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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

Lord and King, You are forever. Send Your light and truth to guide our Senators. Give our lawmakers insights that will help them solve the riddles of our day. Empower them to possess discernment in order to know what is right. Imbue them with a passion for truth that will make them refuse to compromise principles.

Strengthen them also with a humility that seeks to listen and learn. May they find joy in their work as they seek to please You. Remove from them discouragement and despair. Make them partners with You in building a world where truth and righteousness will reign.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable John E. Sununu 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 28, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

PROGRAM

Mr. FRIST. Mr. President, this morning after a period for the transaction of morning business, the Senate will resume consideration of the Military Commissions Act. Under the agreement that was reached yesterday, we have a limited number of amendments to consider and debate. Yesterday, we defeated the Levin substitute amendment, and Senator SPECTER offered his amendment on habeas. The Specter amendment is the pending amendment, and we will have more debate on it this morning.

Following the disposition of the Specter amendment, there are three additional amendments in order followed by a vote on passage of the bill. Once we conclude our work on this bill, we will return to the border fence bill with a cloture vote.

We still have a number of important items to complete before the recess, including the DOD appropriations conference report, additional conference reports that become available, executive items and nominations, and the child custody bill, on which I filed cloture yesterday.

We will have votes throughout the course of today's session and into the evening and over the remaining days until we complete our work.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

TIME TO SPEAK

Mr. REID. Mr. President, it is my understanding we have basically 3½ amendments remaining. We have one on which debate is nearing completion, and then we have three other amendments. We have an hour equally divided on each of those three amendments. On the amendment that is before the Senate dealing with the habeas corpus aspect of this legislation, we have a number of people—and we have conveyed this to the majority—who wish to speak. It takes up about an hour of extra time.

I say to everyone within the sound of my voice—namely, 44 Democrats, especially those who have indicated to the cloakroom they want to speak on this issue—we had time lined up yesterday, and because of quorum calls time was lost. Unless we get more time from the majority, there will be no time to speak, other than the time that is in the unanimous consent agreement that is the order before the Senate on the three amendments, and whatever time is remaining on the amendment being led by Senator SPECTER and Senator LEAHY.

Again, if somebody wants time, they can't always have it so when they get here, they can walk on. Senators might have to wait around for a little while because yesterday we lost a significant amount of Democratic time as a result of Senators not being available to speak.

We have a couple more days. Hopefully, we can finish this tomorrow or Saturday, but we have a lot to do. We will need cooperation from all Senators if, in fact, they want to cooperate.

The ACTING PRESIDENT pro tempore. The majority leader.

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

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Mr. FRIST. Mr. President, to expand a little bit on the Democratic leader's comments, we entered into a unanimous consent agreement to address this bill with a reasonable amount of time. We are going to need to stick to that in large part because we have, as I outlined, the Hamdan legislation, we have the other three amendments, we have the fence border legislation, which has been pending for several days, DOD appropriations, the Child Custody Act, Homeland Security appropriations, and possibly the port security bill. We have an important Cabinet nomination, the Peters nomination, and then we have an adjournment resolution. That list is big.

As the Democratic leader and I have repeatedly said, we are going to finish this week, and it is already Thursday morning. Once we set a plan, we need to stick with a unanimous consent agreement set out. As we go through these issues, it is going to take a lot of cooperation to accomplish what has been laid out.

With that, I think we will begin a period for morning business.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 30 minutes, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

HOMELAND SECURITY

Ms. COLLINS. Mr. President, I rise this morning to take note of the real progress this Congress has made and is on the verge of making in strengthening our homeland security.

This progress—reform of FEMA, protection of our chemical facilities and improved security for our seaports—should not be overlooked as we conclude a hectic month.

In the midst of all the charges that Congress has failed to accomplish all that we should, I want to call attention to the many times when, in fact, Members have cooperated among committees, between Chambers, and across party lines to make real progress to benefit the American people.

The 109th Congress has had many such accomplishments that belie the stereotype of a rancorous debating society that is unable to enact and improve the security of our country.

Let me focus on three major accomplishments by Congress in the area of homeland security. I note that these accomplishments should become law shortly as we complete work on the Homeland Security appropriations bill.

The first accomplishment was reaching agreement on a broad array of reforms to improve the Department of Homeland Security, including urgently needed reform and reinforcement of the Federal Emergency Management Agency.

The recommendations for improvements the result of the Senate Committee on Homeland Security's 7-month investigation into the failed preparations and response to Hurricane Katrina. This investigation, which was completely bipartisan, included 23 hearings, testimony and interviews of some 400 people, and a review of more than 838,000 pages of documents.

The committee's recommendations will make FEMA a distinct entity within DHS. Why does that matter? It matters because it gives FEMA the same kinds of protections enjoyed by the Coast Guard and the Secret Service. It protects FEMA from arbitrary budget cuts or departmental reorganizations that are implemented without congressional review.

FEMA's Administrator, under the reforms included in the appropriations bill, will become the President's principal adviser for all-hazards emergency management.

Another important reform is that the legislation reunites preparedness and response and makes FEMA responsible and empowered for all phases of emergency management—preparation, mitigation, response, and recovery.

A very important reform will be the creation of response strike teams to ensure a more effective response to disasters.

What we will do is create in the 10 regions of the United States multi-agency task forces comprising representatives from every Federal agency that is involved in responding to or preparing for disaster. They will train and exercise with their State and local counterparts, with NGOs, such as the Red Cross, and with the key for-profit businesses, such as utility companies. That will ensure that they won't need to be exchanging business cards in the midst of the next disaster.

I was struck during our investigation of Hurricane Katrina that so many people from FEMA Region I—the region the Presiding Officer and I are from, New England—were sent down to Louisiana to help with the response to Hurricane Katrina. The problem, of course, is they didn't know the people, they didn't know the geography, they didn't know the culture, they didn't have knowledge of what assets could be mobilized in the response. These regional teams will ensure that does not happen again.

We also addressed issues such as chronic staffing shortages at FEMA, the need for better pre-positioning of emergency supplies and tracking of shipments, better grant-making authority to improve coordination regionally and with local responders, and the need to provide survivable and interoperable communications.

We also revised the Stafford Act to bring it up to date and make it more flexible and responsive.

The second major homeland security accomplishment of this Congress is still a work in progress, but I am very optimistic that it will, in fact, become law, and that is the port-security bill which this Chamber recently passed unanimously. Senator MURRAY and I have led a bipartisan effort to enact this legislation. There have been many other Members on both sides of the aisle involved, including on my committee Senator COLEMAN and Senator LIEBERMAN.

With 361 ports in this country and some 11 million shipping containers arriving each year, we desperately need better assurances that our seaports and these containers are not going to be used to bring weapons, explosives, bioterror compounds, or even a squad of terrorists into our country.

The vulnerability of our seaports is perhaps best underscored by an incident that occurred in Seattle in April, when 22 Chinese nationals were successful in coming all the way from China to Seattle in a shipping container. If 22 illegal Chinese nationals can come to our country via a shipping container, it shows we still have a lot of work to do to ensure better security at our seaports.

The legislation this Chamber passed is balanced legislation that strengthens our security while recognizing the importance of trade and not bringing the shipment of containers to a halt. The port-security package fills a dangerous gap in our defenses. I hope we will enact it before leaving here this week.

The third area of accomplishment involves the security of chemical plants, plants that either use, store, or manufacture large quantities of hazardous chemicals.

Last January, I held a hearing in which I asked several experts: What are your greatest concerns? What gaps do we have in our homeland security? The lack of regulation of our chemical plants came up time and again. Our existing protections are a patchwork of different authorities—State, Coast Guard, and voluntary industry standards. They are inadequate, given the threats we face.

Now, this has been a very difficult debate, but I think it is so important to remember that right now, the Department of Homeland Security lacks the authority to set risk- and performance-based standards for security at our chemical facilities despite the fact that terrorism experts tell us al-Qaida is focused on chemical plants and chemical explosions.

We have some 15,000 chemical facilities around the country, including more than 3,000 sites where a terrorist

attack could cause considerable casualties among nearby populations. Language in the DHS appropriations bill would, for the first time, empower DHS to set performance-based security standards for high-risk chemical facilities. That is approximately 3,400 facilities across this country.

Very importantly, this legislation will allow the Secretary of Homeland Security to shut down a noncompliant plant. I fought very hard for this authority to be included in the appropriations bill. It does no good to empower the Secretary to set these risk-based, performance-based standards but then provide the tools to enforce them.

I recognize there are many chemical plants and chemical companies across this country which have voluntarily taken strong steps to improve their security in the wake of the attacks on our country on 9/11. Unfortunately, the Department of Homeland Security has told us there are many plants which have not improved their security at all or which have taken insufficient measures. We can no longer rely on just voluntary compliance with industry standards.

So this legislation is landmark legislation. It closes a dangerous gap in our homeland security, and it has been included in the Homeland Security appropriations bill.

I would note that the language includes a three-year sunset. The reason for that is we will want to evaluate the effectiveness of this approach, the effectiveness of the regulations, and also consider other measures that were not included in this bill. The committee I am privileged to chair unanimously reported chemical-security legislation that was more comprehensive than the measures included in the appropriations bill. This will give us a chance to evaluate the efforts that have been taken, that will be taken, and then to go back and look at some of the issues that were not included.

I want to be very clear. This is a major step forward. It will help close a dangerous gap in our homeland security, and it is significant progress in eliminating or at least lessening a significant risk to our country.

These are three significant steps forward: the reform of FEMA, the port security bill, and the new authority for DHS to set security measures for chemical facilities. Each of them was made possible because of bipartisan cooperation. At times in this Chamber, we berate ourselves for failing to achieve consensus on legislation that is so important to the American people, but we did it in these three cases—or we are on the verge of doing it—and it is because we did have good cooperation and strong leadership. It was not easy. But the legislation we are passing will advance our ability to protect the American people.

I compliment all of the Members of the Senate, our partners on the House side, as well as members of the administration who have stepped forward and worked so hard to make these reforms a reality. Our success in advancing these achievements in strengthening our homeland security should be a source of justifiable pride to the Members of this body.

Mr. DORGAN. Mr. President, could you describe the circumstances of the Senate? Are we in morning business?

The ACTING PRESIDENT pro tempore. The circumstances are as follows: The Senate is in a period of morning business. The minority holds 15 minutes. The majority has used all of its time.

Mr. DORGAN. So the minority's 15 minutes is now available and ready for use?

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

HABEAS CORPUS

Mr. DORGAN. Mr. President, because the truncated time on the amendments to the underlying bill includes a very short amount of time for the Specter amendment, I am going to use only 5 minutes now to talk about my support of the Specter amendment.

The Specter amendment is about habeas corpus. That is a big term, a kind of complicated term. Let me describe it by describing this picture. This is a young woman. She is a young woman named Mitsuye Endo. Mitsuye Endo looked out from behind barbed-wire fences where she was incarcerated in this country some decades ago during the Second World War. Let me tell you about her. She was a 22-year-old clerical worker in California's Department of Motor Vehicles in Sacramento, CA. She had never been to Japan. She didn't speak Japanese. She had been born and raised in this country. She was a Methodist. She had a brother in the U.S. Army, unquestioned loyalty to the United States of America, but she was incarcerated—picked up, taken from her home, her job, her community, and put behind barbed-wire fences.

Now, she eventually got out of that incarceration, and her plea to the courts was what really led to the unlocking of those camps, and let those tens of thousands of Japanese Americans out of those camps. They had been unjustly viewed as enemies of our country and incarcerated. And with one young woman's writ of habeas corpus, an awful chapter in our country's history soon came to an end. Her question to the courts was a simple but powerful one: Why am I being detained?

What is habeas corpus? Well, it answers the question, by giving access to the courts, of whether you can hold someone indefinitely without charges, without a trial, and without a right for anyone to have a review of their circumstances. When someone has the right to file a habeas corpus petition, it is the right of someone to go to the court system in this country to say to that court system: There has been a mistake. I am innocent; I didn't do it; I shouldn't be here.

The court then asks the question: Why are these people locked up? Should they be locked up? Is there a basis for it? Is it a mistake? Is it wrong?

Everyone in this Chamber will have read the story in the Washington Post about a week ago, and after I read that story, I just hung my head a bit. A Canadian in this country was apprehended at an American airport, at a U.S. airport in New York City. That Canadian citizen, apprehended in New York City by our authorities, was then sent to Syria, where he was tortured for some 8 or 9 months. He was put in a coffin-like structure, a cement coffin-like structure, in isolation, and tortured. It turns out, at the end of nearly a year of his incarceration, it was all a big mistake. He wasn't a terrorist. He wasn't involved with terrorists. But he was apprehended and held incommunicado, in fact, rendered to another country where torture occurred. A big mistake. His wife didn't know where he was. He has a young 2- or 3-year-old child.

What does all this say? Why is this country a country that is different from others? We have been different from others because it is in this country where you can't be picked up off of a street and held indefinitely, held without charges, held without a trial, held without a right to go to a court. It is this country in which that exists.

Let me make another point. Why should we care about how the United States treats noncitizens and taking away the right of habeas corpus for noncitizens? Because every U.S. citizen is a noncitizen in every other country of the world. There are 193 countries in this world. We are citizens of only one. And when an American travels—any American, anywhere—we are noncitizens in those countries.

What would our reaction be? What will our reaction be as Americans if—as an example, recently, a journalist who was detained and arrested and put in jail, I believe in Sudan, who then asked his captors to be able to see the American consulate: I need the ability to contact the American consulate.

His captors said: You have no such rights.

He complained: But I do have that right.

His captors said: No. Those you have detained in the United States are not given those rights, and you are not given those rights, either.

This is why this issue is so important, and that is why I support the Specter amendment. I hope very much the Senate will not make a profound mistake by turning down that amendment.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

MILITARY COMMISSIONS

Mr. DODD. Mr. President, America was attacked on September 11, 2001, by a ruthless enemy of our Nation. It is my strong belief, as I believe it is the belief of all of us in this Chamber, that those who are responsible for orchestrating this plot and anyone else who seeks to do harm to our country and citizens should be brought to the bar of justice and punished severely. On that I presume there is no debate whatsoever.

These are extraordinary times, and we must act in a way that fully safeguards America's national security. That is why I support the concept of military commissions: to protect U.S. intelligence and expedite judicial proceedings vital to military action under the Uniform Code of Military Justice. As we develop such means, we must also ensure our actions are not counterproductive to our overall effort to protect America at all levels.

The administration and the Republican leadership on this issue would have the American people believe—and this is the unfortunate point—that the war on terror requires us to make a choice, both here in this Chamber and across the country, between protecting America from terrorism and the choice of upholding the basic tenets upon which our Nation was founded—but not both. This canard, in my view, has been showcased far too often.

I fully reject that reasoning. Americans throughout the previous 200 years have as well. We can and must balance our responsibilities to bring terrorists to justice while at the same time protecting what it means to be an American. To choose the rule of law over the passion of the moment takes courage, but it is the right thing to do if we are to uphold the values of equal justice and due process that are codified in our Constitution.

Our Founding Fathers established the legal framework of our country on the premise that those in government are not infallible. America's leaders knew this 60 years ago when they determined how to deal with Nazi leaders guilty of horrendous crimes. There were strong and persuasive voices at that time crying out for the summary execution of those men who had commanded with ruthless efficiency the slaughter of 6 million innocent Jews and 5 million other innocent men and women. After World War Two, our country was forced to decide whether the accused criminals deserved trial or execution.

There was an article written recently by Professor Luban, a professor at Georgetown University, titled ''Forget Nuremberg—How Bush's new torture bill eviscerates the promise of Nuremberg.'' I ask unanimous consent that the entire article be printed in the RECORD.

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

FORGET NUREMBERG: HOW BUSH'S NEW TORTURE BILL EVISCERATES THE PROMISE OF NUREMBERG

(By David J. Luban)

The burning question is: What did the Bush administration do to break John McCain when a North Vietnamese prison camp couldn't do it?

Could it have been ''ego up''? I'm told ego up is not possible with a U.S. senator. That probably also rules out ego down. Fear up harsh? McCain doesn't have the reputation of someone who scares easily. False flag? Did he think they were sending him to the vice president's office? No, he already knew he was in the vice president's office. Wait, I think I know the answer: futility—which the Army's old field manual on interrogation defined as explaining rationally to the prisoner why holding out is hopeless. Yes, the explanation must be that the Bush lawyers would have successfully loopholed any law McCain might write, so why bother? Futility might have done the trick.

How else can we explain McCain's surrender this week on the torture issue, one on which he has been as passionate in the past as Lindsey Graham was on secret evidence?

Marty Lederman at Balkinization explains here and here some of the worst bits of the proposed ''compromise legislation'' on detainee treatment. But the fact is, virtually every word of the proposed bill is a capitulation, including ''and'' and ''the.'' And yesterday's draft is even worse than last week's. It unexpectedly broadens the already broad definition of ''unlawful enemy combatant'' to include those who fight against the United States as well as those who give them ''material support''—a legal term that appears to include anyone who has ever provided lodging or given a cell phone to a Taliban foot soldier out of sympathy with his cause. Now, not only the foot soldier but also his mom can be detained indefinitely at Guantanamo.

But the real tragedy of the so-called compromise is what it does to the legacy of Nuremberg—a legacy we would have been celebrating next week at the 60th anniversary of the judgment.

What does the bill do to Nuremberg? Section 8(a)(2) holds that when it comes to applying the War Crimes Act, ''No foreign or international sources 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 2441(d).'' That means the customary international law of war is henceforth expelled from U.S. war-crime law—ironic, to say the least, because it was the U.S. Army's Lieber Code that formed the basis for the Law of Armed Conflict and that launched the entire worldwide enterprise of codifying genuinely international humanitarian law.

Ironic also because our own military takes customary LOAC as its guide and uses it to train officers and interrogators. Apparently there is no need to do that anymore, at least when it comes to war crimes. That means goodbye, International Committee of the Red Cross; the Swiss can go back to their fondue and cuckoo clocks. It also means goodbye, jurisprudence of the Yugoslav tribunal, which the United States was instrumental in forming.

And also goodbye, Nuremberg.

Sept. 30 and Oct. 1 mark the 60th anniversary of the tribunal's judgment. If the opening chapters of Telford Taylor's superb The Anatomy of the Nuremberg Trials make one thing crystal clear, it's the burning desire of the United States to create international law using those trials. Great Britain initially opposed the Nuremberg trials and urged simply shooting top Nazis, out of fear they would use the trials for propaganda. Stalin favored conducting trials, but only to establish punishments, not guilt. Like Great Britain, he thought punishing the top Nazis should be a political, and not a legal, decision. The trials happened as they did only because the United States insisted on them for purposes of establishing future law—a task that summary justice at executive sayso could never have done.

At the London conference that wrote the Nuremberg Charter, France and Russia both objected to criminalizing aggressive war for anybody but the Axis countries. But Supreme Court Justice Robert Jackson, the American representative, insisted that creating universally binding international law was the prime purpose of the tribunal.

A compromise left the international status of Nuremberg law ambiguous—the tribunal's jurisdiction covered only the Axis countries, but nowhere does the charter suggest that the crimes it was trying were only crimes if committed by the Axis powers. Because of this ambiguity, the status of the Nuremberg principles as international law was not established until 1950, when the U.N. General Assembly proclaimed seven Nuremberg Principles to be international law. The American agenda had finally prevailed.

Well, forget all that as well. The Nuremberg Principles, like the entire body of international humanitarian law, will now have no purchase in the war-crimes law of the United States. Who cares whether they were our idea in the first place? Principle VI of the Nuremberg seven defines war crimes as ''violations of the laws or customs of war, which include, but are not limited to . . . ill-treatment of prisoners of war.'' Forget ''customs of war''—that sounds like customary international law, which has no place in our courts anymore. Forget ''ill-treatment''—it's too vague. Take this one: Principle II, ''The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.'' Section 8(a)(2) sneers at responsibility under international law. Or Principle IV: ''The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law , provided a moral choice was in fact possible to him.'' Moral, shmoral. The question is, do you want the program or don't you?

The Nuremberg trials presupposed something about the human conscience: that moral choice doesn't take its cues solely from narrow legalisms and technicalities. The new detainee bill takes precisely the opposite stance: Technicality now triumphs over conscience, and even over common sense. The bill introduces the possibility for a new cottage industry: the jurisprudence of pain. It systematically distinguishes ''severe pain''—the hallmark of torture—from (mere) ''serious'' pain—the hallmark of cruel and degrading treatment, usually thought to denote mistreatment short of torture. But then it defines serious physical pain as ''bodily injury that involves . . . extreme physical pain.'' To untutored ears, ''extreme'' sounds very similar to ''severe''; indeed, it sounds even worse than ''severe.'' But in any case, it certainly sounds worse than ''serious.'' Administration lawyers can have a field day rating painful interrogation tactics on the Three Adjective Scale, leaving the rest of us to shake our heads at the essential lunacy of the enterprise.

And then there is section 8(3), which says that ''the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions.'' Section (B) makes it clear that his interpretation ''shall be authoritative (as to non-grave breach provisions).''

On Aug. 1, 2006, The Onion ran a story headlined ''Bush Grants Self Permission To Grant More Power to Self.'' It began: ''In a decisive 1-0 decision Monday, President Bush voted to grant the president the constitutional power to grant himself additional powers.'' It ended thusly: ''Republicans fearful that the president's new power undermines their ability to grant him power have proposed a new law that would allow senators to permit him to grant himself power.'' How life imitates art! In the end, the three courageous Republican holdouts didn't want the president unilaterally trashing Geneva. Now it turns out that the principle they were fighting for was simply Congress' prerogative to grant him the unreviewable power to do so.

Mr. DODD. He pointed out something that needs to be made clear. He said:

Make one thing crystal clear, it's the burning desire of the United States to create international law using those trials. Great Britain initially opposed the Nuremberg trials and urged simply shooting top Nazis out of fear, they would use the trials for propaganda. Stalin favored conducting trials only to establish punishments, not guilt. Like Great Britain, he thought punishing the top Nazis should be a political, and not a legal, decision. The trials happened as they did only because the United States insisted on them for purposes of establishing future law—a task that summary justice at executive say-so could never have done.

At the London conference that wrote the Nuremberg Charter, France and Russia both objected to criminalizing aggressive war for anybody but the Axis countries. But Supreme Court Justice Robert Jackson, the American representative insisted that creating universally binding international law was the prime purpose of the tribunal.

And he prevailed in that argument.

The history is particularly poignant to me because my father, who served in this body, from whose desk I speak this morning, served as Robert Jackson's No. 2, as the executive trial counsel at Nuremberg. Mr. President, the Nuremberg trials rendered their first judgment 60 years ago. What an irony indeed that 60 years ago this Saturday, one of the great, if not the greatest, trials of the 20th century was taking us to a point where we are now codifying and moving to international law. The enemies of the United States were not given the opportunity to walk away from their crimes. Rather, they were given the right to face their accusers, the right to confront evidence against them, the right to a fair trial. Underlying that decision was the conviction that this Nation must not tailor its most fundamental principles to the conflict of the moment and the recognition that if we did, we would be walking in the very footsteps of the enemies we despised.

As we approach this 60th anniversary, I think it is important to reflect on the implications of the past as we face new challenges, new enemies, and new decisions. Much as our actions in the postwar period affected our Nation's standing in the world, so, too, do our actions in the post- 9/11 era.

The Armed Services Committee, and I have great respect for my friend, JOHN WARNER, decided not to rubberstamp the administration's legislation. Instead they worked in a bipartisan way to craft a more narrowly tailored approach. Unfortunately, the bill we are discussing today is not the one that passed out of that committee. The bill before us today was worked out between several of our Republican colleagues and the White House and does not contain the improvements over the Bush administration's original proposal. I remain concerned about several provisions in the pending legislation.

The bill would strip detainees of their habeas corpus rights. The eloquent remarks of ARLEN SPECTER yesterday should be read by everyone. This longstanding tradition of our country that is about to be abandoned here will be one of the great mistakes I think history will record. There are strong beliefs among Senators on both sides that this provision is not only inadvisable but flatly unconstitutional as well. We must do everything in our power to protect our country from threats to our national security, but it is also incumbent upon every one of us to protect the very foundation upon which our Nation was established. This legislation will not achieve those aims.

I support the efforts, certainly of those who are trying to improve this bill, but I wish to conclude these remarks by quoting Justice Jackson. Justice Jackson said at the conclusion of the Nuremberg trials:

We must never forget that the record on which we judge these defendants today—is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our lips as well.

To rubberstamp the administration's bill, in my view, would poison one of the most fundamental principles of American democracy. I urge my colleagues not to move in that direction.

Also, if I can, I wish to read from this article which was written by Mr. Luban, talking about the Nuremberg trials, because it is an important moment in our history. He said:

The Nuremberg trials presupposed something about the human conscience: that moral choice doesn't take its cues solely from narrow legalisms and technicalities. The new detainee bill takes precisely the opposite stance: technicality now triumphs over conscience, and even over common sense. The bill introduces the possibility for a new cottage industry: the jurisprudence of pain. It systematically distinguished ''severe pain''—the hallmark of torture—from mere ''serious'' pain—the hallmark of cruel and degrading treatment, usually thought to denote mistreatment short of torture. But then it defines serious pain as ''bodily injury that involves . . . extreme physical pain.'' To untutored ears, ''extreme'' sounds very similar to ''severe''; indeed, it sounds even worse than ''severe.'' But in any case, it certainly sounds worse than ''serious.''

Administration lawyers can have a field day in the coming years reading painful interrogation tactics on the Three Adjective Scale, leaving the rest of us to shake our heads at the essential lunacy of the enterprise.

It is about conscience. It is the fundamental principle which we enshrined and fought for. It was the United States of America that stood and insisted that our allies try to do something to avoid future conflicts, 60 years ago this Saturday. To watch the Senate, on the anniversary of the Nuremberg trials, step away from that great tradition, those great principles enshrined at that time, I think is one of the saddest days I have ever seen in this Senate in my almost 30 years serving in this body.

I hope my colleagues, with a few days to go before the election, put this aside. Let's come back afterward and think more clearly. Too much of politics is written into these decisions. This is the United States of America.

The PRESIDING OFFICER (Ms. Murkowski). The time of the Senator has expired.

Mr. DODD. I yield the floor.

Several Senators addressed the Chair.

Mr. WARNER. Madam President, will the distinguished leader allow me to say a few words?

I listened very intently. The Senator from Connecticut and I have, over many years, formed a very close personal and professional working relationship. I know the deep, abiding respect you have for your father and his work, particularly at that historic moment in the history of world jurisprudence, the Nuremberg trials. I regret that you perceive that this bill on the floor falls short of your idea of the goals. But I assure you the group with which I worked did everything we could—and I think we have succeeded, I say in all respects—certainly with regard to the 1949 treaty, which, as you know, was in four parts, and the Common Article 3 to all four of those treaties, preserving this Nation's obligations under that treaty.

So while we have our differences, I just wish to conclude that I respect you greatly for the admiration you have for your father, as do I have for my father, who was a doctor during that period. I thank you for the opportunity to listen to you.

Mr. DODD. If I may respond to my colleague from Virginia, for whom I have the greatest respect, it is not only my love and affection for my father; more importantly, it is my love and affection for what he and a group of Americans did at a time when others said abandon the rule of law: They stood up at a time when it was tempting not to do so. World opinion certainly was against them in many ways. These were dreadful human beings. These people murdered millions, incinerated millions of people. Yet people such as my father and Robert Jackson and others stood up and said: No, we are going to be different than they are. The rule of law is so critically important to us that we want to show the civility of this great country of ours and how the last part of the 20th century can be conducted differently. It is not just my affection for my father; it is more the affection for what they did in

a moment, against public opinion, to set the gold standard and set us apart.

We have been known as the nation of Nuremberg. My fear is now we will be known as the nation of Guantanamo, and I worry about that.

Mr. WARNER. We have our differences, if I may say, but that was a war of state-sponsored nations and aggressions, men wearing uniforms, men acting at the direction of recognized governments. Today's war is a disparate bunch of terrorists, coming overnight, no uniforms, no principles, guided by nothing. We are doing the best we can as a nation, under the direction of our President, to defend ourselves.

Mr. DODD. If our colleague would yield, I do not disagree, but I don't think there is a choice between upholding the principles of America and fighting terrorism. Every generation of Americans will face their own threats. This is ours. Every previous generation faced serious threats, and they did not abandon the principles upon which this country is founded. I am fearful we are going to do that today.

Mr. WARNER. I disagree with my friend, and I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. For this little conclusion, I will use leader time.

I ask unanimous consent that 5 minutes from Senator ROCKEFELLER and Senator KENNEDY—they both have a half hour on their respective amendments—be transferred to Senators CLINTON and JOHN KERRY. They will each have 5 minutes to speak. And that I have 12 minutes under my control remaining on the bill and that time be equally divided between Senators FEINSTEIN and FEINGOLD. They will each have 6 minutes to speak on the bill.

Mr. WARNER. Madam President, reserving the right to object, and I will not object, but I listened carefully. You courteously advised me that this request works within the confines of the standing unanimous consent, is my understanding, in terms of the allocation of time.

Mr. REID. This adds no time to the bill.

Mr. WARNER. That is correct. I wanted to make that clear to my colleagues.

Mr. LEAHY. Reserving the right to object. I shall not, of course. As a matter of clarification, there is still some specific time reserved to the Senator from Vermont; is that correct?

The PRESIDING OFFICER. There remains 23 minutes on the bill.

Mr. REID. That is 23 minutes, plus the good offices of Senator SPECTER may give the Senator additional time.

Mr. LEAHY. Thank you.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

MILITARY COMMISSIONS ACT OF 2006

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 3930, which the clerk will report.

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.

Pending:

Specter amendment No. 5087, to strike the provision regarding habeas review.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, just for purposes of advising colleagues, there remains on the Specter amendment 16 minutes under the control of the Senator from Virginia. I desire to allocate about 4 minutes to Senator KYL, 2 to 3 minutes to Senator SESSIONS, and to wrap it up, 2 to 3 minutes to Senator GRAHAM. But we will alternate or do as the Senator from Michigan—you have 33 minutes, I believe, under the control of Senator SPECTER and those in support of his amendment.

Mr. LEVIN. Madam President, parliamentary inquiry: How much time is remaining to Members on this side, including on the bill?

The PRESIDING OFFICER. Senator SPECTER's side controls 33 minutes.

Mr. LEVIN. On the Democratic side?

The PRESIDING OFFICER. Senator WARNER controls 16 minutes, and the proponent of the amendment controls 33.

Mr. LEVIN. And on the bill itself, is there time left?

The PRESIDING OFFICER. Senator REID has allocated the remainder of the debate time on the bill itself.

Mr. LEVIN. All time is allocated?

The PRESIDING OFFICER. Correct.

Mr. LEVIN. Madam President, I ask unanimous consent that I be allowed to proceed for 30 seconds.

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

Mr. LEVIN. Madam President, I wish to thank the Senator from Connecticut for one of the most passionate statements I have ever heard on this floor—heartfelt, right on target. The distinctions made in this bill which will allow statements to be admitted into evidence that were produced by cruel treatment is unconscionable. It is said that, well, statements made after December 30 of 2005 won't be allowed, but those that are produced by cruel and inhuman treatment prior to December 30 of 2005 are OK. It is unconscionable. It is unheard of. It is untenable, and the Senator from Connecticut has pointed it out very accurately, brilliantly. I thank him for his statement.

Mr. WARNER. Madam President, we will proceed on Specter's amendment. In due course, I will find the time to comment on my colleague's 30 seconds. I want to keep this thing in an orderly progression. I would like to add the Senator from Texas, Mr. CORNYN, in the unanimous consent agreement to be recognized as one of the wrap-up speakers on those in opposition to the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, yesterday Senator SPECTER argued that one sentence in the Hamdi opinion that refers to habeas corpus rights as applying to all ''individuals'' inside the United States indicates that alien enemy combatants have constitutional habeas rights when they are held inside this country. I believe that Senator SPECTER is incorrect, for the following reasons: (1) The Hamdi plurality repeatedly makes clear that ''the threshold question before us is whether the Executive has the authority to detain citizens who qualify as 'enemy combatants.''' The plurality expressly frames the issue before it in terms of the rights of citizens no fewer than eight times. It is clear that it is only the rights of citizens that the Hamdi plurality studied and ruled on. (2) Elsewhere the Hamdi plurality criticized a rule that would make the government's right to hold someone as an enemy combatant turn on whether they are held inside or outside of the United States. The plurality characterized such a rule as creating ''perverse incentives,'' noted that it would simply encourage the military to hold detainees abroad, and concluded that it should not create a ''determinative constitutional difference.'' The same effect would, of course, be felt if enemy soldiers' habeas rights were made turn on whether they were held inside or outside of the United States. The fact that the Hamdi plurality rejected this type of geographical gamesmanship in one context casts doubt on the theory that it endorsed it in a closely related context. (3) Had Hamdi extended habeas rights to alien enemy combatants held inside the United States, that would have been a major ruling of tremendous consequence. Because courts typically do not hide elephants in mouseholes, cf. Whitman v. ATA, it is fair to conclude that no such groundbreaking ruling is squirreled away in one ambiguous sentence in the Hamdi plurality opinion on the floor Wednesday evening, I presented the argument that the constitutional writ of habeas corpus does not extend to alien enemy soldiers held during wartime. Senator SPECTER responded by quoting from a passage in Justice O'Connor's plurality opinion in Hamdi v. Rumsfeld, 542 U.S. 507 (2004), that he believes establishes that alien combatants are entitled to habeas rights if they are held within the United States. That statement, towards the beginning of section III.A of the court's opinion, is a part of a statement of general principles noting that ''[a]ll agree'' that, absent suspension, habeas corpus remains available to every ''individual'' within the United States. Senator

SPECTER reads this statement, unadorned by any qualification as to whether the individual in question is a U.S. citizen, an illegal immigrant, or an alien enemy combatant, to stand for the proposition that even the latter has a constitutional right to habeas corpus when held within the United States.

I would suggest that this single, ambiguous statement cannot be construed to bear that much weight, for three reasons.

Elsewhere in its opinion, the Hamdi plurality repeatedly makes clear that the only issue it is actually considering is whether a U.S. citizen has habeas and due process rights as an enemy combatant. The plurality's emphasis on citizenship is repeatedly made clear throughout Justice O'Connor's opinion. For example, on page 509, in its first sentence, the plurality opinion says: ''we are called upon to consider the legality of the detention of a United States citizen on United States soil as an 'enemy combatant' and to address the process that is constitutionally owed to one who seeks to challenge his detention as such.'' On page 516, the plurality again notes: ''The threshold question before us is whether the Executive has the authority to detain citizens who qualify as 'enemy combatants.'" On page 524, the plurality once again emphasizes: ''there remains the question of what process is constitutionally due to a citizen who disputes his enemy-combatant status.'' On page 531: ''We reaffirm today the fundamental nature of a citizen's right to be free from involuntary confinement by his own government without due process of law.'' On page 532: ''neither the process proposed by the Government nor the process apparently envisioned by the District Court below strikes the proper constitutional balance when a United States citizen is detained in the United States as an enemy combatant.'' On page 533: ''We therefore hold that a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertion before a neutral decisionmaker.'' On page 535: military needs ''are not so weighty as to trump a citizen's core rights to challenge meaningfully the Government's case and to be heard by an impartial adjudicator.'' And on page 536–37: ''it would turn our system of checks and balances on its head to suggest that a citizen could not make his way to court with a challenge to the factual basis for his detention by his government.''

Whatever loose language may have been used in the plurality's statement of general principles at the outset of its analysis, it is apparent that the only issue that the plurality actually studied and intended to address is the constitutional rights of the U.S. citizen.

Another thing that augurs against interpreting the Hamdi plurality opinion to extend constitutional habeas rights to alien enemy combatants whenever they are held inside the United States is that, elsewhere in its opinion, the plurality is quite critical of a geographically-based approach to enemy combatant's rights. At page 524, the plurality responds to a passage in Justice Scalia's dissent that it reads as arguing that the government's ability to hold someone as an enemy combatant turns on whether they are held inside or outside of the United States. The plurality opinion states that making the ability to hold someone as an enemy combatant turn on whether they are held in or out of the United States:

> creates a perverse incentive. Military authorities faced with the stark choice of submitting to the full-blown criminal process or releasing a suspected enemy combatant captured on the battlefield will simply keep citizen-detainees abroad. Indeed, the Government transferred Hamdi from Guantanamo Bay to the United States naval brig only after it learned that he might be an American citizen. It is not at all clear why that should make a determinative constitutional difference.

It is doubtful that this same plurality—one that sees ''perverse'' effects in rules that would encourage the government to hold enemy combatants outside of the United States in order to avoid burdensome litigation—also intended to rule that full constitutional habeas rights attach to alien enemy combatants as soon as they enter U.S. airspace.

Finally, Senator SPECTER's argument that the ambiguous reference to ''individuals'' on page 525 of Hamdi extends habeas rights to foreign enemy combatants held inside U.S. territory is inconsistent with the common sense interpretive rule that one does not ''hide elephants in mouseholes.'' *Whitman* v. *American Trucking Association*, 531 U.S. 457, 468 (2001). Although this rule of construction typically is applied by the court to our enactments, I see no reason why its logic would not operate when applied in reverse, by members of this body to the court's opinions.

