the Administration proposed a major overhaul of this program, which would have been disruptive to both grantees and participants. I am hopeful that the Older Americans Act reauthorization bill will preserve the basic structure of the program and build on its success.

I urge Congress to pass the OAA reauthorization as soon as possible so that seniors in need of SCSEP services have the tools to stay active in the workforce and their communities. But beyond reauthorization, we must also boost SCSEP's funding, which is currently only enough to serve less than one percent of the eligible population. As a member of the Appropriations Committee, I will continue to press for additional funding so that all older Americans who want or need to work longer have the opportunity to do so.

As older Americans live longer and healthier lives, most have the ability and desire to remain active. Some want to maintain physical and mental health, some need to improve their financial security, and some want to continue to contribute to society. Whatever the reason, it's time to change the way we think about retirement. Older Americans are a valuable asset to our nation's businesses, communities, and economy, and we must tap their reservoir of experience and talents. Our seniors deserve it, and our economic future may well depend on it.

## CHILD AND FAMILY SERVICES IMPROVEMENT ACT

Mr. GRASSLEY. Mr. President, yesterday, the House of Representatives passed the Senate amendment to S. 3525, which represents the bipartisan and bicameral agreement on the Child and Family Services Improvement Act of 2006.

I was pleased to have introduced the Senate amendment with my friend and partner on the Senate Finance Committee, Senator MAX BAUCUS. Senator BAUCUS and I were joined by Senator ORRIN G. HATCH, and Senator JOHN D. ROCKEFELLER, Jr. and Senator OLYMPIA J. SNOWE. All of these members have a long history of support for important programs to improve the well-being of children.

This important legislation reauthorizes the Promoting Safe and Stable Families Program which provides services to families for family support, family preservation, time-limited reunification of families, and for adoption and post-adoption services. These are critical funding streams, and the reauthorization of the Promoting Safe and Stable Families Program ensures that families can rely on these preventative and supportive services.

The legislation also aligns the Child Welfare Services Act with the prevention activities of the Promoting Safe and Stable Families Program by providing incentives to States to invest in prevention services while allowing States to continue current State spending on existing State priorities.

S. 3525 provides support for increased caseworker visits as well as adopts a version of President Bush's proposal to provide a voucher for mentoring services for children of prisoners.

Additionally, the legislation increases access for funding for Indian tribes, which was a key priority of both Senator BAUCUS and Senator KENT CONRAD.

The legislation that will soon be signed by the President also includes grants for regional partnerships to address the growing problem of methamphetamine and other substance abuse and addictions that have had a substantial impact on child welfare systems and services.

Funding for these competitive grants was a key priority of mine, and I am pleased that the compromise we were able to work out with the House maintains the support for grants to improve the outcomes for children affected by methamphetamine abuse and addiction.

Mr. President, the Senate Finance Committee did a great deal of work on issues relating to child welfare. We held the first full committee hearing in 10 years on child welfare, and we held an additional hearing on the effects of the methamphetamine epidemic on the child welfare system. We worked on a bipartisan basis to mark up and pass the Improving Outcomes for Children Affected by Meth Act of 2005. Key provisions of that bill are features in the legislation which will soon be signed into law.

But there is more that can be done to strengthen and improve child welfare services. I intend to continue to work on a bipartisan basis to develop and enact reforms to ensure that all children have access to loving, permanent homes.

I would like to take this opportunity to thank the staff who worked tirelessly to get this bill done. Members of Congress in both the House and the Senate are very well served by our staffs. These men and women care a great deal about these programs, and we are indebted to them for their insights and analysis.

I am grateful to the talented staff from the office of Senator BAUCUS, specifically, Diedra Henry-Spires, Doug Steiger, and Michelle Easton. Additionally, I am grateful to Senator ROCKEFELLER's extremely knowledgeable aid Barbara Pryor.

I appreciate the work of the staff on the Subcommittee on Human Resources of the House Committee on Ways and Means, Matt Weidinger and Christine Calpin for the majority and Nick Gwyn and Sonja Nesbit for the minority.

I also thank the dedicated analyst from the Congressional Research Service, Emilie Stoltzfus who provided staff with invaluable expertise on child welfare programs.

Thanks to Christina Hawley Anthony from the Congressional Budget Office as well as legislative counsels Ruth Ernst and James Grossman.

Finally, I appreciate the efforts of my own Finance Committee policy lead on this issue, Becky Shipp as well as Mark Hayes, Ted Totman, and Kolan Davis.

Mr. President, because a formal conference was not convened on this bill, there is no conference report filed. However, the staff has prepared a section-by-section analysis of the Senate-House agreement for purposes of the legislative history.

Mr. President, some will say this has been a ''do nothing congress.'' I couldn't disagree more, and I believe that the children and families served by this legislation would disagree as well.

Mr. President, I ask unanimous consent that the section-by-section analysis to which I referred be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

S. 3525, THE CHILD AND FAMILY SERVICES IMPROVEMENT ACT OF 2006, AS AMENDED

(Prepared by the Staff of the U.S. House Committee on Ways and Means and the U.S. Senate Committee on Finance, September 27, 2006)

*Section 1—Short Title*

''The Child and Family Services Improvement Act of 2006''

*Section 2—Findings*

The legislation makes a number of findings regarding the provision of services under two child welfare programs authorized under Title IV–B of the Social Security Act, the Child Welfare Services (CWS) program and the Promoting Safe and Stable Families (PSSF) program. The findings note the importance of monthly caseworker visits in improving outcomes for children. They also outline the relationship between the entry of children into the child welfare system and their parent's abuse of methamphetamine and other substances.

*Section 3—Reauthorization of the Promoting Safe and Stable Families Program*

Current Law

For fiscal year (FY) 2006, authorizes mandatory funding of $345 million for the Promoting Safe and Stable Families (PSSF) program (Title IV–B, Subpart 2 of the Social Security Act) and discretionary funding of $200 million for each of FYs 2002 through 2006.

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The legislation extends the mandatory PSSF funding authorization of $345 million for five years (FYs 2007 through 2011) and extends the discretionary funding authorization of $200 million for each of those same five years. The legislation expands the reporting requirement to include both proposed spending and actual spending under the CWS and PSSF programs, and at State option, other programs that support child abuse prevention activities and child welfare services. The legislation also prohibits HHS from making any payment of PSSF funds to a State for administrative costs that exceed 10 percent of total program expenditures (Federal and non-Federal) of a State.

Reason for Change

The PSSF program supports four categories of services provided to children and families: family preservation services, community-based family support services, time-limited reunification services, and adoption promotion and support services. The legislation recognizes the importance of encouraging States to invest in these activities. Thus the legislation provides for the $200 million increase in mandatory PSSF funds over the next five years included in the Deficit Reduction Act of 2005 (Pub. L. 109–171). In total $345 million in mandatory funds (the recent $305 million allotment of annual mandatory funds, plus a $40 million annual increase provided under the Deficit Reduction Act of 2005) will be provided in each of FYs 2007 through 2011.

The legislation also will ensure better oversight and accountability of spending under the CWS and PSSF programs by requiring States to report on projected and actual spending under these two programs. Specifically, data on actual spending will help track State investments for the four priorities of the PSSF program.

*Section 4—Targeting of Promoting Safe and Stable Families Program Resources*

Current Law

Current law requires States to include assurances in their PSSF plan that they will spend significant portions of their PSSF funds in each of four priority areas: (1) family preservation services; (2) community-based family support services; (3) time-limited family reunification services; and (4) adoption promotion and support services.

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The legislation retains the four priorities of PSSF while targeting the additional $40 million per year provided under the Deficit Reduction Act of 2005 (Pub. L. 109–171) to two new priorities: (1) support for monthly caseworker visits; and (2) competitive grants to promote the well-being of children in or at risk of placement in the child welfare system as a result of their parent's abuse of methamphetamine or other substances.

The legislation provides a total of $95 million to States to support monthly caseworker visits of children in foster care under the responsibility of the State, with a primary emphasis on activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology. States will receive $40 million from FY 2006 PSSF funds (with these funds available through FY 2009), $5 million in FY 2008, $10 million in FY 2009, and $20 million in each of FYs 2010 and 2011 to support monthly caseworker visits. States cannot use these funds to supplant any Federal funds already paid to the State under the Title IV–E program that could be used for the purposes outlined above.

To promote the well-being of children affected by their parent's abuse of methamphetamine or other substances, the legislation provides a total of $145 million to the Secretary of the Department of Health and Human Services (HHS) to award competitive

grants to regional partnerships to pursue innovative approaches to help children and families. Funding will be $40 million in FY 2007, $35 million in FY 2008, $30 million, in FY 2009 and $20 million in each of FYs 2010 and 2011. Partnerships must include the State child welfare agency or an Indian tribe and at least one other eligible partner, including: child welfare service providers (nonprofit and for-profit), community providers of health or mental health services, local law enforcement agencies, judges and court personnel, juvenile justice officials, school personnel, the State agency responsible for administering the substance abuse prevention and treatment block grant (authorized under Title XIX–B, Subpart II of the Public Health Services Act), and any other providers, agencies, personnel, officials or entities related to the provision of child and family services. Grants of between $500,000 and $1 million per year will be awarded for 2 to 5 year periods.

A priority will be given to grant applications that propose to combat methamphetamine abuse, given its substantial affect on child welfare in some areas. Funding for the grants must be used to support the purposes of this program, which may include family-based comprehensive long-term substance abuse treatment services, early intervention and prevention services, mental health services, parent skills training, and replication of successful models for providing family-based comprehensive long-term substance abuse treatment services. Grantees must provide a 15 percent match in the first and second year, a 20 percent match in the third and fourth year, and a 25 percent match in the fifth year. In-kind contributions can qualify towards the match requirement. The Secretary of HHS must consult with State leaders to develop performance indicators and reporting is required of all grant recipients.

The legislation also redirects current PSSF research funding to support evaluation, research, and technical assistance related to the above two PSSF funding priorities. In each of FYs 2007 through 2011, at least $1 million must be spent for research and technical assistance activities that support monthly caseworker visits and at least $1 million must be spent for research and technical assistance activities with respect to the competitive grant program to promote the well-being of children in or at risk of placement in the child welfare system due to a parent's abuse of methamphetamine or other substances.

Reason for Change

The targeting of funds to support monthly visits of foster children is in response to research highlighting how monthly visits lead to better outcomes for children. The Child and Family Service Reviews (CFSRs) completed in each State found a strong correlation between frequent caseworker visits with children and positive outcomes for children, such as timely achievement of permanency and other indicators of child well-being. However, despite the fact that nearly all States had written standards suggesting monthly visits were State policy, a December 2005 report completed by the HHS Office of the Inspector General found that only 20 States were able to produce reports showing whether caseworkers actually visited children in foster care on at least a monthly basis. States are encouraged to invest these resources in those activities with proven effectiveness in supporting monthly caseworker visits of foster children and should be cognizant that these funds may not supplant what States already spend from their Title IV–E programs for these activities. These resources are intended to increase State investment in these important areas.

Parental substance abuse is a well-known problem affecting the child welfare system, and the Office of Applied Studies of the Substance Abuse and Mental Health Services Administration reported that the number of new uses of methamphetamines (meth) has increased 72 percent in the past decade. A study by the National Association of Counties which surveyed 300 counties in 13 States reported that meth abuse is a major cause of child abuse and neglect. Forty percent of all the child welfare officials in the survey reported an increase in out-of-home placements due to meth abuse in 2005.

*Section 5—Allotments and Grants to Indian Tribes*

Current Law

Requires that 1 percent of all mandatory PSSF funds, and 2 percent of any discretionary appropriations for the PSSF program, be set aside for tribal programs. (The minimum tribal funding provided is $3.45 million and the maximum annual tribal funding possible is $7.45 million.)

Out of the tribal funds reserved, Indian tribes or tribal organizations with an approved plan must be allotted PSSF funds (based on the relative share of tribal persons under age 21 but only among tribes or tribal organizations with approved plans). The Secretary of HHS may exempt a tribe from any plan requirement that it determines would be inappropriate for that tribe (taking into account the resources, needs, and other circumstances of that tribe). However, no tribe or tribal organization may have an approved plan (or receive funds) unless its allotment is equal to at least $10,000. Funds allotted are paid directly to the tribal organization of the Indian tribe to which the money is allotted.

S. 3525

The legislation increases the set-aside for tribal programs to 3 percent of any discretionary funds appropriated. It also increases the set-aside for tribal programs to 3 percent of the mandatory funds authorized and which remain after the separate reservation of funds is made for (1) monthly caseworker visits, and (2) competitive grants to combat methamphetamine and other substance abuse. Therefore, the minimum funding available per year for tribal programs would be $9.15 million and the maximum funding would be $15.15 million. The legislation eliminates the ability of the Secretary of HHS to exempt tribes from the PSSF plan requirements related to nonsupplantation, data reporting, and monitoring. However, the Secretary retains the ability to waive for Indian tribes the PSSF requirement to invest significant amounts of program funds in each of the four PSSF activities and to spend no more than 10 percent of PSSF funds on administrative costs.

The legislation also permits tribal consortia to have access to an allotment of PSSF funds (and related technical assistance) on the same basis as such funds are currently available to Indian tribes. A tribal consortium's allotment is to be determined based on the number of tribal persons under age 21 in each tribe that is a part of the tribal consortium. If tribes choose to apply collectively as a consortium, the population of tribal persons under age 21 for each tribe would be combined in order to determine the size of the grant to the consortium, including whether the consortium meets the $10,000 eligibility threshold in the Act. A tribal consortium could select which Indian tribal organization (among the tribes in the consortium) would receive the direct payment of its allotment.

Reason for Change

The legislation recognizes the importance of assisting tribes in their efforts to assist abused and neglected children. The legislation significantly increases the amount of funds provided to tribes and allows tribal consortia to apply for PSSF funds. This step is being taken to encourage the further development of tribal child welfare programs, which largely serve severely disadvantaged communities and families and can do so in a culturally appropriate manner. Permanency outcomes for Indian children can be improved if tribal consortia are able to have access to an allotment of PSSF funding on the same basis as is currently available to Indian tribes. This will facilitate smaller tribes' building their own programs and will allow for administrative efficiencies in tribal program administration.

To collect additional data and ensure proper oversight of these funds, tribes and tribal consortia interested in applying for this substantial increase in PSSF funds will be required to adhere to the same data and monitoring plan requirements as States. This additional data will inform how these funds have helped the tribes better ensure the safety, permanency, and well-being of tribal children.

*Section 6—Improvements to the Child Welfare Services (CWS) Program*

Current Law

Up to $325 million annually is authorized on an indefinite basis for the Child Welfare Services (CWS) program, which provides funds to States to support a wide range of child welfare activities. Federal funding represents 75 percent of total funding for this program, and States are required to contribute 25 percent of total CWS funding from State funds.

S. 3525

The legislation maintains the annual discretionary authorization level of $325 million per year but limits the funding authorization to FYs 2007 through 2011. The legislation also specifies that the purpose of the CWS program for which funds may be expended is to promote State flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and that ensures all children are raised in safe, loving families, by: (1) protecting and promoting the welfare of all children; (2) preventing the neglect, abuse, or exploitation of children; (3) supporting at-risk families through services which allow children, where appropriate, to remain safely with their families or return to their families in a timely manner; (4) promoting the safety, permanence and well-being of children in foster care and adoptive families; and (5) providing training, professional development and support to ensure a well-qualified child welfare workforce.

The legislation eliminates the plan requirements related to child day care standards and those related to the use of paraprofessionals or volunteers and restates and renumbers the remaining provisions with generally the same intent. It rewrites the provision concerning policies and procedures for children abandoned shortly after birth to assert that a State must have in effect administrative and judicial procedures for children who are abandoned at or shortly after birth (including policies and procedures providing for legal representation of the children) to ensure expeditious decisions can be made for their permanent placement. Further, it clarifies that the State may include residential educational programs as a living arrangement for children for whom reunification, adoption, or guardianship have been ruled out as permanency goals. This provision does not undermine current State policies regarding placement of children in adoptive homes and does not eliminate the 25 bed policy.

Beginning October 1, 2007 (i.e. the beginning of FY 2008), the legislation limits administrative funding to 10 percent, but defines administrative funds to exclude caseworker services and supervision of such services. Also beginning in FY 2008, the legislation limits how much each State can expend from Federal CWS funding for foster care maintenance payments, adoption assistance payments, or child day care to what the State can show that it spent for such purposes in FY 2005. Further, beginning with FY 2008, States are not allowed to use State spending on foster care maintenance payments to meet the State matching requirement to receive Federal CWS fund in amounts that exceed what the State spent from such funds in FY 2005.

The legislation also adds new requirements to the CWS plan the State submits to (1) describe how the State consults with and involves physicians and other appropriate medical professionals in the assessment of children in foster care and in determining appropriate medical treatment, and (2) develop a plan on how to respond, track and continue care for children receiving child welfare services in the event of a disaster.

Reason for Change

The legislation will reorganize and update the CWS program and encourage more effective oversight. It also aligns the program to be coterminous with the reauthorization of the PSSF program to allow for better coordination between the two programs. It will encourage States to invest funding in prevention services, but allows each State to maintain in the coming years its FY 2005 level of spending from Federal CWS funds for foster care, adoption assistance and child care purposes. It adds a new State planning requirement to ensure consultation with medical professionals as well as State planning to continue the availability of child welfare services during a disaster.

*Section 7—Monthly Caseworker Standard*

Current Law

There is no minimum Federal standard for monthly visits of foster children in State custody.

S. 3525

The legislation requires the State to update its CWS State plan by October 1, 2007 to describe its standards for the content and frequency of caseworker visits of foster children in State custody, which at a minimum must ensure that children are visited on a monthly basis and that the caseworker visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency, and well-being of children.

The legislation also sets a minimum Federal standard requiring each State and territory to achieve by October 1, 2011 monthly caseworker visits for at least 90 percent of foster children in State custody, with the majority of those visits occurring in the child's residence. Each State and territory would be held accountable for its efforts and the legislation prescribes a planning process to achieve this goal. To receive FY 2008 CWS funds, States must submit to HHS data for FY 2007 on the percentage of foster children visited on a monthly basis by their caseworker and the percentage of those visits that occurred in the child's residence. Based on this data, HHS will work with each State to set target levels for the State to meet to achieve a 90 percent monthly visitation standard by FY 2012 and will establish these target levels by June 30, 2008. Then, beginning in FY 2009, States must achieve their annual goal for the percentage of caseworker visits and the percentage of visits that occur in the child's residence, or face an enhanced matching requirement in order to draw down their full allotment of Federal CWS funds. The share of non-Federal spending that is required in a State that does not meet its visitation target level in a year increases by a minimum of 1 percentage point, up to a maximum of 5 percentage points, depending on the degree to which the State has missed its target level; absent the commitment of additional State funds, Federal funds would be reduced to yield the modified State share of overall CWS funding, consistent with the degree of the State's failure to achieve its visitation target for that year.

No later than March 31, 2010, HHS must submit to the House Committee on Ways and Means and the Senate Committee on Finance a report that outlines the progress States have made in meeting their caseworker visitation standards and that offers recommendations, developed in consultation with State administrators of child welfare programs and members of State legislatures, to assist States in meeting this standard.

Reason for Change

Holding States accountable for achieving monthly caseworker visits for at least 90 percent of foster children responds to research highlighting how monthly visits lead to better outcomes for children. HHS shall work with the States to establish a plan to achieve this goal by FY 2012 and States are encouraged to invest the new PSSF resources provided in FY 2006 and later fiscal years in activities that have been shown to be effective in achieving increased caseworker visitation of foster children. The above accountability measure will ensure that, even in the case of a State that fails to fulfill its specified level of caseworker visits, the full Federal CWS allotment to a State will remain available so long as that State increases its State CWS spending modestly, according to the provisions of the legislation.

*Section 8—Reauthorization of Program for Mentoring Children of Prisoners*

Current Law

The Mentoring Children of Prisoners program is administered by HHS and makes competitive grants to support the establishment or expansion and operation of programs that provide mentoring services to children of prisoners.

S. 3525

The legislation reauthorizes the existing Mentoring Children of Prisoners program through FY 2011 at such sums as may be necessary and increases the HHS set-aside for research, technical assistance, and evaluation from 2.5 percent to 4 percent. It authorizes a new 3-year pilot program to provide vouchers to qualified mentoring groups to offer services to individual children of prisoners, but specifies both annual caps on funding for this purpose and that at least $25 million must be available each year for site-based grants provided under the program. The voucher pilot program will be administered by a national group that will work closely with HHS to manage the program with the goal to distribute least 3,000 vouchers in the first year, 8,000 vouchers in the second year and 13,000 vouchers in the third year. The legislation specifies that the national group must identify in its voucher distribution plan how the group will prioritize providing vouchers to children in areas which have not been served under the current site-based mentoring program. During the third year of this pilot HHS shall provide a report based on an independent evaluation to the House Committee on Ways and Means and the Senate Committee on Finance on the number of children who received vouchers for mentoring services and any conclusions regarding the voucher pilot program's effectiveness.

Reason for Change

The continuation of the Mentoring Children of Prisoners program will enable public and private organizations to establish or expand projects that provide one-on-one mentoring for children of incarcerated parents and those recently released from prison. At the same time, children have not been able to access mentoring services in some States and rural areas because of the absence of a site-based grant to provide this service. The voucher pilot program will evaluate the effectiveness of using vouchers to expand the delivery of mentoring services to children of prisoners, including to children in rural and underserved areas.

*Section 9—Reauthorization of the Court Improvement Program*

Current Law

For each of FYs 2002 through 2006, an eligible highest State court (with an approved application) is entitled to a share of funds to assess and make improvements to its handling of child welfare procedures. A set-aside of $10 million from the mandatory funds authorized and 3.3 percent of any discretionary appropriation is provided from the PSSF program to support the Court Improvement Program. To receive its full allotment of these funds the court, in each of FYs 2002 through 2006, is required to provide at least 25 percent of the expenditures for this purpose.

S. 3525

The legislation reauthorizes the funding for the Court Improvement Program for 5 years, through FY 2011.

Reason for Change

The Court Improvement Program has played an important role in assisting State courts in their efforts to expedite judicial proceedings for at-risk children. The legislation will ensure these funds continue to remain available, and is in addition to the $100 million provided over FYs 2006 through 2010 under the Deficit Reduction Act of 2005 (Pub. L. 109–171) to support training and data collection efforts of State courts.

*Section 10—Requirement for Foster Care Proceedings to Include, in an Age-Appropriate Manner, Consultation with the Child that Is the Subject of the Proceeding*

Current Law

Current law does not include a standard for consulting with children in court proceedings.

S. 3525

The legislation requires States to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults in an age-appropriate manner with the child regarding the plan being proposed for the child.

Reason for Change

Each child deserves the opportunity to participate and be consulted in any court proceeding affecting his or her future, in an age-appropriate manner.

*Section 11—Technical Amendments*

*Section 12—Effective Dates*

The legislation will become effective on October 1, 2006, except for provisions with other specified effective dates or if HHS determines that a State legislature must act before the State can comply with the changes.

## HONORING CHIEF JUDGE WILLIAM WALTER WILKINS, Jr.

Mr. DEMINT. Mr. President, I rise today to honor the years of dedicated service that William Walter Wilkins, Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, has given to the Federal judiciary. Hailing from my hometown of Greenville, SC, his contributions to South Carolina and our Nation are immeasurable.

Chief Judge Wilkins began his public service in 1967 as an officer in the U.S. Army, eventually earning the rank of colonel in the U.S. Army Reserves. Upon his honorable discharge from the Army, Chief Judge Wilkins worked as a law clerk for the Honorable Clement F. Haynsworth, Jr., U.S. Court of Appeals Fourth Circuit until 1970, then going on to become a legal assistant for the late Senator Strom Thurmond. And Senator Thurmond got it exactly right when he called Chief Judge Wilkins ''a man of character and unquestionable integrity.''

While in private practice, Chief Judge Wilkins was elected as the first Republican Solicitor for the Thirteenth Judicial Circuit since Reconstruction, a post that showcased his extensive knowledge and mastery of the legal profession.

In 1981, newly elected President Ronald Reagan used his first Presidential appointment to nominate Chief Judge Wilkins to the position of the U.S. District Judge for the District of South Carolina. Chief Judge Wilkins was confirmed by this body on July 20, 1981 and received his commission on July 22, 1981.

In 1985, President Reagan appointed Chief Judge Wilkins to be the first Chair of the United States Sentencing Commission, where he was given the task of creating guidelines for the sentencing of Federal defendants. He served in this capacity until 1994. During that time, he was also appointed to be U.S. Circuit Judge for the Fourth Circuit Court of Appeals, where he has served as Chief Judge since 2003.

Chief Judge Wilkins is a nationally recognized jurist and is known for this scholarship, sharp wit, and unyielding allegiance to the rule of law. Not only is the State of South Carolina honored to be the home of a man of his integrity, but the United States is privileged to have such a distinguished jurist defending our American legal system.

I commend Chief Judge Wilkins for his 25 years of public service to the United States.

## HONORING RANDE YEAGER

Mr. COLEMAN. Mr. President, I would like to take this opportunity to commend Rande Yeager, a constituent of mine, on completing a year as president of the American Land Title Association, ALTA. He ably represented the land title industry at a time when the value and public policy purposes of title insurance and the maintenance of land records came under challenge.

His leadership of ALTA over this past year was a natural extension of his corporate experience. As president of Old Republic National Title Insurance Company, one of the leading title underwriters in this country and my State of Minnesota, Rande has experience being both a leader and a spokesperson for a large company.

As ALTA president, Rande made numerous trips to State conventions across the country to get to know his colleagues better, hear their concerns for their businesses and the industry, and came back ready to find out how ALTA could help. He also came to Washington to promote the importance of title insurance and land record maintenance.

ALTA has been well served by Rande's leadership. I congratulate him on his year as president and best wishes on his future endeavors.

## MIDDLE GEORGIA BUCKS SENIOR BOYS BASKETBALL TEAM

Mr. CHAMBLISS. Mr. President, I have submitted a resolution to congratulate the 2006 Middle Georgia Bucks Senior Boys Basketball Team of Macon, GA, for their winning season. Not only did they win the 2006 Amateur Athletic Union National Championship, AAU, they won the 2006 State of Georgia AAU Championship and the 2006 Hoosier Showcase in Indianapolis, IN, as well. The Bucks finished the season with an undefeated record of 27 wins and 0 losses. On August 1, they claimed their national victory by defeating the North Carolina Gators by a score of 97 to 75.

This resolution recognizes and commends the hard work, tenacity, and steadfast commitment to excellence of the members, parents, coaches, and managers of the Middle Georgia Bucks. It also commends the Amateur Athletic Union for continuing the tradition of fostering the development of sportsmanship, discipline, and self-assurance in young adults. This talented team, managed by Alfonza Hall and coached by Melvin Flowers, Chris Cromartie, and Al Hagan, has brought great pride to the State of Georgia and the Middle Georgia community, where the fans have shown unwavering enthusiasm, support, and admiration for the players and coaches.

Mr. President, I would like to recognize the players individually for their accomplishment: Lehmon Colbert; LaShun Watson; Anthony Miller; Terrell ''Sput'' Dunham; Keith Ramsey; Giles Mack; Antonio Steele; Tay Waller; Jarvis Ogletree; Rashad Faust; Sean LeGree; Jermaine Sparks; Josh Williams; Akila Carter; and Jeremiah Crutcher. I extend my heartfelt congratulations to each of these players and their families, and to all involved in the organization. I urge my colleagues to support the resolution.

# ADDITIONAL STATEMENTS

## TRIBUTE TO JARED JENSEN

• Mr. ALLARD. Mr. President, today I honor the service and sacrifice of Officer Jared Jensen.

My wife Joan and I were deeply saddened to hear of the death of Officer Jared Jensen while in the line of duty.

It takes a person of great courage to become an officer of the law. It takes a strong, hardworking, and considerate individual. It takes a special someone who is willing to pay the ultimate price in protecting the safety of others.

Officer Jared Jensen was just this person. He served the Colorado Springs Police Department with honor and valor for more than 3 years. Officer Jared Jensen was a dedicated police officer who had a passion for upholding the law.

Officer Jared Jensen was a husband, a brother, and a son. He is survived by his wife Natalie, a brother, who also serves the Colorado Springs Police Department, and his loving parents. Among his many hobbies and interests, Officer Jared Jensen was an avid NASCAR racing fan and golfer. Throughout his life, Jared's caring heart was evident in his devotion to family and friends, his love of animals, and his loyalty to his fellow officers with whom he served.

The city of Colorado Springs has lost a valuable member of its community, and we are all forever grateful for Officer Jared Jensen's service and dedication to the safety and well-being of others. His service to the city of Colorado Springs is highly commendable, and his contributions will be remembered.

On October 6, 2006, the Police Cross and Medal of Valor will be presented to Officer Jared Jensen, posthumously, and given to his widow Natalie at the 21st Annual Medal of Valor Award Ceremony in Colorado Springs, Colorado. These awards represent his extraordinary heroism and honorable service to the Colorado Springs Police Department.

I extend my deepest appreciation to Officer Jared Jensen. May his bravery and unwavering sense of duty serve as a role model for the future generation of law officers.•

## COMMENDING FORT PECK RESERVATION AND FEDERAL HIGHWAYS ADMINISTRATION

• Mr. BURNS. Mr. President, I want to take this moment to call the Senate's attention to a historic agreement that was signed today between the Federal Highways Administration and the Assiniboine & Sioux tribes at the Fort Peck Reservation in Montana.

Today, Fort Peck entered into an agreement with FHWA to directly manage highway funds for the reservation, allowing increased focus on the local needs of tribal members. Fort

Peck is one of five tribes that were selected for this new partnership. By empowering the tribes to administer these funds directly, FHWA is recognizing the critical need for improved transportation infrastructure on tribal lands. From increased safety to economic development, tribal authorities are best suited to direct this funding in a manner that will serve the needs of their communities.

In the recently passed highway bill, the Indian reservation roads account was substantially increased, which also demonstrates the Federal commitment to tribal transportation needs. I was pleased to support this increase, and even more pleased that Montana is leading the way in this new era of government-to-government cooperation in administering these funds.

I am a firm believer that empowering folks on the ground to address the specific needs of their communities generally yields the best results, and no where is that more true than in Indian Country. Montana's tribes are working tirelessly to improve the quality of life for their people, and investing in basic infrastructure, like roads, is the foundation of economic growth in these rural areas. Safe, reliable roads are needed to get kids to school, people to work, and products to market. This is a basic need we are talking about here, and I am confident that the leaders at the Fort Peck reservation are best suited to tackle these challenges.

I would like to congratulate Fort Peck and FHWA for this groundbreaking partnership. I am hopeful that we can build on this initiative and expand the ability of tribal leaders to shape the future of their people. ●

## HONORING ADMIRAL JOHN WILLIAM KIME

● Ms. SNOWE. Mr. President, I would like to take a moment today to honor and pay tribute to ADM John William Kime, the 19th commandant of the Coast Guard who passed away on September 14, 2006.

During his distinguished 41-year career in the Coast Guard, Admiral Kime embodied the ideals of superior public service. An officer of great vision and ability, his leadership as the Commandant of the Coast Guard from 1990 to 1994 left an indelible legacy of resource stewardship, environmental protection, and increased national security.

Admiral Kime graduated from the U.S. Coast Guard Academy in 1957. Following graduation, he immediately went to sea, serving in both deck and engineering assignments aboard the Coast Guard cutter Casco. In 1960, he assumed command of Loran Station Wake Island.

After his tour of duty in the South Pacific, Admiral Kime earned masters degrees in marine engineering and naval engineering from the Massachusetts Institute of Technology and embarked on what ultimately became his lifelong professional passion: improving the safety and security of this Nation's maritime interests.

Admiral Kime commanded the Marine Safety Office in Baltimore, and served as the principal U.S. negotiator at the International Maritime Organization, IMO, conference in London where he was a key contributor during drafting of the liquefied gas container ship safety codes. Also during his time in Washington, Admiral Kime oversaw the structural design of the Coast Guard's Polar Class icebreakers—two vessels that have proven to be the anvil upon which this Nation's scientific research at the Earth's poles has been forged.

While commanding the Coast Guard's Eleventh District, Admiral Kime was summoned to direct the Federal response to the Exxon Valdez oil spill, an event of national significance that influenced the rest of his career. Admiral Kime went on to serve as Chief of the Marine Safety, Security and Environmental Division in Washington DC and was ultimately confirmed by the 101st Congress as Commandant of the U.S. Coast Guard in 1990.

As Commandant, Admiral Kime oversaw implementation of the landmark Oil Pollution Act of 1990. This act streamlined and strengthened the Federal Government's ability to prevent and respond to catastrophic oil spills. For his immense successes in improving commercial shipping regulations, he was awarded the 1993 International Maritime Prize by the International Maritime Organization.

From overseeing the structural design of our Polar ice breaking fleet to pioneering improvements in the way our Nation prevents and responds to oil spills in the wake of the Exxon Valdez disaster, Admiral Kime's influence and energy remains visible in the wonderful performance of the U.S. Coast Guard today.

Mr President, I ask all Members of the Senate to join me in recognizing Admiral Kime's service in our Nation's Coast Guard and remembering both his life and his dedication to the United States of America.●

## HONORING THE SERVICE OF DR. DOROTHY C. STRATTON

● Ms. SNOWE. Mr. President, on September 17, 2006, this Nation lost another distinguished member of our ''greatest generation,'' Dr. Dorothy Constance Stratton. She was 107.

An inspirational leader and true patriot, Dr. Stratton was born in March of 1899, attended high school in the Midwest, and graduated from Ottawa University with a bachelor of arts degree in 1933. She went on to earn a master of arts degree in psychology from the University of Chicago and a doctorate of philosophy from Columbia University.

After earning her degrees, Dr. Stratton became the first full-time dean of women at Purdue University. Always committed to establishing a more positive and constructive atmosphere for women on campus, her pioneering force brought to life a vision to make science more appealing to women. With enthusiasm and energy, she developed an experimental curriculum that proved successful and increased undergraduate enrollment of women at Purdue from 600 to over 1,400.

In 1942, as the dark clouds of World War II gathered over our Nation, Dr. Statton felt compelled to duty and took a leave of absence from Purdue to join the Naval Women's Reserve. Shortly after receiving her commission in the Navy as a lieutenant, President Roosevelt signed an amendment to Public Law 773, thereby establishing the Coast Guard's Women Reserve.

Known for her brilliance as an organizer and administrator, a newly promoted Lieutenant Commander Stratton was sworn in as Coast Guard Women's Reserve new director, simultaneously making Dr. Statton the first women accepted for service as a commissioned officer in the history of the U.S. Coast Guard.

Lieutenant Commander Stratton immediately left her mark on the newly established Reserve Service. Shortly after accepting the position of director she sent a memo to wartime Coast Guard Commandant ADM Russell R. Waesche. Dr. Stratton wrote, ''The motto of the Coast Guard is 'Semper Paratus—Always Ready.' The initials of this motto are, of course, S-P-A-R. Why not call the members of the Women's Reserve SPARs?. . . . As I understand it, a spar is a supporting beam and that is what we hope each member or the Women's Reserve will be.'' And so they were.

Under Stratton's inspiring leadership the newly named SPARs expanded to include nearly 1,000 officers and over 10,0000 enlisted women. These dedicated, selfless women initially replaced men working in traditional clerical and routine services at shore stations, but as the war progressed, SPARs worked as parachute riggers, pilot trainer operators, aviation machinists' mates, and air control tower operators. Known as the ''women behind the men behind the guns,'' their duties eventually extended to include the most important port security, logistical, and administrative jobs. By wars end, the SPARs successes had forever changed the role of women in the Coast Guard, and Dr. Stratton had been promoted to the rank of captain, another first for the U.S. Coast Guard.

Following her time as SPAR director, Dr. Stratton became the first director of personnel at the International Monetary Fund, followed by service as executive director of the Girl Scouts of the U.S.A. She was also the United Nations representative of the International Federation of University Women.

History is replete with events demonstrating the service and sacrifices

made by American women. More than 400,000 women served during World War II. We are humbled by their love and dedication to our Nation.

I ask my colleagues to join with me today in honoring and recognizing CAPT Dorothy Stratton for her service to the United States, the U.S. Coast Guard and its Reserve, and for the inspiration and legacy she created for the women of this great Nation.●

## RECOGNIZING MISSOURI ORGANIZATIONS

● Mr. BOND. Mr. President, I would like to take this opportunity to recognize the valuable efforts of the Missouri National Guard, Missouri School Boards' Association, and National Guard Bureau as they have collaborated to support Missouri's prototypical satellite/wireless communications efforts. They have significantly contributed to our knowledge and experience in delivering interagency, interoperable communications capabilities relevant to both the Nation and Show Me state.