For the Hamdi court to have extended constitutional habeas rights to alien enemy soldiers held inside the United States would have been a major decision of enormous consequence to our nation's warmaking ability. As the Hamdi plurality itself noted, ''detention to prevent a combatant's return to the battlefield is a fundamental incident of waging war.'' As I noted yesterday, during World War II the United States detained over 425,000 enemy war prisoners inside the United States. Yet as Rear Admiral Hutson—no supporter of section 7 of the MCA—noted in his testimony at Monday's Judiciary Committee hearing, aside from one petition filed by an American of Italian descent, no habeas petitions challenging detention were filed by any of these World War II enemy combatants. It is simply inconceivable that all of the 425,000 enemy combatants held inside the United States during this period could have been allowed to sue our government in our courts to challenge their detention. And were their right to do so made to turn on whether they were held inside or outside of the United States, our Armed Forces inevitably would have been forced to find some accommodations for them in foreign territory. And since holding enemy combatants near the war zone is neither practical nor safe, our nation's whole ability to fight a war would be made to turn on whether we could find some third country where we could hold enemy war prisoners. I would submit that this elephant of a result simply will not fit in the small space for it created by the one ambiguous passage in the Hamdi plurality opinion.

For these three reasons, I believe that Senator SPECTER is incorrect to interpret the Hamdi plurality opinion to extend constitutional habeas corpus rights to alien enemy combatants held inside the United States.

Just to conclude by summarizing the point as follows: On eight separate times, the plurality opinion in Hamdi refers to the rights of citizens. That is the question before the court. This is what it rules on. This is our holding. At no point does it extend it to citizens. There is one sentence rather loosely framed that refers to individuals. Had the courts in that decision intended to apply the habeas right to all individuals in the United States rather than citizens, it would most assuredly have said so.

I don't think, with all due respect to my great friend, the chairman of the committee, that relying on that one loose word in one sentence of the opinion overrides all of the other reasoning, all of the other clear statements, and the obvious intent of the opinion to relate it to citizens only. With all due respect, I disagree with the reading of the case and conclude that there is nothing wrong with this legislation before us limiting the rights of habeas to those who are citizens and not extending it to alien enemy combatants.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, by way of brief reply to the comments of the Senator from Arizona, he argues that the Hamdi decision does not apply to aliens but only to citizens, trying to draw some inferences. But that does not stand up in the face of explicit language by Justice O'Connor to this effect:

> All agree that absent suspension the writ of habeas corpus remains available to every individual detained in the United States.

The Senator from Arizona can argue all he wants about inferences, but that hardly stands up to an explicit statement on individuals. And Justice O'Connor knows the difference between referring to an individual or referring to a citizen or referring to an alien. And ''individuals'' covers both citizens and aliens.

Following the reference to individuals is the citation of the constitutional provision that you can't suspend

habeas corpus except in time of rebellion or invasion.

Buttressing my argument is the Rasul v. Bush case where it applied specifically to aliens; and it is true that the consideration was under the statute section 2241. There the Court says that section 2241 ''draws no distinction between Americans and aliens held in Federal custody.''

That again buttresses the argument I have made in two respects. First, Rasul specifically grants habeas corpus, albeit statutory, to aliens and says there is no distinction. So on the face of the explicit language of the Supreme Court of the United States there is a constitutional requirement, and it is fundamental that Congress cannot legislate in contradiction to a constitutional interpretation of the Supreme Court. That requires a constitutional amendment—not legislation.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Vermont.

Mr. LEAHY. Madam President, will the Senator from Pennsylvania yield?

Mr. SPECTER. Madam President, how much time remains under my control?

The PRESIDING OFFICER. Thirty minutes.

Mr. SPECTER. Madam President, I yield 10 minutes to the distinguished Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Thank you, Madam President. If I require further time beyond 10 minutes I will take time from that reserved to the Senator from Vermont.

Let's understand exactly what we are talking about here. There are approximately 12 million lawful permanent residents in the United States today. Some came here initially the way my grandparents did or my wife's parents did. These are people who work for American firms, they raise American kids, they pay American taxes.

Section 7 of the bill before us represents a choice about how to treat them. This bill could have been restricted to traditional notions of enemy combatants—foreign fighters captured on the battlefield—but the drafters of this bill chose not to do so.

Let's be very clear. Once we get past all of the sloganeering, all the fundraising letters, all the sound bites, all the short headlines in the paper, let's be clear about the choice the bill makes. Let's be absolutely clear about what it says to lawful permanent residents of the United States. Then let's decide if it is the right message to send them and if it is really the face of America that we want to show.

Take an example. Imagine you are a law-abiding, lawful, permanent resident, and in your spare time you do charitable fundraising for international relief agencies to lend a helping hand in disasters. You send money abroad to those in need. You are selective in the charities you support, but you do not discriminate on the grounds of religion. Then one day there is a knock on your door. The Government thinks that the Muslim charity you sent money to may be funneling money to terrorists and thinks you may be involved. And perhaps an overzealous neighbor who saw a group of Muslims come to your House has reported ''suspicious behavior.'' You are brought in for questioning.

Initially, you are not very worried. After all, this is America. You are innocent, and you have faith in American justice. You know your rights, and you say: I would like to talk to a lawyer. But no lawyer comes. Once again, since you know your rights, you refuse to answer any further questions. Then the interrogators get angry. Then comes solitary confinement, then fierce dogs, then freezing cold that induces hypothermia, then waterboarding, then threats of being sent to a country where you know you will be tortured, then Guantanamo. And then nothing, for years, for decades, for the rest of your life.

That may sound like an experience from some oppressive and authoritarian regime, something that may have happened under the Taliban, something that Saddam Hussein might have ordered or something out of Kafka. There is a reason why that does not and cannot happen in America. It is because we have a protection called habeas corpus, or if you do not like the Latin phrase by which it has been known throughout our history, call it access to the independent Federal courts to review the authority and the legality by which the Government has taken and is holding someone in custody. It is a fundamental protection. It is woven into the fabric of our Nation.

Habeas corpus provides a remedy against arbitrary detentions and constitutional violations. It guarantees an opportunity to go to court, with the aid of a lawyer, to prove that, yes, you are innocent.

As Justice Scalia stated in the Hamdi case:

> The very core of liberty secured by the Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive.

Of course, the remedy that secures that most basic freedom is habeas corpus.

Habeas corpus does not give you any new rights, it just guarantees you have a chance to ask for your basic freedom.

If we pass this bill today, that will be gone for the 12 million lawful, permanent residents who live and work among us, to say nothing of the millions of other legal immigrants and visitors who we welcome to our shores each year. That will be gone for another estimated 11 million immigrants the Senate has been working to bring out of the shadows with comprehensive immigration reform.

The bill before the Senate would not merely suspend the great writ, the great writ of habeas corpus, it would eliminate it permanently. We do not have to worry about nuances, such as how long it will be suspended. It is gone. Gone.

Over 200 years of jurisprudence in this country, and following an hour of debate, we get rid of it. My God, have any Members of this Senate gone back and read their oath of office upholding the Constitution? This cuts off all habeas petitions, not just those founded on relatively technical claims but those founded on claims of complete innocence.

We hundred Members in the Senate, we privileged men and women, are supposed to be the conscience of the Nation. We are about to put the darkest blot possible on this Nation's conscience. It would not be limited to enemy combatants in the traditional sense of foreign fighters captured in the battlefield, but it would apply to any alien picked up anywhere in the world and suspected of possibly supporting enemies of the United States.

We do not need this bill for those truly captured on the battlefield who have taken up arms against the United States. That is why the definition of enemy combatant has been so expansively redefined behind closed doors in the dark of night.

This bill is designed instead to sweep others into the net. It would not even require an administrative determination that the Government's suspicions have a reasonable basis in fact. By its plain language, it would deny all access to the courts to any alien awaiting—what a bureaucratic term, to determine your basic human rights, ''any alien awaiting''—a Government determination as to whether the alien is an enemy combatant. The Government would be free to delay as long as it liked—for years, for decades, for the length of the conflict which is so undefined and may last for generations.

One need only look at Guantanamo. Even our own Government says a number of people are in there by mistake, but we will not get around to making that determination. Maybe in 5 years, maybe 10, maybe 20, maybe 30. And we wonder why some of our closest allies ask us, what in heaven's name has happened to the conscience and moral compass of this great Nation? Are we so terrified of some terrorists around this country that we will run scared and hide? Is that what we will do, tear down all the structures of liberty in this country because we are so frightened?

It brings to mind that famous passage in ''A Man for All Seasons.'' Thomas More is talking to his protege, William Roper, and says something to the effect that England is planted thick like a forest with laws. He said, Would you cut down those laws to get after the devil? And Roper said, of course I would cut down all the laws in England to get the devil. And then More said, Oh, and when the last law was down and the devil turned on you, what will protect you?

This legislation is cutting down laws that protect all 100 of us, and now almost 300 million Americans. It is amazing the Senate would be talking about doing something such as this, especially after the example of Guantanamo. We can pick up people intentionally or by mistake and hold them forever.

How many speeches have I heard in my 32 years in the Senate during the cold war and after, criticizing totalitarian governments that do things such as that? And we can stand here proudly and say it would never happen in America; this would never happen in America because we have rights, we have habeas corpus, and people are protected.

I am not here speculating about what the bill says. This is not a critic's characterization of the bill. It is what the bill plainly says, on its face. It is what the Bush-Cheney administration is demanding. It is what any Member who votes against the Specter-Leahy amendment and for the bill today is going to be endorsing.

The habeas stripping provisions in the bill go far beyond what Congress did in the Detainee Treatment Act in three respects. First, as the Supreme Court pointed out in Hamdan, the DTA removed habeas jurisdiction only prospectively, for future cases. This new bill strips habeas jurisdiction retroactively, even for pending cases. This is an extraordinary action that runs counter to long-held U.S. policies disfavoring retroactive legislation.

Second, the DTA applied only to detainees at Guantanamo. This new legislation goes far beyond Guantanamo and strips the right to habeas of any alien living in the United States if the alien has been determined an enemy combatant, or even if he is awaiting a determination—and that wait can take years and years and years. Then, 20 years later, you can say: We made a mistake. Tough. It allows holding an alien, any alien, forever, without the right of habeas corpus, while the Government makes up its mind as to whether he is an enemy combatant.

And third, the impact of those provisions is extended by the new definition of enemy combatant proposed in the current bill. The bill extends the definition to include persons who supported hostilities against the United States, even if they did not engage in armed conflict against the United States or its allies. That, again, is an extraordinary extension of existing laws.

If we vote today to abolish rights of access to the justice system to any alien detainee who is suspected—not determined, not even charged; these people are not even charged, just suspected—of assisting terrorists, that will do by the back door what cannot be done up front. That will remove the checks in our legal system that provide against arbitrarily detaining people for life without charge. It will remove the mechanism the Constitution provides to stop the Government from overreaching and lawlessness.

This is so wrong. It grieves me, after three decades in this Senate, to stand here knowing we are thinking of doing this. It is so wrong. It is unconstitutional. It is un-American. It is designed to ensure the Bush-Cheney administration will never again be embarrassed by a U.S. Supreme Court decision reviewing its unlawful abuses of power. The Supreme Court said, you abused your power. And they said, we will fix that. We have a rubberstamp Congress that will set that aside and give us power that nobody—no king or anyone else setting foot in this land—had ever thought of having.

In fact, the irony is this conservative Supreme Court—seven out of nine members are Republicans—has been the only check on the Bush-Cheney administration because Congress has not had the courage to do that. Congress has not had the courage to uphold its own oath of office.

With this bill, the Congress will have completed the job of eviscerating its role as a check and balance on the administration. The Senate has turned its back on the Warner-Levin bill, a bipartisan bill reported by the Committee on Armed Services, so it can jam through the Bush-Cheney bill. This bill gives up the ghost. It is not a check on the administration but a voucher for future wrongdoing.

Abolishing habeas corpus for anyone the Government thinks might have assisted enemies of the United States is unnecessary and morally wrong, a betrayal of the most basic values of freedom for which America stands. It makes a mockery of the Bush-Cheney administration's lofty rhetoric about exporting freedom across the globe. We can export freedom across the globe, but we will cut it out in our own country. What hypocrisy.

I read yesterday from former Secretary of State Colin Powell's letter in which he voiced concern about our moral authority in the war against terrorism. The general and former head of the Joint Chiefs of Staff and former Secretary of State was right.

Admiral John Hutson testified before the Judiciary Committee that stripping the courts of habeas corpus jurisdiction was inconsistent with our history and our tradition. The admiral concluded:

> We don't need to do this. America is too strong.

When we do this, America will not be a stronger nation. America will be a weaker nation. We will be weaker because we turned our back on our Constitution. We turned our back on our rights. We turned our back on our history.

I ask unanimous consent to have printed in the RECORD a letter from more than 60 law school deans and professors who state that the Congress would gravely disserve our global reputation by doing this.

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

SEPTEMBER 27, 2006.

To United States Senators and Members of Congress.

DEAR SENATORS AND REPRESENTATIVES: We, the undersigned law deans and professors, write in our individual capacity to express our deep concern about two bills that are rapidly moving through Congress. These bills, the Military Commissions Act and the National Security Surveillance Act, would make the indefinite detention of those labeled enemy combatants and the executive's program of domestic surveillance effectively unreviewable by any independent judge sitting in public session. While different in character, both bills unwisely contract the jurisdiction of courts and deprive them of the ability to decide critical issues that must be subject to judicial review in any free and democratic society.

Although the Military Commissions Act of 2006 (S. 3929/S. 3930) was drafted to improve and codify military commission procedures following the Supreme Court's June 2006 decision in Hamdan v. Rumsfeld, it summarily eliminates the right of habeas corpus for those detained by the U.S. government who have been or may be deemed to be enemy combatants: Detainees will have no ability to challenge the conditions of their detention in court unless and until the administration decides to try them before a military commission. Those who are not tried will have no recourse to any independent court at any time. Enacting this provision into law would be a grievous error. As several witnesses testified before the Senate Judiciary Committee on Monday, Article I, Section 9 of the Constitution specifies 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,'' conditions that are plainly not satisfied here.

Similarly, the National Security Surveillance Act of 2006 (S. 3876) would strip courts of jurisdiction over pending cases challenging the legality of the administration's domestic spying program and would transfer these cases to the court established by the Foreign Intelligence Surveillance Act of 1978 (FISA). The transfer of these cases to a secret court that issues secret decisions would shield the administration's electronic surveillance program from effective and transparent judicial scrutiny.

These bills exhibit a profound and unwarranted distrust of the judiciary. The historic role of the courts is to ensure that the legislature promulgates and the executive faithfully executes the law of the land with due respect for the rights of even the most despised. Any protections embodied in these bills would be rendered worthless unless the courts can hold the executive accountable to enacted law. Moreover, the bills ignore a central teaching of the Supreme Court's decision in Hamdan v. Rumsfeld: the importance of shared institutional powers and checks and balances in crafting lawful and sustainable responses to the war on terror. Absent effective judicial review, there will be no way to enforce any of the limitations in either bill that Congress is currently seeking to place upon the executive's claimed power.

We recognize the need to prevent and punish crimes of terrorism and to investigate and prosecute such crimes. But depriving our courts of jurisdiction to determine whether the executive has acted properly when it detains individuals in this effort would endanger the rights of our own soldiers and nationals abroad, by limiting our ability to demand

that they be provided the protections that we deny to others. Eliminating effective judicial review of executive acts as significant as detention and domestic surveillance cannot be squared with the principles of transparency and rule of law on which our constitutional democracy rests.

The Congress would gravely disserve our global reputation as a law-abiding country by enacting bills that seek to combat terrorism by stripping judicial review. We respectfully urge you to amend the judicial review provisions of the Military Commissions Act and the National Security Surveillance Act to ensure that the rights granted by those bills will be enforceable and reviewable in a court of law.

Sincerely,

James J. Alfini, President and Dean, South Texas College of Law.

Michelle J. Anderson, Dean, CUNY School of Law.

Katharine T. Bartlett, Dean and A. Kenneth Pye Professor of Law, Duke Law School.

Molly K. Beutz, Yale Law School.

Harold Hongju Koh, Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law, Yale Law School.

Harold J. Krent, Dean & Professor, Chicago-Kent College of Law.

Lydia Pallas Loren, Interim Dean and Professor of Law, Lewis & Clark Law School.

Dennis Lynch, Dean, University of Miami School of Law.

John Charles Boger, Dean, School of Law, University of North Carolina at Chapel Hill.

Jeffrey S. Brand, Dean, Professor and Chairman, Center for Law & Global Justice, University of San Francisco Law School.

Katherine S. Broderick, Dean and Professor, University of the District of Columbia, David A. Clarke School of Law.

Brian Bromberger, Dean and Professor, Loyola Law School.

Robert Butkin, Dean and Professor of Law, University of Tulsa College of Law.

Evan Caminker, Dean and Professor of Law, University of Michigan Law School.

Judge John L. Carroll, Dean and Ethel P. Malugen Professor of Law, Cumberland School of Law, Samford University.

Neil H. Cogan, Vice President and Dean, Whittier Law School.

Mary Crossley, Dean and Professor of Law, University of Pittsburgh School of Law,

Mary C. Daly, Dean & John V. Brennan Professor Law and Ethics, St. John's University School of Law.

Richard A. Matasar, President and Dean, New York Law School.

Philip J. McConnaughay, Dean and Donald J. Farage Professor of Law, The Pennsylvania State University, Dickinson School of Law.

Richard J. Morgan, Dean William S. Boyd School of Law, University of Nevada, Las Vegas.

Fred L. Morrison, Popham Haik Schnobrich/Lindquist & Vennum Professor of Law and Interim Co-Dean, University of Minnesota Law School,

Kenneth M. Murchison, James E. & Betty M. Phillips Professor of Law, Louisiana State University, Paul M. Hebert Law Center.

Cynthia Nance, Dean and Professor, University of Arkansas, School of Law.

Nell Jessup Newton, William B. Lockhart Professor of Law, Chancellor and Dean, University of California at Hastings College of Law,

Maureen A. O'Rourke, Dean and Professor of Law, Michaels Faculty Research Scholar, Boston University School of Law.

Margaret L. Paris, Dean, Elmer Sahlstrom Senior Fellow, University of Oregon School of Law.

Stuart L. Deutsch, Dean and Professor of Law, Rutgers School of Law-Newark.

Stephen Dycus, Professor, Vermont Law School.

Allen K. Easley, President and Dean, William Mitchell College of Law.

Christopher Edley, Jr., Dean and Professor, Boalt Hall School of Law, UC Berkeley.

Cynthia L. Fountaine, Interim Dean and Professor of Law, Texas Wesleyan University School of Law.

Stephen J. Friedman, Dean, Pace University School of Law.

Dean Bryant G. Garth, Southwestern Law School, Los Angeles, California.

Charles W. Goldner, Jr., Dean and Professor of Law, William H. Bowen School of Law, University of Arkansas at Little Rock.

Mark C. Gordon, Dean and Professor of Law, University of Detroit Mercy School of Law.

Thomas F. Guernsey, President and Dean, Albany Law School.

Don Guter, Dean, Duquesne University School of Law.

Jack A. Guttenberg Dean and Professor of Law.

LeRoy Pernell, Dean and Professor, Northern Illinois University College of Law.

Rex R. Perschbacher, Dean and Professor of Law, University of California at Davis School of Law.

Raymond C. Pierce, Dean and Professor of Law, North Carolina Central University School of Law.

Peter Pitegoff Dean and Professor of Law, University of Maine School of Law.

Efrén Rivera Ramos, Dean, School of Law, University of Puerto Rico.

William J. Rich, Interim Dean and Professor of Law, Washburn University School of Law.

James V. Rowan, Associate Dean, Northeastern University School of Law, Boston, Massachusetts.

Edward Rubin, Dean and John Wade-Kent Syverud Professor of Law, Vanderbilt University.

David Rudenstine, Dean, Cardozo School of Law.

Lawrence G. Sager, Dean, University of Texas School of Law, Alice Jane Drysdale Sheffield Regents Chair in Law, Capital University Law School.

Joseph D. Harbaugh, Dean and Professor, Shepard Broad Law Center, Nova Southeastern University.

Lawrence K. Hellman, Dean and Professor of Law, Oklahoma City University School of Law.

Patrick E. Hobbs, Dean and Professor of Law, Seton Hall University School of Law.

José Roberto Juárez, Jr., Dean and Professor of Law, University of Denver Sturm College of Law.

W. H. Knight, Jr., Dean and Professor, University of Washington School of Law, Seattle, Washington.

Brad Saxton, Dean & Professor of Law, Quinnipiac University School of Law.

Stewart J. Schwab, the Allan R. Tessler Dean & Professor of Law, Cornell Law School.

Geoffrey B. Shields, President and Dean and Professor of Law, Vermont Law School.

Aviam Soifer, Dean and Professor, William S. Richardson School of Law, University of Hawai'i.

Emily A. Spieler, Dean, Edwin Hadley Professor of Law, Northeastern University School of Law.

Kurt A. Strasser, Interim Dean and Phillip I. Blumberg Professor, University of Connecticut Law School.

Leonard P. Strickman, Dean, Florida International University, College of Law.

Steven L. Willborn, Dean & Schmoker Professor of Law, University of Nebraska College of Law.

Frank H. Wu, Dean, Wayne State University Law School.

David Yellen, Dean and Professor, Loyola University Chicago School of Law.

Mr. LEAHY. Kenneth Starr, the former independent counsel and Solicitor General for the first President Bush, wrote that the Constitution's conditions for suspending habeas corpus have not been met and that doing it would be problematic.

The post-9/11 world requires us to make adjustments. In the original PATRIOT Act five years ago, we made adjustments to accommodate the needs of the Executive, and more recently, we sought to fine-tune those adjustments. I think some of those adjustments sacrificed civil liberties unnecessarily, but I also believe that many provisions in the PATRIOT Act were appropriate. I wrote many of the provisions of the PATRIOT Act, and I voted for it.

This bill is of an entirely different nature. The PATRIOT Act took a cautious approach to civil liberties and while it may have gone too far in some areas, this bill goes so much further than that. It takes an entirely dismissive and cavalier approach to basic human rights and to our Constitution.

In the aftermath of 9/11, Congress provided in section 412 of the PATRIOT Act that an alien may be held without charge if, and only if, the Attorney General certifies that he is a terrorist or that he is engaged in activity that endangers the national security. He may be held for seven days, after which he must be placed in removal proceedings, charged with a crime, or released. There is judicial review through habeas corpus proceedings, with appeal to the D.C. Circuit.

Compare that to section 7 of the current bill. The current bill does not provide for judicial review. It would preclude it. It does not require a certification by the Attorney General that the alien is a terrorist. It would apply if the alien was ''awaiting'' a Government determination whether the alien is an ''enemy combatant.'' And it is not limited to seven days. It would enable the Government to detain an alien for life without any recourse whatsoever to justice.

What has changed in the past 5 years that justifies not merely suspending but abolishing the writ of habeas corpus for a broad category of people who have not been found guilty, who have not even been charged with any crime? What has turned us? What has made us so frightened as a nation that now the United States will say, we can pick up somebody on suspicion, hold them forever, they have no right to even ask why they are being held, and besides that, we will not even charge them with anything, we will just hold them? What has changed in the last 5 years?

Is our Government is so weak or so inept and our people so terrified that we have to do what no bomb or attack could ever do, and that is take away

the very freedoms that define America? We fought two world wars, we fought a civil war, we fought a revolutionary war, all these wars to protect those rights.

And now, think of those people who have given their lives, who fought so hard to protect those rights. What do we do? We sit here, privileged people of the Senate, and we turn our backs on that. We throw away those rights.

Why would we allow the terrorists to win by doing to ourselves what they could never do and abandoning the principles for which so many Americans today and throughout our history have fought and sacrificed? What has happened that the Senate is willing to turn America from a bastion of freedom into a cauldron of suspicion, ruled by a government of unchecked power?

Under the Constitution, a suspension of the writ may only be justified during an invasion or a rebellion, when the public safety demands it. Six weeks after the deadliest attack on American soil in our history, the Congress that passed the PATRIOT Act rightly concluded that a suspension of the writ would not be justified.

But now, 6 weeks before a midterm election, as the fundraising letters are running around, the Bush-Cheney administration and its supplicants in Congress deem a complete abolition of the writ the highest priority, a priority so urgent that we are allowed no time to properly review, debate, and amend a bill we first saw in its current bill less than 72 hours ago. There must be a lot of fundraising letters going out.

Notwithstanding the harm the administration has done to national security—first by missing their chance to stop September 11 and then with their mismanaged misadventures in Iraq—there is no new national security crisis. Apparently, there is only a Republican political crisis. And that, as we know, is why this un-American, unconstitutional legislation is before us today.

We have a profoundly important and dangerous choice to make today. The danger is not that we adopt a pre-9/11 mentality. We adopted a post-9/11 mentality in the PATRIOT Act when we declined to suspend the writ, and we can do so again today.

The danger, as Senator FEINGOLD has stated in a different context, is that we adopt a pre-1776 mentality, one that dismisses the Constitution on which our American freedoms are founded.

Actually, it is worse than that. Habeas corpus was the most basic protection of freedom that Englishmen secured from their King in the Magna Carta. The mentality adopted by this bill, in abolishing habeas corpus for a broad swath of people, is not a pre-9/11 mentality, it is a pre-1215—that is the year, 1215—mentality, a mentality we did away with in the Magna Carta and our own Constitution.

Every one of us has sworn an oath to uphold the Constitution. In order to uphold that oath, I believe we have a duty to vote for this amendment—the Specter-Leahy amendment—and against this irresponsible and flagrantly unconstitutional bill. That is what I will do.

The Senator from Vermont answers to the Constitution and to his conscience. I do not answer to political pressure.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia.

Mr. WARNER. Madam President, we have colleagues on this side who are ready to proceed. Now, there is a great deal of time left on the other side, but in order of preference, I say to Senator SESSIONS, if you are ready to proceed.

Mr. SESSIONS. Madam President, I will be pleased to do so.

Mr. WARNER. Madam President, might I inquire of the amount of time under my control for those in opposition to the amendment?

The PRESIDING OFFICER. Senator WARNER controls 11 minutes.

Mr. WARNER. Eleven minutes.

The PRESIDING OFFICER. Senator SPECTER controls 20 minutes.

Mr. SESSIONS. Madam President, if the chairman would approve, I would ask for 3 minutes.

Mr. WARNER. Yes. And following that, Senator CORNYN for such time as he may need.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, habeas corpus—the right to have your complaints heard while in custody—is a part of our Constitution. But we have to remember habeas corpus did not mean everything in the whole world when it was adopted. So what did ''habeas'' mean? What does it mean today and at the time it was adopted? It was never, ever, ever, ever intended or imagined that during the War of 1812, if British soldiers were captured burning the Capitol of the United States—as they did—that they would have been given habeas corpus rights. It was never thought to be. Habeas corpus was applied to citizens, really, at that time. I believe that is so plain as to be without dispute.

So to say: Habeas corpus, what does it mean? What did those words mean when the people ratified it? They did not intend to provide it to those who were attacking the United States of America. We provide special protections for prisoners of war who lawfully conduct a war that might be against the United States. We give them great protections. But unlawful combatants, the kind we are dealing with today, have never been given the full protections of the Geneva Conventions.

Second, my time is limited, and I have been so impressed with the debate that has gone on with Senators KYL and CORNYN and GRAHAM, and I associate myself generally with those remarks, but I want to recall that in a spate of an effort to appease critics and those who had ''vague concerns,'' not too many years ago, this Congress passed legislation that said that CIA-gathered information could not be shared with the FBI. We passed a law in this Congress to appease the left in America, the critics of our efforts against communism, primarily. And we have put a wall between the CIA and FBI.

So that was politically good. Everybody must have been happy about that. I was not in the Senate then. Then they complained that the CIA was out talking with people who had criminal records who may have been involved in violence, and this was somehow making our CIA complicitous in dealing with dangerous people, and we banned that. We passed a statute that eliminated that. And everybody felt real good that we had done something special.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. Madam President, I ask unanimous consent for an additional minute.

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

Mr. SESSIONS. After 9/11, we realized both of those were errors of the heart perhaps, but of the brain. And so what happened? We reversed both of them. We reversed them both. And we need to be sure that the legislation we are dealing with today does not create a long-term battle with the courts over everybody who is being detained. That is a function of the military and the executive branch to conduct a war.

Madam President, I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I understand I have 6 minutes on the bill in general.

The PRESIDING OFFICER. The Senator is correct.

Mr. FEINGOLD. Madam President, I oppose the Military Commissions Act.

Let me be clear: I welcomed efforts to bring terrorists to justice. Actually, it is about time. This administration has too long been distracted by the war in Iraq from the fight against al-Qaida. We need a renewed focus on the terrorist networks that present the greatest threat to this country.

We would not be where we are today, 5 years after September 11, with not a single Guantanamo Bay detainee having been brought to trial, if the President had come to Congress in the first place, rather than unilaterally creating military commissions that did not comply with the law. The Hamdan decision was a historic rebuke to an administration that has acted for years as if it is above the law.

I have hoped that we would take this opportunity to pass legislation that allows us to proceed in accordance with our laws and our values. That is what separates America from our enemies. These trials, conducted appropriately, have the potential to demonstrate to

the world that our democratic constitutional system of government is our greatest strength in fighting those who attack us.

That is why I am saddened I must oppose this legislation because the trials conducted under this legislation may send a very different signal to the world, one that I fear will put our troops and personnel in jeopardy both now and in future conflicts. To take just a few examples, this legislation would permit an individual to be convicted on the basis of coerced testimony and hearsay, would not allow full judicial review of the conviction, and yet would allow someone convicted under these rules to be put to death. That is just simply unacceptable.

Not only that, this legislation would deny detainees at Guantanamo Bay and elsewhere—people who have been held for years but have not been tried or even charged with any crime—the ability to challenge their detention in court. The legislation before us is better than that originally proposed by the President, which would have largely codified the procedures the Supreme Court has already rejected. And that is thanks to the efforts of some of my Republican colleagues, for whom I have great respect and admiration. But this bill remains deeply flawed, and I cannot support it.

One of the most disturbing provisions of this bill eliminates the right of habeas corpus for those detained as enemy combatants. I support an amendment by Senator SPECTER to strike that provision from the bill.

Habeas corpus is a fundamental recognition that in America the Government does not have the power to detain people indefinitely and arbitrarily. And in America, the courts must have the power to review the legality of executive detention decisions.

This bill would fundamentally alter that historical equation. Faced with an executive branch that has detained hundreds of people without trial for years now, it would eliminate the right of habeas corpus.

Under this legislation, some individuals, at the designation of the executive branch alone, could be picked up, even in the United States, and held indefinitely without trial and without any access whatsoever to the courts. They would not be able to call upon the laws of our great Nation to challenge their detention because they would have been put outside the reach of the law.

Some have suggested that terrorists who take up arms against this country should not be allowed to challenge their detention in court. But that argument is circular. The writ of habeas allows those who might be mistakenly detained to challenge their detention in court before a neutral decision-maker. The alternative is to allow people to be detained indefinitely with no ability to argue that they are not, in fact—that they are not, in fact—enemy combatants.

There is another reason we must not deprive detainees of habeas corpus, and that is the fact that the American system of government is supposed to set an example for the world as a beacon of democracy.

A group of retired diplomats sent a very moving letter to explain their concerns about this habeas-stripping provision. Here is what they said:

> 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.

Many dedicated patriotic Americans share these grave reservations about this particular provision of this bill. Unfortunately, the suspension of the Great Writ is not the only problem with this legislation. Unfortunately, I do not have time to discuss them all.

But the bill also appears to permit individuals to be convicted, and even sentenced to death, on the basis of coerced testimony. According to the legislation, statements obtained through cruel, inhuman, or degrading treatment, as long as it was obtained prior to December 2005, when the McCain amendment became law, would apparently be admissible in many instances in these military commissions.

Now, it is true that the bill would require the commission to find these statements have sufficient and probative value. But why would we go down this road of trying to convict people based on statements obtained through cruel, inhuman, or degrading interrogation techniques? Either we are a nation that stands against this type of cruelty and for the rule of law or we are not. We cannot have it both ways.

In closing, let me do something I do not do very often, and that is quote my former colleague, John Ashcroft. According to the New York Times, in a private meeting of high-level officials in 2003 about the military commission structure, then-Attorney General Ashcroft reportedly said:

> Timothy McVeigh was one of the worst killers in U.S. history. But at least we had fair procedures for him.

How sad that this Congress would seek to pass legislation about which the same cannot be said.

Mr. President, I strongly support Senator SPECTER's amendment to strike the habeas provision from this bill.

At its most fundamental, the writ of habeas corpus protects against abuse of government power. It ensures that individuals detained by the government without trial have a method to challenge their detention. Habeas corpus is a fundamental recognition that in America, the government does not have the power to detain people indefinitely and arbitrarily. And that in America, the courts must have the power to review the legality of executive detention decisions.

It goes without saying that this is not a new concept. Habeas corpus is a longstanding vital part of our American tradition, and is enshrined in the U.S. Constitution, article 1, section 9, where it 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.

The Founders recognized the importance of this right. Alexander Hamilton in Federalist Paper No. 84 explained the importance of habeas corpus, and its centrality to the American system of government and the concept of personal liberty. He quoted William Blackstone, who warned against the ''dangerous engine of arbitrary government'' that could result from unchallengeable confinement, and the ''bulwark'' of habeas corpus against this abuse of government power.

As a group of retired judges wrote to Congress, habeas corpus ''safeguards the most hallowed judicial role in our constitutional democracy—ensuring that no man is imprisoned unlawfully.''

This bill would fundamentally alter that historical equation. Faced with an administration that has detained hundreds of people without trial for years now, it would eliminate the right of habeas corpus for anyone the executive branch labels an alien ''enemy combatant.''

That's right. It would eliminate the right of habeas corpus for any alien detained by the United States, anywhere in the world, and designated by the government as an enemy combatant. And it would do so in the face of years of abuses of power that—thus far—have been reined in primarily through habeas corpus challenges in our Federal courts.

Let me be clear about what it does. Under this legislation, some individuals, at the designation of the executive branch alone, could be picked up, even in the United States, and held indefinitely without trial and without any access whatsoever to the courts. They would not be able to call upon the laws of our great Nation to challenge their detention because they would have been put outside the reach of the law.

That is unacceptable, and it almost surely violates our Constitution. The rule of law is something deeper and more profound than the collection of laws that we have on paper. It is a principle that undergirds our entire society, and that has been central to our nation since its very founding. As Thomas Paine explained at the time of our country's birth in 1776, the rule of law is that principle, that paramount commitment, ''that in America, the law is king. . . . and there ought to be no other.'' The rule of law tells us that no man is above the law—and as an extension of that principle—that no executive will be able to act unchecked by our legal system.

Yet by stripping the habeas corpus rights of any individual who the executive branch decides to designate as an enemy combatant, that is precisely

where we end up—with an executive branch subject to no external check whatsoever. With an executive branch that is king.

Now, it may well be that this provision will be found unconstitutional as an illegal suspension of the writ of habeas corpus. But that determination will take years of protracted litigation. And for what? The President has been urging Congress to pass legislation so that Khalid Sheikh Mohammed, the alleged mastermind of 9–11, and other ''high value'' al-Qaida detainees can be tried. This bill is supposed to create a framework for prosecuting unlawful enemy combatants for war crimes that the Supreme Court can accept following the decision this summer in the Hamdan case. There is absolutely no reason why we need to restrict judicial review of the detention of individuals who have not been charged with any crime.

That raises another point. People who are actually subject to trial by military commission will at least be able to argue their innocence before some tribunal, even if I have grave concerns about how those military commissions would proceed under this legislation. But people who have not been charged with any crime will have no guaranteed venue in which to proclaim and prove their innocence. As three retired generals and admirals explained in a letter to Congress:

> The effect would be to give greater protections to the likes of Khalid Sheikh Mohammed than to the vast majority of the Guantanamo detainees.

How does this make any sense? Why would we turn our back on hundreds of years of history and our Nation's commitment to liberty?

We have already, in the Detainee Treatment Act, said that no new habeas challenges can be brought by detainees at Guantanamo Bay. The Supreme Court found in Hamdan v. Rumsfeld that the Detainee Treatment Act did not apply to Hamdan's pending habeas petition, and went forward with considering his argument that the President's military commission structure was illegal. And I would think that we should all be pleased that it did so, because otherwise we would have had to wait for several more years for Hamdan's trial to be completed before he would have had any chance to challenge the President's military commission system in court. The Supreme Court's decision striking down those commissions would have occurred several years later. And we would be right back where we are now, but with several more years of delay.

There is another reason why we must not deprive detainees of habeas corpus, and that is the fact that the American system of government is supposed to set an example for the world, as a beacon of democracy. And this provision will only serve to harm others' perception of our system of government.

A group of retired diplomats sent a very moving letter explaining their concerns about this habeas-stripping provision. Here is what they said:

> 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.

They went on to explain further:

> 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.

That is a direct quote.

Let's not go down this road. Let's remove this provision from the bill.

As is already clear, I'm not the only one who has serious concerns about this provision. There is bipartisan support for this amendment. And Congress has received numerous letters objecting to the habeas provision, including from Kenneth Starr; a group of former diplomats; two different groups of law professors; a group of retired judges; and a group of retired generals. Many, many dedicated patriotic Americans have grave reservations about this particular provision of the bill.

They have reservations not because they sympathize with suspected terrorists. Not because they are soft on national security. Not because they don't understand the threat we face. No. They, and we in the Senate who support this amendment, are concerned about this provision because we care about the Constitution, because we care about the image that America presents to the world as we fight the terrorists. Because we know that the writ of habeas corpus provides one of the most significant protections of human freedom against arbitrary government action ever created. If we sacrifice it here, we will head down a road that history will judge harshly and our descendants will regret.

Let me close with something that this group of retired judges said.

> 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. . . .

Mr. President, we must not imperil our proud history. We must not abandon the Great Writ. We must not jeopardize our Nation's proud traditions and principles by suspending the writ of habeas corpus, and permitting our government to pick people up off the street, even in U.S. cities, and detain them indefinitely without court review. That is not what America is about.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I ask unanimous consent for 3 minutes from our time.

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

Mr. CORNYN. First of all, Madam President, I would like to point out there are many myths about this legislation. We need to get to the facts and get to the truth so people can understand what the choices are.

Our distinguished colleague from Wisconsin, in my view, also perpetrated another myth by saying this war is all about Iraq, when, in fact, the new leader of al-Qaida in Iraq, succeeding al-Zarqawi, just reported in an Associated Press story that 4,000 al-Qaida foreign fighters have been killed in Iraq due to the war effort there. But this is a global war, and it requires a uniformed treatment of the terrorists in a way that reflects our values but also the fact that we are at war.

I think our colleagues need to be reminded of legislation which we passed in December of 2005, known as the Detainee Treatment Act. When people come here and suggest that we are stripping all legal rights from terrorists who are detained at Guantanamo Bay, they are simply flying in the face of the Detainee Treatment Act that we passed in December 2005, which provides not only a review through a combatant status review tribunal, with elaborate procedures to make sure there is a fair hearing, but then a right to appeal to the District of Columbia Circuit Court of Appeals, not only to make sure that the right standards were applied—that is, whether the military applied the right rules to the facts—but also to attack the constitutionality of the system should they choose to do so. So those who claim we are simply stripping habeas corpus rights are simply flying in the face of the facts as laid out in the Detainee Treatment Act.

Now, the question may be: Are we going to provide what the law requires? Are we going to provide additional rights and privileges that some would like to confer upon these high-value detainees located at Guantanamo Bay? But the fact is, to do what the proponents of this amendment propose would be to divert our soldiers from the battlefield and to tie their hands in ways with frivolous litigation and appeals. And the last thing that I would think any of us would want to do would be to provide an easy means for terrorists to sue U.S. troops in U.S. courts, particularly when it is not required by the Constitution, laws of the United States, not mandated by the Supreme Court, and we have provided an adequate substitute remedy, which I believe is entirely consistent with the U.S. Supreme Court's decisions in this area.

We have provided an avenue or a process by which these detainees can have their rights protected, such rights as they have being unlawful combatants attacking innocent civilians. America is conferring rights upon them that we do not have to confer, but we are conferring them because we believe there ought to be a fair process and we ought to be consistent with our Constitution and with the decisions of the U.S. Supreme Court.

The last thing I would think any of us would want to do would be to tie the hands of our soldiers to permit terrorists to sue U.S. troops in Federal court at will.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator's time has expired.

The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I ask unanimous consent for 10 minutes from Senator WARNER's side on the bill.

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

Mr. BOND. Mr. President, I appreciate the opportunity to talk generally about the bill. I have already spoken about the importance of not affording habeas corpus to the unlawful combatants when they have more protections than international law requires, or than any other country provides.

Speaking on the bill, for the last 5 years, our most important job has been to protect our families from another terrorist attack.

Our children, our mothers, fathers, grandparents, and grandchildren—none of them deserved to die in the 9/11 attacks; none deserve to die in another terrorist attack. That is why we are doing everything we can to protect our families by stopping terrorists, capturing them, learning their secrets, foiling their plots, and bringing the terrorists to justice.

Through our hard work, there has not been another direct attack on U.S. soil since 9/11. We have worked hard to prevent and stop attacks in the last 5 years and must continue to prevent future attacks. We dramatically boosted airport and airline security. We hired new airport screeners, implemented new checks, and even put armed agents on flights where necessary.

We added thousands of new FBI agents, thousands of new intelligence officers, and increased their budgets by billions to provide new armies against terrorism.

We passed the PATRIOT Act to provide the tools needed to discover terrorist plots and stop them. We reorganized our intelligence agencies to bring a single focus and purpose against terrorism.

We tore down the walls between law enforcement and intelligence to get terror planning and plot information to authorities as quick as possible.

All of this is going on as I speak, as we sleep at night, as our children go to school, we are fighting the war on terrorism.

The President recently highlighted some of the successes we have had because of our terror fighting tools and efforts. He recounted how we have captured terrorists, used new tools to learn their secrets, captured additional terrorists, connected the dots of their conspiracies, and foiled their terror attack plans.

But now some want to tie the hands of our terror fighters, they want to take away the tools we use to fight terror—handcuff us, hamper us—in our fight to protect our families.

It's not new, really. Partisans have slowed our efforts to fight terror every step of the way.

Many on the other side voted against the PATRIOT Act.

Many blocked reauthorization of the PATRIOT Act for months. The Democrat Leader actually boasted, ''We killed the PATRIOT Act.''

Thank Heavens that wasn't true. Now, I know that they all love our country. They are not unpatriotic. They just don't understand the terrorist enemies we face.

These critics are not willing to do what is necessary to protect fully our families from terrorists.

You don't have to take my word for it, just look at their record over the last 5 years. Whether or not you would say terror war critics have a weak record on terror, they have certainly tried to block, slow down, and take away our terror fighting tools.

Some congressional Democrats voted to cut and run from Iraq. Nothing would embolden terrorists more than to see the U.S. turn tail and run home.

Osama bin Laden cited America quitting Somalia, and failing to respond to the U.S.S. *Cole* bombing, as signs of U.S. weakness and vulnerability. We all know what happened later.

Democrats in the Senate have blocked the appointment of senior anti-terror officials. The 9/11 commission report recommended better coordination between law enforcement and intelligence officials. Only last week did Democrats stop blocking the appointment of the senior Justice Department official for National Security.

Partisans readily spread classified information leaked to the public or the media. They call news conferences to highlight cherry-picked intelligence information, or quote newspaper articles betraying our Nation's secret terror fighting programs. Don't they think this encourages the enemy or demoralizes our troops or allies?

Some propose to handcuff our ability to discover terrorist plots. They propose to make it hard to listen in on a potential terrorist calling from a foreign country, or to a foreign country to discuss terror plans.

If al-Qaida calls in, we ought to be listening. That is authorized under the Constitution. The Constitution clearly gives the President the power to intercept phone calls under the foreign intelligence exception in the amendment.

In my meetings with intelligence officials both abroad and here at home I have heard repeatedly how the disclosure, not only of classified information, but also of our interrogation techniques, are extremely damaging.

Our personnel have encountered enemy combatants trained to resist disclosed interrogation techniques thanks to leakers in our media.

If we lay out precisely the techniques that will be used and we print them in the Federal Register, they will be in an al-Qaida training manual within 48 hours.

I'm pleased that with the current Military Commissions legislation moving forward, we have clarified our strict adherence to standards that forbid torture in any way, shape or form and we are allowing our CIA to move forward with a humane interrogation program whose techniques will not be published in the Federal Register, or even worse, in another newspaper disclosure.

Critics support trial procedures that would give terrorists secret intelligence information.

Why on Earth would we hand over classified evidence and information to terrorists so that information could be used against us in the future?

Remember the 1993 World Trade Center bombing? The prosecution of terror suspects there involved giving over 200 names of terror suspects to the attorneys representing the terrorists. They gave them that in a trial, and some months later, after an investigation of the bombings in Africa, we captured the al-Qaida documents which had all of that information that had been given to the attorneys. So once you give it to a detainee or the detainee's attorney, you can count on it getting out.

One other thing is important. Some would propose exposing our terror fighters to legal liability. They oppose giving our terror fighters certainty and clarity in how to go about their jobs. They leave them vulnerable to prosecution and handcuff their efforts and leave the rest of us vulnerable to terror plots that went undiscovered.

Right now, these people are worried and they are buying insurance. People who are trying to carry out the very important intelligence missions of the United States, if they ask any questions, or if they don't give them four square meals a day and keep them in a comfortable motel, they are afraid they are going to get sued. We need to give protection to the people who are operating within the law as we are laying it out to make sure they don't cross over the line.

The problem we have is that if the critics take away the valuable tools we have in breaking apart terror plots, we are going to be significantly less safe. As the President said, the CIA interrogation program has already succeeded in breaking apart terror conspiracies and preventing several terror attacks. Critics within the program are preventing us from punishing terrorists and gaining valuable information that could prevent future attacks.

One thing I, along with the President and my Republican colleagues, share with the war critics is a strong opposition to torture. It is abhorrent, evil, and has no place in the world. What I oppose is how terror war critics would go soft on terror suspects, allowing them comforts they surely don't deserve.

Critics are being tough on targets. Terrorists argue that we should treat them like prisoners of war under the

Geneva Conventions. Article 72 of the Geneva Conventions on treatment of prisoners of war says POWs shall be allowed to receive parcels containing foodstuffs. Is that what critics think the 9/11 Commission conspirators deserve? Cookie care packages?

Article 71 says POWs shall be allowed to send and receive letters and cards. Is that what opponents of the bill believe people who conspire to cut off our heads deserve—letters from home? ''Mail call Ramzi bin al-Shibh.''

Article 60 requires us to grant all POWs monthly advances of pay. It even says how much: below sergeant, 8 Swiss francs; officers, 50 Swiss francs; generals, 75 Swiss francs.

Do the critics think Khalid Sheik Mohammed deserves 50 Swiss francs or 75?

Critics of being tough on terrorists say that we should adhere to international standards of decency. Where was the decency when international troops withdrew without a fight from Srebenica, Bosnia allowing the genocide of its men and boys?

Where was the decency when the U.N. allowed Sudan, guilty of genocide in Darfur, to serve on the Human Rights Commission, and allowed Cuba to help monitor international human rights? This was neither moral nor decent.

Some say that the tough treatment we are debating will lead to bad treatment of America's soldiers in the future. That is a close cousin to the argument that if we leave the terrorists alone they will stop attacking us, or that America made them do it.

Do we need a reminder of how badly they are already treating us? The Wall Street Journal reporter kidnapped by terrorists, Daniel Pearl, had his head cut off long before the criminal acts of Abu Grahib or news of the CIA prisons.

The charred bodies of our Special Forces dragged through the streets of Mogadishu tell us what the vague standards of the Geneva Convention got us.

As I said before, I support a torture ban. I also support provisions that clearly ban cruel, inhuman treatment or intentionally causing great suffering or serious injury. These are serious felonies, as they should be. But what we cannot do is give up tough treatment short of this that protects our families from attack.

What do critics think would happen if we went soft on terrorists? Would they be satisfied with only name, rank and serial number? Would they have us say to our terror suspects, ''Oh gosh darn, I was so hoping you would willingly tell us your terror plots. Oh well, here's your 50 Swiss franc advance pay, don't eat too much from your cookie care package, we've scheduled a dentist appointment for you for Tuesday.''

Of course not, that would be absurd to think that terrorists will willingly tell us their plots. Terror war critics have been watching too many Law and Order TV shows if they think some hokey good cop—bad cop law enforcement approach will work on al-Qaida.

These people flew airplanes into buildings for heaven's sake, or should I say for hell's sake.

America must fight with honor. We must fight from the moral high ground.

But do not tell me we lack a moral basis for our fight against terror. Show me someone who doubts America's moral basis in this fight against terror and I will show you someone who has lost their own moral compass.

The compass of America's future points to this bill. We live in an age where we must fight terror. To win, we must fight tough in that fight against terror. We must give our terror fighters the tools they need and the protections they require to protect our families from terror.

We cannot fall into the traps our terror war critics suggest: handcuffing our law enforcement and intelligence agents, blocking our terror fighting leadership, releasing and spreading our terror war secrets, giving terror suspects our terror fighting methods and techniques, granting terrorists overly-comfortable protections, going soft on terrorists who hold the secrets of their plots, their attacks.

Our agents deserve better, our soldiers deserve better, our families deserve better.

To start where I began, this is what all our efforts are about. Protecting our vulnerable families. Protecting our children, protecting our mothers and fathers, protecting grandparents and grandchildren. None of the vulnerable it protects deserved to die in the 9/11 attacks, and none deserve to die again in another terrorist attack.

I urge my colleagues to support this legislation.

Mr. WARNER. Mr. President, we are anxious to move to a vote on the Specter amendment to accommodate a number of colleagues. Therefore, I urge that the remaining time on the Specter amendment under the control of Senator SPECTER, and the time in opposition under my control, be now utilized by colleagues, such that we can move to that vote.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. That is not a unanimous consent request, is it?

Mr. WARNER. No.

Mr. LEVIN. We have three Senators who have been allocated time specifically, and that time may be used relative to the amendment or in general debate on the bill. I will not agree to any restriction on the use of time that the Senator has been allocated.

Mr. WARNER. I recognize that. It is in our mutual interests to the move ahead on the bill. There will be time after the vote for Senators to speak. You have 18 minutes on the bill. I have 47 under my control on general debate.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. WARNER. Mr. President, the time for the Senator from California is under which category?

The PRESIDING OFFICER. General debate time.

Mrs. FEINSTEIN. Mr. President, I strongly believe the true test of a nation comes when we face hard decisions and hard times. It is really not the easy decisions that test our character and our commitment to fundamental principles and values. It is when the easy answer is not the right answer, but is politically expedient.

We face one of those times right now. The war against terror has challenged our country to fight a nontraditional enemy—one that is not part of any State or military. The enemy does not wear a uniform, it has no code of ethics, and it relishes in the killing of innocents. It strikes in cowardly ways. They have also challenged us as to whether we can continue during this period in fighting this enemy to abide by the bedrock of our justice system, the Constitution.

Before us on the floor of the Senate is a bill to address how our country will interpret the Geneva Conventions, and how we will treat those we apprehend and detain in this nontraditional, asymmetric war.

I truly believe that how we answer these challenges will not only test our commitment to our Constitution, but it will also test our very foundation of justice. It sends a message, also, to other countries—a message that will ultimately dictate how our soldiers and personnel are treated should they be captured by others.

Earlier this month, a bipartisan group of Senators worked together to develop a solution to these complex issues, and the Armed Services Committee reported a compromise military commissions bill to the Senate by a vote of 15 to 9.

Unfortunately, that is not the bill that is before this body today. Instead, House and Senate Republicans met with the White House and made changes that significantly altered the impact of this legislation and changed the bill in such a manner that I cannot at present support its passage without substantial amendment.

I do not believe the bill before us is constitutional. It is being rushed through a month before a major election in which the leadership of this very body is challenged.

The first of my concerns is the issue of habeas corpus. I very much support the amendment offered by the chairman of the Judiciary Committee. The bill before us eliminates a basic right of the American justice system, and that is the right of habeas corpus review. It is constitutionally provided to ensure that innocent people are not held captive or held indefinitely.

Habeas corpus has been a cornerstone of our legal system. It goes back, as it has been said, to the days of the Magna Carta. Our Founding Fathers enshrined this right in the Constitution because they understood mistakes happen and there is need for someone to appeal a mistake or a wrong conviction.

Just a few weeks ago, a man named Abu Bakker-Qassim, who was held at

Guantanamo, described how he was held for years, even though he had never been a terrorist or a soldier. He was never even on a battlefield. He had been sold by Pakistani bounty hunters to the United States military for $5,000. Qassim said it was only because of the availability of habeas corpus that this mistake was able to be corrected. That is why Senator SPECTER's amendment is right.

If innocent people are at Guantanamo—and they presumably are and have been—or if abuses are taking place—and its likely some have—there must be an avenue to address these problems. Eliminating habeas corpus rights is a serious mistake and it will open the door to other efforts to remove habeas corpus.

Next, I am very concerned about the ability to use coerced testimony. This will be the first time in modern history that United States military tribunals will be free to admit evidence that was obtained through abusive tactics so long as the judge determines it is reliable and relevant or so long as it was obtained before December 30, 2005.

We have heard from countless witnesses that coerced testimony is inherently unreliable. We don't want to send the message that coercion is an acceptable tactic to use on Americans as well.

The fact is we had testimony in the Judiciary Committee from the head of all of the Judge Advocate Corps who said they did not believe torture worked.

I am very concerned about the definition of torture and the lack of clarity on cruel and inhumane treatment—especially combined with giving the President discretion to decide what he believes interrogation methods are permissible.

We have already seen through press reports that this administration pushes the boundaries on allowable interrogation techniques and these abuses cannot continue.

Finally, I am concerned about the rules for what evidence may be used to convict someone and then their limited ability to have a court review their case.

If one is not allowed to know what the basis of conviction was and then is only given limited judicial review of their conviction, how can we be confident that we are not holding innocent people who were caught in the wrong place at the wrong time—such an outcome severely harms our standing in the global community.

I believe these issues are too important for us to rush through a bill of this magnitude.

These are difficult times and difficult issues. However, I do not believe the expediency of the moment or the political winds of an impending election should lead us to abandon our core values as a Nation.

The Founding Fathers created specific constitutional limitations. And since that time the United States has been at the forefront of demanding humane treatment of all people. We must not turn our back on these fundamental principles.

I am disappointed to be voting against this bill. I had hoped a real bipartisan compromise could be reached.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. SPECTER. Mr. President, I yield 10 minutes to the distinguished Senator from Oregon.

The PRESIDING OFFICER. The distinguished Senator is recognized for 10 minutes.

Mr. SMITH. Mr. President, this is a most difficult issue we are engaged in. We are arguing about what I believe is a cornerstone principle of the rule of law, and that is the issue of habeas corpus.

I know this is an unusual war, and I don't know its duration. No one fully does. But I do know if we are going to be true to our Constitution and to the rule of law, we have to be true to that law.

I have traveled as a Senator all over this globe and have spoken with great pride about our rule of law and the superiority of democracy to other means of government. While I support this bill in providing due process for these detainees, I rise because I am concerned about the provisions relating to habeas corpus.

I am reminded of the words of Thomas Jefferson who once said:

> The habeas corpus secures every man here, alien or citizen, against everything which is not law, whatever shape it may assume.

On another occasion he said:

> I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it.

What we are talking about is section 7 of this bill, which will further strip the Federal courts of jurisdiction to hear pending Gitmo cases as it applies to all pending and future cases. Had this proposal been law earlier this year, the Supreme Court may not have had jurisdiction to hear the Hamdan case, which is what brings us here today.

At the heart of the habeas issue is whether the President should have the sole authority to indefinitely detain unlawful enemy combatants without any judicial restraints. Congress will provide the President with this unilateral authority by enacting legal restrictions aimed at stripping courts of jurisdiction to hear habeas claims. In doing so, the President does not have to show any cause for detaining an individual labeled an ''unlawful enemy combatant.''

Stripped of jurisdiction by recent legislation, U.S. courts will not have the ability to hear an individual's request to learn why he is even being detained. Providing detainees with the right to ask a court to evaluate the legality of their detention I believe would not cost U.S. lives. However, it will test American laws.

Claims have been made that providing detainees the right to hear why they are being detained necessitates providing them with classified information. I do not believe this to be true. Similar to the military commission legislation, it would only allow a judge or an attorney with security clearance to see the evidence against the defendant to evaluate its reliability and probative value.

Permanent detention of foreigners without reason damages our moral integrity regarding international rule of law issues. To quote: ''History shows that in the wrong hands, the power to jail people without showing cause is a tool of despotism.'' A responsibility this Nation has always assumed is to ensure that no one is held prisoner unjustly.

Stripping courts of their authority to hear habeas claims is a frontal attack on our judiciary and its institutions, as well as our civil rights laws. Habeas corpus is a cornerstone of our constitutional order, and a suspension of that right, whether for U.S. citizens or foreigners under U.S. control, ought to trouble us all. It certainly gives me pause.

The right to judicial appeal is enshrined in our Constitution. It is part and parcel of the rule of law. The Supreme Court has described the writ of habeas corpus as ''the fundamental instrument for safeguarding individual freedom against arbitrary and lawless State action.''

Some of the darkest hours in our Nation's history have resulted from the suspension of habeas corpus, notably the internment of Japanese Americans during World War II.

Obviously, I am not here to question the wisdom of Abraham Lincoln. We have had no wiser President. But one of the most controversial decisions of his administration was the suspension of habeas corpus for all military-related cases, ignoring the ruling of a U.S. circuit court against this order. He, in fact, I believe, if my memory of history serves me, imprisoned the entire Maryland Legislature because of their attempts to secede from the Union. He did it. It happened. It is not necessarily the proudest moment of his administration. But it is something that has been raging with controversy ever since.

Habeas petitions are not clogging the courts and are not frivolous. The administration claims that the approximately 200 pending habeas claims are clogging our courts and are for the most part frivolous. These petitions are not an undue administrative burden. Judges always have the discretion to dismiss frivolous claims, and indefinite detainment of a foreigner without showing cause, Mr. President, is not frivolous.

I suppose what brings me to the floor today is my memory of my study of the law. While I was in law school, I was particularly taken with the study of the Nuremberg trials. The words of

Justice Robert H. Jackson inspired me then and inspire me still. He was our chief counsel for the allied powers. What he said on that occasion in his closing address to the international military tribunal is an inspiration. Said he:

> That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

On the fairness of the Nuremberg proceedings, he said in his closing statement:

> Of one thing we may be sure. The future will never have to ask with misgiving, what could the Nazis have said in their favor. History will know that whatever could be said, they were allowed to say. They have been given the kind of a Trial which they, in the days of their pomp and power, never gave to any man. But fairness is not weakness. The extraordinary fairness of these hearings is an attribute to our strength.

I simply feel this particular provision in this bill ought to be taken out. We ought not to suspend the writ of habeas corpus. We should go the extra mile, not as a sign of weakness, but as evidence of our strength.

I intend to vote for the underlying bill and ultimately will leave the judgment of its constitutionality without habeas to the judgment of the judiciary, but I believe we are called upon to go the extra mile to show our strength and not our weakness, and ultimately our Nation will be stronger if we stand by the rule of law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Oregon for those very cogent remarks, especially in the context of additional Republican support, stated bluntly, and in light of more moderate Republican support.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the Democratic leader has yielded 2 minutes of his leadership time to me. I ask unanimous consent that I be allowed to proceed on that basis.

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

Mr. LEVIN. Mr. President, I support the Specter-Leahy amendment on the writ of habeas corpus. The habeas corpus language in this bill is as legally abusive of the rights guaranteed in the U.S. Constitution as the actions at Abu Ghraib, Guantanamo, and the CIA's secret prisons were physically abusive of the detainees themselves.

The Supreme Court has long held that all persons inside the United States, including lawful permanent residents and other aliens, have a constitutional right to the writ of habeas corpus. Yet, this provision purports to apply even to aliens who are detained inside the United States, including lawful permanent residents.

Unlike the provision that was included in the Detainee Treatment Act last year, this court-stripping provision would apply on a world-wide basis, not just at Guantanamo. It would apply to detainees of all Federal agencies, not just the Department of Defense. It would attempt to expressly strip the courts of jurisdiction over all pending cases.

This provision goes beyond stripping the courts of habeas corpus jurisdiction. It also prohibits the U.S. courts from hearing or considering ''any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial'' of an alien detainee. As a result, this provision would leave many detainees without any alternative legal remedy at all, even after released, even if there is every reason to believe that the detention was in error, and even if the detainee was tortured or abused while in U.S. custody.

For example, the Canadian Government recently concluded, after a comprehensive review, that one of its citizens had been handed over by U.S. authorities to a foreign country which subjected him to torture and cruel and inhuman treatment, without any evidence that he was an enemy combatant or that he supported any terrorist group. Under this habeas corpus court-stripping provision, this individual would have no legal remedy in the U.S. courts even after he was finally released from illegal detention, unless the United States acknowledges that it made a mistake when it determined that he was an enemy combatant.

The fundamental premise of last year's Detainee Treatment Act, DTA, was that we could restrict future habeas corpus suits, because we were providing an alternative course of access to the courts.

The language in the bill before us would deprive many detainees of the right to file a writ of habeas corpus without providing any alternative form of relief. For example: The provision applies on a worldwide basis, not just at Guantanamo. DOD detainees outside Guantanamo do not have access to Combatant Status Review Tribunals—CSRTs—so they can't get to court to review CSRTs. Because this bill would deprive them of the writ of habeas corpus or any other legal remedy, they would have no access to the courts at all.

The provision applies to detainees of all Federal agencies, not just DOD. Detainees of other Federal agencies do not get CSRTs, so they can't get to court to review CSRTs. Because this bill would deprive them of the writ of habeas corpus or any other legal remedy, they would have no access to the courts at all.

The provision even applies to lawful resident aliens who are detained and held inside the United States. Because this bill would deprive them of the writ of habeas corpus or any other legal remedy, they would have no access to the courts at all.

Even in cases where DOD regulations provide detainees a right to Combatant Status Review Tribunals—CSRTs—such tribunals may not be an adequate substitute for judicial review under a writ of habeas corpus. CSRTs are permitted to use coerced testimony, hearsay evidence, and evidence that is never disclosed to the accused. Detainees before those status review tribunals are denied access to witnesses and documents needed to rebut allegations made by the government. Courts reviewing CSRT determinations are not authorized to make an independent determination whether there is a lawful basis for the detention.

The court stripping provision in the bill does more than just eliminate habeas corpus rights for detainees. It also prohibits the U.S. courts from hearing or considering ''any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial'' of an alien detainee.

A separate provision in the bill adds that no person—whether properly held as an alien detainee or not—may invoke the Geneva Conventions as a source of rights in any court of the United States. Other provisions establish new defenses for individuals who may be accused of violating standards for the treatment of detainees under U.S. and international law.

Taken together, these provisions do not just deprive detainees of the ability to challenge the basis on which they have been detained—they are an effort to insulate the United States from any judicial review of our treatment detainees, an effort to ensure that there will be no accountability for actions that violate the laws and the standards of the United States.

Last year, this Congress took an important stand for the rule of law by enacting the Detainee Treatment Act, which prohibits the cruel, inhuman or degrading treatment of detainees in the custody of any U.S. agency anywhere in the world. That landmark provision is at risk of being rendered meaningless, if we establish rules ensuring that it can never be enforced.

Earlier this month, we received a letter from three retired Judge Advocates General, who urged us not to strip the courts of habeas corpus jurisdiction. That letter, signed by Admiral Hutson, Admiral Guter, and General Brahms, stated:

> 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.

We have received similar letters from nine distinguished retired Federal

judges, from hundreds of law professors from around the United States, and from many others.

If we don't strike this court-stripping language in the bill before us, if instead of Congress being a check on excessive executive power, Congress attempts to write a blank check to the executive branch, our expectation is that the courts will find this provision to be a legislative excess and strike it down as unconstitutional. We have a chance to do the right thing and not just to rely on the courts. This body is the body of last resort legislatively when it comes to protecting that great writ of habeas corpus which is in the Constitution. I hope we live up to that responsibility today.

Mr. BYRD. Mr. President, the military commissions bill before us would strip from the U.S. Constitution of one of its most precious protections: the writ of habeas corpus. The Great Writ. The bill would deny those who are detained indefinitely—even those who may be innocent—the opportunity to challenge their detention in court.

Habeas corpus is a procedure whereby a Federal court may review whether an individual is being improperly detained. The concept of habeas corpus is deeply rooted in the English common law and was specifically referenced in the Magna Carta of 1215, which stated:

> No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land.

The legal procedure for issuing writs of habeas corpus was codified by the English Parliament in response to concerns by the British people that no monarch should be permitted to hold innocent people against their will without due process of law.

It is precisely because the Founders of the United States feared elimination of the writ that, when they enumerated the powers of the Congress in the very first article of the U.S. Constitution, they included specific reference to the writ of habeas corpus and sought to protect it. The language they included in article I, section 9, clause 2 of the Constitution, also known as the ''Suspension Clause,'' reads as follows. It 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.

I wonder whether those who drafted the provision in this bill to eliminate habeas corpus have read this clause of the Constitution. Inconceivably, the U.S. Senate is being asked to abolish a fundamental right that has been central to democratic societies, including our own, for centuries. The outrageous provision we debate today could imprison indefinitely, without access to the courts, not just suspects picked up overseas but even those taken into custody on U.S. soil.

Some persons detained at Guantanamo may be terrorists guilty of plotting against the people and the Government of these United States. Of course terrorists must be properly detained and prosecuted for their evil deeds. But some detainees may be innocent. Some may be persons simply swept up because they were in the wrong place at the wrong time. How can we know which truly deserve to be held and tried as enemy combatants if we abolish the legal right of the incarcerated to fairly challenge their detention in court?

The provision in the bill before us deprives Federal courts of jurisdiction over matters of law that are clearly entrusted to them by the Constitution of the United States. The Constitution is clear on this point: The only two instances in which habeas corpus may be suspended are in the case of a rebellion or an invasion. We are not in the midst of a rebellion, and there is no invasion. It is notable that those who drafted the Constitution deliberately used the word ''suspended.'' They did not say that habeas corpus could be forever denied, abolished, revoked, or eliminated. They said that, in only two instances, it could be ''suspended,'' meaning temporarily. Not forever. Not like in this bill.

How can we, the U.S. Senate, in this bill abolish habeas corpus by approving a provision that so clearly contravenes the text of the Constitution? Where is our respect for the checks and balances that were built into our system by the Framers? They included an explicit prohibition against blanket suspension of the writ of habeas corpus precisely to protect innocent persons from being subject to arbitrary and unfair action by the state.

This flagrant attempt to deny a fundamental right protected by the Constitution reveals how White House and Pentagon advisers continue to chip away at the separation of powers. They relentlessly pursue their dangerous goal of consolidating power in the hands of the Executive at the expense of the Congress, the judiciary, and, sadly, the People. How can we even contemplate such an irresponsible and dangerous course as this de facto canceling of the writ of habeas corpus.

The Constitution of the United States is a time-tested contract between our people and their Government, for which thousands of American military men and women have died. Why would we seek to violate its terms? Aren't we fighting the terrorists precisely to preserve individual liberties and the rule of law? If we as a people jettison the very democratic ideals that have made our Nation great and we become, instead, exactly like those whom we seek to imprison—standing for nothing and capable of anything—then what are we fighting for? And if we indefinitely and illegally detain innocent parties of other nations, with what credibility can we request that they release our own?

Mr. President, I ask my colleagues to join me in support of the amendment that has been offered to preserve the writ of habeas corpus.

Mr. REID. Mr. President, I have received a letter from over 100 law professors and other distinguished citizens expressing their opposition to the habeas corpus provisions in the military tribunal bill. They urge support for the Specter-Leahy amendment to remedy that flaw. I ask unanimous consent that the letter be printed in the RECORD.

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

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. DENNIS HASTERT,
Speaker, House of Representatives, Washington, DC.
Hon. HARRY REID,
Democratic Leader, U.S. Senate, Washington, DC.
Hon. NANCY PELOSI,
Democratic Leader, House of Representatives, Washington, DC.

DEAR SENATOR FRIST, SENATOR REID, SPEAKER HASTERT AND REP. PELOSI: We agree with the views set forth in the undated letter sent this month to Members of Congress from Judge John J. Gibbons, Judge Shirley M. Hufstedler, Judge Nathaniel R. Jones, Judge Timothy K. Lewis, Judge William A. Norris, Judge George C. Pratt, Judge H. Lee Sarokin, Judge William S. Sessions, and Judge Patricia M. Wald.

These nine distinguished, retired federal judges expressed deep concern about the lawfulness of a provision in the Military Commissions Act of 2006 stripping the courts of jurisdiction to test the lawfulness of Executive detention outside the United States.

This matter is even more urgent now. The provision would eliminate habeas for all alleged alien enemy combatants, whether lawful or unlawful, even if they are detained in the United States.

We concur with the request made by the judges that Congress remove the provision stripping habeas jurisdiction from the proposed Military Commissions Act.

Respectfully, (100 Signatures)

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. Mr. President, how much time is remaining?

The PRESIDING OFFICER. On which side?

Mr. GRAHAM. On the Warner side.

The PRESIDING OFFICER. Senator WARNER has 4 minutes in opposition to the Specter amendment.

Mr. WARNER. Mr. President, I yield that to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. GRAHAM. Mr. President, this has been a very spirited debate and I am going to give you a spirited answer to what I am proposing with my vote. No. 1, my moral compass is very much intact, and when people mention moral compasses and the conscience of the Senate, I am going to sleep very good casting my vote. I think I have a decent moral compass about what we should be doing to people: What is humane, what is not; what is right, what is wrong. I have tried to balance the interests of our troops and the interests

of our country when it comes to dealing with people who find themselves in our capture.

Why not habeas for noncitizen, enemy combatant terrorists housed at Gitmo? No. 1, the whole Congress has agreed prospectively habeas is not available; the Detainee Treatment Act will be available. The only reason we are here is because of the Hamdan decision. The Hamdan decision did not apply to the Detainee Treatment Act retroactively, so we have about 200 and some habeas cases left unattended and we are going to attend to them now.

Why do we—I and others—want to take habeas off the table and replace it with something else? I don't believe judges should be making military decisions in a time of war. There is a reason the Germans and the Japanese and every other prisoner held by America have never gone to Federal court and asked the judge to determine their status. That is not a role the judiciary should be playing. They are not trained to make those decisions.

Under the Geneva Conventions article 5, the combatant tribunal requirement is a military decision. So I believe very vehemently that the military of our country is better qualified to determine who an enemy combatant is over a Federal judge. That is the way it has been, that is the way it should be and, with my vote, that is the way it is going to be.

What is the problem? Why am I worried about having Federal judges turning every enemy combatant decision into a trial? In 1950 the Supreme Court, denying habeas rights to German and Japanese prisoners, said:

> Such trials would hamper the war effort and bring aid and comfort to the enemy.

I agree with that.

> They would diminish the prestige of our commanders not only with enemies, but wavering neutrals.

I agree with that.

> It would be difficult to devise a more effective fettering of a field commander than to allow the very enemies he has 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.

I agree with that. That is why we shouldn't be doing habeas cases in a time of war. Nor is it unlikely that the result of such enemy litigiousness would be conflict between judicial and military opinion—highly comforting to the enemies of the United States.

These trials impede the war effort. It allows a judge to take what has historically been a military function.

What I am proposing for this body and our country is to allow the military to do what they are best at doing: controlling the battlefield. Let them define who an enemy combatant is under the Geneva Conventions requirements, under the Combatant Status Review Tribunal system, which is Geneva Conventions compliant, in my opinion, and let the Federal courts come in after they made their decision to see if the military applied the correct law, the procedures were followed, and the evidence justifies the decision of the military.

To substitute a judge for the military in a time of war to determine something as basic as who our enemy is is not only not necessary under our Constitution, it impedes the war effort, it is irresponsible, it needs to stop, and it should never have happened. I am confident Congress has the ability, if we choose to redefine the rights of an enemy combatant, noncitizen—what rights they have in a time of war and what has happened.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRAHAM. Mr. President, I will ask unanimous consent to have printed in the RECORD, if I may, examples of the habeas petitions filed on behalf of detainees against our troops.

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

EXAMPLES OF HABEAS PETITIONS FILED OF BEHALF OF DETAINEES

1. Canadian detainee who threw a grenade that killed an Army medic in firefight and who comes from family with longstanding al Qaeda ties moves for preliminary injunction forbidding interrogation of him or engaging in ''cruel, inhuman, or degrading'' treatment of him (n.b. this motion was denied by Judge Bates).

2. ''Al Odah motion for dictionary internet security forms''—Kuwaiti detainees seek court orders that they be provided dictionaries in contravention of GTMO's force protection policy and that their counsel be given high-speed internet access at their lodging on the base and be allowed to use classified DoD telecommunications facilities, all on the theory that otherwise their ''right to counsel'' is unduly burdened.

3. ''Alladeen—Motion for TRO re transfer''—Egyptian detainee who Combatant Status Review Tribunal adjudicated as no longer an enemy combatant, and who was therefore due to be released by the United States, files motion to block his repatriation to Egypt.

4. ''Paracha—Motion for PI re Conditions''—Motion by high level al Qaeda detainee complaining about base security procedures, speed of mail delivery, and medical treatment; seeking an order that he be transferred to the ''least onerous conditions'' at GTMO and asking the court to order that GTMO 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, worship, etc.''

5. ''Motion for PI re Medical Records''—Motion by detainee accusing military's health professionals of ''gross and intentional medical malpractice'' in alleged violation of the 4th, 5th, 8th, and 14th Amendments, 42 USC 1981, and unspecified international agreements.

6. ''Abdah—Emergency Motion re DVDs''—''emergency'' motion seeking court order requiring GTMO to set aside its normal security policies and show detainees DVDs that are purported to be family videos.

7. ''Petitioners' Supp. Opposition''—Filing by detainee requesting that, as a condition of a stay of litigation pending related appeals, the Court involve itself in his medical situation and set the stage for them to second-guess the provision of medical care and other conditions of confinement.

8. ''Al Odah Supplement to PI Motion''—Motion by Kuwaiti detainees unsatisfied with the Koran they are provided as standard issue by GTMO, seeking court order that they be allowed to keep various other supplementary religious materials, such as a ''tafsir'' or 4-volume Koran with commentary, in their cells.