The Missouri School Boards' Association has closely collaborated with the National Guard to demonstrate that a limited amount of Federal funding can be leveraged to provide for the creation of interagency, interoperable, satellite/wireless, disaster response communications capability, creating reliable local, State and Federal communications infrastructure. This capability can support a number of initiatives, including first responder training, distance learning, telemedicine, and local law enforcement. It is significant to note that a critical component of this demonstration effort is to prove that various agencies can leverage common, shared infrastructure, which reduces sustainment costs and improves government efficiency. Every indication is that this model can successfully support information security and network defense requirements.

Since beginning the Missouri effort, much has already been learned. Lessons learned include: interagency interoperability offers an opportunity to transform how we communicate and for significant cost avoidance, including the reduction of annual recurring costs; impediments to interagency interoperability are not because the technology is unavailable or because security requirements cannot be addressed; and challenges and opportunities related to successful interagency communications interoperability exist at all local, State, and Federal Government levels.

The Missouri National Guard has validated the use of affordable satellite technology to create reliable, redundant disaster response network communications. The National Guard has leveraged existing resources and teamed with State and Federal agencies to confirm the reliability and capabilities of a planned network. Ongoing activities to support these efforts, resourced largely from federal FY05 funds, include defining the procurement process related to executing this effort; completing a foundational analysis, the development of ''white papers,'' to define the precise relevance of the effort; completing required Department of Defense accreditation of deployable communications capabilities; completing a national survey of communications requirements, capabilities, and existing shortfalls to confirm that there is a national need for this type of capability; providing deployable communications capabilities for testing/validation. These capabilities will directly support the National Guard, as well as legitimize the concept that state government prior to and during times of emergency can leverage Guard equipment; and providing deployable communications capabilities to be shared with the Missouri School Boards' Association in order that the association, during non-emergency situations, can validate applications with schools.

With remaining Federal funds appropriated in fiscal year 2005, the Missouri School Boards' Association will also coordinate an effort to validate the ability to leverage emerging wireless technologies in a defined geographical area in Missouri. This demonstration will also validate the relevance of IPTV, Internet protocol television, with wireless technologies so that field-based educational opportunities can be transmitted ''live'' to school classrooms. From Federal fiscal year 2006 funds, the Missouri School Boards' Association will coordinate a wireless demonstration project in a second defined geographical area in Missouri. This project will incorporate lessons learned from the initial demonstration project in a defined geographical space.

Once again, I thank the Missouri National Guard, Missouri School Boards' Association, and National Guard Bureau for their work to support Missouri's prototypical satellite/wireless communications efforts. It is an outstanding example of collaboration.●

## COMMENDATION TO THE ''BACK TO BUSINESS'' RADIO PROGRAM

● Ms. SNOWE. Mr. President, as chair of the Senate Committee on Small Business and Entrepreneurship, I rise today to commend the University of Maine and Machias Savings Bank for underwriting the ''Back To Business'' radio program hosted by Deb Neuman for a second year.

Heard on WVOM in Old Town, ME, Back To Business is an advice and news program geared specifically toward fostering the creation, development, and continued success of small businesses in Maine. It has been a strong, supportive, and unwavering voice for Maine's small businesses, providing an interactive forum that discusses pressing issues of the day, such as small business access to investment capital, regulatory, and tax compliance burdens, and the lack of affordable health insurance options in Maine.

The small business owners that appear on ''Back To Business'' frequently cite Maine's business climate as challenging on several fronts. Moving forward, it is critical that we also think forward and equip America's small businesses with the knowledge and tools to confront the challenges of tomorrow so that they can create jobs and continue to strengthen our economy. I can proudly report that ''Back To Business'' offers Maine small businesses vital knowledge and useful tools and resources. We must not forget that the Federal and State governments should be partners, working together with the business community to support small businesses.

Small businesses create nearly three-quarters of all net new jobs, represent 97 percent of all business in Maine, and employ 61 percent of Maine's workers. Mainers are more than ever relying upon small business ownership as an alternative to the traditional workplace where the manufacturing industry and corporate America once offered life long futures for workers.

As chair of the Senate Small Business Committee, I have introduced an ambitious legislative agenda to break down small business barriers. I recently introduced a bill that would expand the Small Business Administration's Historically Underutilized Business Zones or HUBZones program to include rural Maine towns and regions that were previously ineligible. According to the SBA, 110 Maine businesses in 11 counties received more than $12.7 million in HUBZone Program dollars in fiscal year 2005. Unfortunately, current law is preventing more regions in Maine from being certified as HUBZones. Under my bill, small businesses in rural Maine, including the Katahdin region, would be classified as HUBZones to qualify and compete for Federal contracts and subcontracts.

I have also worked hard to find a solution to the small business health insurance crisis. Small businesses in Maine and across the country are trapped in stagnant, dysfunctional insurance markets with premiums that are increasing at exponential percentage levels. Last year, I requested a Government Accountability Office Report that showed a startling market consolidation. In Maine, five large insurance companies control 98 percent of the market, leaving small businesses with few affordable coverage options.

This is why I have long championed legislation that would create Small Business Health Plans, which would allow small businesses to pool together nationally, to offer quality health insurance products to their employees at significantly lower costs. This year we came closer than ever before to passing SBHPs into law, and I will continue to push forward with my colleagues on both sides of the political aisle, to fashion bipartisan legislation that can be

signed into law to bring small businesses relief.

Mr. President, I again commend WVOM's ''Back to Business'' program, which is a true public service to Mainers. Their mission to educate elected officials, opinion leaders, and the people of Maine about the importance of small businesses to our economy and our country is invaluable.●

## GFWC TRAVELERS CLUB CELEBRATES 100TH ANNIVERSARY

● Mr. THUNE. Mr. President, today I recognize GFWC Travelers Club of Chamberlain, SD. On September 12, 2006, GFWC Travelers Club celebrated its 100th anniversary.

As the oldest continuing volunteer club in Brule County, GFWC Travelers Club has been a leader in providing funding and assistance in numerous areas. They have been involved in founding and supporting libraries, both locally and nationally, granting educational scholarships, helping to maintain Ellsworth Air Force Base in South Dakota and many other valuable and necessary community projects.

It gives me great pleasure to rise and recognize the great work that GFWC Travelers Club has done and to wish them all the best of luck as they celebrate their 100th anniversary.●

## RECOGNIZING THE CUSTER SENIOR CENTER

● Mr. THUNE. Mr. President, today I recognize the Custer Senior Center of Custer, SD, on its 35th anniversary. Custer Senior Center truly deserves this recognition for its years of service to the seniors of Custer and of South Dakota.

The Custer Senior Center first began when VISTA volunteers Peggy and David Viers placed an advertisement in the Custer Chronicle asking those interested in starting a community senior center to meet at the Community Church on April 6, 1970. The citizens of Custer came together and the Senior Center officially opened in May of 1970 with 52 charter members.

Since this time, the Custer Senior Center has provided an invaluable community service by creating a welcoming place for Custer's senior citizens to meet together for fellowship and support. I am confident that the Senior Center will continue to bring together Custer's citizens of all ages in the years to come.

I would like to offer my congratulations to the Custer Senior Center on their 35th anniversary and wish them the best of luck as they celebrate this important event.●

## MESSAGES FROM THE HOUSE

At 9:33 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5631) making appropriations for the Department of Defense for the fiscal year ending September 30, 2007, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the amendments of the House to the bill (S. 3525) to amend subpart 2 of part B of title IV of the Social Security Act to improve outcomes for children in families affected by methamphetamine abuse and addiction, to reauthorize the promoting safe and stable families program, and for other purposes.

The message further announced that the House has passed the bill (S. 403) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions, with an amendment, in which it requests the concurrence of the Senate.

## ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 1275. An act to designate the facility of the United States Postal Service located at 7172 North Tongass Highway, Ward Cove, Alaska, as the ''Alice R. Brusich Post Office Building''.

S. 1323. An act to designate the facility of the United States Postal Service located on Lindbald Avenue, Girdwood, Alaska, as the ''Dorothy and Connie Hibbs Post Office Building''.

S.2690. An act to designate the facility of the United States Postal Service located at 8801 Sudley road in Manassas, Virginia, as the ''Harry J. Parrish Post Office''.

H.R. 1442. An act to complete the codification of title 46, United States Code, ''Shipping'', as positive law.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

## ENROLLED BILL SIGNED

At 11:57 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 3525. An act to amend part B of title IV ofthe Social Security Act to reauthorize the promoting safe and stable families program, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. STEVENS).

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At 1:06 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 971. An act to extend the deadline for commencement of construction of certain hydroelectric projects in Connecticut, and for other purposes.

H.R. 1215. An act to provide for the implementation of a Green Chemistry Research and Development Program, and for other purposes.

H.R. 2679. An act to amend the Revised Statutes ofthe United States to prevent the use of the legal system in a manner that extorts money from State and local governments, and the Federal Government, and inhibits such governments' constitutional actions under the first, tenth, and fourteenth amendments.

H.R. 4377. An act to extend the time required for construction of a hydroelectric project, and for other purposes.

H.R. 4417. An act to provide for the reinstatement of a license for a certain Federal Energy Regulatory project.

H.R. 4559. An act to provide for the conveyance of certain National Forest System land to the towns of Laona and Wabeno, Wisconsin, and for other purposes.

H.R. 4942. An act to establish a capability and office to promote cooperation between entities of the United States and its allies in the global war on terrorism for the purpose of engaging in cooperative endeavors focused on the research, development, and commercialization of high-priority technologies intended to detect, prevent, respond to, recover from, and mitigate against acts of terrorism and other high consequence events and to address the homeland security needs of Federal, State, and local governments.

H.R. 5092. An act to modernize and reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

H.R. 5103. An act to provide for the conveyance of the former Konnarock Lutheran Girls School in Smyth County, Virginia, which is currently owned by the United States and administered by the Forest Service, to facilitate the restoration and reuse of the property, and for other purposes.

H.R. 5136. An act to establish a National Integrated Drought Information System within the National Oceanic and Atmospheric Administration to improve drought monitoring and forecasting capabilities.

H.R. 5313. An act to reserve a small percentage of the amounts made available to the Secretary of Agriculture for the farmland protection program to fund challenge grants to encourage the purchase of conservation easements and other interests in land to be held by a State agency, county, or other eligible entity, and for other purposes.

H.R. 5533. An act to prepare and strengthen the biodefenses of the United States against deliberate, accidental, and natural outbreaks of illness, and for other purposes.

H.R. 5835. An act to amend title 38, United States Code, to improve information management within the Department of Veterans Affairs, and for other purposes.

H.R. 6131. An act to permit certain expenditures from the Leaking Underground Storage Tank Trust Fund.

H.R. 6159. An act to extend temporarily certain authorities of the Small Business Administration.

H.R. 6160. An act to recruit and retain Border Patrol Agents.

H.R. 6164. An act to amend title IV of the Public Health Service Act to revise and extend the authorities of the National Institutes of Health, and for other purposes.

The message further announced that the House has passed the following bills, without amendment:

S. 176. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.

S. 244. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

The message also announced that pursuant to 10 U.S.C. 9355(a), amended

by Public Law 108–375, and the order of the House of December 18, 2005, the Speaker reappoints the following Member of the House of Representatives to the Board of Visitors to the United States Air Force Academy: Ms. KILPATRICK of Michigan.

At 3:00 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 483. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

At 6:13 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 3850. An act to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

At 6:57 p.m., a message from the House of Representatives, delivered by Ms. Chiappardi, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 5347. An act to reauthorize the HOPE VI program for revitalization of public housing projects.

H.R. 6166. An act to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

## ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 176. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.

S. 244. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

H.R. 2066. An act to amend title 40, United States Code, to establish a Federal Acquisition Service, to replace the General Supply Fund and the Information Technology Fund with an Acquisition Services Fund, and for other purposes.

H.R. 5074. An act to amend the Railroad Retirement Act of 1974 to provide for continued payment of railroad retirement annuities by the Department of the treasury, and for other purposes.

H.R. 5187. An act to amend the John F. Kennedy Center Act to authorize additional appropriations for the John F. Kennedy Center for the Performing Arts for fiscal year 2007.

## MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 3936. A bill to invest in innovation and education to improve the competitiveness of the United States in the global economy.

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4377. An act to extend the time required for construction of a hydroelectric project, and for other purposes.

H.R. 4417. An act to provide for the reinstatement of a license for a certain Federal Energy Regulatory project.

## MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 5132. An act to direct the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of including in the National Park System certain sites in Monroe County, Michigan, relating to the Battles of the River Raisin during the War of 1812.

## ENROLLED BILLS PRESENTED

The Secretary of the Senate announced that on today, September 27, 2006, she had presented to the President of the United States the following enrolled bills:

S. 1275. An act to designate the facility of the United States Postal Service located at 7172 North Tongass Highway, Ward Cove, Alaska, as the ''Alice R. Brusich Post Office Building''.

S. 1323. An act to designate the facility of the United States Postal Service located on Lindbald Avenue, Girdwood, Alaska, as the ''Dorothy and Connie Hibbs Post Office Building''.

S. 2690. An act to designate the facility of the United States Postal Service located at 8801 Sudley road in Manassas, Virginia, as the ''Harry J. Parrish Post Office''.

S. 3525. An act to amend part B oftitle IV of the Social Security Act to reauthorize the promoting safe and stable families program, and for other purposes.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8435. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Table Grapes from Namibia'' (Docket No. APHIS–2006–0025) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8436. A communication from the Director, Regulatory Review Group, Commodity Credit Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Storage, Handling, and Ginning Requirements for Cotton Marketing Assistance Loan Collateral'' (RIN0560–AH48) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8437. A communication from the Under Secretary, Research Education Economics, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''National Research Initiative Competitive Grants Program—Revisions to Administrative Provisions'' (RIN0524–AA32) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8438. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Comprehensive Everglades Restoration Plan; to the Committee on Environment and Public Works.

EC–8439. A communication from the Acting Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds'' (RIN1018–AU42) received on September 21, 2006; to the Committee on Environment and Public Works.

EC–8440. A communication from the Acting Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2006–07 Early Season'' (RIN1018–AU42) received on September 21, 2006; to the Committee on Environment and Public Works.

EC–8441. A communication from the Acting Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Final Frameworks for Late Season Migratory Bird Hunting Regulations'' (RIN1018–AU42) received on September 21, 2006; to the Committee on Environment and Public Works.

EC–8442. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 to Jordan; to the Committee on Foreign Relations.

EC–8443. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions; and Establishment of a Quality Assessment and Performance Improvement Program; Suspension of Effectiveness'' ((RIN0938–AJ17)(CMS–1910–IFC)) received on September 22, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8444. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Fire Safety Requirements for Certain Health Care Facilities; Alcohol-Based Hand Sanitizer Amendment'' ((RIN0938–AN36)(CMS–3145–F)) received on September 22, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8445. A communication from the General Counsel, Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report of a rule entitled ''Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts'' (5 CFR Part 1653) received on September 22, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–8446. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bentazon, Carboxin, Dipropyl Isocinchomeronate, Oil of Lemongrass (Oil of Lemon) and Oil of Orange; Tolerance Actions'' (FRL No. 8093-5) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8447. A communication from the Principal Deputy Associate Administrator, Office

of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Flufenoxuron; Pesticide Tolerance'' (FRL No. 8092-3) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8448. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Metconazole; Pesticide Tolerance'' (FRL No. 8085-2) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8449. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Quizalofop Ethyl; Pesticide Tolerance'' (FRL No. 8094-5) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8450. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''p-Chlorophenoxyacetic Acid, Glyphosate, Difenzoquat, and Hexazinone; Tolerance Actions'' (FRL No. 8089-6) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8451. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pendimethalin; Pesticide Tolerance'' (FRL No. 8092-6) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8452. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Low Pathogenic Avian Influenza; Voluntary Control Program and Payment of Indemnity'' (Docket No. APHIS-2005-0109) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8453. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Emission Reductions to Meet Phase II of the Nitrogen Oxides ($NO_x$) SIP Call'' (FRL No. 8225-1) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8454. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Additional $NO_x$ Emission Reductions to Support Philadelphia-Trenton-Wilmington One-Hour Ozone Nonattainment Area, and Remaining $NO_x$ SIP Call Requirements'' (FRL No. 8224-9) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8455. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Control Volatile Organic Compound Emissions; Volatile Organic Compound Control for El Paso, Gregg, Nueces, and Victoria Counties and the Ozone Standard Nonattainment Areas of Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston'' (FRL No. 8224-7) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8456. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Ambient Air Quality Standards for Particulate Matter'' (FRL No. 8225-3) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8457. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Priorities List, Final Rule'' (FRL No. 8223-3) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8458. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Fire Suppression and Explosion Protection'' ((RIN2060-AM24) (FRL No. 8223-4)) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8459. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Notice 21 for Significant New Alternatives Policy Program'' ((RIN2060-AG12) (FRL No. 8223-9)) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8460. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Withdrawal of Certain Chemical Substances from Preliminary Assessment Information Reporting and Health and Safety Data Reporting Rules'' ((RIN2070-AB08) (FRL No. 8096-5)) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8461. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report relative to the administration of the Foreign Agents Registration Act for the six months ending December 31, 2005; to the Committee on the Judiciary.

EC–8462. A communication from the Director, Regulations Management, Board of Veterans' Appeals, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Board of Veterans' Appeals: Clarification of a Notice of Disagreement'' (RIN2900-AL97) received on September 22, 2006; to the Committee on Veterans' Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1848. A bill to promote remediation of inactive and abandoned mines, and for other purposes (Rept. No. 109–351).

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 3630. A bill to amend the Federal Water Pollution Control Act to reauthorize a program relating to the Lake Pontchartrain Basin, and for other purposes (Rept. No. 109–352).

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment:

H.R. 3929. A bill to amend the Water Desalination Act of 1996 to authorize the Secretary of the Interior to assist in research and development, environmental and feasibility studies, and preliminary engineering for the Municipal Water District of Orange County, California, Dana Point Desalination Project located at Dana Point, California (Rept. No. 109–353).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. STEVENS for the Committee on Commerce, Science, and Transportation.

Calvin L. Scovel, of Virginia, to be Inspector General, Department of Transportation.

*Charles Darwin Snelling, of Pennsylvania, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority for a term expiring May 30, 2012.

*David H. Pryor, of Arkansas, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2008.

*Chris Boskin, of California, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2012.

*Sharon Lynn Hays, of Virginia, to be an Associate Director of the Office of Science and Technology Policy.

*Cynthia A. Glassman, of Virginia, to be Under Secretary of Commerce for Economic Affairs.

*Collister Johnson, Jr., of Virginia, to be Administrator of the Saint Lawrence Seaway Development Corporation for a term of seven years.

Mr. STEVENS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the Records on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Coast Guard nominations beginning with Paul S. Szwed and ending with Brigid M. Pavilonis, which nominations were received by the Senate and appeared in the Congressional Record on September 20, 2006.

Coast Guard nominations beginning with Margaret A. Blomme and ending with Rickey D. Thomas, which nominations were received by the Senate and appeared in the Congressional Record on September 21, 2006.

Coast Guard nominations beginning with Meredith L. Austin and ending with Werner A. Winz, which nominations were received by the Senate and appeared in the Congressional Record on September 21, 2006.

Coast Guard nominations beginning with Joyce E. Aivalotis and ending with Jose M. Zuniga, which nominations were received by the Senate and appeared in the Congressional Record on September 21, 2006.

By Mr. GRASSLEY for the Committee on Finance.

*John K. Veroneau, of Virginia, to be a Deputy United States Trade Representative, with the Rank of Ambassador.

*Robert K. Steel, of Connecticut, to be an Under Secretary of the Department of the Treasury.

By Mr. CRAIG for the Committee on Veterans' Affairs.

*Robert T. Howard, of Virginia, to be an Assistant Secretary of Veterans Affairs (Information and Technology).

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. FRIST:

S. 3946. A bill to make an alien who is a member of a criminal gang removable from the United States and inadmissible to the United States, to permit the Secretary of Homeland Security to deny a visa to an alien who is a national of a country that has denied or delayed accepting an alien removed from the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3947. A bill to permit the Secretary of Homeland Security to grant citizenship to an alien who serves on active duty in the Armed Forces, to assist such an alien in applying for citizenship, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3948. A bill to amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or, with reckless disregard, permitting the construction or use on one's land, of a tunnel or subterranean passageway between the United States and another country; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3949. A bill to study the geographic areas in Mexico from which illegal immigrants are entering the United States and to develop plans to address the social, political, and economic conditions that are contributing to such illegal immigration; to the Committee on Foreign Relations.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 3950. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for qualified equity investments in certain small businesses; to the Committee on Finance.

By Mr. SMITH (for himself, Mr. CONRAD, Mr. KERRY, and Mr. BINGAMAN):

S. 3951. A bill to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase the retirement security of women and small business owners, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mr. SMITH):

S. 3952. A bill to amend the Internal Revenue Code of 1986 to allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar savings by the self-employed, and for other purposes; to the Committee on Finance.

By Mr. KERRY:

S. 3953. A bill to foster development of minority-owned small businesses; to the Committee on Small Business and Entrepreneurship.

By Mr. KENNEDY (for himself and Mr. MENENDEZ):

S. 3954. A bill to amend title XVIII of the Social Security Act to require monthly reporting regarding the number of individuals who have fallen into the part D donut hole and the amount such individuals are spending on covered part D drugs while in the donut hole; to the Committee on Finance.

By Mr. LIEBERMAN (for himself, Mr. SMITH, Mr. AKAKA, Ms. CANTWELL, Mr. CHAFEE, Mrs. CLINTON, Mr. DAYTON, Mr. FEINGOLD, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mrs. MURRAY, and Mr. WYDEN):

S. 3955. A bill to provide benefits to domestic partners of Federal employees; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DEWINE:

S. 3956. A bill to create a grant program for collaboration programs that ensure coordination among criminal justice agencies, adult protective service agencies, victim assistance programs, and other agencies or organizations providing services to individuals with disabilities in the investigation and response to abuse of or crimes committed against such individuals; to the Committee on the Judiciary.

By Mr. INHOFE:

S. 3957. A bill to protect freedom of speech exercisable by houses of worship or mediation and affiliated organizations; to the Committee on Finance.

By Mrs. CLINTON (for herself, Mr. SPECTER, Mr. KENNEDY, and Ms. MIKULSKI):

S. 3958. A bill to establish the United States Public Service Academy; to the Committee on Homeland Security and Governmental Affairs.

By Mr. WARNER (for himself and Mr. ALLEN):

S. 3959. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain combat zone compensation of civilian employees of the United States; to the Committee on Finance.

By Mr. KENNEDY:

S. 3960. A bill to provide for the competitive status for certain Internal Revenue Service employees; to the Committee on Finance.

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. LOTT, and Mr. LAUTENBERG):

S. 3961. A bill to provide for enhanced safety in pipeline transportation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DOMENICI (for himself and Mr. CRAIG):

S. 3962. A bill to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to assure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes; to the Committee on Energy and Natural Resources.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD (for himself and Mr. KERRY):

S. Res. 588. A resolution to express the sense of the Senate that States should have in place backup systems to deal with any failure of electronic voting equipment during the November 7, 2006, general election; to the Committee on Rules and Administration.

By Mrs. LINCOLN (for herself, Mr. CRAIG, Mr. CHAMBLISS, Mr. DORGAN, Mr. CONRAD, Mr. GRASSLEY, Mr. PRYOR, Mr. HARKIN, Mr. CRAPO, Mr. DEWINE, Mr. TALENT, Mr. BAUCUS, Mr. THUNE, Mr. BURNS, Mr. BOND, Mr. ENZI, Ms. STABENOW, Mr. COCHRAN, and Mr. JOHNSON):

S. Con. Res. 119. A concurrent resolution expressing the sense of Congress that public policy should continue to protect and strengthen the ability of farmers and ranchers to join together in cooperative self-help efforts; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. VITTER:

S. Con. Res. 120. A concurrent resolution expressing the support of Congress for the creation of a National Hurricane Museum and Science Center in southwest Louisiana; to the Committee on Commerce, Science, and Transportation.

## ADDITIONAL COSPONSORS

S. 304

At the request of Mr. LAUTENBERG, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 304, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 408

At the request of Mr. DEWINE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 408, a bill to provide for programs and activities with respect to the prevention of underage drinking.

S. 440

At the request of Mr. BUNNING, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 440, a bill to amend title XIX of the Social Security Act to include podiatrists as physicians for purposes of covering physicians services under the medicaid program.

S. 1085

At the request of Mr. KENNEDY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1085, a bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

S. 1508

At the request of Mr. COCHRAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1508, a bill to require Senate candidates to file designations, statements, and reports in electronic form.

At the request of Mr. FEINGOLD, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1508, supra.

S. 1740

At the request of Mr. CRAPO, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1740, a bill to amend the Internal Revenue Code of 1986 to allow individuals to defer recognition of reinvested

capital gains distributions from regulated investment companies.

S. 2491

At the request of Mr. CORNYN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2491, a bill to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

S. 2563

At the request of Mr. COCHRAN, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 2563, a bill to amend title XVIII of the Social Security Act to require prompt payment to pharmacies under part D, to restrict pharmacy co-branding on prescription drug cards issued under such part, and to provide guidelines for Medication Therapy Management Services programs offered by prescription drug plans and MA–PD plans under such part.

S. 2659

At the request of Mr. AKAKA, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2659, a bill to amend title 38, United States Code, to provide for the eligibility of Indian tribal organizations for grants for the establishment of veterans cemeteries on trust lands.

S. 3651

At the request of Mr. DURBIN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 3651, a bill to reduce child marriage, and for other purposes.

S. 3681

At the request of Mr. DOMENICI, the names of the Senator from Oklahoma (Mr. COBURN) and the Senator from Louisiana (Mr. VITTER) were added as cosponsors of S. 3681, a bill to amend the Comprehensive Environmental Response Compensation and Liability Act of 1980 to provide that manure shall not be considered to be a hazardous substance, pollutant, or contaminant.

S. 3707

At the request of Mr. LOTT, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 3707, a bill to improve consumer access to passenger vehicle loss data held by insurers.

S. 3742

At the request of Mr. LOTT, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 3742, a bill to amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

S. 3744

At the request of Mr. DURBIN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3744, a bill to establish the Abraham Lincoln Study Abroad Program.

S. 3795

At the request of Mr. ROCKEFELLER, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 3795, a bill to amend title XVIII of the Social Security Act to provide for a two-year moratorium on certain Medicare physician payment reductions for imaging services.

S. 3800

At the request of Mr. HAGEL, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 3800, a bill to amend the Foreign Assistance Act of 1961 to require recipients of United States foreign assistance to certify that the assistance will not be used to intentionally traffic in goods or services that contain counterfeit marks or for other purposes that promote the improper use of intellectual property, and for other purposes.

S. 3812

At the request of Mr. ISAKSON, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 3812, a bill to require the Food and Drug Administration to conduct consumer testing to determine the appropriateness of the current labeling requirements for indoor tanning devices and determine whether such requirements provide sufficient information to consumers regarding the risks that the use of such devices pose for the development of irreversible damage to the skin, including skin cancer, and for other purposes.

S. 3855

At the request of Mr. CONRAD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 3855, a bill to provide emergency agricultural disaster assistance, and for other purposes.

S. 3887

At the request of Mr. DORGAN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 3887, a bill to prohibit the Internal Revenue Service from using private debt collection companies, and for other purposes.

S. 3912

At the request of Mr. ENSIGN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 3912, a bill to amend title XVIII of the Social Security Act to extend the exceptions process with respect to caps on payments for therapy services under the Medicare program.

S. 3913

At the request of Mr. ROCKEFELLER, the names of the Senator from Maryland (Mr. SARBANES), the Senator from Wisconsin (Mr. KOHL), the Senator from South Dakota (Mr. JOHNSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 3913, a bill to amend title XXI of the Social Security Act to eliminate funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007.

S. 3934

At the request of Ms. SNOWE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3934, a bill to terminate authorization for the project for navigation, Rockport Harbor, Maine.

S. 3936

At the request of Mr. FRIST, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Indiana (Mr. LUGAR) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 3936, a bill to invest in innovation and education to improve the competitiveness of the United States in the global economy.

S. 3943

At the request of Mrs. BOXER, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Colorado (Mr. SALAZAR), the Senator from New York (Mrs. CLINTON) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 3943, a bill to amend the Help America Vote Act of 2002 to reimburse jurisdictions for amounts paid or incurred in preparing, producing, and using contingency paper ballots in the November 7, 2006, Federal general election.

S. RES. 585

At the request of Mr. VITTER, his name was added as a cosponsor of S. Res. 585, a resolution commending the New Orleans Saints of the National Football League for winning their Monday Night Football game on Monday, September 25, 2006 by a score of 23 to 3.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FRIST:

S. 3946. A bill to make an alien who is a member of a criminal gang removable from the United States and inadmissible to the United States, to permit the Secretary of Homeland Security to deny a visa to an alien who is a national of a country that has denied or delayed accepting an alien removed from the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3947. A bill to permit the Secretary of Homeland Security to grant citizenship to an alien who serves on active duty in the Armed Forces, to assist such an alien in applying for citizenship, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3948. A bill to amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or, with reckless disregard, permitting the construction or use on one's land, of a tunnel or subterranean passageway between the United States and another country; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3949. A bill to study the geographic areas in Mexico from which illegal immigrants are entering the United

States and to develop plans to address the social, political, and economic conditions that are contributing to such illegal immigration; to the Committee on Foreign Relations.

Mr. FRIST. Mr. President, like all of my colleagues in this body, I recognize that our immigration system needs vast improvements. While we have spent a great deal of time discussing immigration over the past year, it appears unlikely that this body will pass comprehensive reform before we break for the recess. This week we have been discussing an important bill that would begin the process completely securing our southern border. I support that bill wholeheartedly and I would also hope to make other improvements to our immigration laws we can make before we end this session.

Today, therefore, I'm proposing four separate bills intended to strengthen our immigration system.

One will help military men and women become citizens more quickly, another will make it easier to remove gang members from our country, another will impose tough penalties on people who tunnel beneath our borders, and the fourth will begin an effort to stop illegal immigration at its source.

I'd like to discuss all four bills briefly . . . they have different purposes and will all complement each other in efforts to improve our immigration system.

I am introducing the Community Protection Against International Gangs Act. Street gangs remain the bane of our society. Their members sell narcotics, steal, and commit horrific acts of violence. Many of these gangs—groups like Mara Salvatrucha, better known as MS–13—draw their membership from immigrants to the United States. While the overwhelming majority of immigrants in the United States obey the law, those who join these gangs wreak havoc on immigrant communities all over the country.

To protect our Nation, we need to stop them . . . now.

Thus, I'm proposing the CPAIGA Act. This law will make our policy clear: immigrants who join gangs are no longer welcome in our country. Under my bill, anyone who joins a gang or helps one faces immediate deportation proceedings. In addition, my bill will let the Secretary of State and the Secretary of Homeland Security deny visas to the nationals of any country that refuses to take back its own criminals.

I am also introducing the Enhanced Border Tunnel Prevention Act. To enhance our crackdown on sophisticated criminal conspiracies, we should also impose tough new penalties on those who construct tunnels under our border. People who build tunnels, or allow them to be built on land that they own or control, should face serious time in prison. Smugglers who use them should have their penalties doubled. We can't allow our borders to become a sieve.

In addition, I am introducing the Soldiers to Citizens Act. Just as we make it clear that criminals have no place in the United States, we should simultaneously do everything we can to welcome the finest people from around the world. Every year, over 8,000 people who are not U.S. citizens enlist in our armed forces.

They serve with valor and distinction . . . they defend our liberty. If they wish to become citizens, they should not face unnecessary burdens.

Under my legislation, anyone who gives our military 2 years of honorable and satisfactory service can acquire citizenship under an expedited process. Service in the military strongly implies that a person has acquired the things we expect from new citizens: a command of English, good moral character, understanding of our history and appreciation for our democratic institutions. Thus, soldiers, sailors, airmen, and marines whose chains of command certify that they've met these requirements should be able to acquire citizenship by filling out some simple paperwork and swearing the citizenship oath.

I believe that the Senate should do everything it can to speed the citizenship process for others in the military who do not want to avail themselves of this process. In particular, we must do away with the burdensome, duplicative process that requires military enlistees to give fingerprints once when they join the military and again when they apply for citizenship. At the same time, we should establish a high-quality, toll-free information center to provide timely, accurate information to any servicemember interested in becoming a citizen.

Finally, I am introducing the Illegal Immigration Source Study and Focus Act. Finally, I believe we need to do more to deal with the underlying causes of much illegal immigration: social, economic, and political conditions in Mexico that lead many to believe they have no choice but as to leave their homeland. Illegal immigration hurts both the United States and Mexico. Our governments must work together so we can understand what areas produce the most illegal immigrants and what we might do to help immigrants.

My bill would begin a process of collaboration. It will mandate regular reports on the areas that produce the most illegal immigrants and, just as importantly, focus our own aid to Mexico on improving the conditions that produce illegal immigration in the first place.

Steps like those I have proposed will not change our immigration system overnight. They will not end illegal immigration.

But they will make our cities safer, stem the flow of illegal immigration, and help those who serve in our armed forces. These are worthy measures and I urge all of my colleagues to support them.

I ask unanimous consent that the text of the bills be printed in the RECORD.

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

S. 3946

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Community Protection Against International Gangs Act''.

**SEC. 2. INADMISSIBILITY AND REMOVAL OF ALIEN GANG MEMBERS.**

(a) INADMISSIBILITY.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

''(J) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe—

''(i) is, or has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code); or

''(ii) has participated in the activities of such a criminal street gang, knowing or having reason to know that such activities promoted, furthered, aided, or supported the illegal activity of the criminal street gang,

is inadmissible.''.

(b) REMOVAL.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—

''(i) is, or at any time after admission has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code); or

''(ii) has participated in the activities of such a criminal street gang, knowing or having reason to know that such activities promoted, furthered, aided, or supported the illegal activity of the criminal street gang,

is deportable.''.

**SEC. 3. PENALTY FOR FAILURE TO ACCEPT AN ALIEN REMOVED FROM THE UNITED STATES.**

Section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)) is amended to read as follows:

''(d) DENYING VISAS TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—The Secretary of Homeland Security, after making a determination that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, and after consultation with the Secretary of State, may instruct the Secretary of State to deny a visa to any citizen, subject, national, or resident of that country until the country accepts the alien that was ordered removed.''.

S. 3947

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Soldiers to Citizens Act''.

**SEC. 2. CITIZENSHIP FOR MEMBERS OF THE ARMED FORCES.**

Section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) is amended—

(1) in subsection (b), by striking ''subsection (a)'' and inserting ''subsection (a) or (d)''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), an individual who is not a citizen of the United States shall not be denied the opportunity to apply for membership in the United States Armed Forces. Such an individual who becomes an active duty member of the United States Armed Forces shall, consistent with this section and with the approval of the individual's chain of command, be granted United States citizenship after performing at least 2 years of honorable and satisfactory service on active duty. Not later than 90 days after such requirements are met with respect to an individual, such individual shall be granted United States citizenship.

''(e) An alien described in subsection (d) shall be naturalized without regard to the requirements of this title or any other requirements, processes, or procedures of the Secretary of Homeland Security, if the alien—

''(1) files an application for naturalization in accordance with such procedures to carry out this section as may be established by regulation by the Secretary of Homeland Security or the Secretary of Defense;

''(2) demonstrates to the alien's military chain of command proficiency in the English language, good moral character, and knowledge of the Federal Government and United States history, consistent with the requirements contained in this Act; and

''(3) takes the oath required under section 337 of this Act and participates in an oath administration ceremony in accordance with this Act.''.

**SEC. 3. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.**

Notwithstanding any other provision of law or any regulation, the Secretary of Homeland Security shall use the fingerprints provided by an individual at the time the individual enlists in the Armed Forces to satisfy any requirement for fingerprints as part of an application for naturalization if the individual—

(1) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440);

(2) was fingerprinted in accordance with the requirements of the Department of Defense at the time the individual enlisted in the Armed Forces; and

(3) submits an application for naturalization not later than 12 months after the date the individual enlisted in the Armed Forces.

**SEC. 4. PROVISION OF INFORMATION ON NATURALIZATION TO MEMBERS OF THE ARMED FORCES.**

The Secretary of Homeland Security shall—

(1) establish a dedicated toll-free telephone service available only to members of the Armed Forces and the families of such members to provide information related to naturalization pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440), including the status of an application for such naturalization;

(2) ensure that the telephone service required by paragraph (1) is operated by employees of the Department of Homeland Security who—

(A) have received specialized training on the naturalization process for members of the Armed Forces and the families of such members; and

(B) are physically located in the same unit as the military processing unit that adjudicates applications for naturalization pursuant to such section 328 or 329; and

(3) implement a quality control program to monitor, on a regular basis, the accuracy and quality of information provided by the employees who operate the telephone service required by paragraph (1), including the breadth of the knowledge related to the naturalization process of such employees.