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

The PRESIDING OFFICER. There is 12 minutes remaining.

Mr. SPECTER. Mr. President, I think it would be appropriate, if I may have Senator WARNER's concurrence, to tell our colleagues that this will be the end of the time allocated for this amendment and we could expect to vote at about 11:45 or 11:50?

Mr. WARNER. Mr. President, very definitely. As soon as all time on this amendment is allocated or yielded back, my intention is to move to a vote.

Mr. SPECTER. I thank my distinguished colleague.

Mr. President, I fully realize it is unpopular to speak for aliens, unpopular to speak on what might be interpreted to be in favor of enemy combatants, but that is not what this Senator is doing. What I am trying to establish is a course of judicial procedure to determine whether they are enemy combatants.

I submit that the materials produced on this floor and in the hearings of the Judiciary Committee show conclusively that the Combatant Status Review Tribunals do not have an adequate way of determining whether these individuals are enemy combatants. What we are doing is defending the jurisdiction of the Federal courts to maintain the rule of law. If the Federal courts are not open, if the Federal courts do not have jurisdiction to determine constitutionality, then how are we to determine what is constitutional?

My own background is one of a reverence for the law, a reverence for the independence of the judiciary, and a reverence for the rule of law as interpreted by our Constitution. If it hadn't been for the Federal courts, the Supreme Court of the United States, we would not have seen the decision in Brown v. Board of Education in 1954. The legislative branches were too mired in politics, the executive was too mired in politics, and it was only the Supreme Court which could recognize the injustice of segregation and it led to that decision.

Similarly, it was the Federal courts which changed the criminal procedure in this country as a matter of basic fairness. Prior to the decision of the case of Brown v. Mississippi in 1936, the Federal courts did not establish standards for State criminal courts. It was determined as a matter of States rights that States could establish their own determinations. But in that case, the evidence was overwhelming about a brutal, coerced confession and, for the first time, the Supreme Court of the United States stepped in and said: States may not take an individual,

take him across State lines, have a feigned hanging, extract a confession, and use that to convict him. That was done by the Federal courts.

I had the occasion when I was in the Philadelphia district attorney's office to witness firsthand on a daily basis a revolution in constitutional criminal procedure. I was litigating the issues in the criminal courts when Mapp v. Ohio came down, imposing the rule of exclusion of evidence in State courts if obtained in violation of the fourth amendment and, when Escobedo came down, limiting admissions and confessions if not in conformity with rules. Then Miranda v. Ohio came down. I found those decisions as a prosecutor very limiting and impeding. But the course of time has demonstrated that those decisions have improved the quality of justice in America. Chief Justice Rehnquist, a recognized conservative, sought to eliminate or limit Miranda when he came to the Supreme Court of the United States. Later in his career, he said in Miranda that the protections of those warnings were appropriate and were helpful in our society.

There are four fundamental, undeniable principles and facts involved in the issue we are debating today. The first undeniable principle is that a statute cannot overrule a Supreme Court decision on constitutional grounds, and a statute cannot contradict an explicit constitutional provision. That is point No. 1.

Point No. 2, the Constitution is explicit in the statement that habeas corpus may be suspended only with rebellion or invasion.

Fact No. 3, uncontested. We do not have a rebellion or an invasion.

Fact and principle No. 4, the Supreme Court says that aliens are covered by habeas corpus.

We have already had considerable exposition of the opinion by Justice O'Connor that the constitutional right of habeas corpus applies to individuals, which means citizens and aliens. The case of Rasul v. Bush, which explicitly involved an alien, says this in the opinion of Justice Stevens speaking for the Court:

> Habeas corpus received explicit recognition in the Constitution, which forbids the suspension of—

Then Justice Stevens cites the constitutional provision.

The privilege of the writ of habeas corpus cannot be suspended unless in the cases of rebellion or invasion, and neither is present here. So you have the express holding of the Supreme Court in Rasul v. Bush that habeas corpus applies to aliens.

Justice Stevens went on to say that:

> Executive imprisonment has been considered oppressive and lawless since John, at Runnymede.

What this bill would do in striking habeas corpus would take our civilized society back some 900 years to King John at Runnymede which led to the adoption of the Magna Charta in 1215, which is the antecedent for habeas corpus and was the basis for including in the Constitution of the United States the principle that habeas corpus may not be suspended.

I believe it is unthinkable, out of the question, to enact Federal legislation today which denies the habeas corpus right which would take us back some 900 years and deny the fundamental principle of the Magna Charta imposed on King John at Runnymede.

Mr. President, how much time do I have?

The PRESIDING OFFICER. There is 3½ minutes remaining.

Mr. SPECTER. Mr. President, the argument has been made that there is an alternative procedure which passes constitutional muster. But the provisions of the statute which set up the Combatant Status Review Tribunal are conclusively insufficient on their face. The statute provides that the Combatant Status Review Tribunal may be reviewed by the Court of Appeals for the District of Columbia only to the extent that the ruling was consistent with the standards and procedures specified by the Secretary of Defense.

Now, to comply with the standards of procedures determined by the Secretary of Defense does not mean exclude on its face a factual determination as to what happens to the detainees.

When the Senator from South Carolina argues that judges should not make military decisions, I agree with him totally. But the converse of that is that judges should make judicial decisions, to decide whether due process is decided. The converse, that judges should not make military decisions, is the principle that the Secretary of Defense ought not to decide what the constitutional standards are. The Secretary of Defense should not decide what the constitutional standards are. That is up to the Supreme Court of the United States, and the Supreme Court of the United States has decided that aliens are entitled to the explicit constitutional protection of habeas corpus.

The argument is made that the Swain case allows for alternative procedures. The Swain case involved a District of Columbia habeas corpus proceeding which was virtually identical with habeas corpus provided under Federal statute 2241, so of course it was satisfactory.

A number of straw men have been set up: One, that we could not apply these principles to the 18,000 detainees in Iraq—nobody seeks to do that; the straw man that we should not give search and seizure protections of the fourth amendment—no one seeks to do that; or the fifth amendment protection against the privilege of self-incrimination.

In essence and in conclusion, what this entire controversy boils down to is whether Congress is going to legislate to deny a constitutional right which is explicit in the document of the Constitution itself and which has been applied to aliens by the Supreme Court of the United States.

The distinguished chairman of the Armed Services Committee has said that he does not want to have this matter come back to Congress. But surely as we are standing here, if this bill is passed and habeas corpus is stricken, we will be on this floor again rewriting the law.

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

Is there further debate on the amendment?

Mr. WARNER. Mr. President, may I inquire, the distinguished Senator from Michigan seeks a little additional time on leader time, is that correct?

Mr. LEVIN. I have already accomplished that. I thank my friend.

Mr. WARNER. At this time I would like to yield to the Senator from South Carolina 3 minutes off of the time under my control on the bill.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. GRAHAM. What I am trying to stress to the body is that this is a war we are fighting, not crime, and habeas corpus rights have not been given to any other prisoners under U.S. control in the past, for very good reason. It impedes the war effort.

Let me give you a flavor of what is coming out of Guantanamo Bay. This is what is happening to the troops defending America by the people who are incarcerated, determined by our military to be an enemy combatant. 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 or engaging in cruel, inhuman or degrading treatment. In other words, he was going to ask the judge to take over running the jail and his interrogation.

A Kuwaiti detainee sought a court order that would provide dictionaries in contravention of Gitmo force protection policy and that their counsel have high-speed Internet access.

Another one applied for a motion that would allow them to change the base security procedures to allow speedy mail delivery medical treatment. He sought an order transferring him to the least onerous condition at Gitmo. He asked the court to allow him to keep any books and reading materials sent to him and report to the court over his opportunities for exercise, communication, recreation and worship.

We are not going to turn this war over to a series of court cases, where our troops are having to account for a bunch of junk by people trying to kill Americans. They will have their day in court, but they are not going to turn this whole war into a mockery with my vote.

I yield back.

Mr. WARNER. Mr. President, I believe there is no time remaining?

The PRESIDING OFFICER. There is no time remaining.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Maine (Ms. SNOWE).

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

The result was announced—yeas 48, nays 51, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS—48

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bayh	Harkin	Nelson (FL)
Biden	Inouye	Obama
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Chafee	Landrieu	Sarbanes
Clinton	Lautenberg	Schumer
Conrad	Leahy	Smith
Dayton	Levin	Specter
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Sununu
Durbin	Menendez	Wyden

NAYS—51

Alexander	DeMint	Lugar
Allard	DeWine	Martinez
Allen	Dole	McCain
Bennett	Domenici	McConnell
Bond	Ensign	Murkowski
Brownback	Enzi	Nelson (NE)
Bunning	Frist	Roberts
Burns	Graham	Santorum
Burr	Grassley	Sessions
Chambliss	Gregg	Shelby
Coburn	Hagel	Stevens
Cochran	Hatch	Talent
Coleman	Hutchison	Thomas
Collins	Inhofe	Thune
Cornyn	Isakson	Vitter
Craig	Kyl	Voinovich
Crapo	Lott	Warner

NOT VOTING—1

Snowe

The amendment (No. 5087) was rejected.

Mr. WARNER. I move to reconsider the vote.

Mr. BOND. 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 of the bill have been notified there are still three amendments remaining, one by Senator ROCKEFELLER, one by Senator KENNEDY, one from Senator BYRD. If I understand from my distinguished ranking member, we will proceed to the amendment of Senator ROCKEFELLER.

Mr. ROCKEFELLER. I have yielded 5 minutes to the Senator from Massachusetts, if that is okay, on a separate matter.

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

Mr. WARNER. Mr. President, the ranking member is about to advise the Senator with regard to which amendment might be forthcoming.

Mr. LEVIN. If Senator ROCKEFELLER is ready, I understand there is a time agreement of 1 hour equally divided.

The PRESIDING OFFICER. That is correct.

Five minutes of the time of the Senator from West Virginia has been previously allocated to the Senator from Massachusetts, Mr. KERRY.

Mr. KERRY. If I could correct that, my time is not supposed to come from the Senator from West Virginia. I believe I have time already allocated, so it would be separate.

Mr. ROCKEFELLER. If the situation is it is deducted from this Senator's time, I would object.

The PRESIDING OFFICER. It is the understanding of the Chair that the Senator from Massachusetts, the unanimous consent was obtained at 10 o'clock with 5 minutes coming from the time of the Senator from West Virginia.

Mr. LEVIN. Mr. President, that unanimous consent request was apparently agreed to and is in place right now?

The PRESIDING OFFICER. That is correct.

The Senator from West Virginia.

AMENDMENT NO. 5095

Mr. ROCKEFELLER. Mr. President, I send an amendment to the desk on behalf of myself, and Senators CLINTON, WYDEN, MIKULSKI and FEINGOLD.

The PRESIDING OFFICER. The clerk will report.

The Senator from West Virginia, [Mr. ROCKEFELLER], for himself, Mrs. CLINTON, Mr. WYDEN, Ms. MIKULSKI, and Mr. FEINGOLD, proposes an amendment numbered 5095.

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

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

The amendment is as follows:

(Purpose: To provide for congressional oversight of certain Central Intelligence Agency programs)

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.

Mr. ROCKEFELLER. Mr. President, for 4 years the Central Intelligence Agency's program was kept from the full membership of the Senate and House Intelligence Committees.

For 4 years the CIA imprisoned and interrogated suspected terrorists at secret black sites under a policy that prevented Congress from not only knowing about the program but from acting on it and regulating it.

For 4 years, the White House refused to brief Intelligence Committee members about the program's legal business and operations, as is required by law.

For 4 years, the members of the Senate and the House Intelligence Committees, whose duty it is to authorize the funding of every CIA program, were kept in the dark by an administration which ignored the legal requirement to keep the Congress fully and currently informed on all intelligence activities.

The amendment I have offered reverses the executive branch's 4-year policy of indifference toward Congress.

My amendment corrects a serious omission in the pending bill: the need for Congress to reassert its fundamental right to understand the intelligence activities it authorizes and funds.

My amendment would subject the CIA's detention and interrogation to meaningful congressional oversight for the first time in 4 years by requiring a series of reviews and reports that will enable the Congress to evaluate the program's scope and legality, as well as its effectiveness.

The amendment establishes this absent congressional oversight in four ways. First, my amendment requires the Director of the CIA to provide a quarterly report to all members of the Intelligence Committees in both the House and the Senate detailing the detention facilities, how they are operated, and how they are used by the CIA.

It requires that the detainees held at these facilities be listed by name as well as the basis for their detention and the description of interrogation techniques used on them and the accompanying legal rationale.

This quarterly report also requires the recording of any violation or abuse under the CIA program as well as an assessment of the effectiveness of the detention and interrogation program.

This issue of the effectiveness of interrogation techniques is incredibly important and often overlooked as an aspect of the debate over the CIA program. Interrogations that coerce information can produce bad intelligence—not necessarily, but they can produce misleading intelligence—fabricated intelligence to get out of the treatment, information that can harm, not help, our efforts to locate and capture terrorists.

Second, my amendment would require the Director of the CIA to provide a quarterly report to all members of the Intelligence Committees on the disposition of each detainee transferred out of the CIA prisons, whether the detainee was transferred to the Department of Defense for prosecution before a military commissioner for further detention, whether the detainee was transferred to the custody of the Attorney General to stand trial in civilian court, or whether the detainee was rendered or otherwise transferred to the custody of another nation.

There needs to be a comprehensive and accurate accounting of detainees held by the CIA. Congress has a responsibility to know who is held by the CIA, why they are held and for how long they are held.

The CIA detention and interrogation program cannot function as a black hole into which people disappear for years on end.

We have been told by CIA leaders that the agency does not want to be—they say this constantly to us—they do not want to be the prison warden for the United States Government. The goal of the CIA program should be to obtain, through lawful means, intelligence information that can identify other terror suspects to prevent further terrorist attacks and then to bring to justice those who we believe to be criminals. This is the so-called endgame that everyone talks about.

If the CIA detention program is allowed to function as some sort of prisoner purgatory, we have then failed.

Also of concern to me is the lack of existing oversight in how the United States transports or renders detainees to other countries for imprisonment and interrogation.

The limited information the administration has shared with the Senate Intelligence Committee on the CIA's rendition program does not by any means assure, at least this Senator, that the intelligence community has a program in place, so to speak, to assert what happens to these individuals when they are transferred to foreign custody, such as how they are treated, how they are interrogated, whether they divulge intelligence information of value, and whether this information is then provided to the CIA.

The CIA's rendition program deserves far greater scrutiny and congressional oversight than it has been given to date.

The third way in which this amendment establishes a meaningful oversight of the CIA detention and interrogation program is to require the CIA Inspector General and the CIA general counsel each separately review the program on an annual basis to report their findings to the Intelligence Committees. These independent Agency reviews would assess the CIA's compliance with any applicable law or regulation and the conduct of detention, interrogation and rendition activities as well as to report to Congress any violations of law or other abuse on the part of personnel involved in the program.

The annual reviews of the Inspector General and the general counsel also would evaluate the effectiveness of the detention and interrogation program; effectiveness at obtaining valuable and reliable intelligence.

Finally, my amendment requires the Attorney General to submit to Congress an unclassified certification whether or not each interrogation technique approved for use by the CIA complies with the United States Constitution and all applicable treaties, statutes and regulations. I believe this is a very important certification.

All Americans, not just the Congress, need an ironclad assurance from our Nation's top enforcement officer that the CIA program and the interrogation techniques it employs are lawful in all respects. The CIA officers in the field, I might say, above all, need this assurance.

I do not believe there is anything particularly controversial about this amendment, and I hope that Democrats and Republicans alike can embrace the need for restoring respect for the oversight role of the Intelligence Committees of the Congress over intelligence.

Only through reports that will be provided under this amendment will the Congress have the information it lawfully deserves to understand the CIA's detention and interrogation program and determine whether the program is producing the unique intelligence mission that justifies its continued operation.

Only when the President works with the Congress are we able to craft intelligence programs that are legally sound and operationally effective. Only when the President works with the Congress can America stand strong in its fight against terrorism.

Intelligence gathering through interrogation is one of the most important tools we have in the war on terrorism. My amendment would provide the congressional oversight necessary to assure that our intelligence officers in the field have clear guidelines for effective and legal interrogation.

Before yielding the floor, I will address two other matters very briefly.

Those who have taken the time to read through the bill we are debating will find the word ''coercion'' repeatedly in the text of the legislation. Coercion is a fitting word when considering how the Senate finds itself rushed into voting on a bill with far-reaching legal and national security implications.

The final text of the underlying bill was negotiated by a handful of Republican Senators, many of whom I respect, and the White House. Democrats were not consulted. I was not consulted. This Senator was not consulted. Senator LEVIN was not consulted. We were kept out of these closed-door sessions.

I say that because the Senate Intelligence Committee is the only Senate committee responsible for authorizing CIA activities and the only committee briefed on classified details of the CIA's detention and interrogation program. We were denied an opportunity to consider this bill, in fact, on sequential referral, which is our due.

In the mad dash to pass this bill before the Senate recesses, Senators are being given only five opportunities, I believe, to amend the bill, effectively preventing the Senate from trying to produce the best bill possible on the most important subject possible with respect to the gathering of intelligence. It does not have to be this way.

Finally, I am troubled by what I view as misleading statements about the current state of the CIA detention and interrogation program made by President Bush and senior administration officials. I say this for the record, and strongly.

The President and others have stated in recent weeks that the CIA program was halted as a result of the Supreme Court's Hamdan decision on June 29, 2006. This assertion is false.

Significant aspects of this program were halted following the passage of the Detainee Treatment Act in 2005, prohibiting cruel, inhuman, or degrading treatment of detainees, well before the Supreme Court decision.

The President has also been very forceful in his public statements asserting that the post-Hamdan application of Geneva Conventions Common Article 3 has created legal uncertainties about the CIA interrogation procedures that the Congress must resolve through legislation—only us—in order for the CIA program to continue. This assertion is misleading, and it is false as well.

Concerns over the legal exposure of CIA officers have existed since the program's inception and did not begin with the Supreme Court's Hamdan decision. These mischaracterizations illustrate to me why it is important for Congress to understand all facts about the CIA program.

Congress cannot and should not sit on the sidelines blithely ignorant about the details of a critical intelligence program that has been operating without meaningful congressional scrutiny for years.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. LEVIN. Mr. President, will the Senator from Massachusetts yield for a unanimous consent request?

Mr. KERRY. Yes.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be added as a cosponsor to the Rockefeller amendment.

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

The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, the last week before we leave for a long recess has always been extraordinarily busy—particularly when an election is only 42 days away. But, sadly, this has become too much the way the Senate does business and often its most important business.

Today, the leadership of the Senate has decided that legislation that will directly impact America's moral authority in the world merits only a few hours of debate. What is at stake is the authority that is essential to winning and to waging a legitimate and effective war on terror, and also one that is critical to the safety of American troops who may be captured.

If, in a few hours, we squander that moral authority, blur lines that for decades have been absolute, then no speech, no rhetoric, and no promise can restore it.

Four years ago, we were in a similar situation. An Iraq war resolution was rushed through the Senate because of election-year politics—a political calendar, not a statesman's calendar. And 4 years later, the price we are paying is clear for saying to a President and an administration that we would trust them.

Today, we face a different choice—to prevent an irreversible mistake, not to correct one. It is to stand and be counted so that election-year politics do not further compromise our moral authority and the safety of our troops.

Every Senator must ask him or herself: Does the bill before us treat America's authority as a precious national asset that does not limit our power but magnifies our influence in the world? Does it make clear that the U.S. Government recognizes beyond any doubt that the protections of the Geneva Conventions have to be applied to prisoners in order to comply with the law, restore our moral authority, and best protect American troops? Does it make clear that the United States of America does not engage in torture, period?

Despite protests to the contrary, I believe the answer is clearly no. I wish it were not so. I wish this compromise actually protected the integrity and letter and spirit of the Geneva Conventions. But it does not. In fact, I regret to say, despite the words and the protests to the contrary, this bill permits torture. This bill gives the President the discretion to interpret the meaning and application of the Geneva Conventions. It gives confusing definitions of ''torture'' and ''cruel and inhuman treatment'' that are inconsistent with the Detainee Treatment Act, which we passed 1 year ago, and inconsistent with the Army Field Manual. It provides exceptions for pain and suffering ''incidental to lawful sanctions,'' but it does not tell us what the lawful sanctions are.

So what are we voting for with this bill? We are voting to give the President the power to interpret the Geneva Conventions. We are voting to allow pain and suffering incident to some undefined lawful sanctions.

This bill gives an administration that lobbied for torture exactly what it wanted. And the administration has

been telling people it gives them what they wanted. The only guarantee we have that these provisions will prohibit torture is the word of the President. Well, I wish I could say the word of the President were enough on an issue as fundamental as torture. But we have been down this road.

The administration said there were weapons of mass destruction in Iraq, that Saddam Hussein had ties to al-Qaida, that they would exhaust diplomacy before they went to war, that the insurgency was in its last throes. None of these statements were true.

The President said he agreed with Senator MCCAIN's antitorture provisions in the Detainee Treatment Act. Yet he issued a signing statement reserving the right to ignore them. Are we supposed to trust that word?

He says flatly that ''The United States does not torture,'' but then he tries to push the Congress into allowing him to do exactly that. And even here he has promised to submit his interpretations of the Geneva Conventions to the Federal Register. Yet his Press Secretary announced that the administration may not need to comply with that requirement. And we are supposed to trust that?

Obviously, another significant problem with this bill is the unconstitutional limitation of the writ of habeas corpus. It is extraordinary to me that in 2 hours, and a few minutes of a vote, the Senate has done away with something as specific as habeas corpus, of which the Constitution says: ''[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.''

Well, we are not in a rebellion, nor are we being invaded. Thus, we do not have the constitutional power to suspend the writ. And I believe the Court will ultimately find it unconstitutional.

The United States needs to retain its moral authority to win the war on terror. We all want to win it. We all want to stop terrorist attacks. But we need to do it keeping faith with our values and the Constitution of the United States.

Mr. President, a veteran of the Iraq War whom I know, Paul Rieckhoff, wrote something the other day that every Senator ought to think about as they wrestle with this bill. He wrote that he was taught at Fort Benning, GA, about the importance of the Geneva Conventions. He didn't know what it meant until he arrived in Baghdad. Paul wrote:

> America's moral integrity was the single most important weapon my platoon had on the streets of Iraq. It saved innumerable lives, encouraged cooperation with our allies and deterred Iraqis from joining the growing insurgency. But those days are over. America's moral standing has eroded, thanks to its flawed rationale for war and scandals like Abu Ghraib, Guantánamo and Haditha. The last thing we can afford now is to leave Article 3 of the Geneva Conventions open to reinterpretation, as President Bush proposed to do and can still do under the compromise bill that emerged last week.

We each need to ask ourselves, in the rush to find a ''compromise'' we can all embrace, are we strengthening America's moral authority or eroding it? Are we on the sides of the thousands of Paul Rieckhoffs in uniform today, or are we making their mission harder and even worse, putting them in greater danger if they are captured?

Paul writes eloquently:

> If America continues to erode the meaning of the Geneva Conventions, we will cede the ground upon which to prosecute dictators and warlords. We will also become unable to protect our troops if they are perceived as being no more bound by the rule of law than dictators and warlords themselves. The question facing America is not whether to continue fighting our enemies in Iraq and beyond but how to do it best. My soldiers and I learned the hard way that policy at the point of a gun cannot, by itself, create democracy. The success of America's fight against terrorism depends more on the strength of its moral integrity than on troop numbers in Iraq or the flexibility of interrogation options.

I wish I could say this compromise serves America's moral mission and protects our troops, but it doesn't. No eloquence we can bring to this debate can change what this bill fails to do.

We have been told in press reports that it is a great compromise between the White House and my good friends, Senator MCCAIN, Senator WARNER, and Senator GRAHAM. We have been told that it protects the ''integrity and letter and spirit of the Geneva Conventions.''

I wish that what we are being told is true. It is not. Nothing in the language of the bill supports these claims. Let me be clear about something—something that it seems few people are willing to say. This bill permits torture. This bill gives the President the discretion to interpret the meaning and application of the Geneva Conventions. This bill gives an administration that lobbied for torture exactly what it wanted.

We are supposed to believe that there is an effective check on this expanse of Presidential power with the requirement that the President's interpretations be published in the Federal Register.

We shouldn't kid ourselves. Let's assume the President publishes his interpretation of permissible acts under the Geneva Convention. The interpretation, like the language in this bill, is vague and inconclusive. A concerned Senator or Congresswoman calls for oversight. Unless he or she is in the majority at the time, there won't be a hearing. Let's assume they are in the majority and get a hearing. Do we really think a bill will get through both houses of Congress? A bill that directly contradicts a Presidential interpretation of a matter of national security? My guess is that it won't happen, but maybe it will. Assume it does. The bill has no effect until the President actually signs it. So, unless the President chooses to reverse himself, all the power remains in the President's hands. And all the while, America's moral authority is in tatters, American troops are in greater jeopardy, and the war on terror is set back.

Could the President's power grab be controlled by the courts? After all, it was the Supreme Court's decision in Hamdan that invalidated the President's last attempt to consolidate power and establish his own military tribunal system. The problem now is that the bill strips the courts the power to hear such a case when it says ''no person may invoke the Geneva Conventions . . . in any habeas or civil action.''

What are we left with? Unfettered Presidential power to interpret what—other than the statutorily proscribed ''grave violations''—violates the Geneva Conventions. No wonder the President was so confident that his CIA program could continue as is. He gets to keep setting the rules—rules his administration have spent years now trying to blur.

Presidential discretion is not the only problem. The definitions of what constitute ''grave breaches'' of Article 3 are murky. Even worse, they are not consistent with either the Detainee Treatment Act or the recently revised Army Field Manual. These documents prohibit ''cruel, inhumane, or degrading treatment'' defined as ''the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments.'' The definition is supported by an extensive body of case law evaluating what treatment is required by our constitutional standards of ''dignity, civilization, humanity, decency, and fundamental fairness.'' And, I think quite tellingly, it is substantially similar to the definition that my good friend, Senator MCCAIN, chose to include in his bill. And there is simply no reason why the standard adopted by the Army Field Manual and the Detainee Treatment Act, which this Congress has already approved, should not apply for all interrogations in all circumstances.

In the bill before us, however, there is no reference to any constitutional standards. The prohibition of degrading conduct has been dropped. And, there are caveats allowing pain and suffering ''incidental to lawful sanctions.'' Nowhere does it tell us what ''lawful sanctions'' are.

So, what are we voting for with this bill? We are voting to give the President the power to interpret the Geneva Conventions. We are voting to allow pain and suffering incident to some undefined lawful sanctions. The only guarantee we have that these provisions really will prohibit torture is the word of the President.

The word of the President. I wish I could say the words of the President were enough on an issue as fundamental as torture. Fifty years ago, President Kennedy sent his Secretary of State abroad on a crisis mission—to

prove to our allies that Soviet missiles were being held in Cuba. The Secretary of State brought photos of the missiles. As he prepared to take them from his briefcase, our ally, a foreign head of state said, simply, ''put them away. The word of the President of the United States is good enough for me.''

We each wish we lived in times like those—perilous times, but times when America's moral authority, our credibility, were unquestioned, unchallenged.

But the word of the President today is questioned. This administration said there were weapons of mass destruction in Iraq, that Saddam Hussein had ties to Al Qaeda, that they would exhaust diplomacy before we went to war, that the insurgency was in its last throes. None of these statements were true, and now we find our troops in the crossfire of civil war in Iraq with no end in sight. They keep saying the war in Iraq is making us safer, but our own intelligence agencies say it is actually fanning the flames of jihad, creating a whole new generation of terrorists and putting our country at greater risk of terrorist attack. It is no wonder then that we are hesitant to blindly accept the word of the President on this question today.

The President said he agreed with Senator MCCAIN's antitorture provisions in the Detainee Treatment Act. Yet, he issued a signing statement reserving the right to ignore them. He says flatly that ''The United States does not torture''—and then tries to bully Congress into allowing him to do exactly that. And even here, he has promised to submit his interpretations of the Geneva Convention to the Federal Register—yet his Press Secretary announced that the administration may not need to comply with that requirement.

We have seen the consequences of simply accepting the word of this administration. No, the Senate cannot just accept the word of this administration that they will not engage in torture given the way in which everything they have already done and said on this most basic question has already put our troops at greater risk and undermined the very moral authority needed to win the war on terror. When the President says the United States doesn't torture, there has to be no doubt about it. And when his words are unclear, Congress must step in to hold him accountable.

The administration will use fear to try and bludgeon anyone who disagrees with them.

Just as they pretended Iraq is the central front in the war on terror even as their intelligence agencies told them their policy made terrorism worse, they will pretend America needs to squander its moral authority to win the war on terror.

They are wrong, profoundly wrong. The President's experts have told him that not only does torture put our troops at risk and undermine our moral authority, but torture does not work. As LTG John Kimmons, the Army's deputy chief of staff for intelligence, put it:

> No good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last five years, hard years, tell us that. Any piece of intelligence which is obtained under duress, through the use of abusive techniques, would be of questionable credibility. And additionally, it would do more harm than good when it inevitably became known that abusive practices were used. We can't afford to go there.

Neither justice nor good intelligence comes at the hands of torture. In fact, both depend on the rule of law. It would be wrong—tragically wrong—to authorize the President to require our sons and daughters to use torture for something that won't even work.

Another significant problem with this bill is the unconstitutional elimination of the writ of habeas corpus. No less a conservative than Ken Starr got it right:

> 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.

Ken Starr says, ''Congress should act cautiously.'' How cautiously are we acting when we eliminate any right to challenge an enemy combatant's indefinite detention? When we eliminate habeas corpus rights for aliens detained inside or outside the United States so long as the Government believes they are enemy combatants? When we not only do this for future cases but apply it to hundreds of cases currently making their way through our court system?

The Constitution is very specific when it comes to habeas corpus. It says, ''[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.'' We are not in a case of rebellion, nor are we being invaded. Thus, we really don't have the constitutional power to suspend the Great Writ. And, even if we did, the Constitution allows only for the writ to be suspended. It does not allow the writ to be permanently taken away. Yet, this is exactly what the bill does. It takes the writ away—forever—from anyone the administration determines is an ''enemy combatant,'' even if they are lawfully on U.S. soil and otherwise entitled to full constitutional protections, and even if they have absolutely no other recourse.

Think of what this means. This bill is giving the administration the power to pick up any non-U.S. citizen inside or outside of the United States, determine in their sole and unreviewable discretion that he is an unlawful combatant, and hold him in jail—be it Guantanamo Bay or a secret CIA prison—indefinitely. Once the Combatant Status Review Tribunal determines that person is an enemy combatant, that is the end of the story—even if the determination is based on evidence that even a military commission would not be allowed to consider because it is so unreliable. That person would never get the chance to challenge his detention; to prove that he is not, in fact, an enemy combatant.

We are not talking about whether detainees can file a habeas suit because they don't have access to the Internet or cable television. We are talking about something much more fundamental: whether people can be locked up forever without even getting the chance to prove that the Government was wrong in detaining them. Allow this to become the policy of the United States and just imagine the difficulty our law enforcement and our Government will have arranging the release of an American citizen the next time our citizens are detained in other countries.

Mr. President, we all want to stop terrorist attacks. We all want to effectively gather as much intelligence as humanly possible. We all want to bring those who do attack us to justice. But, we weaken—not strengthen—our ability to do that when we undermine our own Constitution; when we throw away our system of checks and balances; when we hold detainees indefinitely without trial by destroying the writ of habeas corpus; and when we permit torture. We endanger our moral authority at our great peril. I oppose this legislation because it will make us less safe and less secure. I urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WARNER. Mr. President, I yield 5 minutes to our colleague from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 5 minutes.

Mr. BOND. Mr. President, I thank the manager of the bill for yielding me 5 minutes.

There is no question that this bill, this military commissions bill, is absolutely essential if we are going to continue to have good intelligence and move forward with the program of interrogating and containing detainees in an appropriate manner that will maintain our standing, our honor, and puts tighter control on the United States than other countries do on their unlawful combatants.

I respectfully suggest that the Rockefeller amendment is not only unnecessary, but the simple fact is, the unintended effect is it would complicate the passage of this important military commissions bill. It would either delay or perhaps even derail this bill, which is absolutely essential if we are to get our CIA agents back in the field doing appropriately limited interrogation techniques to find out what attacks are planned against the United States.

The President has pointed out, the interrogation is the thing that has uncovered plots that could have been very serious. We need to have our CIA professionals under carefully controlled

circumstances doing the interrogation that gets the information.

As to the question about whether this is about oversight, well, our committee should be all about oversight. We need to be looking at these things. We need to be looking every day at what the agencies are doing, what the intelligence community is doing. But as I have said here on the floor before, unfortunately, for the last 4 years, we have been looking in the rearview mirror. It has been our fault, not the fault of the agencies, that we have not done enough oversight because when we spent 2 years in the Phase I investigation, we found out the intelligence was flawed, the intelligence was inadequate because our intelligence assets were cut 20 percent in the 1990s. We had no human intel on the ground.

But, most of all, there was no pressure, no coercion by administration officials of the intelligence agencies, and there was no misrepresentation of the findings of the intelligence community—same intelligence that we in the Congress relied upon in supporting the decision to go to war against the hotbed of terrorism, Iraq.

Now, I do not take issue with that first phase. But Phase II has cost us another 2 years, and we have not learned anything more than we learned in the first phase and with the WMD and the 9/11 Commission.

If we would get back to looking out the front windshield, instead of looking in the rearview mirror, we should be doing precisely this kind of interrogation in the oversight committee. And I take no issue with many of the questions the Senator from West Virginia raises. As a matter of fact, I probably would have some of my own. But I do question the need for a very lengthy, detailed report every 3 months. If you read all of the requirements, this is a paperwork nightmare. They are going to have to comply and tell us how they are going to comply, and we are going to oversee them.

I believe putting out this lengthy report gets us nowhere. Frankly, if our past experience is any guide, we will probably see those reports leaked to the press because reports have a way, regrettably, of being leaked and being disclosed.

I think there is one big problem with the Rockefeller amendment. In the amendment, he requires every 3 months the Attorney General—any time there are any new interrogation techniques, the Attorney General shall submit an unclassified certification whether or not each approved interrogation technique complies with the Constitution of the United States, applicable treaty statutes, Executive orders, relations, and an explanation of why it complies.

Mr. President, what we would just order in this amendment is to spread out for the world—and especially for al-Qaida and its related organizations—precisely what interrogation techniques are going to be used. Let me tell you something. I visited with intelligence agents around the world, some of whom have been in on the most sensitive interrogations we have had. I have asked them about that, and they have explained to me how they interrogate people. These interrogations I have learned about comply—even though they were before the passage of this law—with the detainee treatment law. They do comply, and I think they are appropriate. The important thing, they say, is that what the terrorists don't know is most important. They don't know how they are going to be questioned or what is going to happen to them. The uncertainty is the thing that gets them to talk. If we lay out, in an unclassified version, a description of the techniques by the Attorney General, that description will be in al-Qaida and Hezbollah and all of the other terrorist organizations' playbook. They will train their assets that: This is what you must be expected to do, and Allah wants you to resist these techniques.

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

Mr. BOND. Yes, I am happy to.

Mr. ROCKEFELLER. Is the Senator aware, when he talks about delaying implementation of this program, that there are no CIA detainees? What are we holding up?

Mr. BOND. Mr. President, we are passing this bill so that we can detain people. If we catch someone like Khalid Shaikh Mohammed, we have no way to hold him, no way to ask him the questions and get the information we need, because the uncertainty has brought the program to a close. It is vitally important to our security, and unfortunately the Rockefeller amendment would imperil it.

General Hayden promised to come before the committee, and I look forward, in our oversight responsibilities, to hearing how they are implementing this act.

I thank the Chair.

Mr. ROCKEFELLER. That is simply not true.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, at this juncture, I ask unanimous consent that we step off of this amendment and allow the distinguished Senator from New Mexico to speak for up to 10 minutes regarding the bill.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 10 minutes.

Mr. DOMENICI. Mr. President, I will speak on this vital subject. I rise to speak in support of the Military Commission Act of 2006.

First off, we must all ask ourselves a very simple question: Do we believe the United States must have a terrorist attack prevention program?

I submit that the answer is a clear and resounding yes. I believe the American people expect us to have a strong terrorist attack prevention program and that they believe if we don't, we are derelict in our duty. They know that we are at risk, that this is a war, and that there are many people out there who are waiting to do damage and harm to our people. To have anything less than a terrorist prevention program, which is the best we can put together, is shameful. I cannot support any legislation that would prevent the CIA from protecting America and its citizens.

The legislation before us allows the Federal Government to continue using one of the most valuable tools we have in our war on terror—the CIA terrorist interrogation program.

The global war on terror is a new type of war against a new type of enemy, and we must use every tool at our disposal to fight that war—not just some tools, but all of them. These tools include interrogation programs that help us prevent new terrorist attacks.

The CIA interrogation program is such a program. It is helping us deny terrorists the opportunity to attack America. It has allowed us to foil at least eight terrorist plots, including plans to attack west coast targets with airplanes, blow up tall buildings across our Nation, use commercial airliners to attack Heathrow Airport and bomb our U.S. Marine base in Africa.

Mr. President, clearly, this program is valuable. Clearly, this program is necessary in the global war on terror. We must take legislative action that will allow the program to continue. The CIA must be allowed to continue going after those who have information about planned terrorist attacks against our Nation and our friends. The CIA must be allowed to go after those who are in combat with us.

I applaud the White House, the Senate leadership, and the Armed Services Committee for working together to craft a bill that, No. 1, authorizes military tribunals and establishes the trial and evidentiary rules for such tribunals; and No. 2, clarifies the standards the CIA must comply with in conducting terrorist interrogations. We must keep the bill in its current form, fending off amendments that would put the CIA's program in jeopardy.

Regarding the Byrd sunset amendment, we don't know when the global war on terror will end, so we cannot arbitrarily tie one hand behind the CIA's back by suddenly terminating the interrogation program with a sunset provision.

We have already voted on the habeas corpus amendment, and I am glad we did not add habeas provisions to this bill. We cannot give terrorists the right to bring a habeas corpus petition that seeks release from prison on the grounds of unlawful imprisonment, as the Specter amendment would. Such legislation will clog our already overburdened courts.

Additionally, such petitions are often frivolous and disrupt operations at Guantanamo Bay. Examples of the frivolous petitions that have been filed include an al-Qaida terrorist complaining

about base security procedures, speed of mail delivery, and medical treatment; as well as a detainee asking that normal security policies be set aside so that he could be shown DVDs that are alleged to be family videos. Such petitions are not necessary.

The underlying bill allows appeals of judgments rendered by military commissions to the District of Columbia Circuit Court of Appeals—a very significant court. These are appeals of judgments rendered by the military commissions. That is a totally appropriate way to do it. When I finally understood that, I could not believe that some would come to the floor and argue as they did. My colleagues have said we are abandoning habeas corpus; we have never done anything like this before. They act as if we have decided to be totally unjust and unfair when, as a matter of fact, this is about as fair a treatment as you could give terrorist suspects and still have an orderly process. I think we have done the right thing. Giving terrorist suspects access to the court known as the second highest court in America provides an adequate opportunity for review of detainees' cases.

I laud the occupant of the chair for explaining this matter early on to many of us who did not understand the issue, and it has become clear to many of us that we have done the right thing in terms of the habeas corpus rule that we have adopted. It will be upheld, in my opinion, after I have read some other cases, by the courts.

Mr. President, my primary standard in determining whether to support this legislation is whether the legislation will allow the CIA interrogation program to continue. The answer to that question must be yes. If the answer to that question is no, then we are foolhardy, at a minimum, and totally stupid at a maximum, if we decide that the kinds of enemies we have will not be subject to the CIA terrorist interrogation program we have now. The program must continue.

The administration has informed me that this bill, in its current form, will allow the CIA terrorist interrogation program to continue. I sought that information as a critical piece of information before I started looking at all of the amendments to see where we were. Therefore, this bill must pass, and it must pass in its current form.

We must remember that we are dealing with terrorists, not white-collar criminals. We are not even dealing with the types of prisoners of war there were in the Second World War, some of whom, from the German area, might have been severely abusing the rights of prisoners-of-war. But we still did not in any way have the situation we have now with reference to prisoners of war in the Second World War.

We must remember that we are dealing with terrorists who know no limits, follow no rules, have no orderliness about them. They are just going to do what we let them do. We must give our best—the CIA—the tools they need to do their job to fight this war on terror against these terrorists.

It is my privilege to be on the side of this bill. I believe the American people will be on the side of this bill. Some thought early that it was the wrong thing to do. Just as it happens with many bills, we got off on the wrong foot. But we are back straight, with both feet on the right path, and we must pass the bill as is.

I wonder if those who want to destroy this bill or make it ineffective would really ask the American people in honesty and sincerity, do they want the CIA program to continue or are they really trying to say we should not allow the program? If my colleagues are on the side of the latter, they ought to tell us and tell the American people. Then we would understand whom they are for and there would be no question in the American people's minds.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield to the chairman of the Intelligence Committee, the Senator from Kansas, such time as he needs.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, I thank the chairman of the Armed Services Committee, who is an ex officio member of the Intelligence Committee and does extremely valuable work as we try to work in a commensurate fashion on national security.

I rise in opposition to the amendment being offered by my good friend from West Virginia, Senator ROCKEFELLER, who is vice chairman of our committee. The amendment calls for yet another unnecessary and repetitious requirement of reporting.

Now, I do not take issue with some of the numerous questions the Senator from West Virginia seeks. Some of these questions should be answered in the context of our regular committee oversight.

The issue is not if reasonable questions are answered, but how and how often. I really question the need for a formal quarterly report—four times a year—unreasonable in scope and length that will be a very unnecessary burden on the hard-working men and women at the CIA.

The simple fact is that the vice chairman and other members of the committee have been fully briefed in the past, present, and prospective future about CIA's detention and interrogation operations and will continue to be briefed. The vice chairman and other members of the Intelligence Committee can get answers to their questions and more through the course of the committee's normal oversight activities. They only need to ask.

I just mentioned the prospective future of the CIA's interrogation program. That is because without this legislation, there will be no CIA program. Let's be clear. If we adopt what I believe is an unnecessary amendment, contrary with the House, this bill will end up in conference with the House. If that happens, I fear the bill will languish throughout the fall while Members are out campaigning. Meanwhile, the CIA will be unable to interrogate captured unlawful alien combatants.

Forgive me, Mr. President, but I think the American people deserve better than to have this Nation's efforts against al-Qaida bog down because some in this body—and I don't question their intent—are insisting on an unnecessary symbolic and redundant series of reporting requirements that could and will be answered through the regular committee oversight. All we have to do is ask and then to listen and then to respond. Where are our priorities? Where should they be?

As I have listened to the debate on this bill in the relative safety and comfort of Capitol Hill, I cannot help but wonder whether some of us have lost our perspective. While we must do our duty as elected officials—and we will do that—we cannot forget that we are a nation at war. Consequently, our first and foremost duty should be to support our troops and intelligence officers at home and abroad, not to mandate four times a year reporting requirements that are unprecedented in scope and detail. The CIA will not be detecting and interdicting unlawful alien combatants; it will be writing one report after another.

I am on the side of our hard-working intelligence officers and against the terrorists. I think that is an obvious choice. I think most Members would think they would be in that position. But I do not believe in making their job more difficult by legislating additional reporting requirements which are needless and burdensome and which will likely delay enactment of this vital national security legislation.

If this were to pass, we can be reasonably certain that it will have a chilling effect on interrogation operations. We are sending a signal to our intelligence officers to be risk averse, the very thing we don't want to do. In fact, the very implication of this amendment is they are unable to carry out their duties with honor and respect for the law, and that, my colleagues, is just not true.

So let us do our duty, as we should, and get this bill done and to the President.

Mr. President, I oppose the amendment and I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I wonder if I may engage my distinguished chairman in a colloquy. I am privileged to serve on his committee. Some years ago I served on the committee and at one time was vice chairman of the committee. So I draw on, if I may say

with some modesty, a long experience of working with the Intelligence Committee, and, as the chairman knows, the chairman and ranking member of the Armed Services Committee have always had a role of participation in his committee. I guess if I can add up all the years as chairman and ranking, it is about 12 or 15, I think, of my 28 years on the Armed Services Committee. I have watched this committee and have been a participant for many years.

As I read through the amendment offered by our distinguished colleague from West Virginia—he has the title of vice chairman. That came about because the chairman and the vice chairman traditionally on this committee work to achieve the highest degree—I guess the word is the committee working together as an entity.

I say to the chairman, it is my judgment that this amendment is really in the nature of a substitute for the oversight responsibilities of the committee.

As we both know, the world environment changes overnight. This business of trying to operate on the basis of reports is simply, in my judgment, not an effective way for the committee to function. The Senator from Kansas, as chairman, in consultation with the vice chairman, has to call hearings and meetings and briefings in a matter of hours in order to keep the committee currently informed about world situations.

I say with all due respect to my colleagues here and to our vice chairman of the Intelligence Committee, this amendment is a substitute for the committee's responsibilities, the basic responsibilities to be performed by this committee. It is for that reason I oppose the amendment. But I would like to have the chairman's views.

Mr. ROBERTS. Mr. President, if the chairman will yield.

Mr. WARNER. Yes.

Mr. ROBERTS. Let me repeat what I said in my statement—and I share the distinguished Senator's views, more especially from his experience on both committees, the Intelligence Committee and the Armed Services Committee. We both face the same kind of responsibilities, our oversight responsibilities. We take them very seriously. We may have differences of opinion on the Intelligence Committee or on the Armed Services Committee, but we do our oversight.

The simple fact is that the vice chairman, myself, and other members of the committee—and let me stress now full membership of the committee; we worked very hard to get that access—have been fully briefed in the past and the present and also prospectively of the CIA's detention and interrogation operations.

The vice chairman and other members of the Intelligence Committee, if people have problems, if people have questions, if people need to get more briefs, if people want to basically get into some—I say ''some'' because I think some of the questions are not reasonable—say they have questions about this, all they have to do is ask. I can guarantee as chairman that those in charge of this particular program at the CIA will be there and have been there.

The inspector general of the CIA has briefed the committee—I am not going to get into the details of that briefing—both the vice chair and myself in regards to any question on what has happened, with what has gone wrong allegedly or otherwise with the interrogation and detention program, and we get an update as to where are those cases. If there was egregious behavior, what is happening to those people? Are they being prosecuted? And the answer to that is yes.

All we have to do is ask. As I look at this, I must say in scope, it is unprecedented. They ask questions that I think, quite frankly, if I were an interrogator working within the confines of the Central Intelligence Agency, would have a very chilling effect on me to know that four times a year I would be held responsible for all of these questions which I think those in charge at the Agency can certainly respond to any committee request in terms of a briefing. I would be a little nervous.

And that is not the case because, as I said in my remarks, the CIA will not be detecting and interdicting unlawful alien combatants; it will be writing one report after another, four times a year. If we look at the length, breadth, and depth, it is not whether we get this information, it is how we get the information. All we have to do is ask.

This is a tremendous burden. I must tell my colleagues that I don't know where we are going to get enough staff on the committee to respond to these four mandated reports. It is going to be a rather unique situation when we have a lot of work to do. We have briefings, as the Senator from Virginia indicated, every week. We have one this afternoon—it is terribly important—requested by members. Yet I think we are going to have to hire more people to do this if, in fact, we do this, and I think the CIA will as well.

I am not too sure, again, if I were an individual interrogator that I would want to stay in the business.

Mr. WARNER. Mr. President, I thank my colleague. Another observation of all of us who have had the responsibility of being a chairman and ranking member of committees, I know it is sometimes difficult to get witnesses to appear, but I found thus far, certainly with General Hayden—and I have known him for a number of years—I have a high degree of confidence in his ability to administer this Agency, the CIA. It is of great importance to this Senator because it is in Virginia, if I may say. I view the agency and each and every one of its employees as someone for whom I have an obligation to speak on their behalf when necessary.

I find that General Hayden is very forthcoming, very responsive. When the Chair and ranking member desire to see him, my understanding is he makes himself available. It is not as if we have to wait until a report comes, read it, and then decide to bring him down. The Chair, in consultation with the ranking member—he and his team are quite responsive; am I not correct in that?

Mr. ROBERTS. I am happy to respond to the distinguished chairman. What he has described is accurate. It may be the situation with General Hayden, the Inspector General, or anybody else we request to appear before the committee that they may be in a situation where there would be sensitive intelligence information that at that particular time would not be provided, but there certainly would be the promise that it will be provided if at all possible.

So I am not saying that it is a carte blanche kind of situation. That is to be expected. But the great preponderance of requests we make of the General and of the Inspector General have been very prompt and very full, and, again, all we have to do is ask.

It is just that—I don't want to call it a book report, but that is about where we are. It is on some very important matters. I know members of the committee feel very strongly about this. I can't recall a time when members on the committee have asked me for help to get information from the executive or from the CIA or from any of our intelligence agencies where I haven't worked overtime to get that job done.

I thank the chairman for his question.

Mr. WARNER. Mr. President, I thank my distinguished colleague. I think we have framed for the full Senate the parameters of what I regard are the points to be considered at such time we vote on this amendment.

On that matter, I see the distinguished vice chairman and my colleague. How much time remains under the control of the Senator from Virginia?

The PRESIDING OFFICER. There is 8½ minutes remaining under the control of the Senator from Virginia.

Mr. WARNER. I thank the Chair.

I yield the floor.

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

Mr. ROCKEFELLER. Mr. President, if I might speak for 2 or 3 minutes.

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

Mr. ROCKEFELLER. Mr. President I have a one-page summary. Some of the arguments I have heard are absolutely incredible. The fact of the matter is there isn't any reporting done. For 4 years this has gone on. People say: Just call them in; call in the head of the CIA, whoever it is, before the committee. That doesn't yield information. We have so many requests for information from the CIA that have not been responded to. They are not responsive to the committee because they don't want to be responsive to the committee, because they are directed not

to be responsive to the committee, I am assuming, by the Director of the National Intelligence Office.

We don't have oversight on these programs we are talking about. Anybody who suggests otherwise is wrong. I heard the opposition to the amendment say it is going to slow down the passage of the bill. Now, that is brilliant. We could have started this in a timely fashion, and all the House has to do is accept the Senate amendment, if one were to pass. In a heartbeat, it is done. So what is in that argument?

The Senator from Missouri has stated—and this is very important for my colleagues to hear—that the amendment would require public disclosure of the CIA's interrogation techniques. That is categorically false—wrong. It is a dangerous thing to say. It is an irresponsible thing to say on the floor of the Senate. The reports on the CIA program would be classified and they would be sent to the congressional Intelligence Committees and them alone. So we need to get that straight right now.

The information that is provided in the reports is made to sound like we are rewriting the Constitution 17 times in a hot summer's several months. This is information which has not been provided to us for 4 years, what these reports would be asked to do, and then they could taper off if we found a responsive intelligence community. But we have not been provided these in 4 years. Am I meant to be worried about that? Is it the job of the Senate Intelligence Committee and the House to do oversight? Yes, it is, and we can't because they won't give us the information. The chairman can say that he and I are briefed, but that is seldom and on very discrete matters that don't cover this bill.

So the Senator from Virginia, whom I obviously greatly respect, suggests this amendment is a substitute for oversight. This amendment, to the contrary, is going to allow us to do oversight, and that is my point. It is our responsibility under the law to do it. We cannot do it. We are not allowed to do it. We are systematically prevented from getting information from the people who are required by law to give it to us. That is called not being transparent, and that is called us not knowing what is going on and thus not being able to help with the war on terror.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. ROCKEFELLER. Mr. President, I yield 4 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 4 minutes.

Mr. LEVIN. I thank the Chair, and I thank my friend from West Virginia.

Mr. President, this amendment just simply requires regular reports on detention and interrogation programs. It will give us access to legal opinions. It is essential that this amendment be adopted.

I just want to ask my good friend from West Virginia if he heard the chairman of the Intelligence Committee say that all we have to do is ask for reports and we will get them. Did I hear that right?

Mr. ROCKEFELLER. The Senator from Michigan heard that correctly.

Mr. LEVIN. Well, Mr. President, just one example here. I have been trying to get a memo called the second Bybee memo now for 2½ years. I haven't asked once, I haven't asked twice, I have probably asked a dozen times for the Bybee memo, and my good friend, the chairman of the Armed Services Committee, has asked for the Bybee memo, without any luck. So the idea that all we have to do is ask is just simply wrong.

Chairman WARNER asked on May 13, 2004—2004—that all legal reviews and related documentation concerning approval of interrogation techniques be provided to the committee. It has never been provided.

On April 12, 2005, I submitted questions to John Negroponte, who was the nominee for the Director of National Intelligence, requesting to see if the intelligence community has copies of the so-called Bybee memo.

In April of 2005, I asked General Hayden, on his nomination to be Deputy National Intelligence Director, to see if he could determine if the intelligence community has a copy of the second Bybee memo and to provide it to the committee.

Then on the intelligence budget hearing, April 28, 2005, I asked Secretary Cambone: Can you get us a copy of the second Bybee memo? This has to do with what interrogation techniques are legal. This is written by the Office of Legal Counsel, this memo. He says he will get a reply to me. That was April 2005.

In May of 2005, I wrote the Director of Central Intelligence, Porter Goss, requesting the second Bybee memo. Then I get a letter from the Director of Congressional Affairs, Joe Whipple, saying the memorandum can only be released by the Department of Justice. So in July, I write the Department of Justice, the Attorney General: Can we get a copy of the second Bybee memo? Letter after letter after letter.

Then there is a hearing by the Senate Intelligence Committee, July 2005. This is a hearing on Benjamin Powell's nomination to be general counsel in the Office of the Director of National Intelligence. I asked Mr. Powell: Can you provide us for the record a copy of that second Bybee memo? That decision, we are told a week later, is not a decision he can make; that is within the Department of Justice's purview, and on it goes.

Another year of stonewalling, of denial, of coverup by the Department of Justice of a memo which is so critically important, according to press reports and according now also to the acknowledgment by the Department of Justice. It sets a legal framework for the interrogation of detainees, and the Senate can't get a copy.

Apparently, two Members of the Senate, the chairman and vice chairman of the Intelligence Committee, have seen this memo. That is it. Members of the Intelligence Committee can't get it. Members of the Armed Services Committee can't get it. All we have to do is ask? How many times do we have to ask before we get documents?

There are 70 documents we still can't get from the Department of Defense relative to the operation of the Feith shop. All we have to do is ask? There are documents we have asked of the Intelligence Committee for years beyond the Bybee amendment without any response.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. LEVIN. I thank the Chair, and I thank my good friend from West Virginia for trying to get some institutional support behind these requests that are made by Senators and committees frequently for documents.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, in consultation with my distinguished ranking member, I would like to inquire if there is further debate desired on this amendment. If not, my understanding is the leadership will select a time—joint leadership—for votes on this amendment and others at some point this afternoon and with the full expectation that this matter will be voted on final passage.

So at this time, could I inquire as to the time for the Senator from Virginia and the Senator from Michigan?

The PRESIDING OFFICER. The time is 18 minutes for the Senator from Virginia and 5 minutes 10 seconds for the Senator from West Virginia.

Mr. LEVIN. Mr. President, may I inquire of the Senator from West Virginia as to whether, if he has completed debate on this amendment, he would be willing to yield the balance of his time to the Senator from Michigan for use on the bill?

Mr. ROCKEFELLER. I would, with the exception of 1 minute to summarize just before we vote on it, so you can have the balance of the time.

Mr. LEVIN. Mr. President, I ask unanimous consent that the balance of the time of the Senator from West Virginia minus that 1 minute be assigned to the Senator from Michigan for use or allocation on the bill itself.

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

Mr. WARNER. Mr. President, I would make a similar request that the balance of my time be allocated to me for use on the bill.

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

Mr. WARNER. Therefore, I believe all time has been yielded back on both sides, and we can prepare the floor now for the receiving of an amendment

from the distinguished Senator from Massachusetts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

AMENDMENT NO. 5088

Mr. KENNEDY. Mr. President, I believe my amendment No. 5088 is at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 5088.

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

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

The amendment is as follows:

AMENDMENT NO. 5088

(Purpose: To provide for the protection of United States persons in the implementation of treaty obligations)

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.

Mr. KENNEDY. Mr. President, I understand we have an hour evenly divided on the amendment.

The PRESIDING OFFICER. Under the agreement, the Senator has 25 minutes under his control.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes on the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I have here before me the Department of Army regulations and rules for interrogating prisoners. In the document I have here, which is the official military document to define permissible interrogation techniques, it outlines certain interrogations which are prohibited and it lists these: forcing the person to be naked, perform sexual acts, or pose in a sexual manner; applying beatings, electric shock, burns, or other forms of physical pain; waterboarding; using dogs; inducing hypothermia or heat injury; conducting mock executions; depriving the person of necessary food, water, and medical care.

Those techniques are prohibited by the Department of Defense. Those techniques are prohibited from being used against adversaries in any kind of a conflict, blatant violations the requirement for humane treatment, and what I would consider to be torture. Certainly the Army and Department of Defense have effectively found that out that these techniques do not work. They have banned them and there has not been any objection to it.

What does our amendment say? Well, it says we in the United States are not going to tolerate those techniques if any of our military personnel are captured. But not all of the people who are representing the United States in the war on terror are wearing a uniform. For example, we have SEALs, we have some special operations, special forces, we have CIA agents. We have contractors and aid workers. We have more people around the world looking out after our security interests than any other country in the world.

What does this amendment say? Well, if our military personnel are not going to do this those we capture, we are saying to countries around the world: You cannot do this against any American personnel you are going to capture in this war on terror, or in any other conflict. This amendment is about protecting American personnel who are involved in the war on terror. It is saying to foreign countries: If you use any of these techniques, the United States will say this is a war crime and you will be held accountable. How can anybody be against that? This administration has sown confusion about our commitments to the Geneva Conventions, so that protection does not exist now. That protection does not exist now. Restoring that protection is basically what this amendment is all about.

I am not going to take much time, but I just want to remind our colleagues about how we viewed some of these techniques in our conflicts in previous wars.

On the issue of waterboarding, the United States charged Yukio Asano, a Japanese officer on May 1 to 28, 1947, with war crimes. The offenses were recounted by John Henry Burton, a civilian victim:

After taking me down into the hallway they laid me out on a stretcher and strapped me on. The stretcher was then stood on end with my head almost touching the floor and my feet in the air. They then began pouring water over my face and at times it was impossible for me to breathe without sucking in water. The torture continued and continued. Yukio Asano was sentenced to fifteen years of hard labor. We punished people with fifteen years of hard labor when waterboarding was used against Americans in World War II.

What about the case of Matsukichi Muta, another Japanese officer, tried on April 15 to 25, 1947, for, among other charges, causing a prisoner to receive shocks of electricity and beating prisoners. Shocks of electricity. He was sentenced to death by hanging. Death by hanging. We could go on.

In another case prosecuted from March 3 to April 30, 1948—the Japanese officer was sentenced for exposing prisoners to extreme cold temperatures, forcing them to spend long periods of time in the nude, making the prisoner stand in the cold for long periods of time, hour after hour, throwing water on him and inducing hypothermia. This officer received 15 years of hard labor. Fifteen years.

We didn't tolerate those abuses, and we should not tolerate those abuses inflicted on any Americans who are going to be taken in the war on terror. That is what this amendment is all about. It will tell the Secretary of State to notify every signatory from 194 nations, that if any of their governments are going to use any of these techniques on any Americans that are taken in this war on terror, that we will consider this a violation of the Geneva Conventions and that they will be accountable.

This is to protect our servicemen and servicewomen, those who are in the intelligence agencies, those performing dangerous duties, those who are not wearing the uniform in their battle against terror. We are putting everyone on notice.

We did not make up this list. All these techniques are taken right out of the Defense Department's code of conduct for interrogations.

I would take more time and review for my colleagues, where we tried individuals in World War II and sentenced individuals who performed these kinds of abuses on Americans to long periods of incarceration and even to death.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, at this moment I suggest the absence of a quorum, with the time not chargeable to either side.

Mr. KENNEDY addressed the Chair.

Mr. WARNER. I beg your pardon. I thought my colleague yielded the floor.

Mr. KENNEDY. I did. If you want to yield your time, I wouldn't object to it, but I object if you are calling for equal time.

Mr. WARNER. No, I said charged to neither side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, do I have additional time? How much time have I used?

The PRESIDING OFFICER. There are 18 minutes 20 seconds remaining on the time of the Senator.

Mr. KENNEDY. I would like to yield myself 5 more minutes.

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

Mr. KENNEDY. Mr. President, it will be quite surprising to me if the Senate is not prepared to accept this amendment. I look back at the time that we actually passed the War Crimes Act of 1996. At that time it was offered by Walter B. Jones, a Republican Congressman. It was offered in response to our Vietnam experience, where American servicemen—including one of our own colleagues and dear friends, Senator MCCAIN—had been subject to torture during that period of time.

When this matter came up, both in the House of Representatives and the Senate of the United States, it passed in the Senate of the United States without a single objection. It passed the House by voice vote. This is what it says, under War Crimes, chapter 118:

> Whoever, whether inside or outside the United States, commits a war crime . . .

And it talks about the circumstances—

> . . . as a member of the armed forces of the United States or a national United States. It is in Title 18 so those out of uniform are subject to the code.

So that is the CIA. Those are the SEALS. Those are the people involved now in our war on terror. Then it continues along to define a war crime as a violation of Common Article 3 of the Geneva Conventions. That provision protects against cruel treatment and torture. It prevents the taking of hostages. It prohibits outrages upon personal dignity. Those are effectively the kinds of protections that act affords.

We heard a great deal from the administration, from the President, that he wanted specificity in the War Crimes Act and the Geneva Conventions in terms of what is permitted and what is not permitted. He felt those terms are too vague. Well, on that he is right. There is confusion in the world. There is confusion in the world about our commitment to the Geneva Conventions and what we think it means. There is a good deal of confusion in the world in the wake of what happened at Abu Ghraib. There we found out that these harsh interrogation techniques had been used. Sure, we have had 10 different reviews of what happened over there. What we always find out is it is the lower lights, the corporals and the sergeants who are the ones being tried and convicted. Those in the higher ranks are not. No one has stood up and said clearly, those are violations of the Geneva Conventions. So we have Abu Ghraib, which all of us remember. And it has caused confusion.

We have the circumstances in Guantanamo—the conduct of General Miller, who brought these harsh interrogation techniques to Guantanamo at Secretary Rumsfeld's direction. When the Armed Services Committee questioned his whole standard of conduct, he moved toward early retirement to avoid coming up and facing the music. This caused confusion about our commitments to the Geneva Conventions.

Then you had the Bybee memorandum, which was effectively the rule of law for some 2 years, which permitted torture, any kind of torture, and it said that any individual who is going to be involved in torturing would be absolved from any kind of criminality if the purpose of their abusing any individual was to get information and there was no specific intent to have bodily harm for that individual. This caused confusion about our commitments to the Geneva Conventions.

That was the Bybee amendment. Finally, Attorney General Gonzales had to repudiate that or he never would have been approved as the Attorney General of the United States. That is the record in the Judiciary Committee. I sat through those hearings. I heard the Attorney General say they were repudiating the Bybee memorandum on that.

This is against a considerable background of where we have seen some extraordinary abuses.

Then we have tried to clarify our commitment. We have the action in the Senate of the United States, by a vote of 90 to 9, accepting Senator MCCAIN's Amendment to prohibit cruel, inhumane, and degrading treatment; to make the Army Field Manual the law of the land; to say we are not interested in torture. Senator MCCAIN understands. He believes that waterboarding is torture. He believes using dogs is torture. This is not complicated. We don't have to cause confusion. We have it written down on this list of prohibited techniques. It is not my list of prohibited techniques, but it is written down by the Department of Defense. This amendment says if a foreign country is going to practice these kinds of behavior against an American national who is out there in the war on terror and is being picked up, we are going to consider this to be a war crime. This is about protecting Americans.

I don't understand the hesitancy on the other side, not being willing to accept this amendment. Let's go on the record about what we say is absolutely prohibited and what we know has been favored techniques that have been used by our adversaries at other times. Let's go on the record for clarity.

Looking back in history, at the end of World War II and otherwise, we are all familiar with the different examples where these techniques—frighteningly familiar to the series of techniques used in Iraq and Guantanamo—and are often frequently used against Americans.

I am reminded—I gave illustrations: electric shocks, waterboarding, hypothermia, heat injury. We all remember the 52 American hostages who were held in the U.S. Embassy in Iran. They were subjected to the mock executions.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. KENNEDY. Mr. President, I hope we could accept this amendment. I yield myself 1 more minute.

It basically incorporates what the Senate did several years ago with war crimes. It is trying to respond to what the President says. He wants specificity about what is going to be prohibited and what will not be.

The Department of Defense has found these areas to be off limits for the military. All we are saying is if other countries are going to do that to Americans, they are going to be held accountable.

This is about protecting Americans. That is the least we ought to be able to do for those who are risking their lives in very difficult circumstances.

I yield the floor.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. CLINTON. 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.

Mrs. CLINTON. Mr. President, the Senate is currently debating a bill on how we treat detainees in our custody, and, more broadly, on how we treat the principles on which our Nation was founded.

The implications are far reaching for our national security interests abroad; the rights of Americans at home, our reputation in the world; and the safety of our troops.

The threat posed by the evil and nihilistic movement that has spawned terrorist networks is real and gravely serious. We must do all we can to defeat the enemy with all the tools in our arsenal and every resource at our disposal. All of us are dedicated to defeating this enemy.

The challenge before us on this bill, in the final days of session before the November election, is to rise above partisanship and find a solution that serves our national security interests. I fear that there are those who place a strategy for winning elections ahead of a smart strategy for winning the war on terrorism.

Democrats and Republicans alike believe that terrorists must be caught,

captured, and sentenced. I believe that there can be no mercy for those who perpetrated 9/11 and other crimes against humanity. But in the process of accomplishing that I believe we must hold on to our values and set an example we can point to with pride, not shame. Those captured are going nowhere—they are in jail now—so we should follow the duty given us by the Supreme Court and carefully craft the right piece of legislation to try them. The President acted without authority and it is our duty now to be careful in handing this President just the right amount of authority to get the job done and no more.

During the Revolutionary War, between the signing of the Declaration of Independence, which set our founding ideals to paper, and the writing of our Constitution, which fortified those ideals under the rule of law, our values—our beliefs as Americans—were already being tested.

We were at war and victory was hardly assured, in fact the situation was closer to the opposite. New York City and Long Island had been captured. General George Washington and the Continental Army retreated across New Jersey to Pennsylvania, suffering tremendous casualties and a body blow to the cause of American independence.

It was at this time, among these soldiers at this moment of defeat and despair, that Thomas Paine would write, ''These are the times that try men's souls.'' Soon afterward, Washington lead his soldiers across the Delaware River and onto victory in the Battle of Trenton. There he captured nearly 1,000 foreign mercenaries and he faced a crucial choice.

How would General Washington treat these men? The British had already committed atrocities against Americans, including torture. As David Hackett Fischer describes in his Pulitzer Prize winning book, ''Washington's Crossing,'' thousands of American prisoners of war were ''treated with extreme cruelty by British captors.'' There are accounts of injured soldiers who surrendered being murdered instead of quartered, countless Americans dying in prison hulks in New York harbor, starvation and other acts of inhumanity perpetrated against Americans confined to churches in New York City.

Can you imagine.

The light of our ideals shone dimly in those early dark days, years from an end to the conflict, years before our improbable triumph and the birth of our democracy.

General Washington wasn't that far from where the Continental Congress had met and signed the Declaration of Independence. But it is easy to imagine how far that must have seemed. General Washington announced a decision unique in human history, sending the following order for handling prisoners: ''Treat them with humanity, and let them have no reason to complain of our Copying the brutal example of the British Army in their treatment of our unfortunate brethren.''

Therefore, George Washington, our commander-in-chief before he was our President, laid down the indelible marker of our Nation's values even as we were struggling as a Nation—and his courageous act reminds us that America was born out of faith in certain basic principles. In fact, it is these principles that made and still make our country exceptional and allow us to serve as an example. We are not bound together as a nation by bloodlines. We are not bound by ancient history; our Nation is a new nation. Above all, we are bound by our values.

George Washington understood that how you treat enemy combatants can reverberate around the world. We must convict and punish the guilty in a way that reinforces their guilt before the world and does not undermine our constitutional values.

There is another element to this. I can't go back in history and read General Washington's mind, of course, but one purpose of the rule of law is to organize a society's response to violence. Allowing coercion, coercive treatment, and torturous actions toward prisoners not only violates the fundamental rule of law and the institutionalization of justice, but it helps to radicalize those who are tortured.

Zawahiri, bin Laden's second in command, the architect of many of the attacks on our country, throughout Europe and the world, has said repeatedly that it is his experience that torture of innocents is central to radicalization. Zawahiri has said over and over again that being tortured is at the root of jihad; the experience of being tortured has a long history of serving radicalized populations; abusing prisoners is a prime cause of radicalization.

For the safety of our soldiers and the reputation of our Nation, it is far more important to take the time to do this job right than to do it quickly and badly. There is no reason we need to rush to judgment. This broken process and the blatant politics behind it will cost our Nation dearly. I fear also that it will cost our men and women in uniform. The Supreme Court laid out what it expected from us.

I ask unanimous consent to have printed in the RECORD letters and statements from former military leaders, from 9/11 families, from the religious community, retired judges, legal scholars, and law professors. All of them have registered their concerns with this bill and the possible impact on our effort to win the war against terrorism.

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

SEPTEMBER 12, 2006.

Hon. JOHN WARNER, *Chairman,*
Hon. CARL LEVIN, *Ranking Member,*
Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN WARNER AND SENATOR LEVIN: As retired military leaders of the U.S. Armed Forces and former officials of the Department of Defense, we write to express our profound concern about a key provision of S. 3861, the Military Commissions Act of 2006, introduced last week at the behest of the President. We believe that the language that would redefine Common Article 3 of the Geneva Conventions as equivalent to the standards contained in the Detainee Treatment Act violates the core principles of the Geneva Conventions and poses a grave threat to American service-members, now and in future wars.

We supported your efforts last year to clarify that all detainees in U.S. custody must be treated humanely. That was particularly important, because the Administration determined that it was not bound by the basic humane treatment standards contained in Geneva Common Article 3. Now that the Supreme Court has made clear that treatment of al Qaeda prisoners is governed by the Geneva Convention standards, the Administration is seeking to redefine Common Article 3, so as to downgrade those standards. We urge you to reject this effort.

Common Article 3 of the Geneva Conventions provides the minimum standards for humane treatment and fair justice that apply to anyone captured in armed conflict. These standards were specifically designed to ensure that those who fall outside the other, more extensive, protections of the Conventions are treated in accordance with the values of civilized nations. The framers of the Conventions, including the American representatives, in particular wanted to ensure that Common Article 3 would apply in situations where a state party to the treaty, like the United States, fights an adversary that is not a party, including irregular forces like al Qaeda. The United States military has abided by the basic requirements of Common Article 3 in every conflict since the Conventions were adopted. In each case, we applied the Geneva Conventions—including, at a minimum, Common Article 3—even to enemies that systematically violated the Conventions themselves.

We have abided by this standard in our own conduct for a simple reason: the same standard serves to protect American servicemen and women when they engage in conflicts covered by Common Article 3. Preserving the integrity of this standard has become increasingly important in recent years when our adversaries often are not nation-states. Congress acted in 1997 to further this goal by criminalizing violations of Common Article 3 in the War Crimes Act, enabling us to hold accountable those who abuse our captured personnel, no matter the nature of the armed conflict.

If any agency of the U.S. government is excused from compliance with these standards, or if we seek to redefine what Common Article 3 requires, we should not imagine that our enemies will take notice of the technical distinctions when they hold U.S. prisoners captive. If degradation, humiliation, physical and mental brutalization of prisoners is decriminalized or considered permissible under a restrictive interpretation of Common Article 3, we will forfeit all credible objections should such barbaric practices be inflicted upon American prisoners.

This is not just a theoretical concern. We have people deployed right now in theaters where Common Article 3 is the only source of legal protection should they be captured. If we allow that standard to be eroded, we put their safety at greater risk.

Last week, the Department of Defense issued a Directive reaffirming that the military will uphold the requirements of Common Article 3 with respect to all prisoners in its custody. We welcome this new policy. Our servicemen and women have operated for too

long with unclear and unlawful guidance on detainee treatment, and some have been left to take the blame when things went wrong. The guidance is now clear.

But that clarity will be short-lived if the approach taken by Administration's bill prevails. In contrast to the Pentagon's new rules on detainee treatment, the bill would limit our definition of Common Article 3's terms by introducing a flexible, sliding scale that might allow certain coercive interrogation techniques under some circumstances, while forbidding them under others. This would replace an absolute standard—Common Article 3—with a relative one. To do so will only create further confusion.

Moreover, were we to take this step, we would be viewed by the rest of the world as having formally renounced the clear strictures of the Geneva Conventions. Our enemies would be encouraged to interpret the Conventions in their own way as well, placing our troops in jeopardy in future conflicts. And American moral authority in the war would be further damaged.

All of this is unnecessary. As the senior serving Judge Advocates General recently testified, our armed forces have trained to Common Article 3 and can live within its requirements while waging the war on terror effectively.

As the United States has greater exposure militarily than any other nation, we have long emphasized the reciprocal nature of the Geneva Conventions. That is why we believe—and the United States has always asserted—that a broad interpretation of Common Article 3 is vital to the safety of U.S. personnel. But the Administration's bill would put us on the opposite side of that argument. We urge you to consider the impact that redefining Common Article 3 would have on Americans who put their lives at risk in defense of our Nation. We believe their interests, and their safety and protection should they become prisoners, should be your highest priority as you address this issue.

With respect,

General John Shalikashvili, USA (Ret.); General Joseph Hoar, USMC (Ret.); Admiral Gregory G. Johnson, USN (Ret.); Admiral Jay L. Johnson, USN (Ret.); General Paul J. Kern, USA (Ret.); General Merrill A. McPeak, USAF (Ret.); Admiral Stansfield Turner, USN (Ret.); General William G.T. Tuttle, Jr., USA (Ret.); Lieutenant General Daniel W. Christman, USA (Ret.); Lieutenant General Paul E. Funk, USA (Ret.); Lieutenant General Robert G. Gard Jr., USA (Ret.); Lieutenant General Jay M. Garner, USA (Ret.); Vice Admiral Lee F. Gunn, USN (Ret.); Lieutenant General Arlen D. Jameson, USAF (Ret.); Lieutenant General Claudia J. Kennedy, USA (Ret.).