S.3948

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Enhanced Border Tunnel Prevention Act''.

**SEC. 2. CONSTRUCTION OF BORDER TUNNEL OR PASSAGE.**

(a) IN GENERAL.—Chapter 27 of title 18, United States Code, is amended by adding at the end the following:

**''§ 554. Border tunnels and passages**

''(a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by the Bureau of Immigration and Customs Enforcement, shall be imprisoned for not more than 25 years.

''(b) Any person who knows or recklessly disregards the construction or use of a tunnel or passage described in subsection (a) on land that the person owns or controls shall be imprisoned for not more than 15 years.

''(c) Any person who uses a tunnel or passage described in subsection (a) to unlawfully smuggle an alien, goods (in violation of section 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))) shall be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel or passage.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 27 of title 18, United States Code, is amended by adding at the end the following:

''Sec. 554. Border tunnels and passages.''.

(c) CRIMINAL FORFEITURE.—Section 982(a)(6) of title 18, United States Code, is amended by inserting ''554,'' before ''1425,''.

**SEC. 3. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of offenses described in section 554 of title 18, United States Code, as added by section 2.

(b) REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines, policy statements, and official commentary reflect the serious nature of the offenses described in section 554 of title 18, United States Code, and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) provide adequate base offense levels for offenses under such section;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including—

(A) the use of a tunnel or passage described in subsection (a) of such section to facilitate other felonies; and

(B) the circumstances for which the sentencing guidelines currently provide applicable sentencing enhancements;

(4) ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutes;

(5) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(6) ensure that the sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

S. 3949

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Illegal Immigration Source Study and Focus Act''.

**SEC. 2. STUDIES AND REPORTS ON ILLEGAL IMMIGRATION FROM MEXICO.**

(a) STUDIES.—Not later than 1 year after the date of the enactment of this Act, and once every 5 years thereafter, the Secretary of State, in cooperation with the Secretary of Homeland Security, shall conduct a study—

(1) to identify the geographic areas in Mexico from which—

(A) large numbers of residents are leaving to enter the United States in violation of Federal immigration law; and

(B) large percentages of the population of such areas are leaving to enter the United States in violation of Federal immigration law; and

(2) to analyze the social, political, and economic conditions in the geographic areas identified under paragraph (1) that contribute to illegal immigration into the United States.

(b) REPORTS.—Not later than 16 months after the date of the enactment of this Act, and every 5 years thereafter, the Secretary of State shall submit to Congress a report that—

(1) describes the results of the study conducted under subsection (a); and

(2) provides recommendations on how the Government of the United States can improve the conditions described in subsection (a)(2).

**SEC. 3. IMMIGRATION IMPACT FOCUS AREAS.**

(a) DESIGNATION.—Based on the results of each study conducted under section 2(a) and subject to subsection (b), the Administrator of the United States Agency for International Development, in consultation with the Secretary of State, the Secretary of Homeland Security, and appropriate officials of the Government of Mexico, shall designate not more than 4 geographic areas within Mexico as Immigration Impact Focus Areas.

(b) POPULATION LIMITS.—An area may not be designated as an Immigration Impact Focus Area under subsection (a) unless the population of such area is—

(1) not less than 0.5 percent of the total population of Mexico; and

(2) not more than 5.0 percent of the total population of Mexico.

(c) DEVELOPMENT ASSISTANCE PLAN.—The Administrator of the United States Agency for International Development, in consultation with the Secretary of State, shall develop a plan to concentrate, to the extent practicable, economic development and humanitarian assistance provided to Mexico in the Immigration Impact Focus Areas designated under subsection (a).

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Ms. SNOWE (for herself and Mr. KERRY):

S. 3950. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for qualified equity investments in certain small businesses; to the Committee on Finance.

Ms. SNOWE. Mr. President, to help start-up small businesses obtain access to capital, today I rise with my colleague Senator KERRY to introduce the Access to Capital for Entrepreneurs Act of 2006 or ACE Act. Our bill would encourage equity investments in qualified small businesses by providing so-called ''angel investors'' with a tax incentive to fund new small business enterprises. Angel investors are high-net-worth individuals who invest in and support start-up companies in the critical early stages of growth.

As Chair of the Senate Committee on Small Business and Entrepreneurship, I meet with prospective entrepreneurs in Maine and across the country and repeatedly hear about their dreams of starting dynamic new businesses. Unfortunately, their hopes can sometimes be dashed when these entrepreneurs encounter barriers to raising the funds they need to get their ''start-up'' enterprises off the ground.

For entrepreneurs and other aspiring small business owners, a self-evident truth since the founding of our country is that it takes money to make money. Our legislation makes that goal a little easier for aspiring small business owners by ensuring that our entrepreneurs have access to venture capital and credit markets so they can continue to drive America's economic growth and job creation. Since small businesses represent 99 percent of all employers and create nearly 75 percent of all net new jobs, Congress must do everything within its power to help them grow and thrive.

Under the Access to Capital for Entrepreneurs Act of 2006, angel investors would be eligible for a 25 percent tax credit to offset up to $500,000 of investments per year. Because the legislation limits the investment per small business to $250,000, which is the amount a typical entrepreneur requires to begin operations, an investor would have to invest in at least two companies to receive the full $500,000 tax credit. To qualify for the tax incentive, the angel investor must have an income of $200,000 over a two-year period, or net worth of $1 million. It's patterned after successful tax credits that have been enacted in 21 states, including Maine.

Recent research shows that venture capitalists are now targeting their investments for larger businesses or for later in a business's development, leaving precious little seed money for new ventures. Today, venture capitalists invest an average of $7 million per deal, an amount that far exceeds the needs of a nascent small business. Moreover, in 2005, of the $21.7 billion invested by venture capitalists, just 3.3 percent was allocated to start-up small businesses.

There were 227,000 angel investors who were active in 2005. Yet there are hundreds of thousands more waiting to be created. IRS statistics show that the ratio of potential to active angel investors is between 7 to 1 and 10 to 1. There is an enormous untapped market of future investors who we can call to help finance emerging small businesses in virtually every sector of the economy.

Our bill would remedy this situation by encouraging more angel investors to fund more of our Nation's smallest businesses. These businesses are critical to the economy, as they generate 60 percent to 80 percent of net new jobs and contribute more than 50 percent of non-farm private-sector output.

In addition, if the provisions of the ACE Act are signed into law, many small businesses that would otherwise fail for lack of adequate resources could grow and expand, creating more jobs for Americans, and further bolstering our Nation's economy. With no incentive, angel investments helped create 198,000 jobs in the United States during 2005. Imagine how many more jobs we could create if we enact the tax credit we are proposing today.

I am committed to supporting our Nation's small business community by increasing its access to capital. The entrepreneurial spirit of our 25 million small businesses dates back to our Nation's founding. From family farms to software development, small businesses are the heart of our economy and the linchpin for the innovation that moves our country forward. Americans who assume the risks and responsibilities inherent in owning and operating a business deserve our praise, admiration and unwavering support.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3950

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Access to Capital for Entrepreneurs Act of 2006''.

**SEC. 2. EQUITY INVESTMENT IN SMALL BUSINESS TAX CREDIT.**

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

**''SEC. 45N. EQUITY INVESTMENT IN SMALL BUSINESS TAX CREDIT.**

''(a) GENERAL RULE.—For purposes of section 38, in the case of a qualified investor, the equity investment in small business tax credit determined under this section for the taxable year is an amount equal to 25 percent of the amount of each qualified equity investment made by the qualified investor during the taxable year.

''(b) CREDIT AMOUNT.—For purposes of determining the small business tax credit under subsection (a)—

''(1) LIMITATION PER QUALIFIED INVESTOR.—The amount of qualified equity investments made by the qualified investor during the taxable year shall not exceed $500,000.

''(2) LIMITATION PER QUALIFIED SMALL BUSINESS.—The amount of qualified equity investments made by the qualified investor in a qualified small business during the taxable year shall not exceed $250,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED INVESTOR.—The term 'qualified investor' means—

''(A) an individual who qualifies as an accredited investor under rules and regulations prescribed by the Commissioner of the Securities and Exchange Commission, or

''(B) a partnership with respect to which all of the partners are individuals who qualify as accredited investors under rules and regulations prescribed by the Commissioner of the Securities and Exchange Commission.

''(2) QUALIFIED EQUITY INVESTMENT.—The term 'qualified equity investment' means the transfer of cash or cash equivalents in exchange for stock or capital interest in a qualified small business.

''(3) QUALIFIED SMALL BUSINESS.—The term 'qualified small business' means a private small business concern (within the meaning of section 3 of the Small Business Act)—

''(A) that meets the applicable size standard (as in effect on January 1, 2005) established by the Administrator of the Small Business Administration pursuant to subsection (a)(2) of such section, and

''(B) has its principal place of business in the United States.

For purposes of this section, all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 qualified small business.

''(d) ACTIVE BUSINESS REQUIREMENT.—

''(1) IN GENERAL.—Holding stock in a qualified small business shall not be treated as a qualified equity investment unless, during substantially all of the qualified investor's holding period for such stock, such qualified small business meets the active business requirements of paragraph (2).

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the requirements of this paragraph are met by a qualified small business for any period if during such period at least 80 percent (by value) of the assets of such qualified small business are used by such qualified small business in the active conduct of 1 or more qualified trades or businesses.

''(B) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of subparagraph (A), if, in connection with any future qualified trade or business, a qualified small business is engaged in—

''(i) start-up activities described in section 195(c)(1)(A),

''(ii) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

''(iii) activities with respect to in-house research expenses described in section 41(b)(4), assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this subparagraph shall be made without regard to whether a qualified small business has any gross income from such activities at the time of the determination.

''(C) QUALIFIED TRADE OR BUSINESS.—For purposes of this paragraph, the term 'qualified trade or business' is as defined in section 1202(e)(3).

''(D) STOCK IN OTHER ENTITIES.—

''(i) LOOK-THRU IN CASE OF SUBSIDIARIES.—For purposes of this subsection, stock and debt in any subsidiary entity shall be disregarded and the parent qualified small business shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

''(ii) PORTFOLIO STOCK OR SECURITIES.—A qualified small business shall be treated as failing to meet the requirements of subparagraph (A) for any period during which more than 10 percent of the value of its assets (in

excess of liabilities) consists of stock or securities in other entities which are not subsidiaries of such qualified small business other than assets described in subparagraph (E)).

''(iii) SUBSIDIARY.—For purposes of this subparagraph, an entity shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such entity.

''(E) WORKING CAPITAL.—For purposes of subparagraph (A), any assets which—

''(i) are held as a part of the reasonably required working capital needs of a qualified trade or business of the qualified small business, or

''(ii) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the qualified small business has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the qualified small business qualify as used in the active conduct of a qualified trade or business by reason of this subparagraph.

''(F) MAXIMUM REAL ESTATE HOLDINGS.—A qualified small business shall not be treated as meeting the requirements of subparagraph (A) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

''(G) COMPUTER SOFTWARE ROYALTIES.—For purposes of subparagraph (A), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

''(e) CERTAIN PURCHASES BY QUALIFIED INVESTOR OF ITS OWN STOCK.—

''(1) REDEMPTIONS FROM QUALIFIED INVESTOR OR RELATED PERSON.—Stock acquired by the qualified investor shall not be treated as a qualified equity investment if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the qualified small business issuing such stock purchased (directly or indirectly) any of its stock from the qualified investor or from a person related (within the meaning of section 267(b) or 707(b)) to the qualified investor.

''(2) SIGNIFICANT REDEMPTIONS.—Stock issued by a qualified small business to a qualified investor shall not be treated as a qualified equity investment if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such qualified small business made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

''(3) TREATMENT OF CERTAIN TRANSACTIONS.—If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any qualified small business, for purposes of subparagraphs (A) and (B), such qualified small business shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

''(f) SPECIAL RULE FOR RELATED PARTIES.—

''(1) IN GENERAL.—No credit shall be allowed under subsection (a) with respect to a qualified equity investment made by a qualified investor in a qualified small business that is a related party to the qualified investor.

''(2) RELATED PARTY.—For purposes of paragraph (1), a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b), or if such persons are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

''(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

''(1) IN GENERAL.—If, at any time during the 3-year period beginning on the date that the qualified equity investment is made by the qualified investor, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

''(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

''(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

''(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

''(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to a qualified equity investment if such investment is sold, transferred, or exchanged by the qualified investor, but only to the extent that such sale, transfer, or exchange is not the direct result of a complete or partial liquidation of the qualified small business in which such qualified equity investment is made.

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

''(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment.

''(i) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(2) CERTIFICATION OF QUALIFIED EQUITY INVESTMENT.—Such regulations shall require that a qualified investor—

''(A) certify that the small business in which the equity investment is made meets the requirements described in subsection (c)(3), and

''(B) include the name, address, and taxpayer identification number of such small business on the return claiming the credit under subsection (a).

''(j) TERMINATION.—This section shall not apply to qualified equity investments made in taxable years beginning after December 31, 2011.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) in the case of a taxpayer, the equity investment in small business tax credit determined under section 45N(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45N. Equity investment in small business tax credit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified equity investments made after December 31, 2006, in taxable years beginning after such date.

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By Mr. BINGAMAN (for himself and Mr. SMITH):

S. 3952. A bill to amend the Internal Revenue Code of 1986 to allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar savings by the self-employed, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today with my colleagues, Senator SMITH and Senator KERRY, to introduce this important legislation that will ensure that more working Americans have a retirement account. This legislation is the result of the collaborative work done by David John of the Heritage Foundation and Mark Iwry of the Retirement Security Project to provide a simple, cost-effective way to increase retirement security for our Nation's workers who currently do not have a retirement plan. The Automatic IRA Act of 2006 will require employers who do not currently sponsor a retirement plan to offer their workers the opportunity to have part of their paycheck to be sent directly to an IRA. This will not only help millions of Americans begin saving for their retirement but will also provide subtle encouragement to employers to sponsor a qualified retirement account such as a SIMPLE or a 401(k).

In 2004, it was estimated that as many as 71 million Americans work for an employer who does not offer them any kind of retirement plan—almost half of all of our country's workers. Without an employer-sponsored retirement plan, many of these workers will not be saving adequately for their retirement. The first steps to addressing this growing inequity are to ensure that all workers have easy access to a retirement account and the ability to have part of their wages go directly from their paycheck into this account. Both of these features have been proven to encourage retirement savings and are imperative if we are going to address our national retirement savings rate.

Under this legislation, all employers with more than 10 employees who do

not sponsor a qualified retirement or pension plan must offer its employees the ability to have wages remitted directly to an automatic IRA through payroll deduction. These employers will not be required to make any contributions to these accounts and will receive a tax credit to offset the administrative costs of remitting part of the employee's wages to the IRA. It is entirely up to the employer as to what IRA options the employees would have. For instance, the employer could decide to remit the funds to the IRA of the employee's choice or the employer could decide to remit the money to the financial institution of his or her choice. The employer will also have a new option—the ability to remit the money to a new, simplified type of IRA, the automatic IRA. A board, similar to the Federal Government's existing Thrift Savings Plan Board, would create standards for these new accounts that must be followed by participating financial service companies. This board will also be responsible for educating the public about the importance of having a qualified retirement account as part of their duties.

Mr. President, it is going to take a bipartisan approach to address our Nation's retirement savings problems. I again want to applaud the efforts made by Mr. John of the Heritage Foundation and Mr. Iwry from the Retirement Security Project in advancing this proposal. It is now up to all of us in this Chamber to follow their example and pass this legislation.

I ask unanimous consent that the material be printed in the RECORD.

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

THE RETIREMENT SECURITY PROJECT

PURSUING UNIVERSAL RETIREMENT SECURITY THROUGH AUTOMATIC IRAS

(Testimony before the Subcommittee on Long-Term Growth and Debt Reduction, Committee on Finance, United States Senate, June 29, 2006)

Chairman Smith, Ranking Member Kerry, and Senator Grassley, we appreciate the opportunity to testify before you. We are submitting our testimony as a single joint statement because we believe strongly in the need for a common strategy to expand retirement savings, and in the importance of approaching these issues in a manner that transcends ideological and partisan differences.

At the request of Committee staff, this written statement focuses on our proposal to expand retirement savings for small business workers—the automatic IRA. We are pleased by the positive reaction the proposal has received and are grateful to our colleagues, including those in government and in various stakeholder organizations, who have contributed to these ideas.

With the looming retirement security crisis facing our country, policy-makers from both parties are focused on ways to strengthen pensions and increase savings. Our proposal for automatic IRAs would provide a relatively simple, cost-effective way to increase retirement security for the estimated 71 million workers whose employers (usually smaller businesses) do not sponsor plans. It would enable these employees to save for retirement by allowing them to have their employers regularly transfer amounts from their paycheck to an IRA.

We are by no means suggesting that the automatic IRA proposal is the only step that should be taken to expand retirement savings for small business workers. In fact, we have long believed in the primacy of employer-sponsored retirement plans as vehicles for pension coverage. Additionally, we continue to advocate strongly for the expansion of pension coverage through automatic features in 401(k) and similar retirement savings plans.

The automatic 401(k) approach makes intelligent use of defaults—the outcomes that occur when individuals are unable or unwilling to make an affirmative choice or otherwise fail to act—to enlist the power of inertia to promote saving. Automating enrollment, escalation of contributions, investment, and rollovers expands coverage in several ways. Enrolling employees in a plan unless they opt out increases significantly the number of eligible employees who participate in the plan. Escalating the amount of the default contribution tends to increase the amount people save over time. Providing for a default investment (which participants can reject in favor of other alternatives) reflecting consensus investment principles such as diversification and asset allocation tends to raise the expected investment return on contributions. Finally, making retention or rollover of benefits rather than consumption the default when an employee leaves a job furthers the long-term preservation of retirement savings for their intended purposes. By helping improve performance under the nondiscrimination standards and generally making plans more effective in providing retirement benefits, the automatic 401(k) can also encourage more employers to sponsor or continue sponsoring plans.

The automatic IRA builds on the success of the automatic 401(k). Moreover, as explained below, we would intend and expect the introduction of automatic IRAs to expand the number of employers that choose to sponsor 401(k) or SIMPLE plans instead of offering only automatic IRAs. But for millions of workers who continue to have no employer plan, the automatic IRA would provide a valuable retirement savings opportunity.

The automatic IRA proposal is set out in the remainder of this written statement.

EXECUTIVE SUMMARY OF PROPOSAL

This testimony proposes an ambitious but practical set of initiatives to expand dramatically retirement savings in the United States—especially to those not currently offered an employer-provided retirement plan. The essential strategy here, as in the case of the automatic 401(k) described above, is to make saving more automatic—and hence easier, more convenient, and more likely to occur. As noted, making saving easier by making it automatic has been shown to be remarkably effective at boosting participation in 401(k) plans, but roughly half of U.S. workers are not offered a 401(k) or any other type of employer-sponsored plan. Among the 153 million working Americans in 2004, over 71 million worked for an employer that did not sponsor a retirement plan of any kind, and another 17 million did not participate in their employer's plan. This testimony explores a new and, we believe, promising approach to expanding the benefits of automatic saving to a wider array of the population: the ''automatic IRA.''

The automatic IRA would feature direct payroll deposits to a low-cost, diversified individual retirement account. Most American employees not covered by an employer-sponsored retirement plan would be offered the opportunity to save through the powerful mechanism of regular payroll deposits that continue automatically (an opportunity now limited mostly to 401(k)-eligible workers).

Employers above a certain size (e.g., 10 employees) that have been in business for at least two years but that still do not sponsor any plan for their employees would be called upon to offer employees this payroll-deduction saving option. These employers would receive a temporary tax credit for simply serving as a conduit for saving, by making regular payroll deposit available to their employees. Employers would receive a small additional tax credit for each employee who participates. Other employers that do not sponsor a plan also would receive the tax credit if they offered payroll deduction saving.

Firms would be provided a standard notice to inform employees of the automatic IRA (payroll-deduction saving) option, and a standard form to elicit from each employee a decision either to participate or to opt out. For most employees, the payroll deductions would be made by direct deposit similar to the very common direct deposit of paychecks to employees' accounts at their financial institutions.

To maximize participation, employers would be provided a standard enrollment module reflecting current best practices in enrollment procedures. The use of automatic enrollment (whereby employees automatically participate at a statutorily specified rate of contribution unless they opt out) would be encouraged in two ways. First, the standard materials provided to employers would be framed so as to present auto enrollment as the presumptive enrollment method, although employer would be able to opt for the alternative of obtaining responses from all employees. Second, employers using auto enrollment to promote participation would not need to obtain responses from unresponsive employees. As discussed earlier, evidence from the 401(k) universe strongly suggests that high levels of participation tend to result not only from auto enrollment but also from the practice of eliciting from each eligible individual an explicit decision to participate or to opt out.

Employers making direct deposit or payroll deduction available would be protected from potential fiduciary liability and from having to choose or arrange default investments. Instead, diversified default investments and a handful of standard, low-cost investment alternatives would be specified by statute and regulation. Payroll deduction contributions would be transferred, at the employer's option, to a central repository, which would remit them to IRAs designated by employees or, absent employee designation, to a default collective retirement account.

Investment management as well as record keeping and other administrative functions would be contracted to private sector financial institutions to the fullest extent practicable. Costs would be minimized through a no-frills design relying on index funds, economies of scale, and maximum use of electronic technologies, and modeled to some degree on the Thrift Savings Plan for federal government employees. Once accounts reached a predetermined balance (e.g., $15,000) sufficient to make them sufficiently profitable to attract the interest of the full range of IRA providers, account owners would have the option to transfer them to IRAs of their choosing.

This approach involves no employer contributions, no employer compliance with qualified plan or ERISA requirements, and, as noted, no employer liability or responsibility for selecting investments, for selecting an IRA provider, or for opening IRAs for employees. It also steers clear of any adverse impact on employer-sponsored plans or on

the incentives designed to encourage firms to adopt new plans. In fact, the indirect intended effect of the proposal would be to draw small employers into the private pension system.

Our proposed approach would seek to capitalize on the rapid trend toward automated or electronic fund transfers. With the spread of new, low-cost technologies, employers are increasingly using automated or electronic systems to manage payroll, including withholding and federal tax deposits, and for other transfers of funds. Many employers use an outside payroll service provider, an online payroll service, or software to perform these functions, including direct deposit of paychecks to accounts designated by employees.

For firms already offering direct deposit, including many that use outside payroll providers, direct deposit to an IRA would entail no additional cost, insofar as these systems have unused fields that could be used for the additional direct deposit destination. Other small businesses still write paychecks by hand, complete the federal tax deposit forms and Forms W–2 by hand, and deliver them to employees and to the local depositary institution. Our proposal would not require these employers to make the transition to automatic payroll processing or use of on-line systems (although it might have the effect of encouraging such transitions).

At the same time, we would not be inclined to deny payroll deduction savings to all employees of employers that do not yet use automatic payroll processing (and we would not want to give small employers an incentive to drop automatic payroll processing). These employees would benefit from the ability to save through regular payroll deposits at the workplace whether the deposits are made electronically or by hand. Employees would still have the advantages of a method of saving that, once begun, continues automatically, that is more likely to begin because of workplace enrollment arrangements and peer group reinforcement, and that often will not reduce take-home pay. To that end, we outline below a strategy to address these situations efficiently and with minimal cost.

For the self-employed and others who have no employer, regular contributions to IRAs would be facilitated in three principal ways: (1) extending the payroll deposit option to many independent contractors who work for employers (other than the very smallest businesses); (2) enabling taxpayers to direct the IRS to make direct deposit of a portion of their income tax refunds; and (3) expanding access to automatic debit arrangements, including on-line and traditional means of access through professional and trade associations that could help arrange for automatic debit and direct deposit to IRAs. Automatic debit essentially replicates the power of payroll deduction insofar as it continues automatically once the individual has chosen to initiate it.

In addition, a powerful financial incentive to contribute might be provided by means of matching deposits to the IRAs. Private financial institutions that maintain the accounts could deliver matching contributions and be reimbursed through tax credits.

THE BASIC PROBLEM AND PROPOSED SOLUTION

In general, the households that tend to be in the best financial position to confront retirement are the 42 percent of the workforce that participate in an employer-sponsored retirement plan. For reasons we have discussed earlier, traditionally, the takeup rate for IRAs (those who contribute as a percentage of those who are eligible) is less than 1 in 10, but the takeup rate for employer-sponsored 401(k) plans tends to be on the order of 7 in 10.

Moreover, as discussed, an increasing share of 401(k) plans are including automatic features that make saving easier and bolster participation. When firms are not willing to sponsor 401(k)-type plans, the automatic IRA proposed here would apply many of the lessons learned from 401(k) plans so that more workers could enjoy automated saving to build assets—but without imposing any significant burden on employers. Employers that do not sponsor plans for their employees could facilitate saving by employees—without sponsoring a plan, without making employer matching contributions, and without complying with plan qualification or fiduciary standards. Employers can help employees save simply by offering to remit a portion of their pay to an IRA, preferably by direct deposit, at little or no cost to the employer.

Such direct deposit savings using IRAs would not and should not replace retirement plans, such as pension, profit sharing, 401(k), or SIMPLE–IRA plans. Indeed, the automatic IRA would be carefully designed so as to avoid any adverse effect on employer sponsorship of ''real'' plans, which must adhere to standards requiring reasonably broad or proportionate coverage of moderate and lower-income workers and various safeguards for employees, and which often involve employer contributions. Instead, payroll-deduction direct deposit savings, as envisioned here, would promote wealth accumulation for retirement by filling in the coverage gaps around employer-sponsored retirement plans. Moreover, as described below, the arrangements we propose are designed to set the stage for small employers to ''graduate'' from offering payroll deduction to sponsoring an actual retirement plan.

EMPLOYEE ACCESS TO PAYROLL DEPOSIT SAVING

The automatic IRA is a means of facilitating direct deposits to a retirement account, giving employees access to the power of direct deposit saving. In much the same way that millions of employees have their pay directly deposited to their account at a bank or other financial institution, and millions more elect to contribute to 401(k) plans by payroll deduction, employees would have the choice to instruct the employer to send an amount they select directly from their paychecks to an IRA. Employers generally would be required to offer their employees the opportunity to save through such direct deposit or payroll-deduction IRAs.

Direct deposit to IRAs is not new. In 1997, Congress encouraged employers not ready or willing to sponsor a retirement plan to at least offer their employees the opportunity to contribute to IRAs through payroll deduction. Both the IRS and the Department of Labor have issued administrative guidance to publicize the payroll deduction or direct deposit IRA option for employers and to ''facilitate the establishment of payroll deduction IRAs.'' This guidance has made clear that employers can offer direct deposit IRAs without the arrangement being treated as employer sponsorship of a retirement plan that is subject to ERISA or qualified plan requirements. However, it appears that few employers actually have direct deposit or payroll-deduction IRAs—at least in a way that actively encourages employees to take advantage of the arrangement. After some years of encouragement by the government, direct deposit IRAs have simply not caught on widely among employers and, consequently, offer little opportunity for employees to save.

With this experience in mind, we propose a new strategy designed to induce employers to offer, and employees to take up, direct deposit or payroll deposit saving.

*Tax credit for employers that serve as conduit for employee contributions*

Under our proposal, firms that do not provide employees a qualified retirement plan, such as a pension, profit-sharing, or 401(k) plan, would be given an incentive (a temporary tax credit) to offer those employees the opportunity to make their own payroll deduction contributions to IRAs using the employers' payroll systems as a conduit. The tax credit would be available to a firm for the first two years in which it offered payroll deposit saving to an IRA, in order to help the firm adjust to any modest administrative costs associated with the ''automatic IRA.'' This automatic IRA credit would be designed to avoid competing with the tax credit available under current law to small businesses that adopt a new employer-sponsored retirement plan.

SMALL BUSINESS NEW PLAN STARTUP CREDIT

Under current law, an employer with 100 or fewer employees that starts a new retirement plan for the first time can generally claim a tax credit for a portion of its startup costs. The credit equals 50 percent of the cost of establishing and administering the plan (including educating employees about the plan) up to $500 per year. The employer can claim the credit of up to $500 for each of the first three years of the plan.

Accordingly, the automatic IRA tax credit could be set, for example, at $50 plus $10 per employee enrolled. It would be capped at, say, $250 or $300 in the aggregate—low enough to make the credit meaningful only for very small businesses, and lower than the $500 three-year credit available under current law for establishing a new employer plan. Employers would be precluded from claiming both the new plan startup credit and the proposed automatic IRA credit; otherwise, somewhat larger employers might have a financial incentive to limit a new plan to fewer than all of their employees in order to earn an additional credit for providing payroll deposit saving to other employees. As in the case of the current new plan startup credit, employers also would be ineligible for the credit if they had sponsored a retirement plan during the preceding three years for substantially the same group of employees covered by the automatic IRA.

Example: Joe employs four people in his auto body shop, and currently does not sponsor a retirement plan for his employees. If Joe chooses to adopt a 401(k) or SIMPLE–IRA plan, he and each of his employees generally can contribute up to $15,000 (401(k)) or $10,000 (SIMPLE) a year, and the business might be required to make employer contributions. Under this scenario, Joe can claim the startup tax credit for 50 percent of his costs over three years up to $500 per year.

Alternatively, if Joe decides only to offer his employees payroll deposit to an IRA, the business will not make employer contributions, and Joe can claim a tax credit for each of the next two years of $50 plus $10 for each employee who signs up to contribute out of his own salary.

Employers with more than 10 employees that have been in business for at least two years and that still do not sponsor any plan for their employees would be called upon to offer employees this opportunity to save a portion of their own wages using payroll deposit. If the employer sponsored a plan designed to cover only a subset of its employees (such as a particular subsidiary, division or other business unit), it would have to offer the payroll deposit facility to the rest of its workforce (i.e., employees not in that business unit) other than employees excluded from consideration under the qualified plan coverage standards (union-represented employees or nonresident aliens)

and those in the permissible qualified plan eligibility waiting period. The arrangement would be structured so as to avoid, to the fullest extent possible, employer costs or responsibilities. The tax credit would be available both to those firms that are required to offer payroll deposit to all of their employees and to the small or new firms that are not required to offer the automatic IRA, but do so voluntarily. The intent would be to encourage, without requiring, the smallest employers to participate.

*Acting as conduit entails little or no cost to employers*

For many if not most employers, offering direct deposit or payroll deduction IRAs would involve little or no cost. Unlike a 401(k) or other employer-sponsored retirement plan, the employer would not be maintaining a plan. First, there would be no employer contributions: employer contributions to direct deposit IRAs would not be required or permitted. Employers willing to make retirement contributions for their employees would continue to do so in accordance with the safeguards and standards governing employer-sponsored retirement plans, such as SIMPLE–IRAs, 401(k)s, and traditional pensions. (The SIMPLE–IRA is essentially a payroll deposit IRA with an employee contribution limit that is in between the IRA and 401(k) limits and with employer contributions, but without the annual reports, plan documents, and most of the other administrative requirements applicable to other employer plans.)

Employer-sponsored retirement plans are the saving vehicles of choice and should be encouraged; the direct deposit IRA is a fallback designed to apply to employees who are not fortunate enough to be covered under an actual employer retirement plan. (As discussed below, it is also intended to encourage more employers to make the decision sooner or later to ''graduate'' to sponsorship of an employer plan.)

Direct deposit or payroll deduction IRAs also would minimize employer responsibilities. Firms would not be required to: comply with plan qualification or ERISA rules; establish or maintain a trust to hold assets (since IRAs would receive the contributions); determine whether employees are actually eligible to contribute to an IRA; select investments for employee contributions; select among IRA providers, or set up IRAs for employees.

Employers would be required simply to let employees elect to make a payroll-deduction deposit to an IRA (in the manner described below, with a standard notice informing employees of the automatic IRA (payroll-deposit saving) option, and a standard form eliciting the employee's decision to participate or to opt out. Employer then would implement deposits elected by employees. Employers would not be required to remit the direct deposits to the IRA provider(s) any faster than the timing of the federal payroll deposits they are required to make. (Those deposits generally are required to be made on a standard schedule, either monthly or twice a week.) Nor would employers be required to remit direct deposits to a variety of different IRAs specified by their employees (as explained below).

A requirement to offer payroll-deduction to an IRA would by no means be onerous. It would dovetail neatly with what employers already do. Employers of course are already required to withhold federal income tax and payroll tax from employees' pay and remit those amounts to the federal tax deposit system. While this withholding does not require the employer to administer an employee election of the sort associated with direct deposit to an IRA, the tax withholding amounts do vary from employee to employee and depend on the way each employee completes IRS Form W–4 (which employers ordinarily obtain from new hires to help the employer comply with income tax withholding). The employee's payroll deposit IRA election might be made on an attachment or addendum to the Form W–4. Because employees' salary reduction contributions to IRAs would ordinarily receive tax-favored treatment, the employer would report on Form W–2 the reduced amount of the employee's taxable wages together with the amount of the employee's contribution.

*Direct deposit; automated fund transfers*

Our proposed approach would seek to capitalize on the rapid trend toward automated or electronic fund transfers. With the spread of new, low-cost technologies, employers are increasingly using automated or electronic systems to manage payroll, including withholding and federal tax deposits, and for other transfers of funds. It is common for employers to retain an outside payroll service provider to perform these functions, including direct deposit of paychecks to accounts designated by employees or contractors. Other employers use an on-line payroll service that offers direct deposit and check printing (or that allows employers to write checks by hand). Still others do not outsource their payroll tax and related functions to a third-party payroll provider but do use readily available software or largely paperless on-line methods to make their federal tax deposits and perhaps other fund transfers, just as increasing numbers of households pay bills and manage other financial transactions on line. (The IRS encourages employers to use its free Electronic Federal Tax Payment System for making federal tax deposits.)

For the many firms that already offer their workers direct deposit, including many that use outside payroll providers, direct deposit to an IRA would entail no additional cost, even in the short term, insofar as the employer's system has unused fields that could be used for the additional direct deposit destination. Other small businesses still write their own paychecks by hand, complete the federal tax deposit forms and Forms W–2 by hand, and deliver them to employees and to the local bank or other depositary institution. Our proposal would not require these employers to make the transition to automatic payroll processing or use of on-line systems (although it might have the beneficial effect of encouraging such transitions).

At the same time, we would not be inclined to deny the benefits of payroll deduction savings to all employees of employers that do not yet use automatic payroll processing (and we would not want to give small employers an incentive to drop automatic payroll processing). These employees would benefit from the ability to save through regular payroll deposits at the workplace whether the deposits are made electronically or by hand. Employees would still have the advantages of tax-favored saving that, once begun, continues automatically, that is more likely to begin because of workplace enrollment arrangements and peer group reinforcement, and need not cause a visible reduction in take-home pay if begun promptly when employees are hired.

Accordingly, we would suggest a three-pronged strategy with respect to employers that do not use automatic payroll processing.

First, a large proportion of the employers that still process their payroll by hand would be exempted under the exception for very small employers described below. As a result, this proposal would focus chiefly on those employers that already offer their employees direct deposit of paychecks but have not used the same technology to provide employees a convenient retirement saving opportunity.

Second, employers would have the ease of ''piggybacking'' the payroll deposits to IRAs onto the federal tax deposits they currently make. The process, including timing and logistics, for both sets of deposits would be the same. Accompanying or appended to the existing federal tax deposit forms would be a similar payroll deposit savings form enabling the employer to send all payroll deposit savings to a single destination. The small employer who mails or delivers its federal tax deposit check and form to the local bank (or whose accountant or financial provider assists with this) would add another check and form to the same mailing or delivery.

Third, as noted, the existing convenient, low-cost on-line system for federal tax deposits would be expanded to accommodate a parallel stream of payroll deduction savings payments.

Since employers making payroll deduction savings available to their employees would not be required to make contributions or to comply with plan qualification or ERISA requirements with respect to these arrangements, the cost to employers would be minimal. They would administer and implement employee elections to participate or to opt out through their payroll systems. On occasion, employers might need to address mistakes or misunderstandings regarding employee payroll deductions and deposit directions. The time and attention required of the employer could generally be expected to be minimized through orderly communications, written or electronic, between employees and employers, facilitated by the use of standard forms that ''piggyback'' on the existing IRS forms such as the W–4 used by individuals to elect levels of income tax withholding.

*Exemption for small and new employers*

As discussed, the requirement to offer payroll deposit to IRAs as a substitute for sponsoring a retirement plan would not apply to the smallest firms (those with up to 10 employees) or to firms that have not been in business for at least two years. However, even small or new firms that are exempted would be encouraged to offer payroll deposit through the tax credit described earlier. (In addition, a possible approach to implementation of this program would be to require payroll deposit for the first year or two only by non-plan sponsors that are above a slightly larger size. This would try out the new system and could identify any ''bugs'' or potential improvements before broader implementation.)