Lieutenant General Donald L. Kerrick, USA (Ret.); Vice Admiral Albert H. Konetzni Jr., USN (Ret.); Lieutenant General Charles Otstott, USA (Ret.); Vice Admiral Jack Shanahan, USN (Ret.); Lieutenant General Harry E. Soyster, USA (Ret.); Lieutenant General Paul K. Van Riper, USMC (Ret.); Major General John Batiste, USA (Ret.); Major General Eugene Fox, USA (Ret.); Major General John L. Fugh, USA (Ret.); Rear Admiral Don Guter, USN (Ret.); Major General Fred E. Haynes, USMC (Ret.); Rear Admiral John D. Hutson, USN (Ret.); Major General Melvyn Montano, ANG (Ret.); Major General Gerald T. Sajer, USA (Ret.); Major General Michael J. Scotti, Jr., USA (Ret.).

Brigadier General David M. Brahms, USMC (Ret.); Brigadier General James P. Cullen, USA (Ret.); Brigadier General Evelyn P. Foote, USA (Ret.); Brigadier General David R. Irvine, USA (Ret.); Brigadier General John H. Johns, USA (Ret.); Brigadier General Richard O'Meara, USA (Ret.); Brigadier General Murray G. Sagsveen, USA (Ret.); Brigadier General John K. Schmitt, USA (Ret.); Brigadier General Anthony Verrengia, USAF (Ret.); Brigadier General Stephen N. Xenakis, USA (Ret.); Ambassador Pete Peterson, USAF (Ret.); Colonel Lawrence B. Wilkerson, USA (Ret.); Honorable Richard Danzig; Honorable William H. Taft IV; Frank Kendall III, Esq.

THE AMERICAN JEWISH COMMITTEE,
New York, NY, September 27, 2006.

DEAR SENATOR: We write on behalf of the American Jewish Committee, a national human relations organization with over 150,000 members and supporters represented by 32 regional chapters, to urge you to oppose the compromise Military Commissions Act of 2006, S. 3930, and to vote against attaching the bill to H.R. 6061, absent correcting amendments.

To be sure, the compromise that produced the current bill resulted in the welcome addition of provisions making clear that the humane treatment standards of Common Article 3 of the Geneva Conventions provide a floor for the treatment of detainees as well as specifying that serious violations are war crimes. Nevertheless, S. 3930 is unacceptable in its present form for the following reasons:

The bill arguably opens the door to the use of interrogation techniques prohibited by the Geneva Conventions.

It opens the door to the admission of evidence in military commissions obtained by coercive techniques in contravention of constitutional standards and international treaty.

It permits the prosecution to introduce evidence that has not been provided to a defendant in a form sufficient to allow him or her to participate in the preparation of his or her defense.

It unduly restricts defendants' access to exculpatory evidence available to the government.

It unduly restricts access to the courts by habeas corpus and appeal.

It interprets the definition of Common Article 3 violations to exclude sexual assaults such as those that occurred at Abu Ghraib.

There is no doubt that the authorities entrusted with our defense must be afforded the resources and tools necessary to protect us from the serious threat that terrorists continue to pose to all Americans, and, indeed, the civilized world. But the homeland can be secured in a fashion consistent with the values of due process and fair treatment for which Americans have fought and for which they continue to fight. We urge you to revisit and revise this legislation so that it accords with our highest principles.

Respectfully,

E. ROBERT GOODKIND,
President.

RICHARD T. POLTIN,
Legislative Director and Counsel.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
New York, NY, September 27, 2006.

Re Military Commission Act of 2006.

Hon. BILL FRIST,
U.S. Senate Majority Leader,
Washington, DC.

DEAR MAJORITY LEADER FRIST: I am writing on behalf of the New York City Bar Association to urge you to oppose the Administration's proposed Military Commissions Act of 2006 (the ''Act''). The Association is an independent non-governmental organization of more than 22,000 lawyers, judges, law professors and government officials. Founded in 1870, the Association has a long history of dedication to human rights and the rule of law, and a particularly deep historical engagement with the law of armed conflict and military justice.

The Association has now reviewed the amended version of this legislation introduced on September 22, 2006, following the compromise agreement between Senators WARNER, MCCAIN and GRAHAM, on one side, and the Administration on the other. The compromise addresses two distinct aspects of the Administration's proposal: first, the operation of the military commissions which have been envisioned, and second, aspects of United States enforcement of its treaty obligations under the Geneva Conventions. We will address our concerns in this order, keeping in mind particularly the position of our members who may be called upon to serve as defense counsel, prosecutors and judges in the commissions process, and the interests of our members who presently or may in the future serve their nation in the uniformed services or in the intelligence services.

The compromise clarifies many of the most important failings of the prior draft by bringing the military commissions process far closer to the standards established by the Uniform Code of Military Justice and the Manual on Courts-Martial. The Association shares the view presented by the service judge advocates general that the existing court-martial system, which in many respects is exemplary, provides an appropriate process for trial of traditional battlefield detainees as well as the command and control structures of terrorist organizations engaged in combat with the United States, and that the commissions should closely follow that model. The changes produced here in that regard are therefore welcome.

However, the bill gives the military judge discretion to admit coerced testimony if, as will presumably be the case, the coercion occurred before the enactment of the Detainee Treatment Act on December 31, 2005. Hearsay can also be admitted into evidence unless the accused carries a burden (traditionally accorded to the party offering the evidence, i.e., the prosecution) to show that the hearsay is not probative or reliable. This shift of burden is inconsistent with historical practice and would probably taint the proceedings themselves, particularly if the accused is not given access to the facts underlying the evidence. Admission of evidence in this circumstance would discredit the proceedings, undermine the appearance of fairness, and might, if it was critical to a conviction, constitute a grave breach of Common Article 3. These provisions do not serve the interests of the United States in demonstrating the heinous nature of terrorist acts, if such can be established in the military commissions.

The enforcement provisions raise far more troubling issues. In particular, we are concerned by the definition of ''cruel treatment'' which does not correspond to the existing law interpreting and enforcing Common Article 3's notion of ''cruel treatment.'' The definition incorporates a category of ''serious physical pain or suffering,'' but defines that category in a way that does not encompass many types of serious physical suffering that can be and are commonly the result of ''cruel treatment'' prohibited by Common Article 3. The Common Article 3 offense of ''cruel treatment'' will remain prohibited, even if not specifically criminalized by this provision. There is really no basis to doubt that Common Article 3 prohibits techniques such as waterboarding, long-time

standing, and hypothermia or cold cell if indeed they are not precluded as outright torture. However, the language of the current draft would create a crime defined in terms different from the accepted Geneva meanings, thereby introducing ambiguity where none previously existed.

This ambiguity produces risks for United States personnel since it suggests that those who employ techniques such as waterboarding, long-time standing and hypothermia on Americans cannot be charged for war crimes. Moreover, Common Article 3 contains important protections for United States personnel who do not qualify for prisoner of war treatment under the Third Geneva Convention. This may include reconnaissance personnel, special forces operatives, private military contractors and intelligence service paramilitary professionals. Erosion of Common Article 3 standards thus directly imperils the safety of United States personnel in future conflicts. We strongly share the perspective of five former chairs of the Joint Chiefs of Staff in their appeal to Congress to avoid any erosion of these protections.

The draft also seeks to strike the ability of hundreds of detainees held as ''enemy combatants'' to seek review of their cases through petitions of habeas corpus. The Great Writ has long been viewed as one of the most fundamental rights under our legal system. It is an essential guarantor of justice in difficult cases, particularly in a conflict which the Administration suggests is of indefinite duration, possibly for generations. Holding individuals without according them any right to seek review of their status or conditions of detention raises fundamental questions of justice. This concern is compounded by the draft's provision that the Geneva Convention is unenforceable, thus leaving detainees with no recourse should they receive cruel and inhuman treatment.

On July 19, 2006, Michael Mernin, the chair of our Committee on Military Affairs and Justice, testified before the Senate Armed Services Committee concerning this legislative initiative. He appealed at that time for caution and proper deliberation in the legislative process and urged that a commission of military law experts be convened to advise Congress on the weighty issues presented. The current legislative project continues to show severe flaws which are likely to prove embarrassing to the United States if it is enacted. We therefore strongly urge that the matter receive further careful consideration before it is acted upon and that the advice of prominent military justice and international humanitarian law experts be secured and followed in the bill's finalization.

Very truly yours,

BARRY KAMINS,
President.

SEPTEMBER 14, 2006.

DEAR SENATOR: As members of families who lost loved ones in the 9/11 attacks, we are writing to express our deep concern over the provisions of the Administration's proposed Military Commissions Act of 2006.

There are those who would like to portray the legislation as a choice between supporting the rights of terrorists and keeping the United States safe. We reject this argument. We believe that adopting policies against terrorism which honor our values and our international commitments makes us safer and is the smarter strategy.

We do not believe that the United States should decriminalize cruel and inhuman interrogations. The Geneva Convention rules against brutal interrogations have long had the strong support of the U.S. because they protect our citizens. We should not be sending a message to the world that we now believe that torture and cruel treatment is sometimes acceptable. Moreover, the Administration's own representatives at the Pentagon have strongly affirmed in just the last few days that torture and abuse do not produce reliable information. No legislation should have your support if it is at all ambiguous on this issue.

Nor do we believe that it is in the interest of the United States to create a system of military courts that violate basic notions of due process and lack truly independent judicial oversight. Not only does this violate our most cherished values and send the wrong message to the world, it also runs the risk that the system will again be struck down resulting in even more delay.

We believe that we must have policies that reflect what is best in the United States rather than compromising our values out of fear. As John McCain has said, ''This is not about who the terrorists are, this is about who we are.'' We urge you to reject the Administration's ill-conceived proposals which will make us both less safe and less proud as a nation.

Sincerely,

Marilynn Rosenthal, Nicholas H. Ruth, Adele Welty, Nissa Youngren, Terry Greene, John LeBlanc, Andrea LeBlanc, Ryan Amundson, Barry Amundson, Colleen Kelly, Terry Kay Rockefeller, John William Harris.

David Potorti, Donna Marsh O'Connor, Kjell Youngren, Blake Allison, Tia Kminek, Jennifer Glick, Lorie Van Auken, Mindy Kleinberg, Anthony Aversano, Paula Shapiro, Valerie Lucznikowska, Lloyd Glick.

James and Patricia Perry, Anne M. Mulderry, Marion Kminek, Alissa Rosenberg-Torres, Kelly Campbell, Bruce Wallace, John M. Leinung, Kristen Breitweiser, Patricia Casazza, Michael A. Casazza, Loretta J. Filipov, Joan Glick.

SEPTEMBER 20, 2006.

Re Evangelical religious leaders speak out on cruel, inhuman, degrading treatment.

DEAR MEMBERS OF CONGRESS: The Congress faces a defining question of morality in the coming hours: whether it is ever right for Americans to inflict cruel and degrading treatment on suspected terrorist detainees. We are writing to express our strong support for the approach taken on this issue by Senators McCain, Warner and Graham and a strong, bipartisan majority of the Senate Armed Services Committee.

We read credible reports—some from FBI agents—that prisoners have been stripped naked, sexually humiliated, chained to the floor, and left to defecate on themselves. These and other practices like ''waterboarding'' (in which a detainee is made to feel as if he is being drowned) may or may not meet the technical definition of torture, but no one denies that these practices are cruel, inhuman, and degrading.

Today, the question before the Congress is whether it will support Sen. McCain's efforts to make it clear to the world that the U.S. has outlawed such abuse or support an Administration proposal which creates grave ambiguity about whether prisoners can legally be abused in secret prisons without Red Cross access.

Evangelicals have often supported the Administration on public policy questions because they believe that no practical expediency, however compelling, should determine fundamental moral issues of marriage, abortion, or bioethics. Instead, these questions should be resolved with principles of revealed moral absolutes, granted by a righteous and loving Creator.

As applied to issues of cruel, inhuman and degrading treatment, the practical application of this moral outlook is clear: even if it is expedient to inflict cruelty and degradation on a prisoner during interrogation (and experts seem very much divided on this question), the moral teachings of Christ, the Torah and the Prophets do not permit it for those who bear the Imago Dei.

It will not do to say that the President's policy on the treatment of detainees already rules out torture because serious ambiguities still remain—ambiguities that carry heavy moral implications and that are intended to preserve options that some would rather not publicly defend.

The terrorist attacks of September 11 were one of the most heinous acts ever visited upon this nation. The Commander in Chief must provide U.S. authorities with the practical tools and policies to fight a committed, well-resourced, and immoral terrorist threat. At the same time, the President must also defend the deepest and best values of our moral tradition.

As Christians from the evangelical tradition, we support Senator McCain and his colleagues in their effort to defend the perennial moral values of this nation which are embodied in international law and our domestic statutes. The United States Congress must send an unequivocal message that cruel, inhuman and degrading treatment has no place in our society and violates our most cherished moral convictions.

Sincerely,

Rev. Dr. David Gushee, Union University, Jackson, TN.

Gary Haugen, president, International Justice Mission.

Rev. Dr. Roberta Hestenes, teaching pastor, Community Presbyterian Church, Danville, CA.

Frederica Mathewes-Green, author and commentator.

Dr. Brian D. McLaren, founder, Cedar Ridge Community Church, Spencerville, MD.

Rev. Dr. Richard Mouw, president, Fuller Theological Seminary.

Dr. Glen Stassen, professor of Christian Ethics, Fuller Theological Seminary.

Dr. Nicholas Wolterstorff, professor of Philosophical Theology, Yale University.

Mrs. CLINTON. Now these values—George Washington's values, the values of our founding—are at stake. We are debating far-reaching legislation that would fundamentally alter our Nation's conduct in the world and the rights of Americans here at home. And we are debating it too hastily in a debate too steeped in electoral politics.

The Senate, under the authority of the Republican majority and with the blessing and encouragement of the Bush-Cheney administration, is doing a great disservice to our history, our principles, our citizens, and our soldiers.

The deliberative process is being broken under the pressure of partisanship and the policy that results is a travesty.

Fellow Senators, the process for drafting this legislation to correct the administration's missteps has not befitted the ''world's greatest deliberative body.'' Legitimate, serious concerns raised by our senior military and intelligence community have been marginalized, difficult issues glossed over, and debates we should have had have been shut off in order to pass a misconceived bill before Senators return home to campaign for reelection.

For the safety of our soldiers and the reputation of our Nation, it is far more important to take the time to do the job right than to do it quickly and badly. There is no reason other than partisanship for not continuing deliberation to find a solution that works to achieve a true consensus based on American values.

In the last several days, the bill has undergone countless changes—all for the worse—and differs significantly from the compromise brokered between the Bush administration and a few Senate Republicans last week.

We cannot have a serious debate over a bill that has been hastily written with little opportunity for serious review. To vote on a proposal that evolved by the hour, on an issue that is so important, is an insult to the American people, to the Senate, to our troops, and to our Nation.

Fellow Senators, we all know we are holding this hugely important debate in the backdrop of November's elections. There are some in this body more focused on holding on to their jobs than doing their jobs right. Some in this chamber plan to use our honest and serious concerns for protecting our country and our troops as a political wedge issue to divide us for electoral gain.

How can we in the Senate find a proper answer and reach a consensus when any matter that does not serve the majority's partisan advantage is mocked as weakness, and any true concern for our troops and values dismissed demagogically as coddling the enemy?

This broken process and its blatant politics will cost our Nation dearly. It allows a discredited policy ruled by the Supreme Court to be unconstitutional to largely continue and to be made worse. This spectacle ill-serves our national security interests.

The rule of law cannot be compromised. We must stand for the rule of law before the world, especially when we are under stress and under threat. We must show that we uphold our most profound values.

We need a set of rules that will stand up to judicial scrutiny. We in this Chamber know that a hastily written bill driven by partisanship will not withstand the scrutiny of judicial oversight.

We need a set of rules that will protect our values, protect our security, and protect our troops. We need a set of rules that recognizes how serious and dangerous the threat is, and enhances, not undermines, our chances to deter and defeat our enemies.

Our Supreme Court in its Hamdan v. Rumsfeld decision ruled that the Bush administration's previous military commission system had failed to follow the Constitution and the law in its treatment of detainees.

As the Supreme Court noted, the Bush administration has been operating under a system that undermines our Nation's commitment to the rule of law.

The question before us is whether this Congress will follow the decision of the Supreme Court and create a better system that withstands judicial examination—or attempt to confound that decision, a strategy destined to fail again.

The bill before us allows the admission into evidence of statements derived through cruel, inhuman and degrading interrogation. That sets a dangerous precedent that will endanger our own men and women in uniform overseas. Will our enemies be less likely to surrender? Will informants be less likely to come forward? Will our soldiers be more likely to face torture if captured? Will the information we obtain be less reliable? These are the questions we should be asking. And based on what we know about warfare from listening to those who have fought for our country, the answers do not support this bill. As Lieutenant John F. Kimmons, the Army's Deputy Chief of Staff for Intelligence said, ''No good intelligence is going to come from abusive interrogation practices.''

The bill also makes significant changes to the War Crimes Act. As it is now written, the War Crimes Act makes it a federal crime for any soldier or national of the U.S. to violate, among other things, Common Article 3 of the Geneva Conventions in an armed conflict not of an international character. The administration has voiced concern that Common Article—which prohibits ''cruel treatment or torture,'' ''outrages against human dignity,'' and ''humiliating and degrading treatment''—sets out an intolerably vague standard on which to base criminal liability, and may expose CIA agents to jail sentences for rough interrogation tactics used in questioning detainees.

But the current bill's changes to the War Crimes Act haven't done much to clarify the rules for our interrogators. What we are doing with this bill is passing on an opportunity to clearly state what it is we stand for and what we will not permit.

This bill undermines the Geneva Conventions by allowing the President to issue Executive orders to redefine what permissible interrogation techniques happen to be. Have we fallen so low as to debate how much torture we are willing to stomach? By allowing this administration to further stretch the definition of what is and is not torture, we lower our moral standards to those whom we despise, undermine the values of our flag wherever it flies, put our troops in danger, and jeopardize our moral strength in a conflict that cannot be won simply with military might.

Once again, there are those who are willing to stay a course that is not working, giving the Bush-Cheney administration a blank check—a blank check to torture, to create secret courts using secret evidence, to detain people, including Americans, to be free of judicial oversight and accountability, to put our troops in greater danger.

The bill has several other flaws as well.

This bill would not only deny detainees habeas corpus rights—a process that would allow them to challenge the very validity of their confinement—it would also deny these rights to lawful immigrants living in the United States. If enacted, this law would give license to this Administration to pick people up off the streets of the United States and hold them indefinitely without charges and without legal recourse.

Americans believe strongly that defendants, no matter who they are, should be able to hear the evidence against them. The bill we are considering does away with this right, instead providing the accused with only the right to respond to the evidence admitted against him. How can someone respond to evidence they have not seen?

At the very least, this is worth a debate on the merits, not on the politics. This is worth putting aside our differences—it is too important.

Our values are central. Our national security interests in the world are vital. And nothing should be of greater concern to those of us in this chamber than the young men and women who are, right now, wearing our Nation's uniform, serving in dangerous territory.

After all, our standing, our morality, our beliefs are tested in this Chamber and their impact and their consequences are tested under fire, they are tested when American lives are on the line, they are tested when our strength and ideals are questioned by our friends and by our enemies.

When our soldiers face an enemy, when our soldiers are in danger, that is when our decisions in this Chamber will be felt. Will that enemy surrender? Or will he continue to fight, with fear for how he might be treated and with hate directed not at us, but at the patriot wearing our uniform whose life is on the line?

When our Nation seeks to lead the world in service to our interests and our values, will we still be able to lead by example?

Our values, our history, our interests, and our military and intelligence experts all point to one answer. Vladimir Bukovsky, who spent nearly 12 years in Soviet prisons, labor camps, and psychiatric hospitals for nonviolent human rights activities had this to say. ''If Vice President Cheney is right, that some 'cruel, inhumane, or degrading' treatment of captives is a necessary tool for winning the war on terrorism, then the war is lost already.''

Let's pass a bill that's been honestly and openly debated, not hastily cobbled together.

Let's pass a bill that unites us, not divides us.

Let's pass a bill that strengthens our moral standing in the world, that declares clearly that we will not retreat from our values before the terrorists.

We will not give up who we are. We will not be shaken by fear and intimidation. We will not give one inch to the evil and nihilistic extremists who have set their sights on our way of life.

I say with confidence and without fear that we are the United States of America, and that we stand now and forever for our enduring values to people around the world, to our friends, to our enemies, to anyone and everyone.

Before George Washington crossed the Delaware, before he could achieve that long-needed victory, before the tide would turn, before he ordered that prisoners be treated humanely, he ordered that his soldiers read Thomas Paine's writing. He ordered that they read about the ideals for which they would fight, the principles at stake, the importance of this American project.

Now we find ourselves at a moment when we feel threatened, when the world seems to have grown more dangerous, when our Nation needs to ready itself for a long and difficult struggle against a new and dangerous enemy that means us great harm.

Just as Washington faced a hard choice, so do we. It's up to us to decide how we wage this struggle and not up to the fear fostered by terrorists. We decide.

This is a moment where we need to remind ourselves of the confidence, fearlessness, and bravery of George Washington—then we will know that we cannot, we must not, subvert our ideals—we can and must use them to win.

Finally, we have a choice before us. I hope we make the right choice. I fear that we will not; that we will be once again back in the Supreme Court, and we will be once again held up to the world as failing our own high standards.

When our soldiers face an enemy, when our soldiers are in danger, will that enemy surrender if he thinks he will be tortured? Will he continue to fight? How will our men and women be treated?

I hope we both pass the right kind of legislation and understand that it may very well determine whether we win this war against terror and protect or troops who are valiantly fighting for us.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that it not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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.

Mr. LEVIN. Mr. President, the Kennedy amendment would require the Secretary of State to notify other countries around the world that seven specific categories of actions, each of which is specifically prohibited by the Army Field Manual, are punishable offenses under common Article 3 of the Geneva Conventions that would be prosecuted as war crimes if applied to any United States person. Those seven categories of actions are: (1) Forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner; (2) applying beatings, electric shock, burns, or other forms of physical pain; (3) ''waterboarding''; (4) using military working dogs; (5) inducing hypothermia or heat injury; (6) conducting mock executions; and (7) depriving the detainee of necessary food, water, or medical care.

I listened very carefully to what my colleague from Virginia, the Chairman of the Armed Services Committee, had to say about this amendment. He stated:

> Now Senator Kennedy's amendment, depending on how the votes come, and I'm of the opinion that this chamber will reject it, I don't want that rejection to be misconstrued by the world in any way as asserting that the techniques mentioned in the amendment are consistent with the Geneva Convention or that they could legitimately be employed against our troops or anyone else. . . . We must not leave that impression as a consequence of the decisions soon to be made by way of vote on the Kennedy amendment. The types of conduct described in this amendment, in my opinion, are in the category of grave breaches of Common Article Three of the Geneva Convention. These are clearly prohibited by the bill.

I am in complete agreement with Senator WARNER that each of these practices is a grave breach of Common Article 3. I agree that these practices are unlawful today and that they will continue to be unlawful if this bill is enacted into law.

However, I am concerned that the administration may have muddied the record on these issues through its unwillingness to clearly state what practices are permitted, and what practices are prohibited, under Common Article 3. While I reach the same conclusion as Senator WARNER as to the lawfulness of the practices listed in the Kennedy amendment, I am afraid that others around the world may not.

We agree that these practices are prohibited by Common Article 3. We need to send a clear message to the world that this is the case, so that the rest of the world will abide by the same standard. That is why I strongly support the Kennedy amendment.

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

The PRESIDING OFFICER. Ten minutes remain under the Senator's control.

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

Mr. President, I want to point out why this is so necessary and so essential.

In reviewing the underlying legislation, if you look under the provisions dealing with definitions on page 70 and 71, and then read on, you will find that it is difficult to read that without having a sense of the kind of vagueness which I think surrounds prohibited interrogation techniques. It talks about substantial risks and extreme physical pain. But the statute does not have specifics to define the areas which are prohibited. The techniques in my amendment are the same ones the Department of the Army and, to my best knowledge, our colleague and friend from Arizona has identified. Voting for my amendment would provide those specifics.

The President has asked for specificity, but he has refused to say whether Common Article 3 would prohibit these kinds of acts. That has left the world doubting our commitment to Common Article 3 and has endangered our people around the globe—those who are working for the United States in the war on terror. The administration's obfuscation comes at a great risk.

This amendment provides the clarity and sends a message to the world that these techniques are prohibited. They are prohibited from our military bringing them to bear on any combatants. We interpret the legislation so that any country in the world that has signed on to the Geneva Conventions, any of those countries that are going to practice activities prohibited by the field manual, that I consider to be torture, are going to be held by the United States interrogation committing a war crime. This is important. It is essential. It is necessary.

The general concept was improved without objection a number of years ago in the wake of the Vietnam situation, regarding the definition of war crimes. We ought to restate and recommit ourselves to protecting Americans involved in the war on terror and ensure they will not be subject to these activities.

At the present time, without this amendment, it will be left open. If we accept this amendment, it would make it clear it is prohibited. That is what we should do.

I withhold the remainder of my time.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Virginia.

Mr. WARNER. I suggest the absence of a quorum and that it not be chargeable to either side.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, I ask unanimous consent the pending amendment be laid aside so that I may offer an amendment.

Mr. WARNER. Mr. President, reserving the right to object, and I will not object, I would simply like to make it clear in laying aside the amendment

the times remaining under the control of the Senator from Virginia and the Senator from Michigan remain in place. We will now, to accommodate our distinguished senior colleague, go off of the Kennedy amendment and proceed to address his amendment.

The PRESIDING OFFICER. That would be the case.

Without objection, it is so ordered.

The Senator from West Virginia is recognized.

AMENDMENT NO. 5104

(Purpose: To prohibit the establishment of new military commissions after December 31, 2011)

Mr. BYRD. Mr. President, I thank the Chair, and I also thank my very able and distinguished friend from Virginia.

Mr. President, I shall offer an amendment today that provides a 5-year sunset to any Presidential authorization of any military commission enacted under the legislation currently being debated. This amendment which I shall offer is essential to the ability of the Congress to retain its power of oversight and as an important check on future executive actions.

As I stand here now, Members are readying themselves to beat a path home to their States—I understand that—so they may get in their final politicking. Unfortunately, though, in the feverish climate of a looming election, the most important business of the Senate may suffer. I have seen that happen over the years. This is no surprise. We have seen before the fever of politics can undermine the serious business of the Congress once November and the winds of November draw nigh. We have seen the mistakes that can come when Congress rushes to legislate without the benefit of thorough vetting by committees, without adequate debate, without the opportunity to offer amendments.

Likewise, when legislation is pushed as a means of political showboating—we all know what that is—instead of by a diligent commitment to our constitutional duties, the results can be disastrous.

In fact, there have been various proposals to bring congressional oversight to the military tribunals which were first authorized in November, 2001. Senators SPECTER, LEAHY, and DURBIN were instrumental in attempting to push back against unilateral actions by the President to establish these commissions. These attempts were to reassert the power of the Congress—yes, the constitutional duty embodied in Article I of this Constitution that is vested in the Congress and in the Congress alone, to make our country's laws and specifically to make rules concerning captures on land and water.

Let me say that again. I will repeat the verbiage of the Constitution: to make our country's laws and specifically to ''make rules concerning captures on land and water.''

Nothing came of these proposals. Since then, the Congress has ignored its responsibilities and this most important issue has been shoved aside.

What is this new impetus spurring congressional action and a renewed interest in the issue? Did Congress find its way back to embracing its Article I duties? No. Did the executive branch wake up to realize it is not within its purview to dictate the laws of the land? No. It was the Supreme Court's decision in the Hamdan case.

While the President grabbed the wheel and the Congress dozed, the Court stepped in to remind us of the separation of powers and the constitutional role of each branch, thank God. Yes, thank God for the separation of powers envisioned by our forefathers. Thank God for the Supreme Court. Yes, I said this before; I say it again: Thank God for the Supreme Court.

It is no coincidence that the traditional pathways of legislation through the committee and amendment process and ample opportunity for debate are the best recourse against the enactment of bad, bills.

This is the way the Senate was designed to operate and this is how it separates in the best interests of the people.

Unfortunately, because of the timing of the Supreme Court's decision and the charged atmosphere of the midterm elections, we are again confronted with slap-happy legislation that is changing by the minute.

The bill reported by the Senate Committee on Armed Services, which I supported, was the product of a thorough process, a deliberative process. Unfortunately, this bill's progress was halted by the administration's objections, and the product suffered mightily. Then, in closed-door negotiations with the White House, many of the successes announced less than a week ago in the previous version were trashed.

When the administration met stiff opposition to its views by former JAG—judge advocate general—officers and previous members of its own Cabinet, it realized it must come back to the table. Last Friday's version of the bill was superseded by Monday's version, and changes are still forthcoming. In such a frenzied, frenetic, and uncertain state, who really knows the nature of the beast? This bill could very well be the most important piece of legislation—certainly one of the most important pieces of legislation—this Congress enacts, and the adoption of my amendment, which I shall offer, ensures—ensures—a reasonable review of the law authorizing military tribunals.

There is nothing more important to scrutinize than the process of bringing suspected terrorists to justice for their crimes in a fair proceeding, without the taint—without the taint—of a kangaroo court. Those are the values of our country. We dare not handle the matter sloppily. The Supreme Court has once struck down the President's approach to military commissions, has it not? Do we want the product of this debate subjected to the same fate? Do we want it stricken also?

The original authorization of the PATRIOT Act is a case study of the risks we run in legislating from the hip—too much haste—and how, in our haste, we can place in jeopardy those things we hold most dear. Apparently, the Senate has not recognized the error of its ways. This legislation is complex. This legislation defines the processes and the procedures for bringing enemy combatants to trial for offenses against our country, and it involves our obligations under the Geneva Conventions. This bill defines rules of evidence, it determines defendants' access to secret evidence, and it seeks to clarify what constitutes torture. We cannot afford to get this wrong.

As with the PATRIOT Act, my amendment offers us an opportunity to provide a remedy for the unanticipated consequences that may arise as a result of hasty congressional action. Along with the sweeping changes made by the PATRIOT Act, the great hope included in it was the review that was required by the sunset provision. Everyone knows the saying that hindsight is 20–20, but the use of this type of congressional review gives us the opportunity both to strengthen the parts of the law that may be found to be weak, and to right the wrongs of past transgressions.

So if we will not today legislate in a climate of steady deliberation, then let us at least prescribe for ourselves an antidote for any self-inflicted wounds. Let us prescribe for ourselves the remedy of reason—the remedy of reason. Let this be the age of reason once more. Sunset provisions have historically been used to repair the unforeseen consequences of acting in haste. You have heard that haste makes waste. If ever there were a piece of legislation that cries out to be reviewed with the benefit of hindsight, it is the current bill.

My amendment, which I hold in my hand, provides that opportunity through a 5-year sunset provision. Now, what is wrong with that? There is nothing wrong with that—a 5-year sunset provision. And I thank Senator OBAMA and I thank Senator CLINTON for their cosponsorship of my amendment. I urge my colleagues to support it.

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for himself and Mr. OBAMA, and Mrs. CLINTON, proposes an amendment numbered 5104:

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.''.

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia.

Mr. WARNER. Mr. President, we are about to receive a copy of the amendment. But I listened very carefully to my distinguished colleague's remarks. As he well knows, in my relatively short 28 years in the Senate, I have listened to him and I have the highest respect for his judgment, and particularly as it relates to how the legislative body should discharge its constitutional responsibilities and how, also, it should not try to discharge its constitutional responsibilities. And I guess my opposition falls, most respectfully, in the latter category because I find this Congress has a very high degree of vigilance in overseeing the exercise of the executive powers as it relates to the war against those whom I view as jihadists, those who have no respect for, indeed, the religion which they have ostensibly committed their lives to, and those who have no respect for human life, including their human life.

It is a most unusual period in the history of our great Republic. The good Senator, having been a part of this Chamber for nearly a half century, has seen a lot of that history unfold. The Senator and I have often discussed the World War II period. That is when my grasp of history began to come into focus. And, indeed, the Senator himself was engaged in his activities in the war effort, as we all were in this Nation.

The ensuing conflicts, while they have been not exactly like World War II, have been basically engaging those individuals acting in what we refer to as their adhering to a state, an existing government that has promulgated rules and regulations, such as they may be, for the orders issued to their troops, most of whom wore uniforms, certainly to a large degree in the war that followed right after World War II, the Korean war. Most of those individuals in that conflict had some vestige of a uniform, conducting their warfare under state-sponsored regulations. I had a minor part in that conflict and remember it quite well.

Vietnam came along, and there we saw the beginning of the blurring of state sponsored. Nevertheless, it was present. The uniforms certainly lacked the clarity that had been in previous conflicts. And on the history goes.

But this one is so different, I say to my good friend, the Senator from West Virginia. And I think our President, given his duty as Commander in Chief under the Constitution, has to be given the maximum flexibility as to how he deals with these situations. We see that in a variety of issues around here. But, nevertheless, it is the exercise of executive authority, and that exercise of executive authority must also be subject to the oversight of the Congress of the United States.

But I feel that in the broad powers conferred on the executive branch to carry out its duty to defend the Nation in the ongoing threat against what we generally refer to as terrorism—but more specifically the militant jihadists—we have to fight with every single tool we have at our disposal, consistent with the law of this Nation and international law. And, therefore, we are here in this particular time addressing a bill which provides for meting out justice, a measure of justice, to certain individuals who have been apprehended in the course of the war against this militant jihadist terrorist group.

I find it remarkable, as I have worked it through with my other colleagues, that they are alien, they are unlawful by all international standards in the manner they conduct the war. Yet this great Nation, from the passage of this bill, is going to mete out a measure of justice as we understand it.

Now, the Senator's concern is—and it always should be; it goes back to the time of George Washington and the Congress at that time—the fear of the overexercise of the authorities within the executive branch. But I think to put a clause and restriction, such as the Senator recommends in his amendment, into this bill would, in a sense, inhibit the ability of the President to rapidly exercise all the tools at his disposal.

I say to the Senator, your bill says:

> The authority of the President to establish new military commissions under this section shall expire. . . . 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.

That could be misconstrued. This war we are engaged in, most notably on the fronts of Afghanistan and Iraq today, we see where it could spread across our globe and has—not to the degree of the significance of Iraq or Afghanistan, but it has spread. Other nations have become the victims, subject to the threats, subject to the overt actions such as took place in Spain and other places of the world. We should not have overhanging this important bill any such restriction as you wish to impose by virtue of what we commonly call a sunset. I think that would not be correct. It could send the wrong message. We have to rely upon the integrity of the two branches of the Congress to be ever watchful in their oversight, ever unrestrained in the authority they have under the Constitution. As we commonly say around here, what the Congress does one day, it can undo the next day.

If, in the course of exercising our authority under the doctrine of the separation of powers—how many times have I heard the distinguished Senator from West Virginia discuss the doctrine of the separation of powers? So often. I remember when we were vigilantly trying to protect those powers reserved unto the Congress from an encroachment by the executive branch.

So for that reason I most respectfully say that I do not and I urge other colleagues not to support this amendment but to continue in their trust in this institution, in the Senate and in the House, to exercise their constitutional responsibilities in such a way that we will not let the executive branch at any time transcend what we believe are certain parameters that we have set forth in this bill regarding the trials and the conduct of interrogations.

I think an extraordinary legislation that I was privileged to be involved in, which garnered 90-some votes, was the Detainee Act, sponsored by our distinguished colleague, Mr. MCCAIN. That was landmark legislation. From that legislation has come now what we call the Army Field Manual, in which we published to the world what America will do in connection with those persons—the unlawful aliens who come into our custody by virtue of our military operations, and how they will be dealt with in the course of interrogation. That was an extraordinary assertion by the Congress, within the parameters of its powers, as to what they should do, the executive branch.

But a sunset date for the authority to hold military commissions, in my judgment, is not in the best interests, at this time in this war, of our country.

I know there are other speakers. How much time do I have remaining?

The PRESIDING OFFICER. Nineteen minutes 20 seconds.

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

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

Mr. BYRD. Mr. President, the Senator knows my great respect for him. It is an abiding respect. When I look at him, I see a man—a Member of this Senate—who has had vast experience and worn many coats of honor. I see a man who stands by his word, who keeps his word, and is always very meticulous in criticizing another Senator or criticizing legislation. He is most circumspect, most respectful to his colleagues, and most respectful to the Constitution. But I am abhorrent—I cannot write very well anymore. I would like to be able to write down words that other Senators say in a debate. But I cannot write. So I may have misinterpreted, or I may misstate the words. But I cannot understand why this legislation would not be in the best interests of my country.

I believe the Senator said—he certainly implied strongly—that this legislation would not be in the best interests of our country. If I am wrong, I know the Senator will correct me. Let me read, though, the amendment:

> 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.''

Mr. President, what is wrong with that language? How would that language not be in the interest of our country? I think we are all subject to

error. Adam and Eve were driven from the Garden of Eden because of error. So from the very beginning of history, the very history of mankind, this race of human beings, there has been evidence of errors, mistakes. People did not foresee the future, and this language is a protection against that.

What is wrong with providing an expiration date for the authority given to the President in this bill, after a period of 5 years? Can we not be mistaken? Might we not see the day when we wish that we had an automatic opportunity to review this? Five years is a long time. Five years is ample time.

So I must say that I am somewhat surprised that my friend, the great Senator from Virginia, would seek to oppose this amendment. Let me read it once again. This is nothing new, having sunset provisions in bills. I think they are good. We can always review them, and if mistakes have not been made, we can renew them. There is that opportunity. But it does guarantee that there will come a time when this legislation will be reviewed. Only the word of Almighty God is so perfect that there is no sunset provision in the Holy Writ. No. But the sunset provision there is with us, and the time will come when all of us will take a voyage into the sunset.

Mr. WARNER. May I reply at the appropriate time?

Mr. BYRD. Absolutely. I will yield right now.

Mr. WARNER. Many times, the two of us have stood right here and had our debates together. It is one of those rich moments in the history of this institution when two colleagues, without all of the prepared text and so forth, can draw upon their experience and knowledge and their own love for the Constitution of the United States and engage.

I say to my good friend, 3 weeks ago, there were headlines that three Senators were in rebellion against their President, three Senators were dissidents, and on and on it went. Well, the fact is, the three of us—and there were others who shared our views, but somehow the three of us were singled out—believed as a matter of conscience we were concerned about an issue.

The concern was that the bill proposed by the administration, in our judgment, could be construed as in some way—maybe we were wrong—indicating that America was not going to follow the treaties of 1949—most particularly, Common Article 3. Common Article 3 means that article in each of these three treaties. As my good friend knows—and we draw on our own individual recollections about the horrors of World War II. I was involved in the foreign battlefield. We certainly knew about it back here at home and studied it. I was a youngster, a skinny youngster in my last year in the Navy. So much for that. But we were very conscious of what was going on, and the frightful treatment of human beings as a consequence of that war.

The world then came together—and I say the world—after that and enacted these three treaties. The United States was in the lead of putting those treaties in. Those treaties were for the purpose of ensuring that future mankind, generations, hopefully, would not experience what literally millions of people experienced by death and maiming—not only soldiers but civilians.

Mr. President, we believed that the administration's approach to this could be interpreted by the world as somehow we were not behind those treaties. If we were to put a sunset in here after all of the deliberation and all of the work on the current bill that is before this body, it could once again raise the specter that, well, if in fact the United States was trying to not live up to the treaties that brought on this debate in the Senate, then at the end of 5 years we go back to where we were. That could happen. We do not want to send that message. We want to send a message that this Nation has reconciled, hopefully, this body, as we vote this afternoon, and will send a strong bipartisan message that we are reconciled behind this legislation to ensure that in the eyes of the world we are going to live fully within the confines of the treaties of 1949.

Mr. BYRD. We are not dealing with the treaties of 1949.

Mr. WARNER. I respectfully say that our bill does, in my judgment. Clearly, it constitutes an affirmation of the treaties. I would not want to send a message at this time that there could come a point, namely, December 31, 2011, that such assurances as we have given about those treaties might expire. That is what concerns me.

Mr. BYRD. Mr. President, I am almost speechless. I listened to the words that have just been uttered by my friend. My amendment does not affect, in any way, the portions of this bill that relate to the Geneva Conventions.

It sunsets only the authority of the President to convene military commissions and, of course, the Senate can renew that authority. That is done in many instances here. I think it is insurance for our country and the welfare of our country and the welfare of the people who serve in the military.

We say 5 years. Do we want to make that 6 years? Do we want to make it 7 years? Fine. It will expire at that time. It simply means that the Senate and the House take a look at it again and renew it. What is wrong with that?

Mr. WARNER. I say to my friend, Mr. President, from a technical standpoint, he is correct. He is going in there and incising out regarding commissions. But the whole debate has been focused around how those commissions will conduct themselves in accordance with the common understanding of Article 3, particularly.

So while the Senator, in his very fine and precise way of dealing with the legislation, takes out just that, it might not be fully understood beyond our shores. The headline could go out that there is going to be an expiration.

I say to my good friend, it is just not wise to go in and try and put any imprint on this that expiration could occur. It could raise, again, the debate, and I do not think that is in the interest of the country. I think this debate, this legislation has been settled, and I don't think it was ever the President's intention in the course of the preparation of his legislation, but some fear it could.

Mr. BYRD. Mr. President, it could be a Democratic President, as far as I am concerned. I think this is wise on the part of the Senate in conducting its constitutional oversight, to say that we will do it this far and then we will take another look at it in the light of the new day, in the light of the new times, the new circumstances; we will take another look at it. We are not passing any judgment on that legislation 5 years out.

I am flabbergasted—flabbergasted—that my friend would take umbrage at this legislation.

I only have a few minutes left.

Mr. LEVIN. Will the Senator from West Virginia yield for 3 minutes?

Mr. BYRD. Yes, I yield 3 minutes.

Mr. LEVIN. Mr. President, I think the Senator from West Virginia is, more than any other person in the history of this body, the custodian in his person of the Constitution of the United States. The bill that is before us obviously raises a number of very significant issues involving our Constitution.

What the amendment of Senator BYRD does very wisely is say that after 5 years, let us double back and doublecheck—double back and doublecheck—so that we can be confident that what we have done comports with the Constitution of the United States. This amendment does it very carefully. It does not disturb any pending proceeding under the commission. The Senator has written this amendment so carefully that he says even though it will sunset, forcing us to go back and doublecheck, to look at our work, that it will not in any way disturb any existing or pending proceeding.

I believe this is such an important statement of our determination that we act in a way that is constitutional, not in the heat of a moment which is obviously critical to us, but that we comport in every way with this Constitution. We ought to heed the words of Senator BYRD, who understands the importance of this Constitution and that this body be the guardian of the Constitution. We are the body that must protect this Constitution.

Mr. BYRD. Yes.

Mr. LEVIN. And this, as he puts it, is an insurance policy that we will do just that.

Mr. BYRD. Yes.

Mr. LEVIN. I ask unanimous consent that I be added as a cosponsor to the Byrd amendment.

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

Mr. BYRD. Mr. President, I have 4 minutes remaining; do I?

The PRESIDING OFFICER. The Senator has 5 minutes 14 seconds remaining.

Mr. BYRD. I yield 5 minutes to my friend, the distinguished Senator from Illinois, Mr. OBAMA.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, I thank my dear friend and colleague from West Virginia.

I am proud to be sponsoring this amendment with the senior Senator from West Virginia. He is absolutely right that Congress has abrogated its oversight responsibilities, and one way to reverse that troubling trend is to adopt a sunset provision in this bill. We did it in the PATRIOT Act, and that allowed us to make important revisions to the bill that reflected our experience about what worked and what didn't work during the previous 5 years. We should do that again with this important piece of legislation.

It is important to note that this is not a conventional war we are fighting, as has been noted oftentimes by our President and on the other side of the aisle. We don't know when this war against terrorism might end. There is no emperor to sign a surrender document. As a consequence, unless we build into our own processes some mechanism to oversee what we are doing, then we are going to have an open-ended situation, not just for this particular President but for every President for the foreseeable future. And we will not have any formal mechanism to require us to take a look and to make sure it is being done right.

This amendment would make a significant improvement to the existing legislation, and it is one of those amendments that would, in normal circumstances, I believe, garner strong bipartisan support. Unfortunately, we are not in normal circumstances.

Let me take a few minutes to speak more broadly about the bill before us.

I may have only been in this body for a short while, but I am not naive to the political considerations that go along with many of the decisions we make here. I realize that soon—perhaps today, perhaps tomorrow—we will adjourn for the fall. The campaigning will begin in earnest. There are going to be 30-second attack ads and negative mail pieces criticizing people who don't vote for this legislation as caring more about the rights of terrorists than the protection of Americans. And I know that this vote was specifically designed and timed to add more fuel to the fire.

Yet, while I know all of this, I am still disappointed because what we are doing here today, a debate over the fundamental human rights of the accused, should be bigger than politics. This is serious and this is somber, as the President noted today.

I have the utmost respect for my colleague from Virginia. It saddens me to stand and not be foursquare with him. I don't know a more patriotic individual or anybody I admire more. When the Armed Services bill that was originally conceived came out, I thought to myself: This is a proud moment in the Senate. I thought: Here is a bipartisan piece of work that has been structured and well thought through that we can all join together and support to make sure we are taking care of business.

The fact is, although the debate we have been having on this floor has obviously shown we have some ideological differences, the truth is we could have settled most of these issues on habeas corpus, on this sunset provision, on a whole host of issues. The Armed Services Committee showed us how to do it.

All of us, Democrats and Republicans, want to do whatever it takes to track down terrorists and bring them to justice as swiftly as possible. All of us want to give our President every tool necessary to do this, and all of us were willing to do that in this bill. Anyone who says otherwise is lying to the American people.

In the 5 years the President's system of military tribunals has existed, the fact is not one terrorist has been tried, not one has been convicted, and in the end, the Supreme Court of the United States found the whole thing unconstitutional because we were rushing through a process and not overseeing it with sufficient care. Which is why we are here today.

We could have fixed all this several years ago in a way that allows us to detain and interrogate and try suspected terrorists while still protecting the accidentally accused from spending their lives locked away in Guantanamo Bay. Easily. This was not an either-or question. We could do that still.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. OBAMA. Mr. President, I ask unanimous consent for 2 more minutes.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, charged against the allocation under the proponent of the amendment.

The PRESIDING OFFICER. The proponent has no time remaining.

Mr. WARNER. We are under fairly rigid time control, but I will give the Senator from Illinois a minute.

Mr. OBAMA. I will conclude, then. I appreciate the Senator from Virginia.

Instead of allowing this President—or any President—to decide what does and does not constitute torture, we could have left the definition up to our own laws and to the Geneva Conventions, as we would have if we passed the bill that the Armed Services committee originally offered.

Instead of detainees arriving at Guantanamo and facing a Combatant Status Review Tribunal that allows them no real chance to prove their innocence with evidence or a lawyer, we could have developed a real military system of justice that would sort out the suspected terrorists from the accidentally accused.

And instead of not just suspending, but eliminating, the right of habeas corpus—the seven century-old right of individuals to challenge the terms of their own detention, we could have given the accused one chance—one single chance—to ask the Government why they are being held and what they are being charged with.

But politics won today. Politics won. The administration got its vote, and now it will have its victory lap, and now they will be able to go out on the campaign trail and tell the American people that they were the ones who were tough on the terrorists.

And yet, we have a bill that gives the terrorist mastermind of 9/11 his day in court, but not the innocent people we may have accidentally rounded up and mistaken for terrorists—people who may stay in prison for the rest of their lives.

And yet, we have a report authored by sixteen of our own Government's intelligence agencies, a previous draft of which described, and I quote, ''. . . actions by the United States government that were determined to have stoked the jihad movement, like the indefinite detention of prisoners at Guantanamo Bay . . .''

And yet, we have al-Qaida and the Taliban regrouping in Afghanistan while we look the other way. We have a war in Iraq that our own Government's intelligence says is serving as al-Qaida's best recruitment tool. And we have recommendations from the bipartisan 9/11 commission that we still refuse to implement 5 years after the fact.

The problem with this bill is not that it is too tough on terrorists. The problem with this bill is that it is sloppy. And the reason it is sloppy is because we rushed it to serve political purposes instead of taking the time to do the job right.

I have heard, for example, the argument that it should be military courts, and not Federal judges, who should make decisions on these detainees. I actually agree with that.

The problem is that the structure of the military proceedings has been poorly thought through. Indeed, the regulations that are supposed to be governing administrative hearings for these detainees, which should have been issued months ago, still haven't been issued. Instead, we have rushed through a bill that stands a good chance of being challenged once again in the Supreme Court.

This is not how a serious administration would approach the problem of terrorism. I know the President came here today and was insisting that this is supposed to be our primary concern. He is absolutely right it should be our primary concern—which is why we should be approaching this with a somberness and seriousness that this administration has not displayed with this legislation.

Now let me make clear—for those who plot terror against the United

State, I hope God has mercy on their soul, because I certainly do not.

For those who our Government suspects of terror, I support whatever tools are necessary to try them and uncover their plot.

We also know that some have been detained who have no connection to terror whatsoever. We have already had reports from the CIA and various generals over the last few years saying that many of the detainees at Guantanamo shouldn't have been there—as one U.S. commander of Guantanamo told the Wall Street Journal, ''Sometimes, we just didn't get the right folks.'' And we all know about the recent case of the Canadian man who was suspected of terrorist connections, detained in New York, sent to Syria, and tortured, only to find out later that it was all a case of mistaken identity and poor information. In the future, people like this may never have a chance to prove their innocence. They may remain locked away forever.

The sad part about all of this is that this betrayal of American values is unnecessary.

We could have drafted a bipartisan, well-structured bill that provided adequate due process through the military courts, had an effective review process that would've prevented frivolous lawsuits being filed and kept lawyers from clogging our courts, but upheld the basic ideals that have made this country great.

Instead, what we have is a flawed document that in fact betrays the best instincts of some of my colleagues on both sides of the aisle—those who worked in a bipartisan fashion in the Armed Services Committee to craft a bill that we could have been proud of. And they essentially got steamrolled by this administration and by the imperatives of November 7.

That is not how we should be doing business in the U.S. Senate, and that is not how we should be prosecuting this war on terrorism. When we are sloppy and cut corners, we are undermining those very virtues of America that will lead us to success in winning this war. At bare minimum, I hope we can at least pass this provision so that cooler heads can prevail after the silly season of politics is over.

I conclude by saying this: Senator BYRD has spent more time in this Chamber than many of us combined. He has seen the ebb and flow of politics in this Nation. He understands that sometimes we get caught up in the heat of the moment. The design of the Senate has been to cool those passions and to step back and take a somber look and a careful look at what we are doing.

Passions never flare up more than during times where we feel threatened. I strongly urge, despite my great admiration for one of the sponsors of the underlying bill, that we accept this extraordinarily modest amendment that would allow us to go back in 5 years' time and make sure what we are doing serves American ideals, American values, and ultimately will make us more successful in prosecuting the war on terror about which all of us are concerned.

Thank you, Mr. President.

Mr. BYRD. Mr. President, I ask the distinguished Senator from Virginia, may I have 10 seconds?

Mr. WARNER. I am going to give the Senator more than 10 seconds. I have to do a unanimous consent request on behalf of the leadership.

ORDER VITIATED—S. 295

I ask unanimous consent that the order with respect to S. 295 be vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object.

No objection.

Mr. WARNER. I understand there is no objection. Will the Chair kindly rule?

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

The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I yield such time as Mr. BYRD wishes to take.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank my friend from Virginia. I merely wanted to thank the distinguished Senator from Illinois, Mr. OBAMA, for his statement. I think it was well said, I think it was wise, and I thank him for his strong support of this amendment.

I also close by asking that the clerk once again read this amendment. I will then yield the floor. I thank the Senator from Virginia.

Mr. WARNER. Mr. President, I say to my good friend, I fully understand what you endeavor to do here, and I respectfully strongly disagree with it. I think many of us share this. This is going to be a very long war against those people whom we generically call terrorists. In the course of that war, this President and his successor must have the authority to continue to conduct these courts-martial—these trials under these commissions—and not send out a signal to terrorists: If you get under the time limit and you don't get caught, this thing may end.

Mr. WARNER. If you are not caught within this period of time, when this went into effect, then you are no longer going to be held accountable. I, and I think every Member of this body, regret that this Nation or other nations or a consortium of nations have not captured Osama bin Laden. There is a debate going on about that, and I am not going to get into that debate, but the fact is he is still at large. There could be other Osama bin Ladens, and it may take years to apprehend them, no matter how diligently we pursue them. We cannot send out a signal that at this definitive time, it is the responsibility of the President, of the executive branch, to hold those accountable for crimes against humanity. They would not be held accountable if this provision went into power.

Need I remind this institution of the most elementary fact that every Senator understands, that what we do one day can be changed the next. If there comes a time when we feel this President or a subsequent President does not exercise authority consistent with this act, Congress can step in, and with a more powerful action than a sunset, a very definitive action.

Mr. President, it is my understanding I have a few minutes left under this amendment.

The PRESIDING OFFICER (Mr. COLEMAN). The time of the Senator from Virginia is 9½ minutes.

Mr. WARNER. I would like to have that time transferred under my time on the bill as a whole. I hope Senator CORNYN, who has expressed an interest in this, gets the opportunity to use that time to address this amendment.

Now, Mr. President, as I look at the number of Senators who are desiring to speak on my side—and I think perhaps it would be helpful if you could, I say to my colleague, the ranking member, check on the other side—we still have some debate, and we are prepared to get into debate on the Kennedy amendment now. Therefore, I will undertake to do that just as soon as I finish.

But then we are in that time period where all time has expired or utilized or otherwise allocated on the several amendments. We will soon receive an indication from the leadership as to the time to vote on the stacked votes. But under the time reserved for the bill, I have, of course, the distinguished Senator from Arizona, Mr. MCCAIN, and Senator GRAHAM are going to be given by me such time as they desire, and then subject to the time utilized by those two Senators, I would hope to have time for Senator HUTCHISON, Senator CHAMBLISS, and again Senator CORNYN, Senator GRASSLEY, and Senator MCCONNELL, the distinguished majority whip.

So I am going to manage that as fairly and as equitably as I can. That is what we propose to do. I will go into the subject of the Kennedy amendment right now.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I am afraid that the way this now is set up, the Senator from Virginia has about six speakers who will have time, and we have on this side, because of the interest in the amendment process, used up our time and had to use time on the bill, so that on our side we only have—how much time left on the bill, if I could inquire of the Chair?

The PRESIDING OFFICER. The Senator from Michigan has 4 minutes remaining on the bill. The Senator from Vermont has 12 minutes remaining on the bill.

Mr. LEVIN. And the Senator from Massachusetts has how many minutes on his amendment?

The PRESIDING OFFICER. The Senator from Massachusetts has 7 minutes 20 seconds.

Mr. LEVIN. How much time all together on the majority side?

The PRESIDING OFFICER. On the bill, 50 minutes; on the Kennedy amendment, 30 minutes.

Mr. LEVIN. I think everybody ought to recognize the situation we are in. I hope we will withhold our comments until those on the other side who have been indicated as having time allocated to them speak so that we will have some time to respond to them.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

AMENDMENT NO. 5088

Mr. WARNER. Mr. President, I would now like to address the amendment offered by the senior Senator from Massachusetts.

I have read this very carefully and I have studied it, I say to my good friend. There are certain aspects of this amendment that are well-intentioned. But I strongly oppose it, and I do encourage colleagues to oppose it, because the question of the separation of powers is involved here, and that is the subject on which this Chamber has resonated many times. But here I find the amendment invades the authority of the executive branch in the area of the conduct of its foreign affairs by requiring the Secretary of State to notify other state parties to the Geneva Conventions of certain U.S. interpretations of the Geneva Conventions, in particular Common Article 3 and the law of war.

It is up to the executive branch in its discretion to take such actions in terms of its relations with other several states in this world—not the Congress directing that they must do so—such communications with foreign governments. But in the balance of powers, it is beyond the purview of the Congress to say to the Secretary of State: You shall do thus and so.

This bill speaks for itself by defining grave breaches of Common Article 3 that amount to war crimes under U.S. law. Any congressional listing of specific techniques should be avoided simply because Congress cannot foresee all of the techniques considered to maybe fall within the category of cruel and inhuman conduct, and therefore, they would become violations of Article 3. We can't foresee all of those situations. Again, it is the responsibility of this body to administer, to see that this bill becomes law in a manner of oversight.

Senator KENNEDY's amendment, depending on how the vote comes—and I am of the opinion that this Chamber will reject it—I don't want that rejection to be misconstrued by the world in any way as asserting that the techniques mentioned in the amendment are consistent with the Geneva Conventions or that they could legitimately be employed against our troops or anyone else. We must not leave that impression as a consequence of the decision soon to be made by way of a vote on the Kennedy amendment.

The types of conduct described in this amendment, in my opinion, are in the category of grave breaches of Common Article 3 of the Geneva Conventions. These are clearly prohibited by our bill. Rather than listing specific techniques, Congress has exercised its proper constitutional role by defining such conduct in broad terms as a crime under the War Crimes Act. The techniques in Senator KENNEDY's amendment are not consistent with the Common Article 3 and would strongly protest their use against our troops or any others.

So I say with respect to my good friend, this is not an amendment that I would in any way want to be a part of this bill.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I would like to inquire of the Senator from Virginia, and I yield myself 3 minutes. As I understand, one of the reasons this amendment is being rejected is because of the burden that it is going to place on our State Department to notify the 194 countries that we expect, if these techniques are used against Americans, they would be considered a war crime. That is a possible difficulty for us? That is a burden for our State Department? Or, rather is he objecting because, we can't foresee all of the different kinds of techniques that might be used against individuals and therefore we shouldn't list these. We list them in the Army Field Manual specifically. They are not pulled out of the air; they are listed specifically in the Army Field Manual. That is where they come from. And a number of the Members on the other side of the aisle have said that those techniques are prohibited. So we have taken the Department of Defense list and incorporated it.

Then the last argument is that: Well, if it is rejected, we don't want this to be interpreted as a green light for these techniques. There must be stronger arguments. Maybe I am missing something around here. With all respect, I have difficulty in understanding why the Senator from Virginia, the chairman of the Armed Services Committee, does not address the fundamental issue which is included in this amendment, and that is this amendment protects Americans who are out on the front lines of the war on terror, the SEALS, the CIA, others who are fighting, and it gives warning to any country: You go ahead with any of these techniques and you are committing a war crime and will be held accountable.

Now, if I could get a good answer to that, I would welcome it, but I haven't heard it yet. With all respect, I just haven't heard why the Senator is refusing and effectively denying—opposition to this amendment is denying that kind of protection. I read, and it was when the Senator was here, when we found out that similar kinds of techniques were used against Americans in World War II, and we sentenced offenders to 10, 15 years and even executed some. Now we are saying: Oh, no, we can't list those because it is going to be a bother to our State Department, notifying these countries. My, goodness.

There has to be a better reason that we are not going to protect our service men and women from these kinds of techniques. We are saying to those countries: If you use these techniques, you are a war criminal. What are those techniques? They are in the Department of Defense listing. That is what they are. How often are they used? I gave the illustrations of how they were used repeatedly, whether it has been by Iran or whether it has been by Japan, or any of our adversaries in any other war.

The PRESIDING OFFICER. The Senator has consumed 3 minutes.

Mr. KENNEDY. I yield myself 1 minute. I want to put in the RECORD the excellent letter from Jack Vessey, who is a distinguished former Joint Chief of Staff:

> I continue to read and hear that we are facing a different enemy in the war on terror. No matter how true that may be, inhumanity and cruelty are not new to warfare nor to enemies we have faced in the past. In my short 46 years in the armed forces, Americans confronted the horrors of the prison camps of the Japanese in World War II, the North Koreans in 1950 to 1953, and the North Vietnamese in the long years of the Vietnam War, as well as knowledge of the Nazi's holocaust depredations in World War II. Through those years, we held to our own values. We should continue to do so.

The Kennedy amendment does it. That is what this amendment is about. I reserve the remainder of my time.

I ask unanimous consent the letter be printed in the RECORD.

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

SEPTEMBER 12, 2006.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: Sometimes, the news is a little garbled by the time it reaches the forests of North-central Minnesota, but I call your attention to recent reports that the Congress is considering legislation which might relax the United States support for adherence to Common Article 3 of the Geneva Convention. If that is true, it would seem to weaken the effect of the McCain Amendment on torture of last year. If such legislation is being considered, I fear that it may weaken America in two respects. First, it would undermine the moral basis which has generally guided our conduct in war throughout our history. Second, it could give opponents a legal argument for the mistreatment of Americans being held prisoner in time of war.

In 1950, 3 years after the creation of the Department of Defense, the then Secretary of Defense, General George C. Marshall, issued a small book, titled The Armed Forces Officer. The book summarized the laws and traditions that governed our Armed Forces through the years. As the Senate deals with the issue it might consider a short quote from the last chapter of that book which General Marshall sent to every American Officer. The last chapter is titled ''Americans in Combat'' and it lists 29 general propositions which govern the conduct of Americans in war. Number XXV, which I long ago underlined in my copy, reads as follows:

''The United States abides by the laws of war. Its Armed Forces, in their dealing with all other peoples, are expected to comply with the laws of war, in the spirit and the letter. In waging war, we do not terrorize helpless non-combatants, if it is within our power to avoid so doing. Wanton killing, torture, cruelty or the working of unusual hardship on enemy prisoners or populations is not justified in any circumstance. Likewise, respect for the reign of law, as that term is understood in the United States, is expected to follow the flag wherever it goes. . . .''

For the long term interest of the United States as a nation and for the safety of our own forces in battle, we should continue to maintain those principles. I continue to read and hear that we are facing a ''different enemy'' in the war on terror; no matter how true that may be, inhumanity and cruelty are not new to warfare nor to enemies we have faced in the past. In my short 46 years in the Armed Forces, Americans confronted the horrors of the prison camps of the Japanese in World War II, the North Koreans in 1950–53, and the North Vietnamese in the long years of the Vietnam War, as well as knowledge of the Nazi's holocaust depredations in World War II. Through those years, we held to our own values. We should continue to do so.

Thank you for your own personal courage in maintaining those values, both in war and on the floor of the Senate. I hope that my information about weakening American support for Common Article 3 of the Geneva Convention is in error, and if not that the Senate will reject any such proposal.

Very respectfully,

GENERAL JOHN W. VESSEY, USA (Ret.).

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, my distinguished colleague used two phrases just now. He said: Burden. He used the word burden. He then said the word bother. Senator, you walk straight into the constitutional separation of powers in your language and you say: The Secretary of State shall—that is a direct order—notify other parties to the Geneva Conventions. You are putting a direct order to the executive branch. I say that is a transgression of the long constitutional history of this country and the doctrine of separation of powers.

Mr. KENNEDY. Would the Senator support it if we changed it to ''shall,'' that you, the chairman of our committee, will make that request and the President will go ahead and notify and follow those instructions?

Mr. WARNER. Senator, I am not in the business of trying to amend your amendment.

Mr. KENNEDY. I am just trying to accommodate you. You are saying that this is a constitutional issue. I just offered to try to accommodate the Chairman so we can ensure we are protecting American servicemen from torture—from torture. And the response is: Well, it is going to violate the Constitution. I am interested in getting results.

But I hear the Senator say that it is unconstitutional that my amendment says Department of State shall notify other countries that if they are going to torture, they are going to be held accountable, and we are being defeated on the floor of the U.S. Senate because the opponents are saying that is unconstitutional and we cannot find a way to do it. I find this unwillingness to compromise is outrageous.

Mr. President, I am prepared to call the roll on this one.

Mr. WARNER. Mr. President, at this point I wish to have such time as remains under the control of the Senator from Virginia accorded to me under the control of the time on the bill.

The PRESIDING OFFICER. The time will be so allocated.

Mr. WARNER. Mr. President, I wish to inform the Chamber that we are at that juncture where we will consider the statements of others, very important statements to be made. I listed them in a recitation of those who have indicated their desire to speak. But I also bring to the attention of the body that I have just been told by the leadership they are anxious to proceed to the votes.

At this time I would ask—if I can get my colleague's attention—that there be yeas and nays on all of the pending amendments remaining.

The PRESIDING OFFICER. Without objection, the yeas and nays may be requested on all pending amendments.

Mr. LEVIN. Will the Senator withhold that request for 2 minutes? Will the Senator withhold?

Mr. WARNER. Surely.

Mr. President, we will now put in a quorum call to accommodate the ranking member, such that the time is not charged to either side.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. Mr. President, the managers, together with the guidance from their respective leaders, are endeavoring to do the following. There are three amendments to be voted on and then final passage. We hope to have as much time used on the bill as we can, to be consumed prior to the initiation of the votes. But then subsequent to the three votes, there will be a block of time. A Senator on this side has reserved 12 minutes. I intend to reserve, on my side, time to Senator MCCAIN. I am trying to work in that category of time following the votes. But until we are able to reconcile this, I ask that we now proceed.

Let me allow the Senator from Georgia to proceed. He has indicated a desire to speak for 5 or so minutes at this time. But I hope Senators are following what the two managers are saying. Those desiring to speak on the bill, with the exception of Senator MCCAIN, would they kindly come down and utilize this time before the amendments start?

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise today in support of the Military Commissions Act of 2006. This historic legislation is the result of much work, thought, and debate.

I commend the administration, I commend Senator WARNER, Senator MCCAIN, Senator GRAHAM, and all those who were involved in the ultimate compromise we have come to on this very sensitive and very complex issue. I am pleased we were able to find common ground on this critical issue and ensure that the President can authorize the appropriate agencies to move forward with an appropriate interrogation program.

There is no question that this program provides essential intelligence that is vital to America's success in the war on terrorism. At the same time, it honors our agreement under the Geneva Conventions and underscores to other nations that America is a nation of laws. This has been a difficult issue and I am pleased that both sides worked so diligently to achieve this result. In this new era of threats, where the stark and sober reality is that America must confront international terrorists committed to the destruction of our way of life, this bill is absolutely necessary. Our prior concept of war has been completely altered, as we learned so tragically on September 11, 2001. We must address threats in a different way. If we are going to get at the root of terrorist activity, we need to be able to get critical information to do so.

There has been much discussion during the course of the drafting of this bill about the rule of law, and the rule of law relative to detainees is, indeed, reflected in this bill. It provides for tribunals, for judges, for counsel, for discovery, and for rules of evidence.

Most importantly, however, in my view, is that while this bill provides important rule of law procedures for illegal enemy combatants, it does not give them the same protections which we afford lawful enemy combatants or our own military personnel, and that is a critical distinction. And that is how it ought to be. We have made that distinction for no other reason than to provide incentive for every nation across the world to observe international agreements for the proper treatment of captives. It bears repeating—this bill applies to the trial of illegal enemy combatants—those who make no pretense whatsoever of conformity with even minimal standards or international norms of civilized behavior when it comes to the treatment of those they capture.

We hear repeatedly that we should be concerned about what we do, for fear that we encourage others to treat our captured service men and women in a similar manner. But let's be very clear here and state what every American knows to be true. The al-Qaida terrorists treat our captured service men and women by beheading them and by dragging their bodies through the streets.

They need no encouragement or excuse for their actions by reference to our treatment of their captives.

As a result of the Supreme Court's ruling, we are creating military commissions that provide rule of law protections which are embodied in this bill—courts, judges, legal counsel, and rules of evidence. So this bill appropriately meets our international obligations and America's sense of what is right and it is in keeping with our highest values.

However, this bill will allow the President to move forward with a terrorist interrogation program that will ensure that we continue to get critical information about those who are plotting to carry out hateful acts against America and against Americans.

I commend the President for his determination to respond to the new reality confronting us. I commend Chairman WARNER and my colleagues on the Armed Services Committee who worked in good faith to craft a bill which is the right bill to respond to the challenges we face. And again, I am pleased we were able to find common ground on this critical issue and ensure that the President can move forward with an appropriate interrogation program.

I think it is important that we send a bill to the White House, to the desk of the President that is exactly the same as the bill that has already been passed by the House so we can put this program in place immediately. The way we do that is to continue to defeat all the amendments that have been put forward, and that we send the President the same bill that has already been passed by the House so that this program can be reinitiated immediately.

I yield the floor.

Mr. WARNER. Mr. President, I thank our distinguished colleague from Georgia, a very valued member of the Armed Services Committee who has from time to time participated in the extensive deliberations and consultations with regard to how the original bill which we worked on should be shaped and finally amended. I thank him.

Again, I call to the attention of colleagues that I shall put in a quorum for the purpose of trying to accommodate Members on my side who desire to speak.

I now see the distinguished Senator from South Carolina. We are prepared to allocate to him such time as he may desire. How much time does he need?

Mr. GRAHAM. Would 15 minutes be OK?

Mr. WARNER. Yes.

Mr. GRAHAM. I thank the chairman.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, in 15 minutes I will try to explain the processes as I know it to be in terms of how we arrived at this moment.

No. 1, I am glad we are here. I think the country is better off having the bill voted on in the current fashion.

I have gotten to know Senator WARNER very well over the last 30 days. I had a high opinion of the Senator before this process started, but I, quite frankly, am in awe of his ability to stand up for the institution as a U.S. Senator, who was a former Secretary of the Navy, who tried to have a balanced approach about what we are trying to do.

It is no secret that Senator MCCAIN is one of my closest friends in this body, and I respect him in so many ways. But unlike myself and most of us, Senator MCCAIN paid a heavy price while serving this country. He and his colleagues in Vietnam were treated very poorly as prisoners of war. When he speaks about the Geneva Conventions, he does so as someone who has been in an environment where the Conventions would not apply. But Senator MCCAIN believes very strongly in the Geneva Conventions. When it comes to the Vietnam war, he has told me more than once that if it were not for the insistence of the United States and the international community that constantly pushed back against the North Vietnamese, he thought the torture would have continued and all of them would eventually be killed. But the North Vietnamese became concerned about international criticism after a point in time.

While the Geneva Conventions were not applied evenly by any means, it did have an effect on the North Vietnamese.

I have been a military lawyer for over 20 years. I have had the honor of wearing the Air Force uniform while serving my country and being around great men and women in uniform. It has been one of the highlights of my life. I have never been shot at. The only people who wanted to kill me were probably some of my clients. But I do appreciate why the Geneva Conventions exist and the fact that the law of armed conflict is a body of law unique to itself and has a rich tradition in our country and throughout the world and it will work to make us safe and live within our values if we properly apply it.

The reason we are here is because the Supreme Court ruled in the Hamdan case that the military commissions authorized by the President were in violation of Common Article 3 of the Geneva Conventions. They were not regularly constituted courts.

It surprised me greatly that the Supreme Court would find that the Geneva Conventions applied to the war on terror. It was President Bush's assumption and mine, quite frankly, that humane treatment would be the standard. But this enemy doesn't wear a uniform; it operates outside the Conventions, doesn't represent a nation, and, therefore, would not be covered. But the Supreme Court came to a different conclusion. Thus, we are here.

I say to my fellow Americans, it is not a weakness, it is strength that we have three branches of government. It is not healthy for one branch of government to dominate the other two at a time of stress.

I have pushed back against the administration when I believed they were pushing the executive power of the inherent authority of the President too far. Even though we are in a time of war, there is plenty of room for the Congress and the courts.

What I tried to do in helping draft this bill, working with the President and working with our friends on the other side, is come up with a product that would create a balance that I think would serve us well.

My basic proposition that I have applied to the problem is we are at war, that 9/11 was an act of war, and since that moment in time our Nation has been at war with enemy combatants who do not wear a uniform, who do not represent a nation but are warriors for their cause, just as dedicated as Hitler was to his cause, and they are just as vicious and barbaric as any enemy we have ever fought.

But we don't need to be like them to win. As a matter of fact, we need to show the world that we are different than them.

When the Geneva Conventions were applied to the war on terror, we had a problem. We had to renew the Military Commission Tribunal in line with Common Article 3. Common Article 3 is a mini-human-rights tree that is common to all four Convention articles. You have one about lawful combatants and unlawful combatants, civilians and wounded people. Common Article 3 is throughout all of the treaties regarding the Geneva Conventions. It says you would have to have a regularly constituted court to pass judgment or render sentences against those who are in your charge during time of war; that is, unlawful combatants.

The problem with the military commission order authorized by the President was that it deviated from the formal Code of Military Justice, the court-martial model, without showing a practical reason. Within our Uniform Code of Military Justice, it says military commissions are authorized, but they need to be like the court-martial system to the extent practicable.

What I am proud of is we have created a new military commission based on the UCMJ and deviations are there because of the practical need. A court martial is not the right forum to try enemy combatants—non-citizen terrorists—the military commission is the right forum, but we are basing what we are doing on UCMJ, and the practical differences, I think, will be sustained by the Court.

The confrontation rights that were originally posed by the administration gave me great concern. I do not believe that to win this war we need to create a trial procedure where the jury can receive evidence classified in nature, convict the accused, and the accused never knows what the jury had to render a

verdict upon, could not answer that accusation, rebut or examine the evidence.

That was the proposal which I thought went too far and that would come back to haunt us. As a result of this compromise, it has been taken out.

We have a national security privilege available to the Government to protect that prosecutor's file from being given over to the defense or to the accused so our secrets can be protected. But we will now allow the prosecutor to give that to the jury and let them bring it out on the side of the accused and the accused never knowing what he was convicted upon. That could come back to haunt us if one of our soldiers falls into enemy hands.

We would not want a future conviction based on evidence that our soldiers and CIA operative never saw. I think we have a military commission model that affords due process under the law of war that our Nation can be proud of, that will work in a way to render justice, and if a condition is abstained, it will be something we can be proud of as a nation. I am hopeful that the world would see the condition based on evidence, not vengeance.

My goal is to render justice to the terrorists, even though they will not render justice to us. That is a big distinction.

People ask me, Why do you care about the Geneva Conventions? These people will cut our heads off and they will kill us all. You are absolutely right. Why do I care?

Because I am an American. And we have led the way for over 50-something years when it comes to the Geneva Conventions applications.

I am also a military lawyer, and I can tell every Member of this body—some of them have served in combat unlike myself; some know better than I. But we have had downed pilots in Somalia. A helicopter pilot was captured by militia in Somalia. We dropped leaflets all over the city of Mogadishu. We told the militia leaders, ''If you harm a helicopter pilot, you will be a war criminal.'' We blared that throughout town on loudspeakers with helicopters. After a period of time, they got the message, and he was released.