Employees of small employers that are exempted—like other individuals who do not work for an employer that is part of the payroll deposit system outlined here—would be able to use other mechanisms to facilitate saving. These include the ability to contribute by instructing the IRS to make a direct deposit of a portion of an income tax refund, by setting up an automatic debit arrangement for IRA contributions (perhaps with the help of a professional or trade association), and by other means discussed below.

*Employee Participation*

Like a 401(k) contribution, the amount elected by the employee as a salary reduction contribution generally would be tax-favored. It either would be a ''pre-tax'' contribution to a traditional, tax-deductible IRA—deducted or excluded from the employee's gross income for tax purposes—or a contribution to a Roth IRA, which instead receives tax-favored treatment upon distribution. An employee who did not qualify to

make a deductible IRA contribution or a Roth IRA contribution (for example, because of income that exceeds the applicable income eligibility thresholds), would be responsible for making the appropriate adjustment on the employee's tax return. The statute would specify which type of IRA is the default, and the firm would have no responsibility for ensuring that employees satisfied the applicable IRA requirements.

It is often argued that a Roth IRA is the preferred alternative for lowerincome individuals on the theory that their marginal income tax rates are likely to increase as they become more successful economically. The argument is often made also that a Roth is preferable for many others on the assumption that federal budget deficits will cause income tax rates to rise in the future. On either of those assumptions, all other things being equal, the Roth's tax advantage for payouts would likely be more valuable than the traditional IRA's tax deduction for contributions. In addition, the Roth, by producing less taxable income in retirement years, could avoid exposing the individual to a higher rate of incomerelated tax on social security benefits in retirement.

This point of view, however, may well overstate the probability that our tax system, including the federal income tax, social security taxes, and the tax treatment of the Roth IRA, will continue essentially as it is. If, instead of increasing marginal tax rates, we moved to a consumption or value added tax or another system that exempts savings or retirement savings from tax—or if a future Congress eliminated or limited the Roth income tax (and social security benefits tax) advantages—the choice of a Roth over a deductible IRA would entail giving up the proverbial bird in the hand for two in the bush.

Because the automatic IRA proposal would encourage but not require individuals to save, the associated incentives for saving are important. The instant gratification taxpayers can obtain from a deductible IRA might do more to motivate many households than the government's long-term promise of an uncertain tax benefit in an uncertain future. (In addition, by shifting the loss of tax revenues beyond the congressional budget ''window'' period, the Roth also presents a special challenge to a policy of fiscal responsibility.) Accordingly, we are inclined to make the traditional IRA the default but to allow individuals to elect payroll deposits to a Roth.

*Employees covered*

Employees eligible for payroll deposit savings might be, for example, employees who have worked for the employer on a regular basis (including parttime) for a specified period of time and whose employment there is expected to continue. Employers would not be required, however, to offer direct deposit savings to employees they already cover under a retirement plan, including employees eligible to contribute (whether or not they actually do so) to a 401(k)-type salary-reduction arrangement. Accordingly, as discussed, an employer that limits retirement plan coverage to a portion of its workforce generally would be required to offer direct deposit or other payroll deduction saving to the rest of the workforce.

THE AUTOMATIC IRA

*Obstacles to participation*

Even if employers were required to offer direct deposit to IRAs, various impediments would prevent many eligible employees from taking advantage of the opportunity. To save in an IRA, individuals must make a variety of decisions and must overcome inertia. At least five key questions are involved in the process for employees:

a) whether to participate at all;

b) where (with which financial institution) to open an IRA (or, if they have an IRA already, whether to use it or open a new one);

c) whether the IRA should be a traditional or Roth IRA;

d) how much to contribute to the IRA; and

e) how to invest the IRA.

Once these decisions have been made, the individual must still take the initiative to fill out the requisite paperwork (whether on paper or electronically) to participate. Even in 401(k) plans, where decisions (b) and, unless the plan offers a Roth 401(k) option, (c) are not required, millions of employees are deterred from participating because of the other three decisions or because they simply do not get around to enrolling in the plan.

*Overcoming the obstacles to participation: Encouraging automatic enrollment*

These obstacles can be overcome by making participation easier and more automatic, in much the same way as is being done increasingly in the 401(k) universe. An employee eligible to participate in a 401(k) plan automatically has a savings vehicle ready to receive the employee's contributions (the plan sponsor sets up an account in the plan for each participating employee) and benefits from a powerful automatic savings mechanism in the form of regular payroll deduction. With payroll deduction as the method of saving, deposits continue to occur automatically and regularly—without the need for any action by the employee—once the employee has elected to participate. And finally, to jump-start that initial election to participate, an increasing percentage of 401(k) plan sponsors are using ''automatic enrollment.''

Auto enrollment tends to work most effectively when it is followed by gradual escalation of the initial contribution rate. The automatic contribution rate can increase either on a regular, scheduled basis, such as 4 percent in the first year, 5 percent in the second year, etc., or in coordination with future pay raises. But if the default mode is participation in the plan (as it is under auto enrollment), employees no longer need to overcome inertia and take the initiative in order to save; saving happens automatically, even if employees take no action.

Employers offering payroll deposit saving to an IRA should be explicitly permitted to arrange for appropriate automatic increases in the automatic IRA contribution rate. However, an employer facilitating saving in an automatic IRA has far less of an incentive to use automatic escalation (or to set the initial automatic contribution rate as high as it thinks employees will accept) than an employer sponsoring a 401(k) plan. The 401(k) sponsor generally has a financial incentive to encourage nonhighly compensated employees to contribute as much as possible, because their average contribution level determines how much highly compensated employees can contribute under the 401(k) nondiscrimination standards. Because no nondiscrimination standards apply to IRAs, employers have no comparable incentive to maximize participation and contributions to IRAs.

Automatic enrollment, which has typically been applied to newly hired employees (as opposed to both new hires and employees who have been with the employer for some years), has produced dramatic increases in 401(k) participation. This is especially true in the case of lower-income and minority employees. In view of the basic similarities between employee payroll-deduction saving in a 401(k) and under a direct deposit IRA arrangement, the law should, at a minimum, permit employers to automatically enroll employees in direct deposit IRAs.

The conditions imposed by the Treasury Department on 401(k) auto enrollment would apply to direct or payroll deposit IRA auto enrollment as well: all potentially auto enrolled employees must receive advance written notice (and annual notice) regarding the terms and conditions of the saving opportunity and the auto enrollment, including the procedure for opting out, and all employees must be able to opt out at any time.

It is not at all clear, however, whether simply allowing employers to use auto enrollment with direct deposit IRAs will prove to be effective. A key motivation for using auto enrollment in 401(k) plans is to improve the plan's score under the 401(k) nondiscrimination test by encouraging more moderate- and lower-paid (''nonhighly compensated'') employees to participate, which in turn increases the permissible level of tax-preferred contributions for highly compensated employees. This motivation is absent when the employer is merely providing direct deposit IRAs, rather than sponsoring a qualified plan such as a 401(k), because no nondiscrimination standards apply unless there is a plan.

A second major motivation for using 401(k) auto enrollment in many companies is management's sense of responsibility or concern for employees and their retirement security. Many executives involved in managing employee plans and benefits have opted for auto enrollment because they believe far too many employees are saving too little and investing unwisely and need a strong push to ''do the right thing'' and take advantage of the 401(k) plan. This motivation—by no means present in all employers—is especially unlikely to be driving an employer that merely permits payroll deposit to IRAs without sponsoring a retirement plan.

Third, employers might have greater concern about potential employee reaction to auto enrollment in the absence of an employer matching contribution. The high return on employees' investment delivered by the typical 401(k) match helps give confidence to 401(k) sponsors using auto enrollment that they are doing right by their employees and need not worry unduly about potential complaints from workers who failed to read the notice.

Finally, an employer concern that has made some plan sponsors hesitate to use auto enrollment with 401(k) plans might loom larger in the case of auto enrollment with direct deposit IRAs. This is the concern about avoiding a possible violation of state laws that prohibit deductions from employee paychecks without the employee's advance written authorization. Assuming most direct deposit IRA arrangements are not employer plans governed by ERISA, such state laws, as they apply to automatic IRAs, may not be preempted by ERISA because they do not ''relate to any employee benefit plan.'' For reasons such as these, without a meaningful change in the law, most employers that are unwilling to offer a qualified plan today are unlikely to take the initiative to automatically enroll employees in direct deposit IRAs.

*Not requiring employers to use automatic enrollment*

One possible response would be to require employers to use automatic enrollment in conjunction with the direct deposit IRAs (while giving the employers a tax credit and legal protections). The argument for such a requirement would be that it would likely increase participation dramatically while preserving employee choice (workers could always opt out), and that, for the reasons summarized above, employers that do not provide a qualified plan (or a match) are unlikely to use auto enrollment voluntarily.

The arguments against such a requirement include the concern that a workforce that presumably has not shown sufficient demand for a qualified retirement plan to induce the employer to offer one might react unfavorably to being automatically enrolled in direct deposit savings without a matching contribution. (In addition, some small business owners who have only a few employees and work with all of them on a daily basis might take the view that automatic enrollment is unnecessary because of the constant flow of communication between the owner and each employee.)

It is noteworthy, however, that recent public opinion polling shows strong support among registered voters for making saving easier by making it automatic, with 71 percent of respondents favoring a fully automatic 401(k), including automatic enrollment, automatic investment, and automatic contribution increases over time, with the opportunity to opt out at any stage. A vast majority (85 percent) of voters said that if they were automatically enrolled in a 401(k), they would not opt out, even when given the opportunity to do so. In addition, given the choice, 59 percent of respondents preferred a workplace IRA with automatic enrollment to one without.

*Requiring explicit ''Up or Down'' employee elections while encouraging auto enrollment*

An alternative approach that has been used in 401(k) plans and might be particularly well suited to payroll deposit savings is to require all eligible employees to submit an election that explicitly either accepts or declines direct deposit to an IRA. Instead of treating employees who fail to respond as either excluded or included, this ''up or down'' election approach has no default. There is evidence suggesting that requiring employees to elect one way or the other can raise 401(k) participation nearly as much as auto enrollment does. Requiring an explicit election picks up many who would otherwise fail to participate because they do not complete and return the enrollment form due to procrastination, inertia, inability to decide on investments or level of contribution, and the like.

Accordingly, a possible strategy for increasing participation in payroll deposit IRAs would be to require employers to obtain a written (including electronic) ''up or down'' election from each eligible employee either accepting or declining the direct deposit to an IRA. Under this strategy, employers that voluntarily auto enroll their employees in the direct deposit IRAs would be excused from the requirement that they obtain an explicit election from each employee because all employees who fail to elect would be participating. This exemption—treating an employer's use of auto enrollment as an alternative means of satisfying its required-election obligation—would add an incentive for employers to use auto enrollment without requiring them to use it. Any firms that prefer not to use auto enrollment would simply obtain a completed election from each employee, either electronically or on a paper form. And either way—whether the employer chose to use auto enrollment or the required-election approach—participation would likely increase significantly, perhaps even approaching the level that might be achieved if auto enrollment were required for all payroll deposit IRAs.

This combined strategy for promoting payroll deposit IRA participation could be applied separately to new hires and existing employees: thus, an employer auto enrolling new hires would be exempted from obtaining completed elections from all new hires (but not from existing employees), while an employer auto enrolling both new hires and existing employees would be excused from having to obtain elections from both new hires and existing employees.

The required election would not obligate employers to obtain a new election from each employee every year. Once an employee submitted an election form, that employee would not be required to make another election: as in most 401(k) plans, the initial election would continue throughout the year and from year to year unless and until the employee chose to change it. Similarly, an employee who failed to submit an election form and was auto enrolled by default in the payroll deposit IRA would continue to be auto enrolled unless and until the employee took action to make an explicit election.

To maximize participation, employers would receive a standard enrollment module reflecting current best practices in enrollment procedures. A nationwide website with standard forms would serve as a repository of state-of-the-art best practices in and savings education. The use of automatic enrollment (whereby employees automatically are enrolled at a statutorily specified rate of contribution—such as 3% of pay—unless they opt out) would be encouraged in two ways. First, the standard materials provided to employers would be framed so as to present auto enrollment as the presumptive or perhaps even the default enrollment method, although employers would be easily able to opt out in favor of simply obtaining an ''up or down'' response from all employees. In effect, such a ''double default'' approach would use the same principle at both the employer and employee level by auto enrolling employers into auto enrolling employees. Second, as noted, employers using auto enrollment to promote participation would not need to obtain responses from unresponsive employees.

*Compliance and enforcement*

Employers' use of the required-election approach would also help solve an additional problem—enforcing compliance with a requirement that employers offer direct deposit savings. As a practical matter, many employers might question whether the IRS would ever really be able to monitor and enforce such a requirement. Employers may believe that, if the IRS asked an employer why none of its employees used direct deposit IRAs, the employer could respond that it told its employees about this option and they simply were not interested. However, if employers that were required to offer direct deposit savings had to obtain a signed election from each eligible employee who declined the payroll deposit option, employers would know that the IRS could audit their files for each employee's election. This by itself would likely improve compliance.

In fact, a single paper or e-mail notice could advise the employee of the opportunity to engage in payroll deduction savings and elicit the employee's response. The notice and the employee's election might be added or attached to IRS Form W–4. (As noted, the W–4 is the form an employer ordinarily obtains from new hires and often from other employees to help the employer comply with its income tax—withholding obligations.) If the employer chose to use auto enrollment, the notice would also inform employees of that feature (including the default contribution level and investment and the procedure for opting out), and the employer's records would need to show that employees who failed to submit an election were in fact participating in the payroll deduction savings.

Employers would be required to certify annually to the IRS that they were in compliance with the payroll deposit savings requirements. This might be done in conjunction with the existing IRS Form W–3 that employers file annually to transmit Forms W–2 to the government. Failure to offer payroll deposit savings would ultimately need to be backed up by an appropriate sanction, such as the threat of civil monetary penalties or an excise tax.

*Portability of savings*

IRAs are inherently portable. Unlike a 401(k) or other employer plan, an IRA survives and functions independently of the individual saver's employment status. Thus the IRA owner is not at risk of forfeiting or losing the account or suffering an interruption in the ability to contribute when changing or losing employment. As a broad generalization, the automatic IRAs outlined here presumably would be freely transferable to and with other IRAs and qualified plans that permit such transfers. (However, as discussed below, the investment limitations and other cost-containment features of these IRAs raise the issue of whether transferability to other types of vehicles should be subject to restrictions.)

MAKING A SAVINGS VEHICLE AVAILABLE

Most current direct deposit arrangements use a payroll-deduction savings mechanism similar to the 401(k), but, unlike the 401(k), do not give the employee a ready-made vehicle or account to receive deposits. The employee must open a recipient account and must identify the account to the employer. However, where the purpose of the direct deposit is saving, it would be useful to many individuals who would rather not choose a specific IRA to have a ready-made fallback or default account available for the deposits.

Under this approach, modeled after the SIMPLE-IRA, which currently covers an estimated 2 million employees, individuals who wish to direct their contributions to a specific IRA would do so. The employer would follow these directions as employers ordinarily do when they make direct deposits of paychecks to accounts specified by employees. At the same time, the employer would also have the option of simplifying its task by remitting all employee contributions in the first instance to IRAs at a single private financial institution that the employer designates. However, even in this case, employees would be able to transfer the contributions, without cost, from the employer's designated financial institution to an IRA provider chosen by the employee.

By designating a single IRA provider to receive all contributions, the employer could avoid the potential administrative hassles of directing deposits to a multitude of different IRAs for different employees, while employees would be free to transfer their contributions from the employer's designated institution to an IRA provider of their own choosing. Even this approach, though, still places a burden on either the employer or the employee to choose an IRA. For many small businesses, the choice might not be obvious or simple. In addition, the market may not be very robust because at least some of the major financial institutions that provide IRAs may well not be interested in selling new accounts that seem unlikely to grow enough to be profitable within a reasonable time. Some of the major financial firms appear to be motivated at least as much by a desire to maximize the average account balance as by the goal of maximizing aggregate assets under management. They therefore may shun small accounts that seem to lack much potential for rapid growth.

The current experience with automatic rollover IRAs is a case in point. Firms are required to establish these IRAs as a default vehicle for qualified plan participants whose employment terminates with an account balance of not more than $5,000 and who fail to provide any direction regarding rollover or

other payout. The objective is to reduce leakage of benefits from the tax-favored retirement system by stopping involuntary cashouts of account balances between $1,000 and $5,000. (Plan sponsors continue to have the option to cash out balances of up to $1,000 and to retain in the plan account balances between $1,000 and $5,000 instead of rolling them over to an IRA.) Because plan sponsors are required to set up IRAs only for ''unresponsive'' participants—those who fail to give instructions as to the disposition of their benefits—these IRAs are presumed to be less likely than other IRAs are to attract additional contributions. Accordingly, significant segments of the IRA provider industry have not been eager to cater to this segment of the market. As a result, plan sponsors have tended to reduce their cashout level from $5,000 to $1,000 so that new IRAs would not have to be established.

For somewhat similar reasons, IRA providers might expect payroll deposit IRAs to be less profitable than other products. As a result, employers and employees might well find that providers are not marketing to them aggressively and that the array of payroll deposit IRA choices is comparatively limited.

The prospect of tens of millions of personal retirement accounts with relatively small balances likely to grow relatively slowly suggests that the market may need to be encouraged to develop widely available low-cost personal accounts or IRAs. Otherwise, for ''small savers,'' fixed-cost investment management and administrative fees may consume too much of the earnings on the account and potentially even erode principal.

*A standard default account*

Accordingly, to facilitate saving and minimize costs, we believe that a strong case can be made for a default IRA that would be automatically available to receive direct deposit contributions without requiring either the employee or employer to choose among IRA providers and without requiring the employee to take the initiative to open an IRA. Under this approach, for the convenience of both employees and employers, those who wish to save but have no time or taste for the process of locating and choosing an IRA would be able to use a standard default, or automatic, account. If neither the employer nor the employee designated a specific IRA provider, the contributions would go to a personal retirement account within a plan that would in some respects resemble the federal Thrift Savings Plan (the 401(k)-type retirement savings plan that covers federal government employees).

These standard default accounts would be maintained and operated by private financial institutions under contract with the federal government. To the fullest extent practicable, the private sector would provide the investment funds, investment management, record keeping, and related administrative services. To serve as a default account for direct deposits that have not been directed elsewhere by employers or employees, an account need not be maintained by a governmental entity. Given sufficient quality control and adherence to reasonably uniform standards, various private financial institutions could contract to provide the default accounts, on a collective or individual institution basis, more or less interchangeably—perhaps allocating customers on a geographic basis or in accordance with other arrangements based on providers' capacity. These fund managers could be selected through competitive bidding. Once individual default accounts reached a predetermined balance (e.g., $15,000) sufficient to make them potentially profitable for many private IRA providers, account owners would have the option to transfer them to IRAs of their choosing.

*Cost containment*

Both the direct deposit IRAs expressly selected by employees and employers and the standardized direct deposit IRAs that serve as default vehicles would be designed to minimize the costs of investment management and account administration. It should be feasible to realize substantial cost savings through index funds, economies of scale in asset management and administration, uniformity, and electronic technologies.

In accordance with statutory guidelines for all direct deposit IRAs, government contract specifications would call for a no-frills approach to participant services in the interest of minimizing costs. By contrast to the wide open investment options provided in most current IRAs and the high (and costlier) level of customer service provided in many 401(k) plans, the standard account would provide only a few investment options (patterned after the Thrift Savings Plan, if not more limited), would permit individuals to change their investments only once or twice a year, and would emphasize transparency of investment and other fees and other expenses.

Specifically, costs of direct deposit IRAs might be reduced by federal standards that, to the extent possible,

Exclude brokerage services and retail equity funds from the investment options available under the IRA.

Limit the number of investment options under the IRA.

Allow individuals to change their investments only once or twice per year.

Specify a low-cost default investment option and provide that, if any of an individual's account balance is invested in the default option, all of it must be.

Prohibit loans (IRAs do not allow them in any event) and perhaps limit preretirement withdrawals.

Limit access to customer service call centers.

Preclude commissions.

Make compliance testing unnecessary.

Give account owners only a single account statement per year (especially if daily valuation is built into the system and is available to account owners).

Encourage the use of electronic and other new technologies (including enrollment on a web site) for fund transfers, record keeping, and communications among IRA providers, participating employees, and employers to reduce paperwork and cost. Electronic administration has considerable potential to cut costs.

The availability to savers of a major low-cost personal account alternative in the form of the standard account may even help, through market competition, to drive down the costs and fees of IRAs offered separately by private financial institutions. Through efficiencies associated with collective investment and greater uniformity, the standard account should help move the system away from the retail-type cost structure characteristic of current IRAs. It should also help create a broad infrastructure of individual savings accounts that would cover most of the working population.

In conjunction with these steps, Congress and the regulators may be able to do more to require simplified, uniform disclosure and description of IRA investment and administrative fees and charges (building on previous work by the Department of Labor relating to 401(k) fees). Such disclosure should help consumers compare costs and thereby promote healthy price competition.

Another approach would begin by recognizing the trade-off between asset management costs and investment types. As a broad generalization, asset management charges tend to be low for money market funds, certificates of deposit, and certain other relatively low-risk, lower-return investments that generally do not require active management. However, it appears that limiting individual accounts to these types of investments would be unnecessarily restrictive. As discussed below (under ''Default Investment Fund''), passively managed index funds, such as those used in the Thrift Savings Plan, are also relatively inexpensive.

A very different approach to cost containment would be to impose a statutory or regulatory limitation on investment management and administrative fees that providers could charge. One example is the United Kingdom's limit on permissible charges for management of ''stakeholder pension'' accounts—an annual 150 basis point fee cap for five years that is scheduled to drop to 100 basis points thereafter. As another and more limited example, the U.S. Department of Labor has imposed a kind of limitation on fees charged by providers of automatic rollover IRAs established by employers for terminating employees who fail to provide any direction regarding the disposition of account balances of up to $5,000. Labor regulations provide a fiduciary safe harbor for auto rollover IRAs that preserve principal and that do not charge fees greater than those charged by the IRA provider for other IRAs it provides.

Presumably, a mandatory limit would give rise to potential cross-subsidies from products that are free of any limit on fees to the IRAs that are subject to the fee limit—a result that could be viewed either as an inappropriate distortion or as a necessary and appropriate allocation of resources. We would view a mandatory limit as a last resort, preferring the market-based strategies outlined above.

*Default investment fund*

Both the IRAs offered independently by private financial institutions and explicitly selected by employees or employers and the default IRAs would serve the important purpose of providing low-cost professional asset management to millions of individual savers, presumably improving their aggregate investment results. To that end, all of these accounts would offer a similar, limited set of investment options, including a default investment fund in which deposits would automatically be invested unless the individual chose otherwise. This default investment would be a highly diversified ''target asset allocation'' or ''life-cycle'' fund comprised of a mix of equities and fixed income or stable value investments, and probably relying heavily on index funds. (The life-cycle funds recently introduced into the federal Thrift Savings Plan are one possible model.) A portion or all of the fixed income component could be comprised of Treasury inflation protected securities (''TIPS'') to protect against the risk of inflation.

The mix of equities and fixed income would be intended to reflect the consensus of most personal investment advisers, which emphasizes sound asset allocation and diversification of investments—including exposure to equities (and perhaps other assets that have higher-risk and higher-return characteristics), at least given the foundation of retirement income already delivered through Social Security and assuming the funds will not shortly be needed for expenses. The use of index funds would avoid the costs of active investment management while promoting wide diversification.

This default investment would actually consist of several different funds, depending on the individual's age, with the more conservative investments (such as those relying

more heavily on TIPS) applicable to older individuals who are closer to the time when they might need to use the funds. Individuals who selected the default fund or were defaulted into it would have their account balances entirely invested in that fund. However, they would be free to exit the fund at specified times and opt for a different investment option among those offered within the IRA.

The standard automatic (default) investment would also serve two other key purposes. It would encourage employee participation in direct deposit savings by enabling employees who are satisfied with the default to simplify what may be the most difficult decision they would otherwise be required to make as a condition of participation (i.e., how to invest). Finally, the standard default investment should encourage more employers to use automatic enrollment (thereby boosting employee participation) by saving them from having to choose a default investment. This, in turn, would make it easier to protect employers from responsibility for IRA investments, especially employers using automatic enrollment (as discussed below).

We would not fully specify the default investment by statute. It is desirable to maintain a degree of flexibility in order to reflect a consensus of expert financial advice over time. Accordingly, general statutory guidelines would be fleshed out at the administrative level after regular comment by and consultation with private-sector investment experts.

An additional and major design issue is whether the standard, limited set of investment options for payroll deposit IRAs should be only a minimum set of options in each IRA, so that the IRA provider would be permitted to provide any additional options it wished. Limiting the IRAs to these specified options would best serve the purposes of containing costs, improving investment results for IRA owners in the aggregate, and simplifying individuals' investment choices. At the same time, such restrictions would constrain the market, potentially limit innovation, and limit choice for individuals who prefer other alternatives.

One of the ways to resolve this tradeoff would be to limit direct deposit IRAs to the prescribed array of investment options without imposing any comparable limits on other IRAs, and to allow owners of direct deposit IRAs (including default IRAs) to transfer or roll over their account balances between the two classes of accounts. Under this approach, the owner of a direct deposit IRA could transfer the account balance to other (unrestricted) IRAs that are willing to accept such transfers (but perhaps only after the account balance reaches a specified amount that would no longer be unprofitable to most IRA providers). While such a transfer to an unrestricted IRA would deprive the owner of the cost-saving advantages of the no-frills, limited-choice model, such a system would still enable individuals to retain the efficiencies and cost protection associated with the standard low-cost model if they so choose.

*Employers protected from any risk of fiduciary liability*

Employers traditionally have been particularly concerned about the risk of fiduciary liability associated with their selection of retirement plan investments.

This concern extends to the employer's designation of default investments that employees are free to decline in favor of alternative investments. In the IRA universe, employers transferring funds to automatic rollover IRAs and employer-sponsored SIMPLE-IRAs retain a measure of fiduciary responsibility for initial investments.

By contrast, under our proposal, employers making direct deposits would be insulated from such potential liability. These employers would have no liability or fiduciary responsibility with respect to the manner in which direct deposits are invested in default IRAs or in nondefault IRAs (whether selected by the employer or the employee), nor would employers be exposed to potential liability with respect to any employee's choice of IRA provider or type of IRA. This protection of employers is facilitated by statutory designation of standard investment types that reduces the need for continuous professional investment advice. To protect workers against inappropriate IRA providers or inappropriate employer selection of IRA providers while continuing to insulate employers from fiduciary responsibility, employers could be precluded from imposing a particular IRA provider on its employees other than the government-contracted default IRA or could be constrained to choose among an approved list of providers based on capital adequacy, soundness, and other criteria.

*Public opinion polling*

Recent public opinion polling has shown overwhelming support for payroll deduction direct deposit saving. Among registered voters surveyed, 83 percent of respondents said they would be agreeable to having their employer offer to sign them up for an IRA and allow them to contribute to it through direct deposit of a small amount from their paycheck to help them save for retirement. Similarly, 79 percent of registered voters expressed support (and 54 percent expressed ''strong'' support) for giving taxpayers the option to have part of their income tax refund deposited into a retirement savings account such as an IRA by just checking a box on their tax return.

In addition, the polling shows very strong support for a requirement that goes far beyond our proposal, that every company offer its employees some kind of retirement plan—such as a pension or 401(k), or at least an IRA to which employees could contribute. Among registered voters surveyed in August 2005, 77 percent supported such a requirement (and 59 percent responded that they were ''strongly'' in support). As discussed, the approach described in this paper would not require employers to offer their employees retirement plans, but would give firms a financial incentive to offer their employees access to payroll deduction as a convenient and easy means of saving, and would require firms above a certain size and maturity to extend this offer to their employees.

THE IMPORTANCE OF PROTECTING EMPLOYER PLANS

Employer-sponsored pension, profit-sharing, 401(k), and other plans can be particularly effective—more so than IRAs—in accumulating benefits for employees. As noted earlier, the participation rate in 401(k)s, for example, tends to range from two thirds to three quarters of eligible employees, in contrast to IRAs, in which fewer than 1 in 10 eligible individuals participates. Employer plans tend to be far more effective than IRAs at providing coverage because of a number of attributes: for one thing, pension and profit-sharing plans, for example, are funded by employer contributions that automatically are made for the benefit of eligible employees without requiring the employee to take any initiative in order to participate. Second, essentially all tax-qualified employer plans must abide by standards that either seek to require reasonably proportionate coverage of rank and-file workers or give the employer a distinct incentive to encourage widespread participation by employees. This encouragement typically takes the form of both employer-provided retirement savings education efforts and employer matching contributions. The result is that the naturally eager savers, who tend to be in the higher tax brackets, tend to subsidize or bring along the naturally reluctant savers, who often are in the lowest (including zero) tax brackets.

Employer-sponsored retirement plans also have other features that tend to make them effective in providing or promoting coverage. As noted, the proposal outlined here seeks to transplant some of these features to the IRA universe. These include the automatic availability of a saving vehicle, the use of payroll deduction (which continues automatically once initiated), matching contributions (further discussed below), professional investment management, and peer group reinforcement of saving behavior.

The automatic IRA must thus be designed carefully to avoid competing with or crowding out employer plans and to avoid encouraging firms to drop or reduce the employer contributions that many make to plan participants. Owners and others who control the decision whether to adopt or continue maintaining a retirement plan for employees should continue to have incentives to sponsor such plans. The ability to offer employees direct deposit to IRAs should be designed so that it will not prompt employers to drop, curtail, or refrain from adopting retirement plans.

Probably the single most important protection for employer plans is to set maximum permitted contribution levels to the automatic IRA so that they will be sufficient to meet the demand for savings by most households but not high enough to satisfy the appetite for tax-favored saving of business owners or decision-makers. The average annual contribution to a 401(k) plan by a nonhighly compensated employee is somewhat greater than $2,000, and average annual 401(k) contributions by employees generally tend to be on the order of 7 percent of pay. A $3,000 contribution is 7.5 percent of pay for a family earning $40,000, and 6 percent of pay for a family earning $50,000.

Yet IRA contribution limits are already higher than these contribution levels. IRAs currently allow a married couple to contribute up to $8,000 ($4,000 each) on a tax-favored basis, and an additional $1,000 ($500 each) if they are age 50 or older. By 2008, these figures are scheduled to rise to $10,000 plus $2,000 ($1,000 each) for those age 50 or older. These amounts—the current $9,000 a year for those age 50 and over ($8,000 for others) and the post-2007 $12,000 annual amount for those age 50 and over ($10,000 for others)—may well be enough to satisfy the desire of many small-business owners for tax-favored retirement savings. Even some small-business owners that might consider saving somewhat more than $10,000 or $12,000 per year might well conclude that they are better off not incurring the cost of making contributions and providing a plan for their employees because the net benefit to them of having a plan for employees is not greater than the net benefit of simply saving through IRAs and giving their employees access to IRAs.

Accordingly, at the most, payroll deposit IRAs should not permit contributions above the current IRA dollar limits, and could be limited to a lower amount such as $3,000. (A 3% of pay contribution would remain below $3,000 for employees whose compensation did not exceed $100,000.) Imposing a lower limit on the payroll deduction IRA would reduce to some degree the risk that employees will exceed the maximum IRA dollar contribution limit because of auto enrollment, combined with possible other contributions to an IRA. That is already a risk under current

law, but the automatic nature of auto enrollment increases the risk, especially if auto escalation is implemented. There is a tradeoff between the desirability of limiting the contribution amount (to mitigate both this risk and the risk of competing with employer plans) and the simplicity of using an existing vehicle (the IRA) ''as is''.

In any event, the employee—not the employer—would be responsible for monitoring any of all of their IRA contributions to comply with the maximum limit (in part because employees can contribute on their own and through multiple employers). The ultimate reconciliation would be made by the individual when filing the federal income tax return.

In addition, the automatic IRA should be designed to avoid reducing ordinary employees' incentives to contribute to employer-sponsored plans such as 401(k)s. If workers perceive a program such as direct deposit savings to IRAs as a more attractive destination for their contributions than an employer-sponsored plan (for example, because of better matching, tax treatment, investment options, or liquidity), it could unfortunately divert employee contributions from employer plans. This in turn could have a destabilizing effect by making it difficult for employers to meet the nondiscrimination standards applicable to 401(k)s and other plans and therefore potentially discouraging employers from continuing the plans or their contributions. While a detailed discussion of these points is beyond the scope of this paper, it is important to maintain a relationship between IRAs and employer-sponsored retirement plans that preserves and protects the employer plans.

*Automatic payroll deduction can promote marketing and adoption of employer plans*

Our approach is designed not only to avoid causing any reduction or contraction of employer plans, but actually to promote expansion of employer plans. Consultants, third-party administrators, financial institutions, and other plan providers could be expected to view this proposal as providing a valuable new opportunity to market 401(k)s, SIMPLE-IRAs and other tax-favored retirement plans to employers. Firms that, under this proposal, were about to begin offering their employees payroll deduction saving or had been offering their employees payroll deduction saving for a year or two could be encouraged to ''trade up'' to an actual plan such as a 401(k) or SIMPLE-IRA.

Especially because these plans can now be purchased at very low cost, it would seem natural for many small businesses to graduate from payroll deduction savings and complete the journey to a qualified plan in order to obtain the added benefits in terms of recruitment, employee relations, and larger tax-favored saving opportunities for owners and managers.

The following compares the maximum annual tax-favored contribution levels for IRAs, SIMPLE-IRA plans and 401(k) plans in effect for 2006:

| | IRA | SIMPLE-IRA | 401(k) |
|---|---|---|---|
| Under age 50 | $4,000 per spouse ($5,000 after 2007) | $10,000 | $15,000 |
| Age 50 and above | $4,500 per spouse ($6,000 after 2007) | $12,000 | $20,000 |

In addition, as noted, small employers that adopt a new plan for the first time are entitled to a tax credit of up to $500 each year for three years. As discussed, the proposed tax credit for offering payroll deposit would be smaller, so as to maintain the incentive for employers to go beyond the payroll deduction or direct deposit IRA and adopt an actual plan such as a SIMPLE, 401(k), or other employer plan.

ENCOURAGING CONTRIBUTIONS BY NONEMPLOYEES

The payroll deposit system outlined thus far would not automatically cover self-employed individuals, employees of the smallest or newest businesses that are exempt from any payroll deposit obligation, or certain unemployed individuals who can save. A strategy centered on automatic arrangements can also make it easier for these people to contribute to IRAs.

*Encouraging automatic debit arrangements*

For individuals who are not employees or who otherwise lack access to payroll deduction, automatic debit arrangements can serve as a counterpart to automatic payroll deduction. Automatic debit enables individuals to spread payments out over time and to make payments on a regular and timely basis by having them automatically charged to and deducted from an account—such as a checking or savings account or credit card—at regular intervals on a set schedule. The individual generally gives advance authorization to the payer that manages the account or the recipient of the payment, or both. The key is that, as in the case of payroll deduction, once the initial authorization has been given, regular payments continue without requiring further initiative on the part of the individual. For many consumers, automatic debit is a convenient way to pay bills or make payments on mortgages or other loans without having to remember to make each payment when due and without having to write and mail checks.

Similarly, as an element of an automatic IRA strategy, automatic debit can facilitate saving while reducing paperwork and cutting costs. For example, households can be encouraged to sign up on-line for regular automatic debits to a checking account or credit card that are directed to an IRA or other saving vehicle. With on-line sign-up and monitoring, steps can be taken to familiarize more households with automatic debit arrangements and, via Internet websites and otherwise, to make those arrangements easier to set up and use as a mechanism for saving in IRAs.

*Facilitating automatic debit iras through professional or trade associations*

Professional and trade associations could facilitate the establishment of IRAs and the use of automatic debit and direct deposit to the IRAs. Independent contractors and other individuals who do not have an employer often belong to such an association. The association, for example, might be able to make saving easier for those members who wish to save by making available convenient arrangements for automatic debit of members' accounts. Association websites can make it easy for members to sign up on line, monitor the automatic debit savings, and make changes promptly when they wish to. Although such associations generally lack the payroll-deduction mechanism that is available to employers, they can help their members set up a pipeline involving regular automatic deposits (online or by traditional means) from their personal bank or other financial accounts to an IRA established for them.

*Facilitating direct deposit of income tax refunds to IRAs*

Another major element of a strategy to encourage contributions outside of employment would be to allow taxpayers to deposit a portion of their income tax refunds directly into an IRA by simply checking a box on their tax returns.

Currently, the IRS allows direct deposits of refunds to be made to only one account. This all-or-nothing approach discourages many households from saving any of the refund because at least a portion of the refund is often needed for immediate expenses. Allowing households instead to split their refunds to deposit a portion directly into an IRA could make saving simpler and, thus, more likely.

The Bush administration has supported divisible refunds in its last three budget documents; however, the necessary administrative changes have yet to be implemented. Since federal income tax refunds total nearly $230 billion a year (more than twice the estimated annual aggregate amount of net personal savings in the United States), even a modest increase in the proportion of refunds saved every year could bring about a significant increase in savings.

*Extending direct deposit to independent contractors*

Millions of Americans are self-employed as independent contractors. Many of these workers receive regular payments from firms, but because they are not employees, they are not subject to income tax or payroll tax withholding. These individuals might be included in the direct deposit system by giving them the right to request that the firm receiving their services direct deposit into an IRA a specified portion from the compensation that would otherwise be paid to them.

Compared to writing a large check to an IRA once a year, this approach has several potential advantages to independent contractors, which might well encourage them to save. These include the ability to commit themselves to save a portion of their compensation before they receive it (which, for some people, makes the decision to defer consumption easier); the ability to avoid having to make an affirmative choice among various IRA providers; remittance of the funds by the firm by direct deposit to the IRA; and, where payments are made to the independent contractor on a regular basis, an arrangement that, like regular payroll with holdings for employees, automatically continues the pattern of saving through repeated automatic payroll deductions unless and until the individual elects to change.

In many cases, the independent service provider will not have a sufficient connection to a firm that receives the services, or both the independent contractor and the firm will be unwilling to enter into a payroll deposit type of arrangement. In such instances, the independent contractor could contribute to an IRA using automatic debit (as discussed above) or by sending together with the estimated taxes that generally are due four times a year.

*Matching deposits as a financial incentive*

A powerful financial incentive for direct deposit saving by those who are not in the higher tax brackets (and who therefore derive little benefit from a tax deduction or exclusion) would be a matching deposit to their direct deposit IRA. One means of delivering such a matching deposit would be via the bank, mutual fund, insurance carrier, brokerage firm, or other financial institution that provides the direct deposit IRA. For example, the first $500 contributed to an IRA by an individual who is eligible to make deductible contributions to an IRA might be

matched by the private IRA provider on a dollar-for-dollar basis, and the next $1,000 of contributions might be matched at the rate of 50 cents on the dollar. The financial provider would be reimbursed for its matching contributions through federal income tax credits.

Recent evidence from a randomized experiment involving matched contributions to IRAs suggests that a simple matching deposit to an IRA can make individuals significantly more likely to contribute and more likely to contribute larger amounts.

Matching contributions—similar to those provided by most 401(k) plan sponsors—not only would help induce individuals to contribute directly from their own pay, but also, if the match were automatically deposited in the IRA, would add to the amount saved in the IRA. The use of matching deposits, however, would make it necessary to implement procedures designed to prevent gaming—contributing to induce the matching deposit, then quickly withdrawing those contributions to retain the use of those funds. Among the possible approaches would be to place matching deposits in a separate subaccount subject to tight withdrawal rules and to impose a financial penalty on early withdrawals of matched contributions.

American households have a compelling need to increase their personal saving, especially for long-term needs such as retirement. This paper proposes a strategy that would seek to make saving more automatic—hence easier, more convenient, and more likely to occur—largely by adapting to the IRA universe practices and arrangements that have proven successful in promoting 401(k) participation. In our view, the automatic IRA approach outlined here holds considerable promise of expanding retirement savings for millions of workers.

Mr. KERRY. Mr. President, I am pleased to join my colleagues Senators SMITH, CONRAD, and BINGAMAN in introducing the Women's Retirement Security Act of 2006. This legislation comes on the heels of the passage of the Pension Protection Act of 2006, which makes improvements to the defined benefit pension plan system.

The legislation that we are introducing today builds upon that legislation and focuses on defined contribution plans. Our pension system has shifted away from defined benefit plans to defined contribution plans. We should make it easier for employers to offer defined contribution plans and for individuals to participate in these plans.

At a time when we have a negative savings rate that is the lowest since the Great Depression, we should provide appropriate incentives to help individuals save for retirement. In an effort to achieve this, the Women's Retirement Security Act of 2006 focuses on increasing retirement savings, the preservation of income, equity in divorce, improving financial literacy, and encouraging small businesses to enter and remain in the employer retirement plan system.

This legislation increases savings by allowing employees to contribute a portion of their paycheck to an individual retirement account (IRA) if their employer does not offer a pension plan. Automatic IRAs will help the 71 million workers that do not have employer-sponsored plans. It is a low-cost, sensible solution that provides a stepping stone toward employer-sponsored retirement plans. More workers are likely to contribute to an IRA if the contribution is deducted from their payroll. Automatic IRAs will help combat the inertia that is a factor in our low savings rate. The bill also provides a tax credit to help small businesses with the cost of implementation.

Women are often placed at a disadvantage in our retirement system because they cycle in and out of the work force. The Women's Retirement Security Act of 2006 addresses this issue by requiring employers that offer defined contribution plans to cover part-time employees that meet specific requirements.

Pension coverage needs to improve, particularly for small businesses. In 2004, only 26 percent of workers at firms with fewer than 25 employees participated in pension plans. Progress has been made on providing coverage to small businesses. Currently, more than 19 million workers are covered by small business retirement plans, but more than 36 million Americans work for firms with less than 25 employees.

The Women's Retirement Security Act of 2006 provides a start-up credit for new small business retirement contributions. In addition, it removes rules that discourage small employers from adopting deferral only plans.

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By Mr. KERRY:

S. 3953. A bill to foster development of minority-owned small businesses; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, I rise today to introduce the Minority Entrepreneurship Development Act of 2006. It's especially appropriate that this bill be introduced during Hispanic Heritage Month. Millions of Latino Americans during this time reflect on their place in this country and the positive contributions they have made here. One area where we can be certain that the Hispanic community has made a significant contribution is in business. The principled and strong leadership of Hispanic Americans can be seen in corporate boards and sole proprietorships alike. As a Nation, we must support the development of the next generation of business leaders within the Latino community. I believe that this legislation will help in that effort.

This legislation is aimed at giving potential and burgeoning entrepreneurs the tools they need to realize their goals. Whether those goals include creating a small business that will employ people from the community or taking a small business and making it into a major enterprise, it's imperative that we develop the tools to help minority small business owners succeed.

I want to take a moment and tell you why it's so important to expand the numbers of entrepreneurs in the minority community. As the Ranking Member on the Senate Committee on Small Business and Entrepreneurship, I have received firsthand testimony and countless reports documenting the positive economic impact that occurs when we foster entrepreneurship in underserved communities. There are signs of significant economic returns when minority businesses are created and are able to grow in size and capacity. Between 1987 and 1997, revenue from minority owned firms rose by 22.5 percent, an increase equivalent to an annual growth rate of 10 percent. Employment opportunities within minority owned firms increased by 23 percent during that same period. There is a clear correlation between the growth of minority owned firms and the economic viability of the minority community.

Although, these economic numbers tell a significant part of the story, they don't tell the whole story of what these firms mean to the minority communities they serve and represent. Many of these business leaders are first generation immigrants; many are first generation business owners and many represent, for those in their communities, what hard work, determination and patience can do.

We must encourage those kinds of values in our minority communities and, quite frankly, in our nation as a whole. For generations, millions have come to our shores in search of a better life. Millions of others were brought here by force and for years were not given a voice in how their lives would turn out. But how ever we got here, we all have become branches of this great tree we call America. This tree is still nourished by roots planted by our forefathers more than 200 years ago. Those men and women planted the roots of hard work, innovation, faith and risk taking.

When you think about it, those words are the perfect description of an entrepreneur. It is the spirit of entrepreneurship that has made our nation great. And that is why it is absolutely imperative that we continue to support and develop that spirit in our minority communities. To that end, this legislation provides several tools to help minority entrepreneurs as they develop and grow their businesses.

First, this legislation will create an Office of Minority Small Business Development. One of its primary functions will be to increase the number of small business loans that minority businesses receive. Latinos, African-Americans, Asian-Americans and women have been receiving far fewer small business loans than they reasonably should.

To ensure that this trend is reversed and minorities begin to get a greater share of loan dollars, venture capital investments, counseling, and contracting opportunities, this bill will give the new office the authority to monitor the outcomes for programs under Capital Access, Entrepreneurial Development, and Government Contracting. It also requires the head of

the Office to work with SBA's partners, trade associations and business groups to identify more effective ways to market to minority business owners, and to work with the head of Field Operations to ensure that district offices have staff and resources to market to minorities.

Second, this legislation will create the Minority Entrepreneurship and Innovation Pilot Program. This program will offer a competitive grant to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions to create an entrepreneurship curriculum at these institutions and to open Small Business Development Centers on campus to serve local businesses.

The goal of this program is to target students in highly skilled fields such as engineering, manufacturing, science and technology, and guide them towards entrepreneurship as a career option. Traditionally, minority-owned businesses are disproportionately represented in the service sectors. Promoting entrepreneurial education to undergraduate students will help expand business ownership beyond the service sectors to higher yielding technical and financial sectors.

Third, this legislation will create the Minority Access to Information Distance Learning Pilot Program. This program will offer competitive grants to well established national minority non-profit and business organizations to create distance learning programs for small business owners who are interested in doing business with the federal government.

The goal of this program is to provide low cost training to the many small business owners who cannot afford to pay a consultant thousands of dollars for advice or training on how to prepare themselves to contract with the federal government. There are thousands of small businesses in this country that are excellent and efficient. They are primed to provide the goods and services that this nation needs to stay competitive. This program will help prepare them to do just that.

Finally, this legislation will extend the Socially and Economically Disadvantaged Business Program which expired in 2003. This program provides a Price Evaluation Adjustment for Socially and Economically Disadvantaged businesses as a way of increasing their competitiveness when bidding against larger firms. This is one more tool to increase opportunities for our minority small business owners.

I have outlined several ways that we can create a more positive environment for our minority small business community. These are reasonable steps that we ought to take without delay. Moreover, these are important steps that will help bolster a movement that is already underway. According to U.S. Census data, Hispanics are opening businesses 3 times faster than the national average. Also, business development and entrepreneurship have played a significant role in the expansion of the black middle class in this country for over a century. These business owners are embodying the entrepreneurial spirit that our forefathers carried with them as they established this nation.

With this legislation, we will help to extend that spirit to the next generation. Not only is this vital for our minority communities, but it is vital for America. I urge my colleagues to join with me in support of the Minority Entrepreneurship Development Act of 2006.

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By Mr. KENNEDY (for himself and Mr. MENENDEZ):

S. 3954. A bill to amend title XVIII of the Social Security Act to require monthly reporting regarding the number of individuals who have fallen into the part D donut hole and the amount such individuals are spending on covered part D drugs while in the donut hole; to the Committee on Finance.

Mr. KENNEDY. Mr. President, more and more seniors are waking each day and learning they've fallen into the dreaded ''donut hole''—the gap in prescription drug coverage that leaves them with large drug costs to pay by themselves until coverage resumes. As a result, millions of seniors can't afford the drugs they urgently need, even though they're paying for Medicare coverage.

It's important to have a full accounting of how many seniors are affected, so that Congress and the public can make sensible choices about Medicare. Senator MENENDEZ and I intend to introduce legislation to require Medicare to track and publicly report how many enrollees fall into the donut hole, and how much they are spending themselves for their needed prescriptions.

We wouldn't be facing this problem if the administration and the Republican Congress had cared more about seniors than about drug industry profits when Medicare prescription drug coverage was enacted. They refused to let Medicare negotiate drug prices, which the Veterans Administration is allowed to do for veterans. Instead of allocating adequate Federal funds to the drug benefit, they made sure that HMOs received large overpayments, which enable them to force Medicare beneficiaries into their plans by offering extra benefits, while still allowing the plans to make large profits.

It's long past time to correct this glaring defect in Medicare drug coverage. Once we have up-to-date information on the damage being done by the donut hole, we can correct the problem and give seniors the Medicare coverage they deserve.

I ask by unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3954

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Honest Medicare Act of 2006''.

**SEC. 2. MONTHLY REPORTING REGARDING THE NUMBER OF INDIVIDUALS WHO HAVE FALLEN INTO THE PART D DONUT HOLE AND THE AMOUNT SUCH INDIVIDUALS ARE SPENDING ON COVERED PART D DRUGS WHILE IN THE DONUT HOLE.**

Section 1860D–1 of the Social Security Act (42 U.S.C. 1395w–101) is amended by adding at the end the following new subsection:

''(d) INFORMATION REGARDING INDIVIDUALS WHO HAVE REACHED THE INITIAL COVERAGE LIMIT.—Not later than the 15th of each month (beginning with February 2007), the Secretary shall make available to the public information on—

''(1) the number of individuals enrolled in a prescription drug plan or an MA–PD plan who have reached the initial coverage limit applicable under the plan but who have not reached the annual out-of-pocket threshold specified in section 1860D–2(b)(4)(B); and

''(2) the amount such individuals are spending on covered part D drugs after they have reached such limit and before they have reached such threshold.''.

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By Mr. DEWINE:

S 3956. A bill to create a grant program for collaboration programs that ensure coordination among criminal justice agencies, adult protective service agencies, victim assistance programs, and other agencies or organizations providing services to individuals with disabilities in the investigation and response to abuse of or crimes committed against such individuals; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, it is a well-known fact that people with disabilities face a great risk of abuse and victimization—in fact, studies indicate that disabled adults experience violence or abuse at least twice as often as those without disabilities. This shameful situation is made even worse by the fact that far too often these crimes are not reported, or if they are reported, they are not effectively prosecuted—with the result that crime victims with disabilities are left vulnerable to further victimization. This is a tragic situation and one which requires action.

The good news is that we have a model to follow, a response which works. Massachusetts has set up an excellent program to enhance cooperation and coordination between law enforcement and the State officials and programs which provide services and care to the disabled, and this coordination has greatly improved the ability of the criminal justice system to prosecute these offenders and protect those with disabilities from crime. In fact, since the implementation of the program, criminal referrals in these types of cases in Massachusetts went up from 32 before the program began to 880 in 2004, the most recent year for which we have statistics.

We should try to extend the success of the Massachusetts program around the country. Accordingly, today I am introducing the Crime Victims with Disabilities Act of 2006. This legislation would establish a $10 million Federal grant program to make money available to States and localities which are

interested in setting up similar programs to enhance training, coordination, and cooperation within the law enforcement and disabilities services communities order to address this problem.

The legislation would require a State or local government to design a cooperative plan to improve the reporting and prosecution of crimes against people with disabilities, including within the system at least one criminal justice agency and at least one agency or organization which provides services to individuals with disabilities. The legislation encourages local innovation; as long as the application meets the basic goals of protecting people with disabilities from crime and prosecuting those who attempt to victimize them, it can be designed in whatever way the applicants decide will work best in the affected community. The grants would be for a maximum of $300,000 over 2 years, with a potential for a one-time renewal.

I have worked closely with the creators of the Massachusetts program and many others who work in law enforcement and who provide services to crime victims and people with disabilities, and I believe this legislation will help States and localities create programs that can address the problem of violence against people with disabilities. This is a serious problem, and I encourage my colleagues to support this effort to help address it.

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By Mr. INHOFE:

S. 3957. A bill to protect freedom of speech exercisable by houses of worship or mediation and affiliated organizations; to the Committee on Finance.

Mr. INHOFE. Mr. President, I rise today to introduce legislation which will protect the Constitutionally-guaranteed exercise of free speech and exercise of religion, the Religious Freedom Act of 2006.

The American people may be surprised to learn a few things about their government's relationship with religion. They may be surprised to learn that the Federal Government of the United States of America, in the land of the free, does not allow religious leaders in houses of worship of all religious orders to say anything that might be construed as political in nature. The American people may further be surprised to learn that the federal agency tasked with enforcing the absolute ban on political speech for houses of worship is the Internal Revenue Service. It is the IRS that reviews the content of sermons and homilies and threatens to revoke those institutions' tax-exempt status if they dare to speak out on the political matters of the day. Many times, the only evidence on which the IRS will base their case is a third-party complaint and may move forward with threatening letters and the revocation of their tax-exempt status even if the prohibited activities—the exercise of their First Amendment Rights—were incidental or unintentional. Furthermore, the IRS admits that it applies a ''coded language'' policy to political speech. That is, discussion of a moral issue, if it happens to be a matter discussed in our public debates, is a political issue and is consequently banned by the IRS. The American people may even be more surprised to learn that the IRS is stepping up the enforcement of the ban on political speech in houses of worship and has recently emphasized the ''coded language'' policy.

A skeptic might assert that something as serious as an IRS-enforced ban on political discourse in a church must have a tenured legislative history buttressed by decades of sound First Amendment jurisprudence. The American people may be surprised to learn that the exact opposite is true. The First Amendment freedoms of houses of worship were stripped away in 1954 by the ''Johnson Amendment,'' a floor amendment named for then-Senator Lyndon Johnson, which placed an absolute ban on political speech by tax exempt organizations. Although the legislative record is relatively silent on this matter, the amendment and its subsequent ban were enacted without a hearing, any debate, or any public comment. History also indicates that Senator Johnson enacted this ban as a means of silencing some anticommunist nonprofits that were mobilizing against his political campaign. It now silences important comment on the issues of the day. Although the Supreme Court has affirmed and reaffirmed a ''profound national commitment'' to the proposition that debate on issues should be ''uninhibited, robust, and wide-open,'' the debate has been unconstitutionally restricted for nearly 50 years.

Whereas the legislative history of the Johnson Amendment is dubious where it even exists, the history of the relationship between politics and the pulpit is a history of a positive force for change in momentous times in our history when we as a nation have reaffirmed our commitment to an open and tolerant society. From slavery to segregation, religious leaders in America clearly have been effective forces for good, and they are also for more modern issues such as abortion, assisted suicide, and human trafficking. Perhaps no one could better articulate an important aspect of the history of politics and the pulpit than Martin Luther King, Jr.: ''The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state. It must be the guide and the critic of the state, and never its tool . . . [or] it will become an irrelevant social club without moral or spiritual authority.'' The Johnson Amendment silences the ''conscience of the state.'' It's difficult to see how religious leaders can in any way continue to function as Martin Luther King Jr.'s ideal of the church as the ''conscience of the state,'' as the church has done so effectively during trying times for our state, when houses of worship are banned absolutely from discussing matters of the state.

The moral questions of the day are more often than not also fundamental social and political questions—questions that concern what we value as a nation. It is truly astounding that today, in America, religious leaders are banned from any comment on those moral issues. It is not partisan; this ban on speech makes no distinction between the ideological divide of left versus right in America: one church leader is investigated for publicly opposing abortion and another for discussing the morality of the Iraq War. Indeed, the American people may be surprised to learn this about their country.

The American people would allowing religious leaders, of all kinds, to speak their consciences on the issues facing our nation, and to do so without the threat of IRS punishment through the revocation of their tax-exempt status. This is why I am introducing legislation that will do just that. The Religious Freedom Act of 2006 simply states that religious leaders may discuss political matters, as a Constitutionally protected right, without the threat of an IRS investigation. Upon enactment, this bill will reaffirm the Supreme Court's holding that this country has a ''profound national commitment'' to a national debate that is ''uninhibited, robust, and wide-open.'' It will also reaffirm Martin Luther King, Jr.'s ideal of churches as the ''conscience of the state.'' I ask that the text of this statement be included in the CONGRESSIONAL RECORD by unanimous consent.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3957

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Religious Freedom Act of 2006''.

**SEC. 2. PROTECTION OF FREEDOM OF SPEECH FOR HOUSES OF WORSHIP OR MEDITATION.**

(a) IN GENERAL.—Notwithstanding any other provision of law, no organization described in subsection (b) may be denied its Federal tax exemption under the Internal Revenue Code of 1986 by administrative or judicial action, nor shall donors to such organization be denied the deductibility of their contributions under such Code, because such organization engages in an activity that is protected by the United States Constitution, including comment on public issues, election contests, and pending legislation made in the theological or philosophical context of such organization.

(b) HOUSES OF WORSHIP OR MEDITATION AND AFFILIATED ORGANIZATIONS.—For purposes of subsection (a), an organization described in this subsection is a church, synagogue, mosque, temple, or other house of worship or meditation (including any organization affiliated with any of the foregoing)—

(1) with an established form of worship or meditation and a recognizable creed that minimally acknowledges the right of others to freely accept or reject such form and creed, and

(2) which meets 2 or more of the following indicia: definite and distinct ecclesiastical government; formal code of doctrine and discipline; distinct religious history; membership not axiomatically associated with any other organization; organization of ordained ministers; ordained ministers selected after completing prescribed courses of study; a literature of its own; established places of worship or meditation; regular congregations; regular religious services; classes for the religious instruction of youth or seniors or both; auxiliaries to provide relief and sustenance to the poor and deprived; and auxiliaries to provide youth with morally-structured community service and supervised opportunities to compete in sport and intellect-expanding activities as an alternative to destructive behavior such as crime and drug use.

(c) CONSTRUCTION.—This section shall not be construed so as to exempt any organization described in subsection (b) from the operation of any other law generally applicable to all organizations and individuals.

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By Mrs. CLINTON (for herself, Mr. SPECTER, Mr. KENNEDY, and Ms. MIKULSKI):

S. 3958. A bill to establish the United States Public Service Academy; to the Committee on Homeland Security and Governmental Affairs.

Mrs. CLINTON. Mr. President, I rise today to introduce legislation that will create an undergraduate institution designed to cultivate a generation of young leaders dedicated to public service. The U.S. Public Service Academy Act, the PSA Act, will establish a national academy, modeled after the military service academies, to serve as an extraordinary example of effective, national public education.

The tragic events of September 11 and the devastation of natural disasters Hurricanes Katrina and Rita have demonstrated just how critical it is for our Nation to improve its ability to respond to future emergencies and to confront daily challenges. These events also underscore how much our Nation depends upon strong public institutions and competent civilian leadership at all levels of society.

Our country must improve its ability to groom future public servants to fill the pipeline as the baby boomer generation approaches retirement from critical public sector careers. Recent studies have shown that 2 million teachers are approaching retirement this decade alone, and more than 80 percent of law enforcement agencies are unable to fill positions due to a lack of qualified candidates.

The PSA Act will establish the U.S. Public Service Academy to provide a 4-year, federally subsidized college education for more than 5,000 students a year in exchange for a 5-year commitment to public service following graduation. Academy graduates will help to fill the void in public service our Nation will soon face by serving for 5 years in areas such as public education, public health, law enforcement, and the nonprofit sector.

Not only has the public service sector expressed a need for a young, talented, and high-qualified workforce, many college students today have already expressed a strong desire to serve. A recent study conducted by the Higher Education Research Institute found that more than two-thirds of the 2005 freshman class expressed a desire to serve others, the highest rate in a generation.

Unfortunately, as thousands of American youth seek to serve their Nation in a civilian capacity, many are often priced out of public service due to rising college debts. Over the past decade, the average debt burden for a college graduate has increased by 58 percent. Many of the students who want to serve our country owe more than $20,000 in student loans after graduating from college.

By providing a quality college education at no cost to the student, the U.S. Public Service Academy would tap into the renewed sense of patriotism and civic obligation among young people and create a corps of competent civilian leaders.

The establishment of a U.S. Public Service Academy is an innovative way to strengthen and protect America by creating a corps of well-trained, highly qualified civilian leaders. I am hopeful that my Senate colleagues from both sides of the aisle will join me today to move this legislation to the floor without delay.

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By Mr. WARNER (for himself and Mr. ALLEN):

S. 3959. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain combat zone compensation of civilian employees of the United States; to the Committee on Finance.

Mr. WARNER. Mr. President, I rise today along with my colleague Senator GEORGE ALLEN to introduce the Federal Employee Combat Zone Tax Parity Act, which would provide parity to civilian Federal employees by extending the tax credit currently received by military personnel in combat zones to the civilian Federal employees working along side them. My fellow Virginian, Congressman FRANK WOLF, has introduced a similar bill in the House of Representatives.

In addition, several Federal employee organizations, such as the American Federation of Government Employees (AFGE), the National Treasury Employees Union (NTEU), the Financial Management Association (FMA), the Senior Executives Association (SEA), the American Foreign Service Association (AFSA), and the National Federation of Federal Employees (NFFE), strongly support this legislation.

As of today, I have made eleven separate trips to Iraq and Afghanistan to see firsthand the work of our military personnel, which is essential to success in these regions. In addition, the work of our Federal civilian employees in these regions is significantly important.

At the moment, a majority of the work in the reconstruction of these countries is being done by the military and the Department of State (DOS). These dedicated men and women deserve our gratitude. However, as I have said on a number of occasions, our challenging task requires the coordination and work of Federal agencies across the spectrum.

Regardless of whether one is in the military or a civilian, there are certain risks and hardships associated with working overseas. As a result, the Federal Government provides certain incentives to individuals when they take on extremely challenging jobs. For example, those in the military working in a combat zone receive the Combat Zone Tax Credit.

This tax credit permits military personnel working in combat zones to exclude a certain amount of income from their Federal income taxes. This benefit for the military was established in 1913.

Private contractors working in Iraq and Afghanistan get a similar benefit. Under the Foreign Earned Income Tax Credit, contractors are allowed to exclude a portion of their income from taxes while they work abroad, like in Iraq and Afghanistan.

To date, however, no similar benefit exists for Federal employees serving in the same combat zones. I do not believe it is fair for our Federal employees to be excluded from the same benefits available to military personnel and private contractors in the same combat zone.

The Commonwealth of Virginia, of which I have been honored to serve for the last 28 years in the Senate, is home to over 200,000 Federal employees. I have long been a strong supporter of our Federal employees as I have been for our military personnel.

Our efforts in the war on terrorism can only be successful with a highly skilled and experienced workforce. I can personally attest to the dedication of civil service employees throughout the Federal Government. Since the September 11th attacks, Federal employees have been relocated, reassigned, and worked long hours under strenuous circumstances without complaints, proving time and again their loyalty to their country is first and foremost.

During my service as Secretary of the Navy during which I was privileged to have some 650,000 civilian employees working side by side with the uniformed Navy, I valued very highly the sense of teamwork between the civilian and uniformed members of the United States Navy. Teamwork is an intrinsic military value, in my judgment, and essential to mission accomplishment. A sense of parity and fairness is important for developing this teamwork.

In Iraq and Afghanistan, the teamwork of the entire Federal Government is essential to harness our overall efforts to secure a measure of democracy for the peoples of those countries, and

we need to make it easier for our Federal employees to participate.

I recently offered additional legislation to achieve this goal. My bill, S. 2600, would provide the heads of agencies other than DOS and the Department of Defense (DOD) with the authority, at their discretion, to give their employees who serve in Iraq and Afghanistan allowances, benefits, and gratuities comparable to those provided to State Department and DOD employees serving in those countries.

Currently, the agency heads of non-DOD and DOS agencies do not have such authority, and it is essential, as part of the U.S. effort to bring democracy and freedom to Iraq and Afghanistan, that agency heads be able to give their workers in those countries the same benefits as those they work beside.

In the last estimate, there are almost 2,000 Federal employees working a variety of jobs in Iraq and Afghanistan. I am grateful for their hard work in potentially dangerous situations. And, I know there are many other Federal employees who are anxious to serve their country and engage in these efforts, but it is a lot to risk.

Providing parity in this important tax credit would provide a significant incentive for individuals to take on this challenge—a challenge that America desperately needs Federal employees to undertake.

Throughout the world, America's civil servants are serving our government and our people, often in dangerous situations. They are on the ground in the war on terrorism taking over new roles to relieve military personnel of tasks civilian employees can perform. They are playing a vital role in the reconstruction of Iraq and Afghanistan.

We have a long tradition in Congress of recognizing the valuable contributions of our Federal employees in both the military service and in the civil service by providing fair and equitable treatment. This bill gives us the ability to continue this tradition while at the same time providing an important incentive to help America meet its needs.

I urge my colleagues to join with me in support of this legislation.

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By Mr. STEVENS (for himself, Mr. INOUYE, Mr. LOTT, and Mr. LAUTENBERG):

S. 3961. A bill to provide for enhanced safety in pipeline transportation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, I am pleased to introduce the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006. I am joined by my colleagues from the Commerce, Science, and Transportation Committee, Senators INOUYE, LOTT and LAUTENBERG.

Pipelines are one of the safest forms of transportation, and in most cases their safety record has been steadily improving. Unfortunately however, as recent events in my State demonstrate, there is still much to be done. This bill addresses the problems that have occurred in Alaska and other safety issues that have been brought to the Committee's attention.

The bill reauthorizes the pipeline safety programs of the Pipeline and Hazardous Materials Safety Administration (PHMSA) for Fiscal Years 2007 through 2010.

Highlights of the bill include:

Increased Department of Transportation Resources Dedicated to Overseeing Pipeline Safety—The bill provides an additional 45 Federal inspectors (a 50 percent increase) over the 4 years of the bill at a cost of $6 million in Fiscal Year 2010. Currently PHMSA has 90 inspectors, but the DOT Inspector General has stated in the past that these relatively low staffing levels are a matter for concern. Ninety inspectors translate to one inspector for every 18,000 miles of pipeline in this country.

Strengthened Programs to Reduce Construction Related Damage to Pipelines—The bill includes new civil enforcement authority against excavators and pipeline operators responsible for third-party damage incidents and provides grants to states that have damage prevention programs in place. Construction related damage, such as damage caused by excavation for a highway project, is the greatest cause of pipeline accidents that result in death or injury. This occurs most often on the distribution systems that run through the neighborhoods where people live and work. These incidents have increased by 49 percent since 1996.

Applying DOT Safety Standards to the Currently Unregulated Low Stress Pipelines—On August 31, the DOT announced proposed rules to cover low stress pipelines in unusually sensitive areas. Pipeline operators will have to meet new safety requirements, including cleaning and continuous monitoring, along more than 1,200 miles of pipelines. However, low-stress lines that aren't in such sensitive areas would continue to be unregulated. The bill goes further than the regulation and requires DOT oversight of all low-stress pipelines.

Increased Accountability of Pipeline Company Officials—The bill includes a provision that would require senior officials at pipeline companies to certify that the information they are providing to regulators is accurate.

Enhanced Pipeline Research—The bill would also boost PHMSA's research and technology development budget for pipeline safety issues such as corrosion by $10 million over the length of the bill.

A Study of Pipelines Critical to Energy Supply—The bill includes a study of oil pipelines that are critical to the nation's energy supply in order to determine if there are sufficient safety regulations in place to ensure their safety.

The House Transportation and Infrastructure Committee and the House Energy and Commerce Committee are also working on pipeline safety legislation. I hope that our three Committees can work together over the next month while the Congress is out of session to develop a joint legislative product that we can pass and have signed into law when we return in November. Many of the provisions in the three bills are similar and we should have enough common ground to achieve this goal.

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By Mr. DOMENICI (for himself and Mr. CRAIG):

S. 3962. A bill to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to assure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I note the arrival on the floor of the distinguished Senator from Nevada. The legislation that I will be talking about is of significant interest to the Senator from Nevada. But it will take many months on the floor of the Senate before we finish.

Today my fellow Senators I am introducing legislation that I believe will place the Department of Energy's nuclear waste program back on track.

As we all know, the history of the Yucca Mountain project has been rocky at best. The Yucca Mountain project has a very long pedigree, starting back to the late 1950's when the National Academy of Sciences reported to the Atomic Energy Commission suggesting that burying radioactive high-level waste in geologic formations should receive consideration.

In the 1980s, when Congress decided to pursue a geologic repository, we were quite optimistic—so optimistic that we told the Department of Energy—DOE—to enter into contracts with utilities that promised that we would begin taking nuclear waste off their hands by 1998. Well, obviously that didn't happen. What did happen was that the courts found that the government is liable for its failure to meet its contractual obligation.

While moving more slowly than planned, DOE's nuclear waste program has made progress toward making the goal of a permanent geologic repository for nuclear waste a reality. In 2002, the President and Congress approved the Yucca Mountain site, and instructed DOE to file a license application for the repository with the Nuclear Regulatory Commission—NRC. That decision has been made.

With the siting decision made, it will now be up to the NRC to evaluate the scientific data and determine whether the repository will permanently, and safely, isolate nuclear waste.

Yucca Mountain is the cornerstone of our national comprehensive spent nuclear fuel management strategy for

this country. Let me be clear: We need Yucca Mountain. We must make this program work. I believe the bill introduced today will do that.

This bill will remove legal barriers that will allow DOE to meet its obligation to accept and store spent nuclear fuel as soon as possible, without prejudging the outcome of the NRC's repository licensing decision.

The bill I will introduce today authorizes the DOE to permanently withdraw 147,000 acres currently controlled by the Bureau of Land Management, the Air Force, and the Nevada Test Site, a license condition of the NRC.

This legislation will repeal the arbitrary 70,000 metric ton statutory limit on emplacement of radioactive material at Yucca Mountain. The capacity of the mountain will be determined by scientific and technical analysis.

The DOE may also begin construction of needed infrastructure for the repository and surface storage facilities as soon as they complete an environmental impact statement that evaluates these activities.

This legislation will begin to consolidate the defense waste and spent nuclear fuel at Yucca Mountain. The bill requires DOE to file for a permit to build a surface storage facility at the Nevada Test Site at the same time it files its license application for a repository at Yucca Mountain.

As soon as the department receives the permit for the surface storage facilities from the NRC, the department may begin moving defense fuel and waste to the Nevada Test Site. The spent nuclear fuel from our Navy and defense activities that kept us safe during the Cold War will be consolidated and secure at the site.

Only after the NRC issues a construction permit for Yucca Mountain, may the department begin moving civilian spent fuel to the Nevada Test Site.

This bill will withdraw the land for the rail route for Yucca, a vital transportation component. There is a provision that also provides that appropriations from the Nuclear Waste Fund will not count against the allocations for discretionary spending. The DOE will have access to the full funds in the Nuclear Waste Fund, monies collected from our constituents, to complete this project.

This bill compliments the short, medium, and long term components of the nuclear fuel cycle that I began to talk about this past summer. The thinking of how to handle nuclear spent fuel in the late 1970s and early 1980s and the way we approached its management is changing, we need to acknowledge that change.

In the short term, according to DOE's most optimistic schedule, the NRC's construction permit will not be issued until 2011. The Consolidated and Preparation ''CAP'' proposal in the Energy and Water Appropriations bill begins to enable DOE to fulfill its contractual liability for spent fuel storage before DOE can move spent fuel to Yucca Mountain by providing new authorities for DOE to accept and store civilian spent nuclear fuel within the states in which it was generated.

In the mid term, this legislation lays the foundation to integrate Yucca Mountain and Global Nuclear Energy Partnership—GNEP—by providing that before spent fuel is shipped to Nevada, the Secretary of Energy determines if it can be recycled within a reasonable amount of time. Current plans for GNEP do not include recycling all 55,000 metric tons of civilian spent fuel that has already been generated. This proposal will avoid moving waste to Nevada that should be shipped instead to a GNEP facility.

In the long term, this measure provides DOE with the authorities needed to execute the Yucca Mountain project, and to begin long term emplacement, while the GNEP program will reduce the volume of material to be emplaced in the mountain, eliminating the need for a second repository program.

The three pieces of the fuel cycle that I have discussed today—interim storage, GNEP and Yucca Mountain—will establish a comprehensive program that will provide confidence that our nation's nuclear waste will be managed safely both for current and future reactors.

We can solve this problem and I hope we can move forward together.

I send to the desk a bill which does all of the things that I have just spoken to. I am sure many Senators and their staffs will be interested. This will certainly not proceed in any hurry; it will take a while. But I intend to move it as best I can. There will be opportunities to stop the movement at every opportunity. I am just hopeful that we will carry all the way through, as we have in the past, and go to conference and take something to the President and see where we are.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I want to again express my appreciation to the distinguished Senator from New Mexico—I know this is a feeling shared by a lot of Senators—for his efforts and leadership over many years in the Senate but particularly in the energy area. He has been persistent.

We did pass a good energy policy bill last year. Obviously, he would like for it to have been, perhaps, even broader, but we got it done. It is making a contribution and will continue to have a positive contribution into more diverse energy policy in this country from which the American people will benefit.

I thank the Senator for his leadership on this particular area of the nuclear repository. We must deal with this issue. We can do it. His input was critical. I thank him.

Mr. DOMENICI. I thank the Senator. It is a pleasure working with him.

When I have legislation such as the legislation I just described, which is very difficult, and I know we are going to come to spots in the Senate, stopovers where we will have to vote because it is good for the country, I am counting in the column that if I have done my work, will this Senator vote for it, the Senator's name. I believe if we do our work and get our votes properly and line up what we propose, a Senator such as Senator LOTT will not be running around asking people what is going on in his State.

This matter deserves his attention, as it deserves my attention. I believe we will get that.

I thank the Senator.

Mr. CRAIG. Mr. President, I rise today to express my strong support for the Nuclear Fuel Management and Disposal Act introduced today by Senator PETE DOMENICI. Senator DOMENICI has long been a courageous supporter of dependable, emissions-free nuclear energy, and he is largely responsible for the current renaissance of nuclear power in this country—with upwards of 30 new nuclear reactors on the drawing board to be licensed in the next several years. Senator DOMENICI's landmark legislation will help assure the future of nuclear power in this country by providing the necessary legislation for moving forward on the long-stalled Yucca Mountain repository and authorizing much-needed interim storage for spent fuel and high-level waste that has been accumulating around the country. For used nuclear fuel that will eventually be recycled, the Senate Energy and Water Appropriations bill approved by the Appropriations Committee earlier this year provides for interim storage of commercial spent fuel at Consolidation and Preparation—CAP—facilities. Senator DOMENICI's legislation introduced today addresses defense spent fuel and high-level waste that cannot be recycled, so that these wastes will be sent to Yucca Mountain for storage and eventual disposal. In this way, this bill removes the final roadblock to developing new nuclear power in this country.

And let me say a few words about this ''roadblock'' to Yucca that has persisted for so many years. The Federal Government made a promise to take possession of spent nuclear fuel in order to safely and permanently dispose of it in a geologic repository. We promised to begin taking this fuel back in 1998—8 years ago. However, through concerted efforts by the state of Nevada and its congressional delegation, progress on Yucca has often slowed to a crawl. This is the classic NIMBY attitude—''not in my backyard.'' And yet my colleague from Nevada, Mr. REID, has repeatedly called for this Congress and the administration to do something to help reduce emissions of greenhouse gases because of his concerns about global warming.

This Congress and this administration have done a great deal to promote emission-free power generation. This Congress passed the Energy Policy Act last year, which provided financial incentives for new, emission-free sources

of energy, including wind, solar, clean coal—and nuclear. And earlier this year, this administration introduced the Advanced Energy Initiative—AEI—to support research and development of new energy sources—including nuclear power. In fact, the Global Nuclear Energy Partnership—GNEP—is one part of the AEI. One goal of GNEP is to reduce the amount and toxicity of nuclear waste ultimately destined for disposal at Yucca Mountain; another goal is to eventually help expand the deployment of emission-free nuclear power in developing countries that otherwise would need to depend on burning fossil fuels for their growing energy demands. Contrary to Senator REID's comments about doing nothing to help reduce greenhouse gas emissions, we have done a great deal to develop emission-free energy in this country and abroad. But the deployment of nuclear power requires that we manage the spent fuel from nuclear power plants in a safe and responsible manner. One aspect of that management strategy must be to open the Yucca Mountain repository as soon as possible.

As Senator DOMENICI has said, Yucca Mountain is the cornerstone of a comprehensive spent-fuel management strategy for this country, but Yucca alone cannot meet the government's spent-fuel obligations. Through GNEP we will also explore technologies that promise to reduce the volume and toxicity of spent fuel. Thus, GNEP, interim storage and Yucca Mountain together provide a comprehensive program for safely managing our Nation's Nuclear waste.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 588—TO EXPRESS THE SENSE OF THE SENATE THAT STATES SHOULD HAVE IN PLACE BACKUP SYSTEMS TO DEAL WITH ANY FAILURE OF ELECTRONIC VOTING EQUIPMENT DURING THE NOVEMBER 7, 2006, GENERAL ELECTION

Mr. FEINGOLD (for himself and Mr. KERRY) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 588

Whereas widespread problems with new voting technology have been reported this year in primaries in Ohio, Arkansas, Illinois, Maryland, and elsewhere;

Whereas States such as Texas, Arkansas, and others have had to unexpectedly administer provisional ballots after electronic voting machines failed;

Whereas equipment malfunctions in the Arkansas district 16 State Senate primary race precipitated a recount that, in turn, produced a new winner;

Whereas computer problems in 4 southern Indiana counties required workers to manually enter the number of votes for each candidate in each precinct;

Whereas a deadline to test electronic voting machines in West Virginia was pushed back to the day before the May 9 primary election due to problems and delays with the new machines;

Whereas glitches in the electronic voter check-in system in Montgomery County, Maryland, resulted in polls remaining open for additional hours and required a recount of thousands of paper provisional ballots;

Whereas 40 percent of registered voters nationally are expected to cast ballots on new machines in the November 7 midterm elections;

Whereas the larger number of voters participating in the November 7 midterm elections may result in even more equipment failures than occurred in the primary elections;

Whereas millions of voters could be disenfranchised in the November 7 midterm elections, as thousands have already been in 2006 primary elections, due to the failure of electronic voting machines; and

Whereas former Attorney General Richard Thornburgh and former Ohio Governor Richard Celeste, co-chairs of the Committee to Study a Framework for Understanding Electronic Voting of the National Academies' National Research Council wrote recently: ''If major problems arise with unproven technology and new election procedures, the political heat will be high indeed. . . . Jurisdictions need to come up with contingency plans for such November problems, if they haven't done so already. One possible example: Make preparations to fall back to paper ballots if necessary.'': Now, therefore, be it

*Resolved,* That it is the sense of the Senate that each State and jurisdiction that uses electronic voting equipment should have in place for use in the November 7, 2006, general election a backup system, such as the use of paper ballots, in the case of any failure of the electronic voting equipment.

### SENATE CONCURRENT RESOLUTION 119—EXPRESSING THE SENSE OF CONGRESS THAT PUBLIC POLICY SHOULD CONTINUE TO PROTECT AND STRENGTHEN THE ABILITY OF FARMERS AND RANCHERS TO JOIN TOGETHER IN COOPERATIVE SELF-HELP EFFORTS

Mrs. LINCOLN (for herself, Mr. CRAIG, Mr. CHAMBLISS, Mr. DORGAN, Mr. CONRAD, Mr. GRASSLEY, Mr. PRYOR, Mr. HARKIN, Mr. CRAPO, Mr. DEWINE, Mr. TALENT, Mr. BAUCUS, Mr. THUNE, Mr. BURNS, Mr. BOND, Mr. ENZI, Ms. STABENOW, Mr. COCHRAN, and Mr. JOHNSON) submitted the following concurrent resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. CON. RES. 119

Whereas, the ability of farmers and ranchers in the United States to join together in cooperative self-help efforts is vital to their continued economic viability;

Whereas, Federal laws have long recognized the importance of protecting and strengthening the ability of farmers and ranchers to join together in cooperative self-help efforts, including to cooperatively market their products, ensure access to competitive markets, and help achieve other important public policy goals;

Whereas, farmer- and rancher-owned cooperatives play an important role in helping farmers and ranchers improve their income from the marketplace, manage their risk, meet their credit and other input needs, and compete more effectively in a rapidly changing global economy;

Whereas, farmer- and rancher-owned cooperatives also play an important role in providing consumers in the United States and abroad with a dependable supply of safe, affordable, high-quality food, fiber and related products;

Whereas, farmer- and rancher-owned cooperatives also help meet the energy needs of the United States, including through the production and marketing of renewable fuels such as ethanol and biodiesel;

Whereas, there are nearly 3,000 farmer- and rancher-owned cooperatives located throughout the United States with a combined membership representing a majority of the nearly 2 million farmers and ranchers in the United States; and

Whereas, farmer- and rancher-owned cooperatives also contribute significantly to the economic well being of rural America as well as the overall economy, including accounting for as many as 250,000 jobs: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the Sense of the Congress that public policy should continue to protect and strengthen the ability of farmers and ranchers to join together in cooperative self-help efforts—

(1) to improve their income from the marketplace and their economic well-being;

(2) to capitalize on new market opportunities; and

(3) to help meet the food and fiber needs of consumers, provide for increased energy production, promote rural development, maintain and create needed jobs, and contribute to a growing United States economy.

### SENATE CONCURRENT RESOLUTION 120—EXPRESSING THE SUPPORT OF CONGRESS FOR THE CREATION OF A NATIONAL HURRICANE MUSEUM AND SCIENCE CENTER IN SOUTHWEST LOUISIANA

Mr. VITTER submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. CON. RES. 120

Whereas the Creole Nature Trail All-American Road District Board of Commissioners has begun to create and develop a National Hurricane Museum and Science Center in the southwest Louisiana area;

Whereas protecting, preserving, and showcasing the intrinsic qualities that make Louisiana a one-of-a-kind experience is the mission of the Creole Nature Trail All-American Road;

Whereas the horrific experience and the devastating long-term effects of Hurricanes Katrina and Rita will play a major role in the history of the United States;

Whereas a science center of this caliber will educate and motivate young and old in the fields of meteorology, environmental science, sociology, conservation, economics, history, communications, and engineering;

Whereas it is only appropriate that the effects of hurricanes and the rebuilding efforts be captured in a comprehensive center such as a National Hurricane Museum and Science Center to interpret the effects of hurricanes in and outside of Louisiana; and

Whereas it is critical that the history of past hurricanes be preserved so that all people in the United States can learn from this history: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress supports and encourages the creation of a National Hurricane Museum and Science Center in southwest Louisiana.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 5075. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table.

SA 5076. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5077. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5078. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5079. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5080. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5081. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5082. Mr. SPECTER (for himself, Mr. LEAHY, and Mr. SMITH) submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5083. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5084. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5085. Mr. FRIST proposed an amendment to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes.

SA 5086. Mr. LEVIN (for himself, Mr. DAYTON, and Mr. REED) proposed an amendment to the bill S. 3930, supra.

SA 5087. Mr. SPECTER (for himself, Mr. LEAHY, Mr. DORGAN, Mr. DODD, Mr. DAYTON, Mr. FEINGOLD, Mrs. CLINTON, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 3930, supra.

SA 5088. Mr. KENNEDY (for himself, Mrs. FEINSTEIN, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 3930, supra; which was ordered to lie on the table.

SA 5089. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5066 submitted by Mrs. HUTCHISON (for herself and Mr. KYL) and intended to be proposed to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table.

SA 5090. Mr. BENNETT (for Mr. FRIST) proposed an amendment to the bill S. 403, to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

SA 5091. Mr. BENNETT (for Mr. FRIST) proposed an amendment to amendment SA 5090 proposed by Mr. BENNETT (for Mr. FRIST) to the bill S. 403, supra.

## TEXT OF AMENDMENTS

**SA 5075.** Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Military Commissions Act of 2006''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The Constitution of the United States grants to Congress the power ''To define and punish . . . Offenses against the Law of Nations'', as well as the power ''To declare War . . . To raise and support Armies . . . [and] To provide and maintain a Navy''.

(2) The military commission is the traditional tribunal for the trial of persons engaged in hostilities for violations of the law of war.

(3) Congress has, in the past, both authorized the use of military commission by statute and recognized the existence and authority of military commissions.

(4) Military commissions have been convened both by the President and by military commanders in the field to try offenses against the law of war.

(5) It is in the national interest for Congress to exercise its authority under the Constitution to enact legislation authorizing and regulating the use of military commissions to try and punish violations of the law of war.

(6) Military commissions established and operating under chapter 47A of title 10, United States Code (as enacted by this Act), are regularly constituted courts affording, in the words of Common Article 3 of the Geneva Conventions, ''all the judicial guarantees which are recognized as indispensable by civilized peoples''.

**SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.**

(a) IN GENERAL.—The President is authorized to establish military commissions for the trial of alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses specifically made triable by military commission as provided in chapter 47 of title 10, United States Code, and chapter 47A of title 10, United States Code (as enacted by this Act).

(b) CONSTRUCTION.—The authority in subsection (a) may not be construed to alter or limit the authority of the President under the Constitution and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(c) SCOPE OF PUNISHMENT AUTHORITY.—A military commission established pursuant to subsection (a) shall have authority to impose upon any person found guilty under a proceeding under chapter 47A of title 10, United States Code (as so enacted), a sentence that is appropriate for the offense or offenses for which there is a finding of guilt, including a sentence of death if authorized under such chapter, imprisonment for life or a term of years, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the military commission shall direct.

(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense is authorized to carry out a sentence of punishment imposed by a military commission established pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.

(e) ANNUAL REPORT ON TRIALS BY MILITARY COMMISSIONS.—

(1) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions established pursuant to subsection (a) during such year.

(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

**SEC. 4. MILITARY COMMISSIONS.**

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

**''CHAPTER 47A—MILITARY COMMISSIONS**


| | |
|---|---|
| ''SUBCHAPTER | Sec. |
| ''I. General Provisions | 948a. |
| ''II. Composition of Military Commissions | 948h. |
| ''III. Pre-Trial Procedure | 948q. |
| ''IV. Trial Procedure | 949a. |
| ''V. Sentences | 949s. |
| ''VI. Post-Trial Procedure and Review of Military Commissions | 950a. |
| ''VII. Punitive Matters | 950aa. |

''SUBCHAPTER I—GENERAL PROVISIONS

''Sec.
''948a. Definitions.
''948b. Military commissions generally.
''948c. Persons subject to military commissions.
''948d. Jurisdiction of military commissions.


**''§ 948a. Definitions**

''In this chapter:

''(1) ALIEN.—The term 'alien' means an individual who is not a citizen of the United States.

''(2) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(3) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means an individual who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(4) UNLAWFUL ENEMY COMBATANT.—The term 'unlawful enemy combatant' means an individual engaged in hostilities against the United States who is not a lawful enemy combatant.

**''§ 948b. Military commissions generally**

''(a) PURPOSE.—This chapter establishes procedures governing the use of military

commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title, while instructive, is therefore not of its own force binding on military commissions established under this chapter.

''(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

''(d) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

**''§ 948c. Persons subject to military commissions**

''Any alien unlawful enemy combatant engaged in hostilities or having supported hostilities against the United States is subject to trial by military commission as set forth in this chapter.

**''§ 948d. Jurisdiction of military commissions**

''A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter, chapter 47 of this title, or the law of war.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.

''948h. Who may convene military commissions.
''948i. Who may serve on military commissions.
''948j. Military judge of a military commission.
''948k. Detail of trial counsel and defense counsel.
''948l. Detail or employment of reporters and interpreters.
''948m. Number of members; excuse of members; absent and additional members.

**''§ 948h. Who may convene military commissions**

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

**''§ 948i. Who may serve on military commissions**

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

**''§ 948j. Military judge of a military commission**

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

**''§ 948k. Detail of trial counsel and defense counsel**

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

''(A) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who is—

''(A) a member of the bar of a Federal court or of the highest court of a State; and

''(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

**''§ 948l. Detail or employment of reporters and interpreters**

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military

commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

**''§ 948m. Number of members; excuse of members; absent and additional members**

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''Sec.
''948q. Charges and specifications.
''948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment.
''948s. Service of charges.

**''§ 948q. Charges and specifications**

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of his knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against him as soon as practicable.

**''§ 948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment**

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) STATEMENTS OBTAINED BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—A statement obtained by use of torture or by cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd), whether or not under color of law, shall not be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence the statement was made.

''(c) STATEMENTS OBTAINED BY ALLEGED COERCION NOT AMOUNTING TO TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—An otherwise admissible statement obtained through the use of alleged coercion not amounting to torture or cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 may be admitted in evidence in a military commission under this chapter only if the military judge finds that—

''(1) the totality of the circumstances under which the statement was made render it reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

**''§ 948s. Service of charges**

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''Sec.
''949a. Rules.
''949b. Unlawfully influencing action of military commission.
''949c. Duties of trial counsel and defense counsel.
''949d. Sessions.
''949e. Continuances.
''949f. Challenges.
''949g. Oaths.
''949h. Former jeopardy.
''949i. Pleas of the accused.
''949j. Opportunity to obtain witnesses and other evidence.
''949k. Defense of lack of mental responsibility.
''949l. Voting and rulings.
''949m. Number of votes required.
''949n. Military commission to announce action.
''949o. Record of trial.

**''§ 949a. Rules**

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

''(b) EXCEPTIONS.—(1) The Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability in trials by military commission under this chapter from the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.

''(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights:

''(A) To examine and respond to all evidence considered by the military commission on the issue of guilt or innocence and for sentencing.

''(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) To the assistance of counsel.

''(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).

''(E) To the suppression of evidence that is not reliable or probative.

''(F) To the suppression of evidence the probative value of which is substantially outweighed by—

''(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

''(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

''(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

''(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(C) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(D) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission only if—

''(i) the proponent of the evidence makes known to the adverse party, sufficiently in advance of trial or hearing to provide the adverse party with a fair opportunity to meet the evidence, the proponent's intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained); and

''(ii) the military judge finds that the totality of the circumstances render the evidence more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts, taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.

''(4)(A) The accused in a military commission under this chapter who exercises the

right to self-representation under paragraph (2)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

**''§ 949b. Unlawfully influencing action of military commission**

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) The provisions of this subsection shall not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

**''§ 949c. Duties of trial counsel and defense counsel**

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discretion, may detail additional military counsel to represent the accused.

''(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

**''§ 949d. Sessions**

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

''(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(4)(A) Subject to the provisions of this paragraph, classified information shall be handled in accordance with rules applicable in trials by general courts-martial of the United States.

''(B) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. This subparagraph applies to all stages of proceedings of military commissions under this chapter.

''(C) After the original classification authority or head of the agency concerned has certified in writing that evidence and the sources thereof have been declassified to the maximum extent possible, consistent with the requirements of national security, the military judge may, to the extent practicable in accordance with the rules applicable in trials by court-martial, authorize—

''(i) the deletion of specified items of classified information from documents made available to the accused;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(D) A claim of privilege under this paragraph, and any materials in support thereof, shall, upon the request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

**''§ 949e. Continuances**

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

**''§ 949f. Challenges**

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

**''§ 949g. Oaths**

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases

in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''(c) OATH DEFINED.—In this section, the term 'oath' includes an affirmation.

**''§ 949h. Former jeopardy**

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

**''§ 949i. Pleas of the accused**

''(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

**''§ 949j. Opportunity to obtain witnesses and other evidence**

''(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(B) shall run to any place where the United States shall have jurisdiction thereof.

''(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any known evidence that reasonably tends to exculpate or reduce the degree of guilt of the accused.

''(c) TREATMENT OF CERTAIN ITEMS.—In accordance with the rules applicable in trials by general courts-martial in the United States, and to the extent provided in such rules, the military judge in a military commission under this chapter may authorize trial counsel, in making documents available to the accused pursuant to subsections (a) and (b)—

''(1) to delete specified items of classified information from such documents;

''(2) to substitute an unclassified summary of the classified information in such documents; or

''(3) to substitute an unclassified statement admitting relevant facts that classified information in such documents would tend to prove.

**''§ 949k. Defense of lack of mental responsibility**

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members as to the defense of lack of mental responsibility under this section and shall charge the members to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

**''§ 949l. Voting and rulings**

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

**''§ 949m. Number of votes required**

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(2) No person may be sentenced to death by a military commission, except insofar as—

''(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused was convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all members present at the time the vote was taken concurred in the sentence of death.

''(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12 members.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 5 members), and the military commission may be assembled, and the trial held, with not less than the number of members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

**''§ 949n. Military commission to announce action**

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

**''§ 949o. Record of trial**

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of section 949d(c)(4) of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''Sec.
''949s. Cruel or unusual punishments prohibited.
''949t. Maximum limits.
''949u. Execution of confinement.

**''§ 949s. Cruel or unusual punishments prohibited**

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

**''§ 949t. Maximum limits**

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

**''§ 949u. Execution of confinement**

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court.
''950g. Appellate counsel
''950h. Execution of sentence; suspension of sentence.
''950i. Finality of proceedings, findings, and sentences.

**''§ 950a. Error of law; lesser included offense**

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

**''§ 950b. Review by the convening authority**

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after accused has been give an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, only—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

**''§ 950c. Waiver or withdrawal of appeal**

''(a) WAIVER OF RIGHT OF REVIEW.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Appeals for the Armed Forces under section 950f(a) of this title of the final decision of the military commission under this chapter.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(b) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(c) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

**''§ 950d. Appeal by the United States**

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Appeals for the Armed Forces under section 950f of this title of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (c) or (d) of section 949d of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of the order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the United States Court of Appeals for the Armed Forces. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

**''§ 950e. Rehearings**

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

**''§ 950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court**

''(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—(1) Subject to the provisions of this subsection, the United States Court of Appeals for the Armed Forces shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

''(2) The United States Court of Appeals for the Armed Forces may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

''(3)(A) An accused may seek a determination by the United States Court of Appeals for the Armed Forces of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

''(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which written notice of the final decision of the military commission is served on the accused or defense counsel.

''(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

''(4) The determination by the United States Court of Appeals for the Armed Forces of the final validity of a judgment of a military commission under this subsection shall be governed by the provisions of section 1005(e)(3) of the Detainee Treatment Act of 2005 (42 U.S.C. 801 note).

''(b) REVIEW BY SUPREME COURT.—The Supreme Court of the United States may review by writ of certiorari pursuant to section 1257 of title 28 the final judgment of the United States Court of Appeals for the Armed Forces in a determination under subsection (a).

**''§ 950g. Appellate counsel**

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States before the Supreme Court in case arising under this chapter when requested to do so by the Attorney General.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented before the United States Court of Appeals for the Armed Forces or the Supreme Court by military appellate counsel, or by civilian counsel if retained by him.

**''§ 950h. Execution of sentence; suspension of sentence**

''(a) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

''(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the United States Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the Armed Forces and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

**''§ 950i. Finality of proceedings, findings, and sentences**

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950aa. Definitions; construction of certain offenses; common circumstances.
''950bb. Principals.
''950cc. Accessory after the fact.
''950dd. Conviction of lesser offenses.
''950ee. Attempts.
''950ff. Conspiracy.
''950gg. Solicitation.
''950hh. Murder of protected persons.
''950ii. Attacking civilians.
''950jj. Attacking civilian objects.
''950kk. Attacking protected property.
''950ll. Pillaging.
''950mm. Denying quarter.
''950nn. Taking hostages.
''950oo. Employing poison or similar weapons.
''950pp. Using protected persons as a shield.
''950qq. Using protected property as a shield.
''950rr. Torture.
''950ss. Cruel, unusual, or inhumane treatment or punishment.
''950tt. Intentionally causing serious bodily injury.
''950uu. Mutilating or maiming.
''950vv. Murder in violation of the law of war.
''950ww. Destruction of property in violation of the law of war.
''950xx. Using treachery or perfidy.
''950yy. Improperly using a flag of truce.
''950zz. Improperly using a distinctive emblem.
''950aaa. Intentionally mistreating a dead body.
''950bbb. Rape.
''950ccc. Hijacking or hazarding a vessel or aircraft.
''950ddd. Terrorism.
''950eee. Providing material support for terrorism.
''950fff. Wrongfully aiding the enemy.
''950ggg. Spying.
''950hhh. Contempt.
''950iii. Perjury and obstruction of justice.

**''§ 950aa. Definitions; construction of certain offenses; common circumstances**

''(a) DEFINITIONS.—In this subchapter:

''(1) The term 'military objective' means combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

''(2) The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

''(3) The term 'protected property' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under sections 950hh, 950ii, 950jj, 950kk, and 950ss of

this title precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

''(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with armed conflict.

**''§ 950bb. Principals**

''Any person punishable under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter,

is a principal.

**''§ 950cc. Accessory after the fact**

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

**''§ 950dd. Conviction of lesser offenses**

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

**''§ 950ee. Attempts**

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**''§ 950ff. Conspiracy**

''Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950gg. Solicitation**

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

**''§ 950hh. Murder of protected persons**

''Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

**''§ 950ii. Attacking civilians**

''Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950jj. Attacking civilian objects**

''Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

**''§ 950kk. Attacking protected property**

''Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

**''§ 950ll. Pillaging**

''Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

**''§ 950mm. Denying quarter**

''Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

**''§ 950nn. Taking hostages**

''Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950oo. Employing poison or similar weapons**

''Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950pp. Using protected persons as a shield**

''Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack. or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950qq. Using protected property as a shield**

''Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

**''§ 950rr. Torture**

''(a) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

**''§ 950ss. Cruel, unusual, or inhumane treatment or punishment**

''Any person subject to this chapter who subjects another person in their custody or under their physical control, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950tt. Intentionally causing serious bodily injury**

''(a) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SERIOUS BODILY INJURY DEFINED.—In this section, the term 'serious bodily injury' means bodily injury which involves—

''(1) a substantial risk of death;

''(2) extreme physical pain;

''(3) protracted and obvious disfigurement; or

''(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**''§ 950uu. Mutilating or maiming**

''Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of

the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950vv. Murder in violation of the law of war**

''Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

**"§ 950ww. Destruction of property in violation of the law of war**

''Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

**"§ 950xx. Using treachery or perfidy**

''Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950yy. Improperly using a flag of truce**

''Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

**"§ 950zz. Improperly using a distinctive emblem**

''Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

**"§ 950aaa. Intentionally mistreating a dead body**

''Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

**"§ 950bbb. Rape**

''Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

**"§ 950ccc. Hijacking or hazarding a vessel or aircraft**

''Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950ddd. Terrorism**

''Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950eee. Providing material support for terrorism**

''(a) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in section 950ddd of this title), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(b) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this section, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

**"§ 950fff. Wrongfully aiding the enemy**

''Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

**"§ 950ggg. Spying**

''Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

**"§ 950hhh. Contempt**

''A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

**"§ 950iii. Perjury and obstruction of justice**

''A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A and part II of subtitle A of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''Chapter 47A. Military Commissions 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

(1) SUBMITTAL OF PROCEDURES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

(2) SUBMITTAL OF MODIFICATIONS.—Not later than 60 days before the date on which any proposed modification of the procedures described in paragraph (1) shall go into effect, the Secretary shall submit to the committees of Congress referred to in that paragraph a report describing such modification.

**SEC. 5. AMENDMENTS TO OTHER LAWS.**

(a) DETAINEE TREATMENT ACT OF 2005.—Section 1004(b) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 42 U.S.C. 200dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection,''.

(b) UNIFORM CODE OF MILITARY JUSTICE.—Chapter 47 of title, 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) Section 802 (article 2 of the Uniform Code of Military Justice) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(3) of this title) who violate the law of war.''.

(2) Section 821 (article 21 of the Uniform Code of Military Justice) is amended by striking ''by statute or law of war''.

(3) Section 836(a) (article 36(a) of the Uniform Code of Military Justice) is amended by inserting ''(other than military commissions under chapter 47A of this title)'' after ''other military tribunals''.

(c) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice)), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter or chapter 47A of this title who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

(d) REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.—

(1) REVIEW BY SUPREME COURT.—Section 1259 of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) Cases tried by military commission and reviewed by the United States Court of Appeals for the Armed Forces under section 950f of title 10.''.

(2) DETAINEE TREATMENT ACT OF 2005.—Section 1005(e) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(A) in paragraphs (3) and (4), by striking ''United States Court of Appeals for the District of Columbia Circuit'' each place it appears and inserting ''United States Court of Appeals for the Armed Forces''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(ii) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(ii) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(iii) in subparagraph (C)—

(I) in clause (i)—

(aa) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(bb) by striking ''at Guantanamo Bay, Cuba''; and

(II) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(iv) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

**SEC. 6. HABEAS CORPUS MATTERS.**

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended—

(1) by striking subsection (e) (as added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)) and by striking subsection (e) (as added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477)); and

(2) by adding at the end the following new subsection:

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(3) In this subsection, the term 'United States', when used in a geographic sense, has the meaning given that term in section 1005(g) of the Detainee Treatment Act of 2005.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, treatment, or trial of an alien detained outside the United States (as that term is defined in section 2241(e)(3) of title 28, United States Code (as added by subsection (a)) since September 11, 2001.

**SEC. 7. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.**

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto as an individually enforceable right in any civil action against an officer, employee, member of the Armed Forces or another agent of the United States Government, or against the United States, for the purpose of any claim for damages for death, injury, or damage to property in any court of the United States or its States or territories. This subsection does not affect the obligations of the United States under the Geneva Conventions.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

**SEC. 8. REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.**

(a) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(1) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(2) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) GRAVE BREACH OF COMMON ARTICLE 3.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL, UNUSUAL, OR INHUMANE TREATMENT OR PUNISHMENT.—The act of a person who subjects another person in the custody or under the physical control of the United States Government, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause, by disfiguring such person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of the body of such person or persons, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraph (1)(A) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title; and

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) of paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(b) CONSTRUCTION.—Such section is further amended by adding at the end the following new subsections:

''(e) INAPPLICABILITY OF FOREIGN SOURCES OF LAW IN INTERPRETATION.—No foreign source of law shall be considered in defining or interpreting the obligations of the United States under this title.

''(f) NATURE OF CRIMINAL SANCTIONS.—The criminal sanctions in this section provide penal sanctions under the domestic law of the United States for grave breaches of the international conventions done at Geneva August 12, 1949. Such criminal sanctions do not alter the obligations of the United States under those international conventions.''.

(c) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—Such section is further amended by adding at the end the following new subsection:

''(g) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—The provisions of section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution relating to the detention and interrogation of individuals described in such provisions that is grounded in an offense under

subsection (a) by reason of subsection (c)(3) with respect to actions occurring between September 11, 2001, and December 30, 2005.''.

**SEC. 9. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.**

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

**SEC. 10. SEVERABILITY.**

If any provision of this Act or amendment made by a provision of this Act, or the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of such provisions and amendments to any other person or circumstance, shall not be affected thereby.

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**SA 5076.** Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international and maritime borders of the United States, which was ordered to lie on the table; as follows;

On page ___, between lines _____ and _____ and insert the following:

(3) EXCEPTION TO RETROACTIVE APPLICABILITY.—Notwithstanding paragraph (2), the amendments made by this subsection shall take effect with respect to any individual appointed by the President to a position in any agency or department of the United States on the date of the enactment of this Act

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**SA 5077.** Mr. BYRD submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie in the table; as follows:

On page 5, line 19, add at the end the following: ''The authority of the President to establish new military commissions under this section shall expire on December 31, 2011. However, the expiration of that authority shall not be construed to prohibit the conduct to finality of any proceedings of a military commission established under this section before that date.''.

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**SA 5078.** Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

At the end, add the following:

**SEC. 11. OVERSIGHT OF CENTRAL INTELLIGENCE AGENCY PROGRAMS.**

(a) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY REPORTS ON DETENTION AND INTERROGATION PROGRAM.—

(1) QUARTERLY REPORTS REQUIRED.—Not later than three months after the date of the enactment of this Act, and every three months thereafter, the Director of the Central Intelligence Agency shall submit to the congressional intelligence committees a report on the detention and interrogation program of the Central Intelligence Agency during the preceding three months.

(2) ELEMENTS.—In addition to any other matter necessary to keep the congressional intelligence committees fully and currently informed about the detention and interrogation program of the Central Intelligence Agency, each report under paragraph (1) shall include (but not be limited to), for the period covered by such report, the following:

(A) A description of any detention facility operated or used by the Central Intelligence Agency.

(B) A description of the detainee population, including—

(i) the name of each detainee;

(ii) where each detainee was apprehended;

(iii) the suspected activities on the basis of which each detainee is being held; and

(iv) where each detainee is being held.

(C) A description of each interrogation technique authorized for use and guidelines on the use of each such technique.

(D) A description of each legal opinion of the Department of Justice and the General Counsel of the Central Intelligence Agency that is applicable to the detention and interrogation program.

(E) The actual use of interrogation techniques.

(F) A description of the intelligence obtained as a result of the interrogation techniques utilized.

(G) Any violation of law or abuse under the detention and interrogation program by Central Intelligence Agency personnel, other United States Government personnel or contractors, or anyone else associated with the program.

(H) An assessment of the effectiveness of the detention and interrogation program.

(I) An appendix containing all guidelines and legal opinions applicable to the detention and interrogation program, if not included in a previous report under this subsection.

(b) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY REPORTS ON DISPOSITION OF DETAINEES.—

(1) QUARTERLY REPORTS REQUIRED.—Not later than three months after the date of the enactment of this Act, and every three months thereafter, the Director of the Central Intelligence Agency shall submit to the congressional intelligence committees a report on the detainees who, during the preceding three months, were transferred out of the detention program of the Central Intelligence Agency.

(2) ELEMENTS.—In addition to any other matter necessary to keep the congressional intelligence committees fully and currently informed about transfers out of the detention program of the Central Intelligence Agency, each report under paragraph (1) shall include (but not be limited to), for the period covered by such report, the following:

(A) For each detainee who was transferred to the custody of the Department of Defense for prosecution before a military commission, the name of the detainee and a description of the activities that may be the subject of the prosecution.

(B) For each detainee who was transferred to the custody of the Department of Defense for any other purpose, the name of the detainee and the purpose of the transfer.

(C) For each detainee who was transferred to the custody of the Attorney General for prosecution in a United States district court, the name of the detainee and a description of the activities that may be the subject of the prosecution.

(D) For each detainee who was rendered or otherwise transferred to the custody of another nation—

(i) the name of the detainee and a description of the suspected terrorist activities of the detainee;

(ii) the rendition process, including the locations and custody from, through, and to which the detainee was rendered; and

(iii) the knowledge, participation, and approval of foreign governments in the rendition process.

(E) For each detainee who was rendered or otherwise transferred to the custody of another nation during or before the preceding three months—

(i) the knowledge of the United States Government, if any, concerning the subsequent treatment of the detainee and the efforts made by the United States Government to obtain that information;

(ii) the requests made by United States intelligence agencies to foreign governments for information to be obtained from the detainee;

(iii) the information provided to United States intelligence agencies by foreign governments relating to the interrogation of the detainee;

(iv) the current status of the detainee;

(v) the status of any parliamentary, judicial, or other investigation about the rendition or other transfer; and

(vi) any other information about potential risks to United States interests resulting from the rendition or other transfer.

(c) CIA INSPECTOR GENERAL AND GENERAL COUNSEL REPORTS.—

(1) ANNUAL REPORTS REQUIRED.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Inspector General of the Central Intelligence Agency and the General Counsel of the Central Intelligence Agency shall each submit to the congressional intelligence committees a report on the detention, interrogation and rendition programs of the Central Intelligence Agency during the preceding year.

(2) ELEMENTS.—Each report under paragraph (1) shall include, for the period covered by such report, the following:

(A) An assessment of the adherence of the Central Intelligence Agency to any applicable law in the conduct of the detention, interrogation, and rendition programs of the Central Intelligence Agency.

(B) Any violations of law or other abuse on the part of personnel of the Central Intelligence Agency, other United States Government personnel or contractors, or anyone else associated with the detention, interrogation, and rendition programs of the Central Intelligence Agency in the conduct of such programs.

(C) An assessment of the effectiveness of the detention, interrogation, and rendition programs of the Central Intelligence Agency.

(D) Any recommendations to ensure that the detention, interrogation, and rendition programs of the Central Intelligence Agency are conducted in a lawful and effective manner.

(3) CONSTRUCTION OF REPORTING REQUIREMENT.—Nothing in this subsection shall be construed to modify the authority and reporting obligations of the Inspector General of the Central Intelligence Agency under section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) or any other law.

(d) CERTIFICATION OF COMPLIANCE.—Not later than three months after the date of the enactment of this Act, and promptly upon any subsequent approval of interrogation techniques for use by the Central Intelligence Agency, the Attorney General shall submit to the congressional intelligence committees—

(1) an unclassified certification whether or not each approved interrogation technique complies with the Constitution of the United States and all applicable treaties, statutes, Executive orders, and regulations; and

(2) an explanation of why each approved technique complies with the Constitution of the United States and all applicable treaties, statutes, Executive orders, and regulations.

(e) FORM OF REPORTS.—Except as provided in subsection (d)(1), each report under this section shall be submitted in classified form.

(f) AVAILABILITY OF REPORTS.—Each report under this section shall be fully accessible by each member of the congressional intelligence committees.

(g) DEFINITIONS.—In this section:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ''congressional intelligence committees'' means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) LAW.—The term ''law'' includes the Constitution of the United States and any applicable treaty, statute, Executive order, or regulation.

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**SA 5079.** Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

At the end, add the following:

**SEC. 11. DEADLINE FOR TRANSFER OF DETAINEES HELD BY THE CENTRAL INTELLIGENCE AGENCY.**

(a) DEADLINE FOR TRANSFER.—Except as provided in subsection (b), not later than one year after the commencement of the detention of an individual by the Central Intelligence Agency, the Director of the Central Intelligence Agency shall—

(1) transfer the individual to the custody of the Department of Defense for prosecution before a military commission or for any other lawful purpose for which the Department of Defense may hold the individual;

(2) transfer the individual to the Attorney General for prosecution in a United States district court; or

(3) transfer the individual to a foreign nation in a manner consistent with the treaty obligations of the United States.

(b) EXTENSION.—The President may extend the period otherwise provided by subsection (a), as previously extended (if at all) under this subsection, for the transfer of an individual under this section by an additional period of 180 days if the President submits to the congressional intelligence committees a classified certification that it is in the national security interest of the United States to retain the individual in the custody of the Central Intelligence Agency for such additional period. A separate certification shall be submitted with respect to each extension under this subsection.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

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**SA 5080.** Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 2, line 18, strike ''prevention'' and all that follows through line 21, and insert the following: ''effective prevention of unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband, as determined by the Secretary of Homeland Security.''.

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**SA 5081.** Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 93, strike line 5 and all that follows through page 94, line 9.

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**SA 5082.** Mr. SPECTER (for himself, Mr. LEAHY, and Mr. SMITH) submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 94, line 2, strike the quotation marks and the second period and insert the following:

''(3)(A) Paragraph (1) shall not apply to an application for a writ of habeas corpus challenging the legality of the detention of an alien described in paragraph (1), including a claim of innocence, filed by or on behalf of such an alien who has been detained by the United States for longer than 1 year.

''(B) No second or successive application for a writ of habeas corpus may be filed by or on behalf of an alien described in paragraph (1).''.

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**SA 5083.** Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 94, strike lines 10 through 12 and insert the following:

**SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005.**

(a) PERMISSIBLE INTERROGATION TECHNIQUES.—

(1) IN GENERAL.—Section 1002 of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2739; 10 U.S.C. 801 note) is amended by striking ''Department of Defense'' each place it appears in subsections (a) and (b) and inserting ''United States Government''.

(2) CONFORMING AMENDMENT.—The heading of such section is amended to read as follows:

**''SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE UNITED STATES GOVERNMENT.''.**

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**SA 5084.** Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 83, between lines 8 and 9, insert the following:

(2) PROTECTION OF UNITED STATES PERSONS.—The Secretary of State shall notify other parties to the Geneva Conventions that—

(A) the United States has historically interpreted the law of war and the Geneva Conventions, including in particular common Article 3, to prohibit a wide variety of cruel, inhuman, and degrading treatment of members of the United States Armed Forces and United States persons;

(B) during and following previous armed conflicts, the United States Government has prosecuted persons for engaging in cruel, inhuman, and degrading treatment, including the use of waterboarding techniques, stress positions, including prolonged standing, the use of extreme temperatures, beatings, sleep deprivation, and other similar acts;

(C) this Act and the amendments made by this Act preserve the capacity of the United States to prosecute nationals of enemy powers for engaging in acts against members of the United States Armed Forces and United States persons that have been prosecuted by the United States as war crimes in the past; and

(D) should any United States person be subjected to the following acts, without limitation, under circumstances in which the Geneva Conventions are applicable, the United States would consider such acts to constitute punishable offenses under common Article 3 and would act accordingly: forcing the person to be naked, perform sexual acts, or pose in a sexual manner; applying beatings, electric shocks, burns, or other forms of physical pain to the person; waterboarding the person; using dogs on the person; inducing hypothermia or heat injury in the person; conducting a mock execution of the person; and depriving the person of necessary food, water, or medical care.

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**SA 5085.** Mr. FRIST proposed an amendment to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Military Commissions Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Construction of Presidential authority to establish military commissions.
Sec. 3. Military commissions.
Sec. 4. Amendments to Uniform Code of Military Justice.
Sec. 5. Treaty obligations not establishing grounds for certain claims.
Sec. 6. Implementation of treaty obligations.
Sec. 7. Habeas corpus matters.
Sec. 8. Revisions to Detainee Treatment Act of 2005 relating to protection of certain United States Government personnel.
Sec. 9. Review of judgments of military commissions.
Sec. 10. Detention covered by review of decisions of Combatant Status Review Tribunals of propriety of detention.

**SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.**

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

**SEC. 3. MILITARY COMMISSIONS.**

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

**"CHAPTER 47A—MILITARY COMMISSIONS**

''Subchapter
''I. General Provisions ..... 948a
''II. Composition of Military Commissions ..... 948h
''III. Pre-Trial Procedure ..... 948q
''IV. Trial Procedure ..... 949a
''V. Sentences ..... 949s
''VI. Post-Trial Procedure and Review of Military Commissions ..... 950a
''VII. Punitive Matters ..... 950p

''SUBCHAPTER I—GENERAL PROVISIONS

''Sec.
''948a. Definitions.
''948b. Military commissions generally.
''948c. Persons subject to military commissions.
''948d. Jurisdiction of military commissions.
''948e. Annual report to congressional committees.

**"§ 948a. Definitions**

''In this chapter:

''(1) UNLAWFUL ENEMY COMBATANT.—(A) The term 'unlawful enemy combatant' means—

''(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

''(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

''(B) CO-BELLIGERENT.—In this paragraph, the term 'co-belligerent', with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy.

''(2) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means a person who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(3) ALIEN.—The term 'alien' means a person who is not a citizen of the United States.

''(4) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(5) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means the international conventions signed at Geneva on August 12, 1949.

**"§ 948b. Military commissions generally**

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

''(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided in this chapter. The judicial construction and application of that chapter are not binding on military commissions established under this chapter.

''(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by this chapter.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) STATUS OF COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(g) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.

**"§ 948c. Persons subject to military commissions**

''Any alien unlawful enemy combatant is subject to trial by military commission under this chapter.

**"§ 948d. Jurisdiction of military commissions**

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) DETERMINATION OF UNLAWFUL ENEMY COMBATANT STATUS DISPOSITIVE.—A finding, whether before, on, or after the date of the enactment of the Military Commissions Act of 2006, by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense that a person is an unlawful enemy combatant is dispositive for purposes of jurisdiction for trial by military commission under this chapter.

''(d) PUNISHMENTS.—A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.

**"§ 948e. Annual report to congressional committees**

''(a) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under this chapter during such year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.
''948h. Who may convene military commissions.
''948i. Who may serve on military commissions.
''948j. Military judge of a military commission.
''948k. Detail of trial counsel and defense counsel.
''948l. Detail or employment of reporters and interpreters.
''948m. Number of members; excuse of members; absent and additional members.

**"§ 948h. Who may convene military commissions**

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

**"§ 948i. Who may serve on military commissions**

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members of the commission such members of the armed forces eligible under subsection (a), as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

**"§ 948j. Military judge of a military commission**

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military

commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) QUALIFICATIONS.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members of the commission except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members of the commission.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

**''§ 948k. Detail of trial counsel and defense counsel**

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges against the accused.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice) who—

''(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who—

''(A) is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

**''§ 948l. Detail or employment of reporters and interpreters**

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the commission qualified court reporters, who shall make a verbatim recording of the proceedings of and testimony taken before the commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the commission and, as necessary, for trial counsel and defense counsel and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the commission, who shall also be responsible for preparing the record of the proceedings.

**''§ 948m. Number of members; excuse of members; absent and additional members**

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''Sec.
''948q. Charges and specifications.
''948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements.
''948s. Service of charges.

**''§ 948q. Charges and specifications**

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of the signer's knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges against him as soon as practicable.

**''§ 948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements**

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) EXCLUSION OF STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005.

**''§ 948s. Service of charges**

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused

and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''Sec.
''949a. Rules.
''949b. Unlawfully influencing action of military commission.
''949c. Duties of trial counsel and defense counsel.
''949d. Sessions.
''949e. Continuances.
''949f. Challenges.
''949g. Oaths.
''949h. Former jeopardy.
''949i. Pleas of the accused.
''949j. Opportunity to obtain witnesses and other evidence.
''949k. Defense of lack of mental responsibility.
''949l. Voting and rulings.
''949m. Number of votes required.
''949n. Military commission to announce action.
''949o. Record of trial.

**''§ 949a. Rules**

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense, in consultation with the Attorney General. Such procedures shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence in trial by general courts-martial. Such procedures and rules of evidence may not be contrary to or inconsistent with this chapter.

''(b) RULES FOR MILITARY COMMISSION.—(1) Notwithstanding any departures from the law and the rules of evidence in trial by general courts-martial authorized by subsection (a), the procedures and rules of evidence in trials by military commission under this chapter shall include the following:

''(A) The accused shall be permitted to present evidence in his defense, to cross-examine the witnesses who testify against him, and to examine and respond to evidence admitted against him on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

''(B) The accused shall be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) The accused shall receive the assistance of counsel as provided for by section 948k.

''(D) The accused shall be permitted to represent himself, as provided for by paragraph (3).

''(2) In establishing procedures and rules of evidence for military commission proceedings, the Secretary of Defense may prescribe the following provisions:

''(A) Evidence shall be admissible if the military judge determines that the evidence would have probative value to a reasonable person.

''(B) Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

''(C) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(D) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient basis to find that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(E)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under the preceding sentence is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(c) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(F) The military judge shall exclude any evidence the probative value of which is substantially outweighed—

''(i) by the danger of unfair prejudice, confusion of the issues, or misleading the commission; or

''(ii) by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (1)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (1)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''(d) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF CHANGES TO PROCEDURES.—Not later than 60 days before the date on which any proposed modification of the procedures in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the modification.

**''§ 949b. Unlawfully influencing action of military commission**

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or his functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to his judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) Paragraphs (1) and (2) do not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

**''§ 949c. Duties of trial counsel and defense counsel**

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, but only if such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to classified information that is classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information and may not divulge such information to any person not authorized to receive it.

''(5) If the accused is represented by civilian counsel, detailed military counsel shall act as associate counsel.

''(6) The accused is not entitled to be represented by more than one military counsel.

However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to represent the accused.

''(7) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

**''§ 949d. Sessions**

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (c) and (e), any proceedings under paragraph (1) shall—

''(A) be conducted in the presence of the accused, defense counsel, and trial counsel; and

''(B) be made part of the record.

''(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, including any consultation of the members with the military judge or counsel, shall—

''(1) be in the presence of the accused, defense counsel, and trial counsel; and

''(2) be made a part of the record.

''(c) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(d) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in accordance with this subsection.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(e) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(f) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. The rule in the preceding sentence applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure of the information would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

**''§ 949e. Continuances**

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

**''§ 949f. Challenges**

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the commission. The military judge shall determine the relevance and validity of challenges for cause. The military judge may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

**''§ 949g. Oaths**

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary of Defense. Those regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

**''§ 949h. Former jeopardy**

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

**''§ 949i. Pleas of the accused**

''(a) ENTRY OF PLEA OF NOT GUILTY.—If an accused in a military commission under this

chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

**''§ 949j. Opportunity to obtain witnesses and other evidence**

''(a) RIGHT OF DEFENSE COUNSEL.—Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(b) PROCESS FOR COMPULSION.—Process issued in a military commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(2) shall run to any place where the United States shall have jurisdiction thereof.

''(c) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(d) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (c).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by general court-martial under chapter 47 of this title.

**''§ 949k. Defense of lack of mental responsibility**

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

**''§ 949l. Voting and rulings**

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

**''§ 949m. Number of votes required**

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) No person may be sentenced by a military commission to suffer death, except insofar as—

''(A) the penalty of death is expressly authorized under this chapter or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused is convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all the members present at the time the vote is taken concur in the sentence of death.

''(2) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(3) All other sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not fewer than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

**''§ 949n. Military commission to announce action**

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

**''§ 949o. Record of trial**

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall be given a redacted version of the record consistent with the requirements of section 949d of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''Sec.
''949s. Cruel or unusual punishments prohibited.
''949t. Maximum limits.
''949u. Execution of confinement.

**"§ 949s. Cruel or unusual punishments prohibited**

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

**"§ 949t. Maximum limits**

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

**"§ 949u. Execution of confinement**

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Appellate referral; waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by Court of Military Commission Review.
''950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court.
''950h. Appellate counsel.
''950i. Execution of sentence; procedures for execution of sentence of death.
''950j. Finality or proceedings, findings, and sentences.

**"§ 950a. Error of law; lesser included offense**

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

**"§ 950b. Review by the convening authority**

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action on the sentence under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(3) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, may—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

**"§ 950c. Appellate referral; waiver or withdrawal of appeal**

''(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided under subsection (b), in each case in which the final decision of a military commission (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

''(b) WAIVER OF RIGHT OF REVIEW.—(1) In each case subject to appellate review under section 950f of this title, except a case in which the sentence as approved under section 950b of this title extends to death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice on the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

**"§ 950d. Appeal by the United States**

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (d), (e), or (f) of section 949d of this title or section 949j(c) of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of such order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified

in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''(d) APPEAL FROM ADVERSE RULING.—The United States may appeal an adverse ruling on an appeal under subsection (c) to the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in the Court of Appeals within 10 days after the date of such ruling. Review under this subsection shall be at the discretion of the Court of Appeals.

**''§ 950e. Rehearings**

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

**''§ 950f. Review by Court of Military Commission Review**

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may be serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) CASES TO BE REVIEWED.—The Court of Military Commission Review, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

**''§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court**

''(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

''(B) The Court of Appeals may not review the final judgment until all other appeals under this chapter have been waived or exhausted.

''(2) A petition for review must be filed by the accused in the Court of Appeals not later than 20 days after the date on which—

''(A) written notice of the final decision of the Court of Military Commission Review is served on the accused or on defense counsel; or

''(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(b) STANDARD FOR REVIEW.—In a case reviewed by it under this section, the Court of Appeals may act only with respect to matters of law.

''(c) SCOPE OF REVIEW.—The jurisdiction of the Court of Appeals on an appeal under subsection (a) shall be limited to the consideration of—

''(1) whether the final decision was consistent with the standards and procedures specified in this chapter; and

''(2) to the extent applicable, the Constitution and the laws of the United States.

''(d) SUPREME COURT.—The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals pursuant to section 1257 of title 28.

**''§ 950h. Appellate counsel**

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

''(1) shall represent the United States in any appeal or review proceeding under this chapter before the Court of Military Commission Review; and

''(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (4) of that section.

**''§ 950i. Execution of sentence; procedures for execution of sentence of death**

''(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

''(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

''(i) a petition for a writ of certiorari is not timely filed;

''(ii) such a petition is denied by the Supreme Court; or

''(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

**''§ 950j. Finality or proceedings, findings, and sentences**

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950p. Statement of substantive offenses.
''950q. Principals.
''950r. Accessory after the fact.
''950s. Conviction of lesser included offense.
''950t. Attempts.
''950u. Solicitation.
''950v. Crimes triable by military commissions.
''950w. Perjury and obstruction of justice; contempt.

**''§ 950p. Statement of substantive offenses**

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new

crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

**''§ 950q. Principals**

''Any person is punishable as a principal under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

**''§ 950r. Accessory after the fact**

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

**''§ 950s. Conviction of lesser included offense**

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

**''§ 950t. Attempts**

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**''§ 950u. Solicitation**

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

**''§ 950v. Crimes triable by military commissions**

''(a) DEFINITIONS AND CONSTRUCTION.—In this section:

''(1) MILITARY OBJECTIVE.—The term 'military objective' means—

''(A) combatants; and

''(B) those objects during an armed conflict—

''(i) which, by their nature, location, purpose, or use, effectively contribute to the opposing force's war-fighting or war-sustaining capability; and

''(ii) the total or partial destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.

''(2) PROTECTED PERSON.—The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including—

''(A) civilians not taking an active part in hostilities;

''(B) military personnel placed hors de combat by sickness, wounds, or detention; and

''(C) military medical or religious personnel.

''(3) PROTECTED PROPERTY.—The term 'protected property' means property specifically protected by the law of war (such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(4) CONSTRUCTION.—The intent specified for an offense under paragraph (1), (2), (3), (4), or (12) of subsection (b) precludes the applicability of such offense with regard to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation:

''(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''(11) TORTURE.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(12) CRUEL OR INHUMAN TREATMENT.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by

such punishment, other than death, as a military commission under this chapter may direct.

''(B) DEFINITIONS.—In this paragraph:

''(i) The term 'serious physical pain or suffering' means bodily injury that involves—

''(I) a substantial risk of death;

''(II) extreme physical pain;

''(III) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(IV) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(ii) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(iii) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(I) the term 'serious' shall replace the term 'severe' where it appears; and

''(II) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

''(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term 'serious bodily injury' means bodily injury which involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) protracted and obvious disfigurement; or

''(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

''(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

''(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

''(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessity, shall be punished as a military commission under this chapter may direct.

''(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

''(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct.

''(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

''(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''(27) SPYING.—Any person subject to this chapter who with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(28) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950w. Perjury and obstruction of justice; contempt**

''(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to military commissions under this chapter.

''(b) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''47A. Military Commissions ..... 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

**SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE.**

(a) CONFORMING AMENDMENTS.—Chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) APPLICABILITY TO LAWFUL ENEMY COMBATANTS.—Section 802(a) (article 2(a)) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''.

(2) EXCLUSION OF APPLICABILITY TO CHAPTER 47A COMMISSIONS.—Sections 821, 828, 848, 850(a), 904, and 906 (articles 21, 28, 48, 50(a), 104, and 106) are amended by adding at the end the following new sentence: ''This section does not apply to a military commission established under chapter 47A of this title.''.

(3) INAPPLICABILITY OF REQUIREMENTS RELATING TO REGULATIONS.—Section 836 (article 36) is amended—

(A) in subsection (a), by inserting '', except as provided in chapter 47A of this title,'' after ''but which may not''; and

(B) in subsection (b), by inserting before the period at the end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

(b) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

**SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.**

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

**SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.**

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—

(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) THIRD GENEVA CONVENTION.—The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(B) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

''(5) DEFINITION OF GRAVE BREACHES.—The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

**SEC. 7. HABEAS CORPUS MATTERS.**

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477) and inserting the following new subsection (e):

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

**SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.**

(a) COUNSEL AND INVESTIGATIONS.—Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection''.

(b) PROTECTION OF PERSONNEL.—Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

**SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.**

Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(1) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(3) in subparagraph (C)—

(A) in clause (i)—

(i) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(ii) by striking ''at Guantanamo Bay, Cuba''; and

(B) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(4) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

**SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.**

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

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**SA 5086.** Mr. LEVIN (for himself, Mr. DAYTON, and Mr. REED) proposed an amendment to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Military Commissions Act of 2006''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The Constitution of the United States grants to Congress the power ''To define and punish . . . Offenses against the Law of Nations'', as well as the power ''To declare War . . . To raise and support Armies . . . [and] To provide and maintain a Navy''.

(2) The military commission is the traditional tribunal for the trial of persons engaged in hostilities for violations of the law of war.

(3) Congress has, in the past, both authorized the use of military commission by statute and recognized the existence and authority of military commissions.

(4) Military commissions have been convened both by the President and by military commanders in the field to try offenses against the law of war.

(5) It is in the national interest for Congress to exercise its authority under the Constitution to enact legislation authorizing and regulating the use of military commissions to try and punish violations of the law of war.

(6) Military commissions established and operating under chapter 47A of title 10, United States Code (as enacted by this Act), are regularly constituted courts affording, in the words of Common Article 3 of the Geneva Conventions, ''all the judicial guarantees which are recognized as indispensable by civilized peoples''.

**SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.**

(a) IN GENERAL.—The President is authorized to establish military commissions for the trial of alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses specifically made triable by military commission as provided in chapter 47 of title 10, United States Code, and chapter 47A of title 10, United States Code (as enacted by this Act).

(b) CONSTRUCTION.—The authority in subsection (a) may not be construed to alter or limit the authority of the President under the Constitution and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(c) SCOPE OF PUNISHMENT AUTHORITY.—A military commission established pursuant to subsection (a) shall have authority to impose upon any person found guilty under a proceeding under chapter 47A of title 10, United States Code (as so enacted), a sentence that is appropriate for the offense or offenses for which there is a finding of guilt, including a sentence of death if authorized under such chapter, imprisonment for life or a term of years, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the military commission shall direct.

(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense is authorized to carry out

a sentence of punishment imposed by a military commission established pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.

(e) ANNUAL REPORT ON TRIALS BY MILITARY COMMISSIONS.—

(1) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions established pursuant to subsection (a) during such year.

(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

**SEC. 4. MILITARY COMMISSIONS.**

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

**"CHAPTER 47A—MILITARY COMMISSIONS**


| | |
|---|---|
| ''SUBCHAPTER | Sec. |
| ''I. General Provisions | 948a. |
| ''II. Composition of Military Commissions | 948h. |
| ''III. Pre-Trial Procedure | 948q. |
| ''IV. Trial Procedure | 949a. |
| ''V. Sentences | 949s. |
| ''VI. Post-Trial Procedure and Review of Military Commissions | 950a. |
| ''VII. Punitive Matters | 950aa. |


''SUBCHAPTER I—GENERAL PROVISIONS


''Sec.
''948a. Definitions.
''948b. Military commissions generally.
''948c. Persons subject to military commissions.
''948d. Jurisdiction of military commissions.


**"§ 948a. Definitions**

''In this chapter:

''(1) ALIEN.—The term 'alien' means an individual who is not a citizen of the United States.

''(2) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(3) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means an individual who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(4) UNLAWFUL ENEMY COMBATANT.—The term 'unlawful enemy combatant' means an individual engaged in hostilities against the United States who is not a lawful enemy combatant.

**"§ 948b. Military commissions generally**

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title, while instructive, is therefore not of its own force binding on military commissions established under this chapter.

''(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

''(d) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

**"§ 948c. Persons subject to military commissions**

''Any alien unlawful enemy combatant engaged in hostilities or having supported hostilities against the United States is subject to trial by military commission as set forth in this chapter.

**"§ 948d. Jurisdiction of military commissions**

''A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter, chapter 47 of this title, or the law of war.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS


''Sec.
''948h. Who may convene military commissions.
''948i. Who may serve on military commissions.
''948j. Military judge of a military commission.
''948k. Detail of trial counsel and defense counsel.
''948l. Detail or employment of reporters and interpreters.
''948m. Number of members; excuse of members; absent and additional members.


**"§ 948h. Who may convene military commissions**

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

**"§ 948i. Who may serve on military commissions**

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

**"§ 948j. Military judge of a military commission**

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any

report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

**"§ 948k. Detail of trial counsel and defense counsel**

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

''(A) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who is—

''(A) a member of the bar of a Federal court or of the highest court of a State; and

''(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

**"§ 948l. Detail or employment of reporters and interpreters**

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

**"§ 948m. Number of members; excuse of members; absent and additional members**

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''Sec.
''948q. Charges and specifications.
''948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment.
''948s. Service of charges.

**"§ 948q. Charges and specifications**

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of his knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against him as soon as practicable.

**"§ 948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment**

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) STATEMENTS OBTAINED BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—A statement obtained by use of torture or by cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd), whether or not under color of law, shall not be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence the statement was made.

''(c) STATEMENTS OBTAINED BY ALLEGED COERCION NOT AMOUNTING TO TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—An otherwise admissible statement obtained through the use of alleged coercion not amounting to torture or cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 may be admitted in evidence in a military commission under this chapter only if the military judge finds that—

''(1) the totality of the circumstances under which the statement was made render it reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

**"§ 948s. Service of charges**

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''Sec.
''949a. Rules.
''949b. Unlawfully influencing action of military commission.
''949c. Duties of trial counsel and defense counsel.
''949d. Sessions.
''949e. Continuances.
''949f. Challenges.
''949g. Oaths.
''949h. Former jeopardy.
''949i. Pleas of the accused.
''949j. Opportunity to obtain witnesses and other evidence.
''949k. Defense of lack of mental responsibility.
''949l. Voting and rulings.
''949m. Number of votes required.
''949n. Military commission to announce action.
''949o. Record of trial.

**"§ 949a. Rules**

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

''(b) EXCEPTIONS.—(1) The Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability in trials by military commission under this chapter from the procedures

and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.

''(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights:

''(A) To examine and respond to all evidence considered by the military commission on the issue of guilt or innocence and for sentencing.

''(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) To the assistance of counsel.

''(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).

''(E) To the suppression of evidence that is not reliable or probative.

''(F) To the suppression of evidence the probative value of which is substantially outweighed by—

''(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

''(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

''(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

''(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(C) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(D) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission only if—

''(i) the proponent of the evidence makes known to the adverse party, sufficiently in advance of trial or hearing to provide the adverse party with a fair opportunity to meet the evidence, the proponent's intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained); and

''(ii) the military judge finds that the totality of the circumstances render the evidence more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts, taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.

''(4)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (2)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

**''§ 949b. Unlawfully influencing action of military commission**

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) The provisions of this subsection shall not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

**''§ 949c. Duties of trial counsel and defense counsel**

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discretion, may detail additional military counsel to represent the accused.

''(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

**''§ 949d. Sessions**

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

''(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(4)(A) Subject to the provisions of this paragraph, classified information shall be handled in accordance with rules applicable

in trials by general courts-martial of the United States.

''(B) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. This subparagraph applies to all stages of proceedings of military commissions under this chapter.

''(C) After the original classification authority or head of the agency concerned has certified in writing that evidence and the sources thereof have been declassified to the maximum extent possible, consistent with the requirements of national security, the military judge may, to the extent practicable in accordance with the rules applicable in trials by court-martial, authorize—

''(i) the deletion of specified items of classified information from documents made available to the accused;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(D) A claim of privilege under this paragraph, and any materials in support thereof, shall, upon the request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

**''§ 949e. Continuances**

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

**''§ 949f. Challenges**

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

**''§ 949g. Oaths**

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''(c) OATH DEFINED.—In this section, the term 'oath' includes an affirmation.

**''§ 949h. Former jeopardy**

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

**''§ 949i. Pleas of the accused**

''(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

**''§ 949j. Opportunity to obtain witnesses and other evidence**

''(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(B) shall run to any place where the United States shall have jurisdiction thereof.

''(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any known evidence that reasonably tends to exculpate or reduce the degree of guilt of the accused.

''(c) TREATMENT OF CERTAIN ITEMS.—In accordance with the rules applicable in trials by general courts-martial in the United States, and to the extent provided in such rules, the military judge in a military commission under this chapter may authorize trial counsel, in making documents available to the accused pursuant to subsections (a) and (b)—

''(1) to delete specified items of classified information from such documents;

''(2) to substitute an unclassified summary of the classified information in such documents; or

''(3) to substitute an unclassified statement admitting relevant facts that classified information in such documents would tend to prove.

**''§ 949k. Defense of lack of mental responsibility**

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members as to the defense of lack of mental responsibility under this section and shall charge the members to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

**''§ 949l. Voting and rulings**

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a

lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

**''§ 949m. Number of votes required**

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(2) No person may be sentenced to death by a military commission, except insofar as—

''(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused was convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all members present at the time the vote was taken concurred in the sentence of death.

''(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12 members.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 5 members), and the military commission may be assembled, and the trial held, with not less than the number of members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

**''§ 949n. Military commission to announce action**

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

**''§ 949o. Record of trial**

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of section 949d(c)(4) of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''Sec.
''949s. Cruel or unusual punishments prohibited.
''949t. Maximum limits.
''949u. Execution of confinement.

**''§ 949s. Cruel or unusual punishments prohibited**

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

**''§ 949t. Maximum limits**

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

**''§ 949u. Execution of confinement**

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court.
''950g. Appellate counsel
''950h. Execution of sentence; suspension of sentence.
''950i. Finality of proceedings, findings, and sentences.

**''§ 950a. Error of law; lesser included offense**

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

**''§ 950b. Review by the convening authority**

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after accused has been give an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, only—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

**''§ 950c. Waiver or withdrawal of appeal**

''(a) WAIVER OF RIGHT OF REVIEW.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Appeals for the Armed Forces under section 950f(a) of this title of the final decision of the military commission under this chapter.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(b) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(c) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

**''§ 950d. Appeal by the United States**

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Appeals for the Armed Forces under section 950f of this title of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (c) or (d) of section 949d of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of the order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the United States Court of Appeals for the Armed Forces. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

**''§ 950e. Rehearings**

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

**''§ 950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court**

''(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—(1) Subject to the provisions of this subsection, the United States Court of Appeals for the Armed Forces shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

''(2) The United States Court of Appeals for the Armed Forces may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

''(3)(A) An accused may seek a determination by the United States Court of Appeals for the Armed Forces of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

''(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which written notice of the final decision of the military commission is served on the accused or defense counsel.

''(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

''(4) The determination by the United States Court of Appeals for the Armed Forces of the final validity of a judgment of a military commission under this subsection shall be governed by the provisions of section 1005(e)(3) of the Detainee Treatment Act of 2005 (42 U.S.C. 801 note).

''(b) REVIEW BY SUPREME COURT.—The Supreme Court of the United States may review by writ of certiorari pursuant to section 1257 of title 28 the final judgment of the United States Court of Appeals for the Armed Forces in a determination under subsection (a).

**''§ 950g. Appellate counsel**

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States before the Supreme Court in case arising under this chapter when requested to do so by the Attorney General.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented before the United States Court of Appeals for the Armed Forces or the Supreme Court by military appellate counsel, or by civilian counsel if retained by him.

**''§ 950h. Execution of sentence; suspension of sentence**

''(a) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

''(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the United States Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the Armed Forces and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

**''§ 950i. Finality of proceedings, findings, and sentences**

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a

military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950aa. Definitions; construction of certain offenses; common circumstances.
''950bb. Principals.
''950cc. Accessory after the fact.
''950dd. Conviction of lesser offenses.
''950ee. Attempts.
''950ff. Conspiracy.
''950gg. Solicitation.
''950hh. Murder of protected persons.
''950ii. Attacking civilians.
''950jj. Attacking civilian objects.
''950kk. Attacking protected property.
''950ll. Pillaging.
''950mm. Denying quarter.
''950nn. Taking hostages.
''950oo. Employing poison or similar weapons.
''950pp. Using protected persons as a shield.
''950qq. Using protected property as a shield.
''950rr. Torture.
''950ss. Cruel, unusual, or inhumane treatment or punishment.
''950tt. Intentionally causing serious bodily injury.
''950uu. Mutilating or maiming.
''950vv. Murder in violation of the law of war.
''950ww. Destruction of property in violation of the law of war.
''950xx. Using treachery or perfidy.
''950yy. Improperly using a flag of truce.
''950zz. Improperly using a distinctive emblem.
''950aaa. Intentionally mistreating a dead body.
''950bbb. Rape.
''950ccc. Hijacking or hazarding a vessel or aircraft.
''950ddd. Terrorism.
''950eee. Providing material support for terrorism.
''950fff. Wrongfully aiding the enemy.
''950ggg. Spying.
''950hhh. Contempt.
''950iii. Perjury and obstruction of justice.

**''§ 950aa. Definitions; construction of certain offenses; common circumstances**

''(a) DEFINITIONS.—In this subchapter:

''(1) The term 'military objective' means combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

''(2) The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

''(3) The term 'protected property' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under sections 950hh, 950ii, 950jj, 950kk, and 950ss of this title precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

''(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with armed conflict.

**''§ 950bb. Principals**

''Any person punishable under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter,

is a principal.

**''§ 950cc. Accessory after the fact**

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

**''§ 950dd. Conviction of lesser offenses**

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

**''§ 950ee. Attempts**

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**''§ 950ff. Conspiracy**

''Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950gg. Solicitation**

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

**''§ 950hh. Murder of protected persons**

''Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

**''§ 950ii. Attacking civilians**

''Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950jj. Attacking civilian objects**

''Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

**''§ 950kk. Attacking protected property**

''Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

**''§ 950ll. Pillaging**

''Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

**''§ 950mm. Denying quarter**

''Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

**''§ 950nn. Taking hostages**

''Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950oo. Employing poison or similar weapons**

''Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**''§ 950pp. Using protected persons as a shield**

''Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack. or to shield, favor, or impede military operations, shall be punished, if death results to one or more

of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950qq. Using protected property as a shield**

''Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

**"§ 950rr. Torture**

''(a) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

**"§ 950ss. Cruel, unusual, or inhumane treatment or punishment**

''Any person subject to this chapter who subjects another person in their custody or under their physical control, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950tt. Intentionally causing serious bodily injury**

''(a) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SERIOUS BODILY INJURY DEFINED.—In this section, the term 'serious bodily injury' means bodily injury which involves—

''(1) a substantial risk of death;

''(2) extreme physical pain;

''(3) protracted and obvious disfigurement; or

''(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**"§ 950uu. Mutilating or maiming**

''Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950vv. Murder in violation of the law of war**

''Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

**"§ 950ww. Destruction of property in violation of the law of war**

''Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

**"§ 950xx. Using treachery or perfidy**

''Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950yy. Improperly using a flag of truce**

''Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

**"§ 950zz. Improperly using a distinctive emblem**

''Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

**"§ 950aaa. Intentionally mistreating a dead body**

''Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

**"§ 950bbb. Rape**

''Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

**"§ 950ccc. Hijacking or hazarding a vessel or aircraft**

''Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950ddd. Terrorism**

''Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

**"§ 950eee. Providing material support for terrorism**

''(a) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in section 950ddd of this title), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(b) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this section, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

**"§ 950fff. Wrongfully aiding the enemy**

''Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

**"§ 950ggg. Spying**

''Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

**"§ 950hhh. Contempt**

''A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

**"§ 950iii. Perjury and obstruction of justice**

''A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A and part II of subtitle A of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''Chapter 47A. Military Commissions 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

(1) SUBMITTAL OF PROCEDURES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

(2) SUBMITTAL OF MODIFICATIONS.—Not later than 60 days before the date on which any proposed modification of the procedures described in paragraph (1) shall go into effect, the Secretary shall submit to the committees of Congress referred to in that paragraph a report describing such modification.

**SEC. 5. AMENDMENTS TO OTHER LAWS.**

(a) DETAINEE TREATMENT ACT OF 2005.—Section 1004(b) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 42 U.S.C. 200dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection,''.

(b) UNIFORM CODE OF MILITARY JUSTICE.—Chapter 47 of title, 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) Section 802 (article 2 of the Uniform Code of Military Justice) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(3) of this title) who violate the law of war.''.

(2) Section 821 (article 21 of the Uniform Code of Military Justice) is amended by striking ''by statute or law of war''.

(3) Section 836(a) (article 36(a) of the Uniform Code of Military Justice) is amended by inserting ''(other than military commissions under chapter 47A of this title)'' after ''other military tribunals''.

(c) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice)), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter or chapter 47A of this title who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

(d) REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.—

(1) REVIEW BY SUPREME COURT.—Section 1259 of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) Cases tried by military commission and reviewed by the United States Court of Appeals for the Armed Forces under section 950f of title 10.''.

(2) DETAINEE TREATMENT ACT OF 2005.—Section 1005(e) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(A) in paragraphs (3) and (4), by striking ''United States Court of Appeals for the District of Columbia Circuit'' each place it appears and inserting ''United States Court of Appeals for the Armed Forces''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(ii) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(ii) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(iii) in subparagraph (C)—

(I) in clause (i)—

(aa) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(bb) by striking ''at Guantanamo Bay, Cuba''; and

(II) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(iv) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

**SEC. 6. HABEAS CORPUS MATTERS.**

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended—

(1) by striking subsection (e) (as added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)) and by striking subsection (e) (as added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477)); and

(2) by adding at the end the following new subsection:

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(3) In this subsection, the term 'United States', when used in a geographic sense, has the meaning given that term in section 1005(g) of the Detainee Treatment Act of 2005.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, treatment, or trial of an alien detained outside the United States (as that term is defined in section 2241(e)(3) of title 28, United States Code (as added by subsection (a)) since September 11, 2001.

**SEC. 7. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.**

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto as an individually enforceable right in any civil action against an officer, employee, member of the Armed Forces or another agent of the United States Government, or against the United States, for the purpose of any claim for damages for death, injury, or damage to property in any court of the United States or its States or territories. This subsection does not affect the obligations of the United States under the Geneva Conventions.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

**SEC. 8. REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.**

(a) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(1) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(2) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) GRAVE BREACH OF COMMON ARTICLE 3.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL, UNUSUAL, OR INHUMANE TREATMENT OR PUNISHMENT.—The act of a person who subjects another person in the custody or under the physical control of the United States Government, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause, by disfiguring such person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of the body of such person or persons, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more

persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraph (1)(A) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title; and

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) of paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(b) CONSTRUCTION.—Such section is further amended by adding at the end the following new subsections:

''(e) INAPPLICABILITY OF FOREIGN SOURCES OF LAW IN INTERPRETATION.—No foreign source of law shall be considered in defining or interpreting the obligations of the United States under this title.

''(f) NATURE OF CRIMINAL SANCTIONS.—The criminal sanctions in this section provide penal sanctions under the domestic law of the United States for grave breaches of the international conventions done at Geneva August 12, 1949. Such criminal sanctions do not alter the obligations of the United States under those international conventions.''.

(c) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—Such section is further amended by adding at the end the following new subsection:

''(g) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—The provisions of section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution relating to the detention and interrogation of individuals described in such provisions that is grounded in an offense under subsection (a) by reason of subsection (c)(3) with respect to actions occurring between September 11, 2001, and December 30, 2005.''.

**SEC. 9. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.**

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

**SEC. 10. SEVERABILITY.**

If any provision of this Act or amendment made by a provision of this Act, or the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of such provisions and amendments to any other person or circumstance, shall not be affected thereby.

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**SA 5087.** Mr. SPECTER (for himself, Mr. LEAHY, Mr. DORGAN, Mr. DODD, Mr. DAYTON, Mr. FEINGOLD, Mrs. CLINTON, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; as follows:

On page 93, strike line 9 and all that follows through page 94, line 13.

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**SA 5088.** Mr. KENNEDY (for himself, Mrs. FEINSTEIN, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; which was ordered to lie on the table; as follows:

On page 83, between lines 8 and 9, insert the following:

(2) PROTECTION OF UNITED STATES PERSONS.—The Secretary of State shall notify other parties to the Geneva Conventions that—

(A) the United States has historically interpreted the law of war and the Geneva Conventions, including in particular common Article 3, to prohibit a wide variety of cruel, inhuman, and degrading treatment of members of the United States Armed Forces and United States citizens;

(B) during and following previous armed conflicts, the United States Government has prosecuted persons for engaging in cruel, inhuman, and degrading treatment, including the use of waterboarding techniques, stress positions, including prolonged standing, the use of extreme temperatures, beatings, sleep deprivation, and other similar acts;

(C) this Act and the amendments made by this Act preserve the capacity of the United States to prosecute nationals of enemy powers for engaging in acts against members of the United States Armed Forces and United States citizens that have been prosecuted by the United States as war crimes in the past; and

(D) should any United States person to whom the Geneva Conventions apply be subjected to any of the following acts, the United States would consider such act to constitute a punishable offense under common Article 3 and would act accordingly. Such acts, each of which is prohibited by the Army Field Manual include forcing the person to be naked, perform sexual acts, or pose in a sexual manner; applying beatings, electric shocks, burns, or other forms of physical pain to the person; waterboarding the person; using dogs on the person; inducing hypothermia or heat injury in the person; conducting a mock execution of the person; and depriving the person of necessary food, water, or medical care.

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**SA 5089.** Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5066 submitted by Mrs. HUTCHISON (for herself and Mr. KYL) and intended to be proposed to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 1, between lines 2 and 3, insert the following:

(d) OPERATIONAL CONTROL DEFINED.—Notwithstanding subsection (b), for purposes of this section the term ''operational control'' means effective prevention of unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband, as determined by the Secretary of Homeland Security.

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**SA 5090.** Mr. BENNETT (for Mr. FRIST) proposed an amendment to the bill S. 403, to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; as follows:

On page 12, line 2, strike ''45 days'' and insert ''46 days''.

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**SA 5091.** Mr. BENNETT (for Mr. FRIST) proposed an amendment to amendment SA 5090 proposed by Mr. BENNETT (for Mr. FRIST) to the bill S. 403, to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; as follows:

Strike ''46 days'' and insert ''44 days''.

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## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on September 27, 2006, at 10 a.m., to conduct a hearing on the nominations of Mr. Christopher A. Padilla, of the District of Columbia, to be Assistant Secretary of the Department of Commerce; and Mr. Bijan Rafiekian, of California, to be a Member of the Board of Directors of the Export-Import Bank of the United States.

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

### COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a committee markup on Wednesday, September 27, 2006 at 10 a.m.

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

### COMMITTEE ON FINANCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on

Finance be authorized to meet during the session on Wednesday, September 27, 2006, at a time and location to be determined, following a vote on the Senate Floor, to consider favorably reporting the nominations of John K. Veroneau, to be Deputy United States Trade Representative, with the Rank of Ambassador, Executive Office of the President, and Robert K. Steel, to be Under Secretary, U.S. Department of the Treasury.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 27, 2006, at 2:30 p.m. to hold a hearing on nominations.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, September 27, 2006, at 10 a.m. for a hearing titled, ''Development of an Artificial Pancreas: Will New Technologies Improve Care for People With Diabetes and Reduce the Burden on the Health Care System?''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, September 27, 2006, at 10 a.m. for a hearing titled, ''The Potential of an Artificial Pancreas: Improving Care for People With Diabetes.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Wednesday, September 27, 2006, to hold a meeting to mark up the nomination of Robert T. Howard to be Assistant Secretary for Information and Technology, Department of Veterans' Affairs.

The meeting will take place in the Reception Room off the Senate Floor in the Capitol following the first roll call vote of the day.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on September 27, 2006 at 2:30 p.m. to hold a closed briefing.

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

SUBCOMMITTEE ON BIOTERRORISM AND PUBLIC HEALTH PREPAREDNESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on bioterrorism and Public Health Preparedness, be authorized to hold a hearing during the session of the Senate on Wednesday, September 27, 2006 at 2:30 p.m. in SD–430.

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

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on Immigration, Border Security and Citizenship be authorized to meet to conduct a hearing on ''Oversight Hearing: U.S. Refugee Admissions and Policy'' on Wednesday, September 27, at 3 p.m. in SD–226.

*Witness List*

Panel I: The Honorable Ellen Sauerbray, Assistant Secretary of State, Population, Refugees and Migration, Department of State, Washington, DC; Jonathan ''Jock'' Scharfen, Deputy Director, U.S. Citizenship and Immigration Services, Department of Homeland Security, Washington, DC.

Panel II: Michael Horowitz, Director, Project for Civil Justice Reform and Project for International Religious Liberty, Hudson Institute, Washington, DC; Father Kenneth Gavin, S.J., Vice-Chair, Refugee Council U.S.A. and National Director, Jesuit Refugee Service, U.S.A., Washington, DC.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate on Wednesday, September 27 at 10 a.m.

The purpose of the hearing is to receive testimony on the following bills: S. 3000, a bill to grant rights-of-way for electric transmission lines over certain native allotments in the State of Alaska; S. 3599, to establish the Prehistoric Trackways National Monument in the State of New Mexico; S. 3794, to provide for the implementation of the Owyhee Initiative Agreement, and for other purposes; S. 3854, to designate certain land in the State of Oregon as wilderness, and for other purposes; H.R. 3603, to promote the economic development and recreational use of National Forest System lands and other public lands in Central Idaho, to designate the Boulder-White Cloud Management Area to ensure the continued management of certain National Forest System lands and Bureau of Land Management lands for recreational and grazing use and conservation and resource protection, to add certain National Forest System lands and Bureau of Land Management lands in Central Idaho to the National Wilderness Preservation System, and for other purposes; and H.R. 5025, to protect for future generations the recreational opportunities, forest, timber, clean water, wilderness and scenic values, and diverse habitat of Mount Hood National Forest, Oregon, and for other purposes.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. LOTT. Mr. Speaker, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on September 27, 2006, at 10 a.m., to receive testimony on U.S. policy and practice with respect to the use of riot control agents by the U.S. Armed forces.

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

## PRIVILEGES OF THE FLOOR

Mr. WARNER. I ask unanimous consent a fellow from Senator GRAHAM's staff, Adam Brake, have floor privileges for the duration of the Military Commissions Act of 2006.

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

Mr. LEVIN. Mr. President, I ask unanimous consent that William Johnson, a fellow in Senator KENNEDY's office, be granted floor privileges during the consideration of S. 3930.

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

Mr. CORNYN. Mr. President, I ask unanimous consent that two of my law clerks, Natasha Solce and John Huffman, be granted the privilege of the floor during the remainder of the week.

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

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

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

## MEASURE READ THE FIRST TIME—H.R. 5132

Mr. BENNETT. Mr. President, I understand there is a bill at the desk. I ask for its first reading.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5132) to direct the Secretary of Interior to conduct a special resource study to determine the suitability and feasibility of including in the National Park System certain sites in Monroe County, Michigan, relating to the battles of the River Raisin during the War of 1812.

Mr. BENNETT. Mr. President, I now ask for its second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will receive its second reading on the next legislative day.

MEASURE PLACED ON THE CALENDAR—S. 3936

Mr. BENNETT. Mr. President, I understand there is a bill at the desk due for a second reading.

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

The assistant legislative clerk read as follows:

A bill (S. 3936) to invest in innovation and education to improve the competitiveness of the United States in the global economy.

Mr. BENNETT. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

STAR PRINT—S. 3867

Mr. BENNETT. Mr. President, I ask unanimous consent that S. 3867 be star printed with the changes that are at the desk.

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

CONGRESSIONAL TRIBUTE TO DR. NORMAN E. BORLAUG ACT OF 2006

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs be discharged from further consideration of S. 2250, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2250) to award a Congressional Gold Medal to Dr. Norman E. Borlaug.

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

Mr. HARKIN. Mr. President, today the Senate pays tribute to a true American hero and fellow native Iowan in passing S. 2250, a bill to award Dr. Norman E. Borlaug the Congressional Gold Medal, which is the highest congressional expression of national appreciation for distinguished achievement and contribution. This is a fitting honor to a man who is frequently credited with saving more lives than anyone who has ever lived.

Commonly known as ''The Father of the Green Revolution,'' Dr. Borlaug's scientific and humanitarian efforts have saved countless people from starvation and hunger while raising standards of living throughout the world.

Dr. Borlaug was born in 1914 near Cresco, IA. Like many Iowans at the time, he grew up on a small farm and attended a one-room school house for his first 8 years of education. After graduating from high school, he attended the University of Minnesota and earned his bachelor of science in forestry. Immediately after receiving his degree in 1937, he worked for the U.S. Forestry Service. He returned to the University of Minnesota to receive his master's degree in 1939 and doctorate in 1942.

In 1944 Dr. Borlaug accepted an appointment as a geneticist and plant pathologist with the Cooperative Wheat Research and Production Program in Mexico. This program was a joint undertaking by the Mexican Government and the Rockefeller Foundation involving research in plant genetics, plant breeding, plant pathology, agronomy, soil science, and cereal technology. He spent two decades working with farmers in Mexico to develop a new disease resistant variety of wheat that could triple its output in grain. This breakthrough achievement in plant breeding enabled Mexico to become self-sufficient in wheat production while vastly improving the livelihood of many poor farmers.

The United Nations asked Dr. Borlaug to travel to India and Pakistan in the 1960s to help the warring countries, which were threatened with an imminent pandemic famine. Working with scientists from both countries, Dr. Borlaug convinced India and Pakistan to adopt his new seeds and approach to agriculture to avert potential starvation and famine. In a short time, both countries attained self-sufficiency in wheat production and millions of people were saved from hunger, famine and death. Dr. Borlaug continued his work in Southeast Asia, and the results were the same.

In 1970, Dr. Borlaug was awarded the Nobel Peace Prize for his work in agriculture, reversing food shortages and saving millions of lives. Today, at the age of 92, Dr. Borlaug continues his tireless work to alleviate and prevent hunger throughout the world. He is the head of the Sasakawa Global 2000 program, which is working to bring the Green Revolution to Africa and alleviate hunger and malnutrition in the sub-Saharan region. He founded the World Food Prize in 1986 as a means to recognize and inspire achievements in increasing the quality, quantity and availability of food in the world. He also continues his role as an educator at Texas A&M University while also continuing research at the International Center for the Improvement of Wheat and Maize in Mexico.

Dr. Borlaug has been awarded the Presidential Medal of Freedom, the National Academy of Science's Public Service Medal and the Rotary International Award for World Understanding and Peace. Today the Senate approves legislation to award Dr. Borlaug the Congressional Gold Medal. Dr. Borlaug is a true American hero and it is fitting that Congress honors this man who has done so much to alleviate hunger and human suffering, improve the quality of life around the globe and promote understanding and peace among all of the world's people.

I would like to thank Senator GRASSLEY and the many cosponsors of this bill for their support and work to honor Dr. Borlaug with this high distinction.

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

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2250

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Congressional Tribute to Dr. Norman E. Borlaug Act of 2006''.

**SEC. 2. FINDINGS.**

Congress finds as follows:

(1) Dr. Norman E. Borlaug, was born in Iowa where he grew up on a family farm, and received his primary and secondary education.

(2) Dr. Borlaug attended the University of Minnesota where he received his B.A. and Ph.D. degrees and was also a star NCAA wrestler.

(3) For the past 20 years, Dr. Borlaug has lived in Texas where he is a member of the faculty of Texas A&M University.

(4) Dr. Borlaug also serves as President of the Sasakawa Africa Association.

(5) Dr. Borlaug's accomplishments in terms of bringing radical change to world agriculture and uplifting humanity are without parallel.

(6) In the immediate aftermath of World War II, Dr. Borlaug spent 20 years working in the poorest areas of rural Mexico. It was there that Dr. Borlaug made his breakthrough achievement in developing a strand of wheat that could exponentially increase yields while actively resisting disease.

(7) With the active support of the governments involved, Dr. Borlaug's ''green revolution'' uplifted hundreds of thousands of the rural poor in Mexico and saved hundreds of millions from famine and outright starvation in India and Pakistan.

(8) Dr. Borlaug's approach to wheat production next spread throughout the Middle East. Soon thereafter his approach was adapted to rice growing, increasing the number of lives Dr. Borlaug has saved to more than a billion people.

(9) In 1970, Dr. Borlaug received the Nobel Prize, the only person working in agriculture to ever be so honored. Since then he has received numerous honors and awards including the Presidential Medal of Freedom, the Public Service Medal, the National Academy of Sciences' highest honor, and the Rotary International Award for World Understanding and Peace.

(10) At age 91, Dr. Borlaug continues to work to alleviate poverty and malnutrition. He currently serves as president of Sasakawa Global 2000 Africa Project, which seeks to extend the benefits of agricultural development to the 800,000,000 people still mired in poverty and malnutrition in sub-Saharan Africa.

(11) Dr. Borlaug continues to serve as Chairman of the Council of Advisors of the World Food Prize, an organization he created in 1986 to be the ''Nobel Prize for Food and Agriculture'' and which presents a $250,000 prize each October at a Ceremony in Des Moines, Iowa, to the Laureate who has made an exceptional achievement similar to Dr. Borlaug's breakthrough 40 years ago. In the almost 20 years of its existence, the World

Food Prize has honored Laureates from Bangladesh, India, China, Mexico, Denmark, Sierra Leone, Switzerland, the United Kingdom, and the United States.

(12) Dr. Borlaug has saved more lives than any other person who has ever lived, and likely has saved more lives in the Islamic world than any other human being in history.

(13) Due to a lifetime of work that has led to the saving and preservation of an untold amount of lives, Dr. Norman E. Borlaug is deserving of America's highest civilian award: the congressional gold medal.

**SEC. 3. CONGRESSIONAL GOLD MEDAL.**

(a) PRESENTATION AUTHORIZED.—The President Pro Tempore of the Senate and the Speaker of the House of Representatives are authorized to make appropriate arrangements for the presentation, on behalf of Congress, of a gold medal of appropriate design, to Dr. Norman E. Borlaug, in recognition of his enduring contributions to the United States and the world.

(b) DESIGN AND STRIKING.—For the purpose of the presentation referred to in subsection (a), the Secretary of the Treasury (in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

**SEC. 4. DUPLICATE MEDALS.**

Under such regulations as the Secretary may prescribe, the Secretary may strike and sell duplicates in bronze of the gold medal struck under section 3 at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

**SEC. 5. STATUS AS NATIONAL MEDALS.**

(a) NATIONAL MEDAL.—The medal struck under this Act is a national medal for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all duplicate medals struck under this Act shall be considered to be numismatic items.

**SEC. 6. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.**

(a) AUTHORITY TO USE FUND AMOUNTS.—There are authorized to be charged against the United States Mint Public Enterprise Fund, such sums as may be necessary to pay for the cost of the medals struck under this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 4 shall be deposited in the United States Mint Public Enterprise Fund.

## BYRON NELSON CONGRESSIONAL GOLD MEDAL ACT

Mr. BENNETT. Mr. President, I ask unanimous consent the Committee on Banking, Housing and Urban Affairs be discharged from further consideration of S. 2491 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2491) to award a Congressional Gold Medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

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

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

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

The bill (S. 2491) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2491

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Byron Nelson Congressional Gold Medal Act''.

**SEC. 2. FINDINGS.**

Congress finds as follows:

(1) Byron Nelson was a top player in the sport of golf during the World War II era and his accomplishments as a player, a teacher, and commentator are renowned.

(2) Byron Nelson won 54 career victories, including a record 11 in a row in 1945, during his short 13-year career.

(3) Byron Nelson won 5 majors, including 2 Masters (1937 and 1942), 2 Professional Golf Association (PGA) Championships (1940 and 1945) and the U.S. Open (1939).

(4) Sports journalist Bill Nichols recently ranked the greatest seasons on the PGA tour for The Dallas Morning News and picked Roanoke, Texas-resident Byron Nelson's 1945 tour as the greatest season of golf in American history.

(5) In 1945, Byron Nelson accumulated 18 total victories, 11 of which were consecutive, while averaging 68.33 strokes per round for 30 tournaments.

(6) At the Seattle Open in 1945, Byron Nelson shot a record 62 for 18 holes and the world record 259, 29 shots under par for 72 holes.

(7) Byron Nelson is one of only 2 golfers to be named ''Male Athlete of the Year'' twice by the Associated Press: in 1944, when he won 7 tournaments and averaged 69.67 strokes for 85 rounds, and again after his 1945 season.

(8) The World Golf Hall of Fame honored Byron Nelson in 2004 by featuring an exhibit entitled ''Byron Nelson: A Champion ... A Gentleman''.

(9) Byron Nelson was selected for the Ryder Cup 4 times—in 1937, 1939, 1947 and 1965, and on that last occasion he led the United States Ryder Cup team as team captain to victory over Great Britain.

(10) Byron Nelson was also a pioneer in the golf business, helping to develop the golf shoes and umbrellas used today.

(11) In 1966, True Temper created the ''Iron Byron'' robot to replicate Byron Nelson's swing in order to test the company's equipment, but the robot was eventually used for club and ball testing by the United States Golf Association (USGA) and many other manufacturing companies.

(12) Byron Nelson mentored many golf hopefuls, including 1964 Player of the Year Ken Venturi and 6-time PGA Player of the Year Tom Watson.

(13) Byron Nelson was one of the first golf analysts on network television where his understanding of the game in general, and the golf swing in particular, was demonstrably profound.

(14) Byron Nelson received the United States Golf Association's Bob Jones Award for distinguished sportsmanship in golf in 1974.

(15) In 1974, the Golf Writers Association of America presented Byron Nelson with the Richardson Award for consistently outstanding contributions to golf.

(16) Since 1983, the Byron and Louise Nelson Golf Endowment Fund has provided over $1,500,000 in endowment funds to Abilene Christian University in Abilene, Texas.

(17) Byron Nelson received the PGA Distinguished Service Award in 1993. This award is presented to an individual who has helped perpetuate the ideals and values of the PGA.

(18) Byron Nelson has served as an honorary chairperson for the Metroport Meals on Wheels since 1992.

(19) In 1994, the Golf Course Superintendents Association of America presented Byron Nelson with the Old Tom Morris Award for outstanding contributions to the game.

(20) Byron Nelson helped to develop the Tournament Players Course (TPC) Four Seasons at Los Colinas, Texas, site of the EDS Byron Nelson Championship and the Byron Nelson Golf School, into a world-class facility.

(21) The EDS Byron Nelson Championship is the only PGA tour event named in honor of a professional golfer and traditionally attracts the strongest players in the sport.

(22) Since its inception, the EDS Byron Nelson Championship has raised $88,000,000 for Salesmanship Club Youth and Family Centers, a nonprofit agency that provides education and mental health services for more than 2,700 children and their families in the greater Dallas area.

(23) In 2002, Byron Nelson received the prestigious Donald Ross Award from the American Society of Golf Course Architects (ASGCA) for his significant contribution to the game of golf and the profession of golf course architecture.

(24) The United States Golf Association presented Byron Nelson the Ike Grainger Award for volunteer service to the game of golf in 2002.

(25) In 2002, the National Golf Foundation presented Byron Nelson with the Graffis Award for outstanding lifelong contributions to the game of golf.

**SEC. 3. CONGRESSIONAL GOLD MEDAL.**

(a) PRESENTATION AUTHORIZED.—The President pro tempore of the Senate and the Speaker of the House of Representatives shall make appropriate arrangements for the presentation, on behalf of the Congress, of a gold medal of appropriate design to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

(b) DESIGN AND STRIKING.—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

**SEC. 4. DUPLICATE MEDALS.**

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 3 under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

**SEC. 5. STATUS OF MEDALS.**

(a) NATIONAL MEDALS.—The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

**SEC. 6. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.**

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund, such amounts as may be necessary to pay for the costs of the medals struck pursuant to this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals authorized under section 4 shall be deposited into the United States Mint Public Enterprise Fund.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## CHILD INTERSTATE ABORTION NOTIFICATION ACT

Mr. BENNETT. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on the bill (S. 403) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

S. 403

*Resolved*, That the bill from the Senate (S. 403) entitled ''An Act to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Child Interstate Abortion Notification Act''.*

***SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.***

*Title 18, United States Code, is amended by inserting after chapter 117 the following:*

***''CHAPTER 117A—TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION***

*''Sec*

*''2431. Transportation of minors in circumvention of certain laws relating to abortion.*

*''2432. Transportation of minors in circumvention of certain laws relating to abortion.*

***''§2431. Transportation of minors in circumvention of certain laws relating to abortion***

*''(a) OFFENSE.—*

*''(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.*

*''(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed or induced on the minor, in a State or a foreign nation other than the State where the minor resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the minor resides.*

*''(b) EXCEPTIONS.—*

*''(1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.*

*''(2) A minor transported in violation of this section, and any parent of that minor, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.*

*''(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant—*

*''(1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides; or*

*''(2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to procure an abortion.*

*''(d) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).*

*''(e) DEFINITIONS.—For the purposes of this section—*

*''(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;*

*''(2) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—*

*''(A) requiring, before an abortion is performed on a minor, either—*

*''(i) the notification to, or consent of, a parent of that minor; or*

*''(ii) proceedings in a State court; and*

*''(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;*

*''(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision;*

*''(4) the term 'parent' means—*

*''(A) a parent or guardian;*

*''(B) a legal custodian; or*

*''(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required; and*

*''(5) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.*

***''§2432. Transportation of minors in circumvention of certain laws relating to abortion***

*''Notwithstanding section 2431(b)(2), whoever has committed an act of incest with a minor and knowingly transports the minor across a State line with the intent that such minor obtain an abortion, shall be fined under this title or imprisoned not more than one year, or both. For the purposes of this section, the terms 'State', 'minor', and 'abortion' have, respectively, the definitions given those terms in section 2435.''.*

***SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.***

*Title 18, United States Code, is amended by inserting after chapter 117A the following:*

***''CHAPTER 117B—CHILD INTERSTATE ABORTION NOTIFICATION***

*''Sec*

*''2435. Child interstate abortion notification*

***''§2435. Child interstate abortion notification***

*''(a) OFFENSE.—*

*''(1) GENERALLY.—A physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined under this title or imprisoned not more than one year, or both.*

*''(2) PARENTAL NOTIFICATION.—A physician who performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must provide, or cause his or her agent to provide, at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice must be given to a parent.*

*''(b) EXCEPTIONS.—The notification requirement of subsection (a)(2) does not apply if—*

*''(1) the abortion is performed or induced in a State that has, in force, a law requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law;*

*''(2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion;*

*''(3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect;*

*''(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, or because in the reasonable medical judgment of the minor's attending physician, the delay in performing an abortion occasioned by fulfilling the prior notification requirement of subsection (a)(2) would cause a substantial and irreversible impairment of a major bodily function of the minor arising from continued pregnancy, not including psychological or emotional conditions, but an exception under this paragraph does not apply unless the attending physician or an agent of such physician, within 24 hours after completion of the abortion, notifies a parent in writing that an abortion was performed on the minor and of the circumstances that warranted invocation of this paragraph; or*

*''(5) the minor is physically accompanied by a person who presents the physician or his agent with documentation showing with a reasonable degree of certainty that he or she is in fact the parent of that minor.*

*''(c) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).*

*''(d) DEFINITIONS.—For the purposes of this section—*

*''(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;*

*''(2) the term 'actual notice' means the giving of written notice directly, in person, by the physician or any agent of the physician;*

*''(3) the term 'constructive notice' means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;*

*''(4) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—*

*''(A) requiring, before an abortion is performed on a minor, either—*

*''(i) the notification to, or consent of, a parent of that minor; or*

*''(ii) proceedings in a State court;*

*''(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;*

*''(5) the term 'minor' means an individual who is not older than 18 years and who is not emancipated under State law;*

*''(6) the term 'parent' means—*

*''(A) a parent or guardian;*

*''(B) a legal custodian; or*

*''(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides;*

*as determined by State law;*

*''(7) the term 'physician' means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion; and*

*''(8) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.''.*

***SEC. 4. CLERICAL AMENDMENT.***

*The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new items:*

***''117A. Transportation of minors in circumvention of certain laws relating to abortion ..... 2431***

***''117B. Child interstate abortion notification ..... 2435''.***

***SEC. 5. SEVERABILITY AND EFFECTIVE DATE.***

*(a) The provisions of this Act shall be severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.*

*(b) This Act and the amendments made by this Act shall take effect 45 days after the date of enactment of this Act.*

AMENDMENT NO. 5090

Mr. BENNETT. Mr. President, on behalf of the majority leader, I move to concur in the amendment of the House and send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FRIST, proposes an amendment numbered 5090 to the House amendment.

Mr. BENNETT. I ask that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 12, line 2, strike ''45 days'' and insert ''46 days''

Mr. BENNETT. 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.

AMENDMENT NO. 5091 TO AMENDMENT NO. 5090

Mr. BENNETT. Mr. President, on behalf of the majority leader, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FRIST, proposes an amendment numbered 5091 to amendment No. 5090.

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

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

The amendment is as follows:

Strike ''46 days'' and insert ''44 days''.

CLOTURE MOTION

Mr. BENNETT. Mr. President, on behalf of the leader, I send a cloture motion to the desk.

The PRESIDING OFFICER. Without objection, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to concur in the House amendment to S. 403: a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

Bill Frist, John Ensign, Tom Coburn, Craig Thomas, Jim DeMint, Wayne Allard, Mitch McConnell, Trent Lott, Jim Bunning, Conrad Burns, Ted Stevens, Johnny Isakson, John Cornyn, Jeff Sessions, Larry Craig, Mike Crapo, John Thune.

## MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent we now return to morning business.

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

## ORDERS FOR THURSDAY, SEPTEMBER 28, 2006

Mr. BENNETT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, September 28. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to 30 minutes, with the first 15 minutes under the control of the majority leader or his designee, and the final 15 minutes under the control of the Democratic leader or his designee; further, that following morning business, the Senate resume consideration of S. 3930, as under the previous order.

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

## PROGRAM

Mr. BENNETT. Mr. President, today we were able to reach an agreement on the military tribunal legislation. We have disposed of one amendment today. The Levin substitute amendment was defeated this afternoon. The Specter amendment is pending, and there will be some additional debate time on that tomorrow. Under the agreement, we have three other amendments to consider and then final passage of the bill. Therefore, Senators can expect rollcall votes throughout tomorrow's session.

As a reminder, the majority leader has outlined a number of items that we need to complete before we leave for the recess. We will be here until we can get these items finished.

## ORDER FOR ADJOURNMENT

Mr. BENNETT. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks made by the Senator from Illinois for up to 10 minutes.

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

Mr. BENNETT. Mr. President, does the Senator from Illinois require more than 10 minutes?

Mr. OBAMA. If I could, I do not think I will need more than 15 minutes. It may be a little more than 10 minutes.

Mr. BENNETT. Mr. President, I amend my request that the Senate stand in adjournment under the previous order following the remarks of the Senator from Illinois for up to 20 minutes.

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

The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, thank you very much. And I thank my dear friend from Utah.

## HABEAS CORPUS—AMENDMENT NO. 5087

Mr. OBAMA. Mr. President, I would like to address the habeas corpus

amendment that is on the floor and that we just heard a lengthy debate about between Senator SPECTER and Senator WARNER.

A few years ago, I gave a speech in Boston that people talk about from time to time. In that speech, I spoke about why I love this country, why I love America, and what I believe sets this country apart from so many other nations in so many areas. I said:

> That is the true genius of America—a faith in simple dreams, an insistence on small miracles; that we can tuck in our children at night and know that they are fed and clothed and safe from harm; that we can say what we think, write what we think, without hearing a sudden knock on the door. . . .

Without hearing a sudden knock on the door. I bring this up because what is at stake in this bill, and in the amendment that is currently being debated, is the right, in some sense, for people who hear that knock on the door and are placed in detention because the Government suspects them of terrorist activity to effectively challenge their detention by our Government.

Now, under the existing rules of the Detainee Treatment Act, court review of anyone's detention is severely restricted. Fortunately, the Supreme Court in Hamdan ensured that some meaningful review would take place. But in the absence of Senator SPECTER's amendment that is currently pending, we will essentially be going back to the same situation as if the Supreme Court had never ruled in Hamdan, a situation in which detainees effectively have no access to anything other than the Combatant Status Review Tribunal, or the CSRT.

Now, I think it is important for all of us to understand exactly the procedures that are currently provided for under the CSRT. I have actually read a few of the transcripts of proceedings under the CSRT. And I can tell you that oftentimes they provide detainees no meaningful recourse if the Government has the wrong guy.

Essentially, reading these transcripts, they proceed as follows: The Government says: You are a member of the Taliban. And the detainee will say: No, I'm not. And then the Government will not ask for proof from the detainee that he is not. There is no evidence that the detainee can offer to rebut the Government's charge.

The Government then moves on and says: And on such and such a date, you perpetrated such and such terrorist crime. And the detainee says: No, I didn't. You have the wrong guy. But again, he has no capacity to place into evidence anything that would rebut the Government's charge. And there is no effort to find out whether or not what he is saying is true.

And it proceeds like that until effectively the Government says, OK, that is the end of the tribunal, and he goes back to detention. Even if there is evidence that he was not involved in any terrorist activity, he may not have any mechanism to introduce that evidence into the hearing.

Now, the vast majority of the folks in Guantanamo, I suspect, are there for a reason. There are a lot of dangerous people. Particularly dangerous are people like Khalid Shaikh Mohammed. Ironically, those are the guys who are going to get real military procedures because they are going to be charged by the Government. But detainees who have not committed war crimes—or where the Government's case is not strong—may not have any recourse whatsoever.

The bottom line is this: Current procedures under the CSRT are such that a perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence.

I would like somebody in this Chamber, somebody in this Government, to tell me why this is necessary. I do not want to hear that this is a new world and we face a new kind of enemy. I know that. I know that every time I think about my two little girls and worry for their safety—when I wonder if I really can tuck them in at night and know that they are safe from harm. I have as big of a stake as anybody on the other side of the aisle and anybody in this administration in capturing terrorists and incapacitating them. I would gladly take up arms myself against any terrorist threat to make sure my family is protected.

But as a parent, I can also imagine the terror I would feel if one of my family members were rounded up in the middle of the night and sent to Guantanamo without even getting one chance to ask why they were being held and being able to prove their innocence.

This is not just an entirely fictional scenario, by the way. We have already had reports by the CIA and various generals over the last few years saying that many of the detainees at Guantanamo should not have been there. As one U.S. commander of Guantanamo told the Wall Street Journal:

> Sometimes, we just didn't get the right folks.

We all know about the recent case of the Canadian man who was suspected of terrorist connections, detained in New York, sent to Syria—through a rendition agreement—tortured, only to find out later it was all a case of mistaken identity and poor information.

In this war, where terrorists can plot undetected from within our borders, it is absolutely vital that our law enforcement agencies are able to detain and interrogate whoever they believe to be a suspect, and so it is understandable that mistakes will be made and identities will be confused. I don't blame the Government for that. This is an extraordinarily difficult war we are prosecuting against terrorists. There are going to be situations in which we cast too wide a net and capture the wrong person.

But what is avoidable is refusing to ever allow our legal system to correct these mistakes. By giving suspects a chance—even one chance—to challenge the terms of their detention in court, to have a judge confirm that the Government has detained the right person for the right suspicions, we could solve this problem without harming our efforts in the war on terror one bit.

Let me respond to a couple of points that have been made on the other side. You will hear opponents of this amendment say it will give all kinds of rights to terrorist masterminds, such as Khalid Shaikh Mohammed. But that is not true. The irony of the underlying bill as it is written is that someone like Khalid Shaikh Mohammed is going to get basically a full military trial, with all of the bells and whistles. He will have counsel, he will be able to present evidence, and he will be able to rebut the Government's case. The feeling is that he is guilty of a war crime and to do otherwise might violate some of our agreements under the Geneva Conventions. I think that is good, that we are going to provide him with some procedure and process. I think we will convict him, and I think he will be brought to justice. I think justice will be carried out in his case.

But that won't be true for the detainees who are never charged with a terrorist crime, who have not committed a war crime. Under this bill, people who may have been simply at the wrong place at the wrong time—and there may be just a few—will never get a chance to appeal their detention. So, essentially, the weaker the Government's case is against you, the fewer rights you have. Senator SPECTER's amendment would fix that, while still ensuring that terrorists like Mohammed are swiftly brought to justice.

You are also going to hear a lot about how lawyers are going to file all kinds of frivolous lawsuits on behalf of detainees if habeas corpus is in place. This is a cynical argument because I think we could get overwhelming support in this Chamber right now for a measure that would restrict habeas to a one-shot appeal that would be limited solely to whether someone was legally detained or not. I am not interested in allowing folks at Guantanamo to complain about whether their cell is too small or whether the food they get is sufficiently edible or to their tastes. That is not what this is about. We can craft a habeas bill that says the only question before the court is whether there is sufficient evidence to find that this person is truly an unlawful enemy combatant and belongs in this detention center. We can restrict it to that. And although I have seen some of those amendments floating around, those were not amendments that were admitted during this debate. It is a problem that is easily addressed. It is not a reason for us to wholesale eliminate habeas corpus.

Finally, you will hear some Senators argue that if habeas is allowed, it renders the CSRT process irrelevant because the courts will embark on de

novo review, meaning they will completely retry these cases, take new evidence. So whatever findings were made in the CSRT are not really relevant because the court is essentially going to start all over again.

I actually think some of these Senators are right on this point. I believe we could actually set up a system in which a military tribunal is sufficient to make a determination as to whether someone is an enemy combatant and would not require the sort of traditional habeas corpus that is called for as a consequence of this amendment, where the court's role is simply to see whether proper procedures were met. The problem is that the way the CSRT is currently designed is so insufficient that we can anticipate the Supreme Court overturning this underlying bill, once again, in the absence of habeas corpus review.

I have had conversations with some of the sponsors of the underlying bill who say they agree that we have to beef up the CSRT procedures. Well, if we are going to revisit the CSRT procedures to make them stronger and make sure they comport with basic due process, why not leave habeas corpus in place until we have actually fixed it up to our satisfaction? Why rush through it 2 days before we are supposed to adjourn? Because some on the other side of the aisle want to go campaign on the issue of who is tougher on terrorism and national security.

Since 9/11, Americans have been asked to give up certain conveniences and civil liberties—long waits in airport security lines, random questioning because of a foreign-sounding last name—so that the Government can defeat terrorism wherever it may exist. It is a tough balance to strike. I think we have to acknowledge that whoever was in power right now, whoever was in the White House, whichever party was in control, that we would have to do some balancing between civil liberties and our need for security and to get tough on those who would do us harm.

Most of us have been willing to make some sacrifices because we know that, in the end, it helps to make us safer. But restricting somebody's right to challenge their imprisonment indefinitely is not going to make us safer. In fact, recent evidence shows it is probably making us less safe.

In Sunday's New York Times, it was reported that previous drafts of the recently released National Intelligence Estimate, a report of 16 different Government intelligence agencies, describe:

> . . . actions by the United States Government that were determined to have stoked the jihad movement, like the indefinite detention of prisoners at Guantanamo Bay. . . .

This is not just unhelpful in our fight against terror, it is unnecessary. We don't need to imprison innocent people to win this war. For people who are guilty, we have the procedures in place to lock them up. That is who we are as a people. We do things right, and we do things fair.

Two days ago, every Member of this body received a letter, signed by 35 U.S. diplomats, many of whom served under Republican Presidents. They urged us to reconsider eliminating the rights of habeas corpus from this bill, saying:

> To deny habeas corpus to our detainees can be seen as a prescription for how the captured members of our own military, diplomatic, and NGO personnel stationed abroad may be treated. . . . The Congress has every duty to insure their protection, and to avoid anything which will be taken as a justification, even by the most disturbed minds, that arbitrary arrest is the acceptable norm of the day in the relations between nations, and that judicial inquiry is an antique, trivial and dispensable luxury.

The world is watching what we do today in America. They will know what we do here today, and they will treat all of us accordingly in the future—our soldiers, our diplomats, our journalists, anybody who travels beyond these borders. I hope we remember this as we go forward. I sincerely hope we can protect what has been called the ''great writ''—a writ that has been in place in the Anglo-American legal system for over 700 years.

Mr. President, this should not be a difficult vote. I hope we pass this amendment because I think it is the only way to make sure this underlying bill preserves all the great traditions of our legal system and our way of life.

I yield the floor.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate is adjourned until 9:30 a.m.

There being no objection, the Senate, at 7:39 p.m., adjourned until Thursday, September 28, 2006, at 9:30 a.m.