We had two pilots shot down over Libya when Reagan bombed Qadhafi. I was on active duty in the Air Force. We told Qadhafi directly and indirectly, if they harm these two pilots, they will be in violation of the Geneva Conventions, and we will hunt you down to the ends of the Earth.

I want to be able to say in future wars that there is no reason to abandon our Geneva Conventions obligations to render justice to these terrorists.

So not only do we have a military commission model that is Geneva Conventions compliant; we have a model that I think we should be proud of as a nation.

The idea that the changes between the committee bill and the compromise represents some grave departure, quite frankly, I vehemently disagree with. I didn't get into this discussion and political fight to take all the heat that we have taken to turn around and do something that undercuts the purpose of being involved in it to begin with. The evidentiary standard that will be used in a military commission trial of an enemy combatant was adopted from the International Criminal Court.

I will place into the RECORD statements from every Judge Advocate General in all four branches of the services that have certified from their point of view that the evidentiary standard that the judge will apply to any statements coming into evidence against an enemy combatant are legally sufficient, will not harm our standing in the world, and, in fact, are the model of the International Criminal Court which try the war criminals on a routine basis.

The provision I added, along with Senator MCCAIN, dealing with the provisions of the Detainee Treatment Act, 5th, 8th, and 14th amendment concepts within the Detainee Treatment Act, will also be a standard in the future designed to reinforce the relevance of the Detainee Treatment Act in our national policy, in our legal system, not to undermine anything but to enforce the concept the Detainee Treatment Act and the judicial standard that our military judges will apply to terrorists accused is the same that is applied in International Criminal Court.

I have been a member of the JAG court for over 20 years. I have had the honor of serving with many men and women who will be in that court-martial scene. The chief prosecutor, Moe Davis, I met as a captain. There is no finer officer in the military than Colonel Davis. He is committed to render justice. I am very proud of the fact that the men and women who will be doing these military commissions believe in America just as much as anybody I have ever met, and they want to render justice.

What else do we try to accomplish?

We reauthorize the military commissions in a way to be Geneva Conventions-compliant to afford the defendants accused due process in the way that will not come back to haunt us.

What else did we have to deal with? A CIA program that is classified in nature that needs to continue. There is a debate in this country: Should we have a CIA interrogation program classified in nature that would allow techniques not in the Army Field Manual to get good intelligence from high value targets? The answer, from my point of view, is yes, we should, but not because we want to torture anybody, because we want to be inhumane as a nation. The reason we need a CIA program classified in nature to get good information is because in this war information saves lives.

Mutual assured destruction was the concept of the Cold War, where if the Soviet Union attacked us, they knew with certainty they would be wiped out. That concept doesn't work when your enemy doesn't mind killing themselves when they kill you. The only way we will protect ourselves effectively is to know what they are up to before they act. The way you find that out is to have good intelligence. But you have to do it with your value system.

Abu Ghraib was an aberration, but it has hurt this country. Anytime the world believes America has adopted techniques and tactics that are not of who we are, we lose our standing. So what we did regarding the CIA, we redefined the War Crimes Act to meet our Geneva Conventions obligations. The test for the Congress was, how can you have a clandestine CIA program and then not run afoul of the Geneva Conventions? What are the Geneva Conventions requirements of every country that signs the treaty to outlaw domestically gray areas of the treaty?

In Article 129 and 130 of the Geneva Conventions, it puts the burden on each country to do it internally, to create laws to discipline their own personnel who may violate the treaty in a grave way. It lists six offenses that would be considered grave breaches of the treaty under the conventions. Those six offenses were taken out of the treaty and put in our domestic law, title 18, the War Crimes Act, and anybody in our Government who violates that War Crimes Act is subject to being punished as a felon.

We added three other crimes we came up with ourselves.

Torture has always been a crime, so anyone who comes to the Senate and says the United States engages in torture, condones torture, that this agreement somehow legitimizes torture, you don't know what you are talking about. Torture is a crime in America. If someone is engaged in it, they are subject to being a felon, subject to the penalty of death. Not only is torture a war crime, serious physical injury, cruel and inhumane treatment mentally and physically of a detainee is a crime under title 18 of the war crimes statute.

Every CIA agent, every military member now has the guidance they need to understand the law. Before we got involved, our title 18 War Crimes Act was hopelessly confusing. I couldn't understand it. We brought clarity. We have reined in the program. We have created boundaries around what we can do. We can aggressively interrogate, but we will not run afoul of the Geneva Conventions. We are not going to let our people commit felonies in the name of getting good information, but now they know what they can and cannot do.

Who complies with that treaty? Who is it within our Government who would implement our obligations under the treaty? The Congress has decided what a war crime would be to prohibit grave breaches of the treaty. The President, this President, like every other President, implements treaties. So what we

said in this legislation, when it comes to nongrave breaches, all the other obligations of the Geneva Conventions, the President will have the responsibility constitutionally to comply with those obligations, not to rewrite title 18, not to sanction torture, not to violate the Detainee Treatment Act, but to fulfill the treaty the way every other President has in our constitutional history. That is all we have done. To say otherwise is just political rhetoric. Not only have we allowed the CIA program to go forward in a way not to violate the Geneva Conventions, we have delegated to the President what was already our constitutional responsibility to enforce the treaty—not to rewrite it but to enforce it and fulfill it.

My concern was that in the process of complying with Hamdan, we would be seen by the world as redefining the treaty for our own purposes. We have not redefined the Geneva Conventions. We have, for the first time in our domestic law, clearly defined what a crime would be against the Geneva Conventions, and we have told the President, as a Congress: It is your job to fulfill the other obligations outside of criminal law. That is the way it should be, and it is something of which I am extremely proud.

We have been at war for over 5 years. Here we are 5 years later trying to figure out the basic legal infrastructure. It has been confusing. It has been contentious. We have had two Supreme Court cases where the Government's work product was struck down.

My hope is that our homework will be graded by the Supreme Court, that this bill eventually will go to our Federal courts, as it should, and the courts will say the following: the military commissions are Geneva Conventions compliant and meet constitutional standards set out by our country when it comes to trying people.

I am confident the court will rule that way. I am confident the Supreme Court will understand that the power we gave the President to fulfill the treaty is consistent with his role as President and the war crimes we have written to protect the treaty from a grave breach from our own people is written in a way to sustain legal scrutiny.

I am also confident that Congress has finally cleared up what has been a huge problem. What role should a judge have in a time of war? Who should make the decision regarding enemy combatant status?

In every war we have been in up until now, the military has decided the battlefield issues. Under the Geneva Conventions, it is a military decision to consider who an enemy combatant is. The habeas cases that have existed in our courts from the last 3 or 4 years have led to tremendous chaos at Guantanamo Bay. Our own troops are being sued by the people we are fighting. They are bringing every kind of action you can think of into Federal courts. Over 200 cases have been filed. It is impeding the war effort.

A judge should not make a military decision during a time of war. The military is far more capable of determining who an enemy combatant is than a Federal judge. They are not trained to do that.

We have replaced a system where the judges of this country can take over military decisions and allow judges to review military decisions, once made, for legal sufficiency. That is the way every other country in the world does it. Habeas has no place in this war for enemy prisoners. The Germans and the Japanese—no prisoner in the history of the United States has ever been able to go to a Federal court and sue the people they are fighting who are protecting us against the enemy.

We are allowing the Federal courts to review every military decision made about an enemy combatant as to whether they made the right decision based on competent evidence and whether the procedures they used are constitutional. We have rejected the idea as a Congress of allowing the courts to run the war when it comes to defining who an enemy combatant is. That was a decision which needed to be made. It is not destroying the writ of habeas corpus. It is having a rational, balanced approach to where the judges can play a meaningful role in time of war and not play a role they are not equipped to play. This will mean nothing if it does not withstand court scrutiny.

I hope soon we will have an overwhelming vote for the final product after the amendments are disposed of. My goal for 2 years has been to try to find national unity, to have the Congress, the executive branch, and eventually the courts on the same sheet of music where we can tell the world at large that we have detention policies, interrogation policies, and confinement policies that not only are humane and just but will allow us to protect ourselves from a vicious enemy and live up to our obligations as a nation. We are very close to that day coming.

I thank every Member of this Senate who has worked to make this product better. When you cast a vote, please remember, we are at war, we are not fighting crime.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we now have an additional speaker, the Senator from Texas.

As the Senator from South Carolina has just completed his remarks, I have to say it has been an unusual experience for all of us these past weeks. Working together with Senator MCCAIN and the Senator from South Carolina has enabled this Senate to proceed in a way that is consistent with Senate practices: namely, have a committee go through a bill, have a markup, and then proceed to work on a product. It brought together the consensus.

I say to my friend from South Carolina, although I have had some modest experience as Secretary of the Navy dealing with court-martials, and, indeed, when I was a young officer in the Marines, I was involved in court-martials, the Senator brought together in this bill, in this deliberation, a very special expertise of the years he has had.

Now he is a full colonel in the U.S. Air Force and a Judge Advocate General recognition. I thank the Senator for his invaluable contribution to putting the series of bills we have had—putting into those bills matters which he believed were in the best interests of the men and women of the Armed Forces and, indeed, his consultation throughout this process with the Judge Advocate Generals and other past and present Judge Advocates and some of the younger officers who will be future Judge Advocate Generals. I thank the Senator from South Carolina for his strong contribution to this deliberative process in the Senate.

Now I yield the floor to our last speaker before we proceed to the votes. As I understand, we will be voting at the conclusion of this statement?

Mr. LEVIN. I don't know if the unanimous consent agreement has been finished yet. That is our hope.

Mr. WARNER. We are finishing a unanimous consent request, but I alert the Senate that it is my strong hope and prediction we will soon be voting in sequence on three amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I first compliment the distinguished chairman of the Senate Committee on Armed Services, the Senator from Virginia, for being the calm and steady hand on the rudder during the course of the discussions and debates involving this important piece of legislation. His work and demeanor have always been constructive and civil, and any disagreements we have had are befitting of the great traditions of this institution. I thank him for that.

Mr. WARNER. If I may, I thank the Senator from Texas. Several times we came to the Senator's office in the course of the deliberations on this bill because the Senator, too, brings to the debate a vast experience, having risen through the ranks of the legal profession to become a judge in his State. The Senator is very well equipped and did provide a very valuable input into this debate.

Mr. CORNYN. My thanks to the Senator from Virginia.

Mr. President, not everyone who has been engaging in this debate has been as constructive. We have heard some outlandish statements that bear correction, some suggesting this bill would actually permit the use of torture. Nothing—nothing—could be further from the truth. In fact, what this bill does is make sure that the provisions of the Detainee Treatment Act,

which were passed in December of 2005 in this same Senate, that ban torture, cruel, inhuman, and degrading treatment of detainees, that we comply with those laws which reflect upon our international treaty obligations as well as our domestic laws and which reflect our American values.

We are a nation at war. But there is no equivalency with the way this war is fought and prosecuted by the United States and our allies, no equivalency with the manner in which the war is prosecuted by our enemies. We have learned that our enemies have been at war against us for much longer than just September 11, 2001, and date back many years before we even realized America was under attack.

We know that this enemy, represented by Islamic extremism, justifies the use of murder against innocent civilians in order to accomplish its goals.

America complies with all of its international treaty obligations and domestic laws. What this bill is about is to try to provide our intelligence authorities the clear direction they need so they know how to comply with those laws and, at the same time, preserve an absolutely critical means of collecting intelligence through the interrogation of high-value detainees at Guantanamo Bay.

But no civilian employee of the U.S. Government working at the CIA or elsewhere is going to risk their career, their reputation, and their assets using some sort of cloudy law or gray law that does not make clear what is permitted and what is not permitted. This bill we are prepared to pass in a few minutes provides that kind of clear direction. What it says is that we in the U.S. Congress are stepping up to take the responsibility ourselves to provide that kind of clarity that will allow our intelligence authorities to gain this important intelligence while at the same time be secure in the knowledge that what they are doing fully complies with our law, including our international treaty obligations.

We know the aggressive interrogation techniques that are legal under the provisions of the McCain amendment in the Detainee Treatment Act have provided much valuable intelligence that has saved American lives. We know the CIA's high-value terrorist detainee program works. For example, detainees have provided the names of approximately 86 individuals whom al-Qaida deemed suitable for Western operations. Half of these individuals have now been removed from the battlefield and are no longer a threat to the United States of America or our allies.

This program is effective and has saved American lives and must be preserved. Yet there are people who would go so far as to intimate that we are torturing people. But we are not torturing people. But we are using legal, aggressive interrogations consistent with the U.S. Constitution, U.S. laws, and our treaty obligations. In doing so, we are keeping faith with the American people that the Federal Government will use every legal means available to us to keep the American people safe.

Now, we may disagree—and we do disagree on the Senate floor—with the level of rights that an accused terrorist should have. I happen to believe these individuals, who are high-value detainees at Guantanamo Bay, do not deserve the same panoply of rights preserved for American citizens in our legal system. But I would hope that we would all agree that the CIA interrogation program must continue. We must not allow the brave patriots who conduct these interrogations to be at risk unnecessarily by providing a gray zone as opposed to absolute clarity insofar as it is within our power to give it so that we may interrogate these captured terrorists to the fullest extent of the law.

To suggest that we are somehow torturing individuals or violating our own laws that we passed just last year in the Detainee Treatment Act under the McCain amendment banning torture, cruel and inhuman treatment, is absolutely untrue and irresponsible. The American people have a right to believe we will use every legal tool available to us to help keep them safe against this new and different type of enemy.

Let me just say a word about who that enemy is. We have heard we are engaged in a global war on terror, and that is absolutely true. But it does not necessarily tell us who that enemy is. Unfortunately, it is an enemy that has hijacked one of the world's great religions, Islam, in pursuit of their extremist goals that justifies the murder of innocent civilians in order to accomplish those goals.

Some on the Senate floor have said this debate is all about Iraq. It is not just about Iraq. If it were just about Iraq, how would those critics explain the attempted terrorist plot that was broken up at Heathrow Airport just a few short weeks ago, or the attacks in Madrid or Beslan in Russia or Bali or elsewhere or, for that matter, New York and Washington, DC?

The fact is, we have prevented another terrorist attack on our own soil by using this interrogation program to allow us to detect and deter and disrupt terrorist activity, and the fact we have also taken the fight on the offensive where the terrorists plot, plan, train, and try to export their terrorist attacks to the United States and elsewhere.

If we would do what some would apparently want us to do and simply pull the covers over our head and wish the bad people would go away, America would be less safe and we would not be able to stand here and say that due to the vigilance of the American people, due to the vigilance of the U.S. Congress and the executive branch of Government, we have been successful, thank goodness, in preventing another terrorist attack on our own soil, after 5 years from September 11, 2001.

So, Mr. President, I hope our colleagues will vote against these ill-advised amendments to this bill and will send a clean bill to be reconciled with the House version and sent to the President right away so that before too long we can see that some of the war criminals who sit detained at Guantanamo Bay may be brought to justice, people like Khalid Shaikh Mohammed, who was the mastermind of the 9/11 plot that killed nearly 3,000 Americans.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague from Texas. He has been a valuable addition to those who are trying to structure this piece of legislation.

Momentarily, I will seek a unanimous consent request ordering the votes and the allocation of such time as remains between Senators.

So at this point in time, I will suggest the absence of a quorum, unless the Senator from Massachusetts would like to take the additional 3 minutes that he has at this time on his amendment.

Mr. KENNEDY. Yes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, just quickly, the proceedings we are going to have—if I can inquire—I use the 3 minutes, and then we are moving toward a series of votes; is that right?

Mr. WARNER. That is correct, I say to the Senator.

Mr. KENNEDY. Then, I would ask when I have 30 seconds left—Mr. President, I have 3½ minutes; am I correct?

The PRESIDING OFFICER. Three minutes.

Mr. KENNEDY. Three minutes.

Mr. WARNER. Mr. President, I may have misunderstood my colleague. That is the 3 minutes remaining on your amendment held in abeyance.

Mr. KENNEDY. That is correct.

Mr. President, I yield myself the 3 minutes.

AMENDMENT NO. 5088

Mr. President, just for the benefit of the membership, in my hand is the Army manual. In the Army manual are the prohibitions for instructions to all the interrogators of the United States, that they cannot use these kinds of harsh tactics which have been recognized by Members as torture.

This amendment says if any country is going to use those similar tactics against those who would be representing the United States in the war on terror—for example, the Central Intelligence Agency; for example, the SEALs; for example, contractors working for the intelligence agency—then they will have committed a war crime.

I reviewed earlier in the debate where we have prosecuted Japanese and other war crimes, giving them 10 or 15 years, and even execution when they went ahead with this. That is why this is so important.

Now, my good friend, the chairman of the committee, says we cannot do it

because it violates the Constitution because it is instructing—instructing—the President of the United States through the State Department to notify the 194 countries.

Well, we thought it was not unconstitutional on the Port Security Act, when we said:

When the Secretary . . . , after conducting an assessment . . . , decides that an airport does not maintain and carry out effective security measures, the Secretary . . . shall notify the appropriate authorities of the government of the foreign country. . . .

Here is port security.

Here is on the pollution issues:

The Secretary of State shall notify without delay foreign states concerned. . . .

That is the second one.

And I have the third illustration in terms of foreign carriers.

In 15 minutes we got these cases. And here we are going to say we are going to refuse to protect Americans who are on the cutting edge of the war on terror because we will not let our State Department go on an e-mail and notify the 192 countries because that is unconstitutional? If the chairman of the Armed Services Committee feels that way, we could strike that provision and just say it is the policy of the United States. Then we would not be instructing anyone. Either way, this is about protecting Americans. It is about protecting Americans.

I believe those Americans who are out there in the hills and in the mountains of Afghanistan today and tonight, those people who are in the hills and mountains and deserts of Iraq, those people who are out in Southeast Asia or all over the world in order to try to deal with the problems of terrorism ought to know, if they are in danger of getting captured, if any of their host countries are going to perform this kind of procedure and torture on them, they will be war criminals.

That is what this amendment is about. I hope it will be accepted. It should be.

Mr. President, I yield what time I have to my ranking member.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WARNER. Mr. President, at this time we are waiting for clearance by the leadership of the UC. But I will ask at this time we get the yeas and nays on all the votes, the amendments and final passage.

Mr. ROCKEFELLER. Mr. President, without objecting, does any unanimous consent request allow me to close on my amendment for 2 minutes?

Mr. WARNER. Mr. President, the UC, as presently drafted, gives 2 minutes to each side for the purpose of addressing amendments.

Mr. ROCKEFELLER. I thank the Senator.

Mr. WARNER. Mr. President, I once again restate the request for the yeas and nays on the amendments and final passage. I ask unanimous consent that it be in order to ask for the yeas and nays on the amendments and final passage.

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

Mr. WARNER. Mr. President, I ask for the yeas and nays on the amendments and final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. 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. 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. Mr. President, I ask unanimous consent that any remaining time be yielded back, other than as noted below, and that the Senate proceed to votes in relation to the amendments in the following order:

The Rockefeller amendment No. 5095, the Byrd amendment No. 5104, and the Kennedy amendment No. 5088.

I further ask unanimous consent that there be 4 minutes for debate, equally divided, prior to each of the above votes.

I further ask unanimous consent that prior to passage of the bill, Senator LEAHY be recognized for his remaining 12 minutes and, as set forth in the initial unanimous consent request, which was provided for under the original consent order, Senator LEVIN be in control of 4 minutes, Senator WARNER in control of 16 minutes, to be followed by closing remarks by the two leaders and, following that time, the Senate proceed to passage of the bill; further, that there then be 5 minutes equally divided prior to the vote on invoking cloture on the border fence legislation; provided further that with respect to the border fence bill, it be in order to file second degrees at the desk no later than 5 p.m. today under the provisions of rule XXII.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, reserving the right to object, I did not understand the part about the fence.

Mr. WARNER. Can the Senator repeat that?

Mr. LEAHY. I did not understand the part about the timing of the fence bill.

Mr. WARNER. I will repeat it.

Mr. LEAHY. Just that part.

Mr. WARNER. It reads as follows: Following that time, the Senate proceed to passage of the bill; further, there then be 5 minutes equally divided prior to the vote on invoking cloture on the border fence legislation; provided further that with respect to the border fence bill, it be in order to file second degrees at the desk no later than 5 p.m. today under the provisions of rule XXII.

Mr. LEAHY. Mr. President, even though I believe we have made a terrible and tragic mistake in the Senate, including major changes in our constitutional rights willy-nilly to get out to campaign, I realize they have locked this in and there is not much one can do about it. I think it is a farce in the Senate.

Mr. WARNER. Mr. President, I renew the unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 5095

There will now be 4 minutes of debate, equally divided, on the Rockefeller amendment.

The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, my amendment would require, as I explained this morning, the CIA to provide the Congressional Intelligence Committees, which are required by law to be informed of what is going on in the intelligence world, fully the most basic and fundamental information it needs to oversee the CIA detention and interrogation program.

Frankly, for the past 4 years we have not had that information. The administration has withheld this information from us. I am not saying that in partisan fashion. It is a fact.

It has been very frustrating as a member of the Intelligence Committee, much less as a Member of the Senate. We have made repeated requests and the Intelligence Committee has been prevented from carefully reviewing the program. The program has operated, as a result, without any meaningful congressional oversight whatsoever, and that is our responsibility under the law.

All of my colleagues should be troubled by this fact. We cannot assure ourselves, we cannot assure the American people, and we cannot assure our agents overseas that the CIA program is both legally sound and effective, without the basic information required under my amendment.

My amendment is simply about oversight and accountability, nothing more, nothing less. Nothing in the amendment would require the public disclosure of any classified document or aspect of the CIA program.

Mr. President, I ask unanimous consent that Senator FEINSTEIN be added as a cosponsor of my amendment.

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

The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I spoke in strong opposition to this amendment. Again, I think it tries to displace the oversight that is performed by the Intelligence Committee. I would like to add the following bit of information.

On September 28 of this year, GEN Michael V. Hayden, who is the current Director of the CIA, wrote a letter to Chairman PAT ROBERTS of the Intelligence Committee in the Senate. In it he said:

On September 6, 2006, I briefed the full SSCI membership on key aspects of the detainee program, providing a level of detail

previously not made available to SSCI members. I made clear to the committee that upon passage of the new detainee legislation, I would brief the SSCI on how CIA would execute the future program, and I agreed to promptly notify the committee when any modifications to the program were proposed, or when the status of any individual detainee changed.

I think that is dispositive of a very clear indication by the executive branch to allow the Senate to perform its oversight through the properly designated committee, the Senate Committee on Intelligence.

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

The PRESIDING OFFICER. The Senator's time has expired.

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

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

CENTRAL INTELLIGENCE AGENCY,
Washington, DC, September 28, 2006.

Hon. PAT ROBERTS,
Chairman, Select Committee on Intelligence, United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: I write today regarding the Rockefeller amendment to the military commissions legislation now pending on the Senate floor. The CIA strongly opposes adoption of the Rockefeller amendment.

Since the inception of its detention program, the CIA has a strong and consistent record of keeping its oversight committees fully and currently informed of critical aspects of the program. Further, the bipartisan leadership of Congress has been briefed regularly by the CIA on this program since its inception, and I personally briefed the Majority and Minority Leaders of the Senate only weeks ago. The CIA remains committed to a frank and open dialogue with the Congress on detailed aspects of the detainee program, while ensuring the secrecy of this particularly sensitive activity. Senate adoption of the Rockefeller amendment would go far beyond traditional CIA reports to Congress by mandating detailed information about assets, methods, locations and individuals involved in sensitive operations. In addition, detailing in public law the amount of sensitive information that CIA must provide to Congress will chill some of our counterterrorism partners whose cooperation is fully conditioned on the absolute secrecy of their support.

Since becoming Director of the CIA, I have made every effort to keep your committee apprised of the status of the detainee program. In July, I updated you and SSCI Vice Chairman Rockefeller on the program, sharing sensitive aspects, including information about specific detainees, examples of actionable intelligence gained from the program and about ways in which the program could continue to be successful in the future. Following this briefing and despite its highly sensitive nature, at your request—and that of Sen. Rockefeller—I fully supported briefing the entire SSCI membership.

On September 6, 2006, I briefed the full SSCI membership on key aspects of the detainee program, providing a level of detail previously not made available to SSCI members. I made clear to the committee that upon passage of new detainee legislation, I would brief the SSCI on how CIA would execute the future program and I agreed to promptly notify the committee when any modifications to the program were proposed or when the status of any individual detainee changed.

Upon Senate passage of the military commissions legislation, I stand ready to again brief your committee and the bipartisan Senate leadership on the future of the detainee program.

Sincerely,

MICHAEL V. HAYDEN,
General, USAF Director.

Mr. WARNER. Mr. President, are we prepared to move to a vote?

The PRESIDING OFFICER. Yes. The question is on agreeing to the amendment of the Senator from West Virginia.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Maine (Ms. SNOWE).

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

The result was announced—yeas 46, nays 53, as follows:

[Rollcall Vote No. 256 Leg.]

YEAS—46

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bayh	Harkin	Nelson (FL)
Biden	Inouye	Nelson (NE)
Bingaman	Jeffords	Obama
Boxer	Johnson	Pryor
Byrd	Kennedy	Reed
Cantwell	Kerry	Reid
Carper	Kohl	Rockefeller
Chafee	Landrieu	Salazar
Clinton	Lautenberg	Sarbanes
Conrad	Leahy	Schumer
Dayton	Levin	Stabenow
Dodd	Lieberman	Wyden
Dorgan	Lincoln	
Durbin	Menendez	

NAYS—53

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Specter
Chambliss	Hagel	Stevens
Coburn	Hatch	Sununu
Cochran	Hutchison	Talent
Coleman	Inhofe	Thomas
Collins	Isakson	Thune
Cornyn	Kyl	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	

NOT VOTING—1

Snowe

The amendment (No. 5095) was rejected.

Mr. MCCONNELL. 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.

AMENDMENT NO. 5104

The PRESIDING OFFICER. There will now be 4 minutes equally divided on the Byrd amendment.

Who yields time?

The Senator from West Virginia is recognized.

Mr. BYRD. Friends, Senators, lend me your ears. Friends, Senators, lend me your ears. I voted to report a fair and balanced bill from the Armed Services Committee, but the legislation before the Senate today bears little resemblance to that legislation. It has been changed so many times, we don't know the real implications of this ever-changing bill. The Byrd-Obama-Clinton-Levin amendment sunsets the authority of the President to convene new military commissions after 5 years. There is nothing wrong with that.

This amendment ensures that Congress will not simply stand aside and ignore its oversight responsibilities after this bill is enacted. This amendment will not stop any trials of suspected terrorists that commence before the sunset date. It simply forces Congress to revisit—revisit—the weighty constitutional implications of this bill in 5 years' time and then be in a position, on the basis of new knowledge and experience, to make a decision again.

It is a very reasonable amendment. I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I say to our most distinguished senior colleague that this amendment was well debated on the floor, but I would bring to the attention of all Senators that we do not have any estimates of how long the war on terrorism against the jihadists is going to take place. We may be having those who commit crimes today not apprehended until after this sunset provision. Then they go free. They are not subject, unless the Senate at that time somehow restores the importance of the next President to continue—to continue, Mr. President—bringing to justice and trial under our rules these individuals who are committing war crimes. So I urge all Senators to oppose this amendment.

Mr. BYRD. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 36 seconds.

Mr. BYRD. This amendment will not set any terrorists free. Let Senators who are here 5 years from now take a new look on the basis of experience and make a decision in the light of the then circumstances. That is all I am asking. This is nothing new.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the Byrd amendment No. 5104.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Maine (Ms. SNOWE).

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

The result was announced—yeas 47, nays 52, as follows:

[Rollcall Vote No. 257 Leg.]

YEAS—47

Akaka	Bayh	Bingaman
Baucus	Biden	Boxer

Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Specter
Stabenow
Wyden

NAYS—52

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Roberts
Santorum
Sessions
Shelby
Smith
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NOT VOTING—1

Snowe

The amendment (No. 5104) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 5088

The PRESIDING OFFICER. There are 4 minutes equally divided on the Kennedy amendment.

Mr. KENNEDY. Mr. President, here is the Army Manual of 2006 printed after the Senate of the United States went on record in accepting the McCain amendment prohibiting torture. In the printed Army Manual is a list of the prohibited activities where any person who is a member of the Defense Department is prohibited to engage in these kinds of activities because they have made a finding that they are basically and effectively torture.

Today we have thousands of Americans in the Central Intelligence Agency, Special Forces, the SEALS, and American contractors working for the CIA around the world fighting terrorism. All this amendment does is give notice to each and every country that any country that is going to practice these kinds of techniques on any American will be guilty effectively of a war crime.

That is effectively what we have done with the Army Manual, and we ought to protect our intelligence agency personnel, our SEALS, and all of those who are all over the world protecting the United States.

Arguments against? It is a violation of the Constitution because it is an instruction to a member of the Cabinet about what they ought to do.

Here it is for airports. The Secretary of Transportation shall conduct an assessment with foreign countries.

Here it is on voting rights. The Attorney General is authorized and directed to institute suits that are going to be involved in poll taxes.

The Secretary of State shall notify without delay foreign states that are involved in pollution. The list goes on. If we can do it for pollution, we can do it for violation of basic and fundamental rights of Americans overseas.

This is effectively about what we adopted when we adopted the War Crimes Act, which was virtually unanimous, with not a single vote in opposition.

This is basically a restatement. I hope it will be accepted overwhelmingly.

Mr. WARNER. Mr. President, this is an amendment that requires close attention by all colleagues.

In the preparation of this bill, we defined in broad terms the conduct that is regarded as a grave breach of Common Article 3. These are war crimes. We the Congress should not try to provide a specific list of techniques. We don't know what the future holds. That is not the responsibility of the Congress. We are not going to direct. We try to make a list of techniques, that the United States describe every technique that violates Common Article 3. We cannot foresee into the future every technique that might violate Common Article 3. We should not step on that situation. It is not ours to do.

Under the separation of powers, it is reserved to the executive branch to work this out. But if at any time it is the judgment of any Member of this body, or collectively, that we are not abiding by this law, I am confident that this institution's oversight will correct and quickly remedy the situation.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Maine (Ms. SNOWE).

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

The result was announced—yeas 46, nays 53, as follows:

[Rollcall Vote No. 258 Leg.]

YEAS—46

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Specter
Stabenow
Wyden

NAYS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (NE)
Roberts
Santorum
Sessions
Shelby
Smith
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NOT VOTING—1

Snowe

The amendment (No. 5088) was rejected.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WARNER. I ask the Presiding Officer to read the unanimous consent that is in place so all Members understand what is to take place.

The PRESIDING OFFICER. Senator LEAHY will be recognized for his remaining 12 minutes. Senator LEVIN is under the control of 4 minutes, Senator WARNER is under the control of 16 minutes, to be followed by closing remarks by the two leaders. Following that time, the Senate will proceed to passage of the bill. Further, that there then be 5 minutes equally divided prior to the vote on the motion to invoke cloture on border fence legislation.

Mr. WARNER. The Chair will now recognize Senator LEAHY?

Mr. LEVIN. Mr. President, my understanding is that was the allocation of time, not necessarily the order of speaking.

The PRESIDING OFFICER. The agreement does not appear to be in any particular order.

Mr. WARNER. Mr. President, at the appropriate time, I will allocate 14 minutes to the distinguished Senator from Arizona, Mr. MCCAIN.

At this point in time, I recognize the extraordinary contributions of the staff persons who worked on this bill, and I shall include the entire list.

We worked under the direction of Charlie Abell, Scott Stucky, David Morriss, Rick DeBobes, Peter Levine, Chris Paul, Pablo Chavez, Richard Fontaine, Jen Olson, Adam Brake, James Galyean, and legislative counsel Charlie Armstrong.

I assure Members it was a challenge from beginning to end. I cannot recall seeing a more professional group of staffers serving their Members in the Senate.

Mr. LEVIN. I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side or to any party.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS CONSENT REQUEST—S. 2781

Mr. INHOFE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 625, S. 2781, and I ask unanimous consent that the committee-reported amendment be, for the third time, passed and the motion to reconsider be laid upon the table.

Mr. JEFFORDS. I object. I agree that wastewater security is an important issue. In fact, it is made even more important because the Homeland Security appropriations conferees have exempted these facilities from security requirements—a decision that I understand was due in large part to the Senator's opposition to including these facilities within the protections of that bill.

Although I would like to have seen stronger chemical security provisions than those I understand are forthcoming from the Homeland Security appropriations conference, I anticipate supporting that measure. I would support including wastewater facilities in that measure. But I will not support a bill like S. 2781 that provides weaker protections.

By contrast, I long ago introduced S. 1995, The Wastewater Treatment Works Security Act of 2005. I feel certain that if I asked unanimous consent to pass this bill, the Senator would object to my request. I prefer a more constructive pathway to providing essential protection to our communities.

We should fill this gap in our Nation's security, and in order to do so, we need full and fair opportunity to offer amendments to cure the serious deficiencies in this bill.

Mr. President, I ask unanimous consent to insert a statement in the RECORD concerning my objection to consideration of the Wastewater Security bill.

The PRESIDING OFFICER. The objection is heard.

Mr. INHOFE. Mr. President, I wanted to call the Senate's attention to the fact we do have wastewater legislation that has passed both the House and the Senate, in the House by a vote of 413 to 2. It is something which is desperately needed. We need to attend to that as soon as possible.

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

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

COMMON ARTICLE 3 AND WAR CRIMES PROVISIONS OF THE MILITARY COMMISSIONS ACT

Mr. LEVIN. Senators WARNER and MCCAIN, over the last year, you have played an instrumental role in bringing needed clarity to the rules for the treatment of detainees in U.S. custody. I understand that you also played a key role in negotiating the provisions of the military commissions bill regarding the War Crimes Act and Common Article 3 of the Geneva Conventions. As you said last year when the Detainee Treatment Act was adopted, this is not an area in which ambiguity is helpful. For this reason, I hope that you will help me in providing a clear record of our intent on these issues.

In particular, section 8(a)(3) of the bill provides that ''the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions'', that these interpretations shall be issued by Executive order, and that such an Executive order ''shall be authoritative (as to non-grave breach provisions of Common Article 3) as a matter of United States law, in the same manner as other administrative regulations.''

Would you agree that nothing in this provision gives the President or could give the President the authority to modify the Geneva Conventions or U.S. obligations under those treaties?

Mr. MCCAIN. First, I say to my good friend from Michigan that this legislation clearly defines grave breaches of Common Article 3, which are criminalized and ultimately punishable by death. It is critical for the American public to understand that we are criminalizing breaches of Common Article 3 that rise to the level of a felony. Such acts—including cruel or inhuman treatment, torture, rape, and murder, among others—will clearly be considered war crimes.

Where the President may exercise his authority to interpret treaty obligations is in the area of ''nongrave'' breaches of the Geneva Conventions—those breaches that do not rise to the level of a war crime. In interpreting the conventions in this manner, the President is bounded by the conventions themselves. Nothing in this bill gives the President the authority to modify the conventions or our obligations under those treaties. That understanding is at the core of this legislation.

Mr. WARNER. I concur with the Senator from Arizona.

Mr. LEVIN. Would you agree that nothing in this provision gives the President, or could give the President, the authority to modify the requirements of the Detainee Treatment Act?

Mr. WARNER. The purpose of this legislation is to strengthen, not to weaken or modify, the Detainee Treatment Act. For the first time, this legislation is required to ''take action to ensure compliance'' with the DTA's prohibition on cruel, inhuman, or degrading treatment, as defined in the U.S. reservation to the Convention Against Torture. He is directed to do so through, among other actions, the establishment of administrative rules and procedures. Nothing in this legislation authorizes the President to modify the requirements of the DTA, which were enshrined in a law passed last December. I would point out as well to the distinguished ranking member that the President himself never proposed to weaken the DTA. Rather, he proposed to make compliance with the DTA tantamount to compliance with Common Article 3 of the Geneva Conventions. That proposal is not included in this legislation.

Mr. MCCAIN. I agree entirely with Senator WARNER's comments.

Mr. LEVIN. Would you agree that any interpretation issued by the President under this section would only be valid if it is consistent with U.S. obligations under the Geneva Conventions and the Detainee Treatment Act?

Mr. MCCAIN. That is correct.

Mr. WARNER. I agree.

Mr. LEVIN. Section 8(b) of the bill would amend the War Crimes Act to provide that only ''grave breaches'' of Common Article 3 of the Geneva Conventions constitute war crimes under U.S. law. The provision goes on to define those grave breaches to include, among other things, torture, and ''cruel or inhuman treatment''. The term ''cruel or inhuman treatment' is defined to include acts ''intended to inflict severe or serious physical or mental pain or suffering.''

Would you agree that the changes to the War Crimes Act in section 8(b) do not in any way alter U.S. obligations under the Geneva Conventions or under the Detainee Treatment Act?

Mr. MCCAIN. The changes to the War Crimes Act are actually a responsible modification in order to better comply with America's obligations under the Geneva Conventions to provide effective penal sanction for grave breaches of Common Article 3. It is important to note, as has the Senator from Michigan, that in this section ''cruel or inhuman treatment'' is defined for purposes of the War Crimes Act only. It does not infringe, supplant, or in any way alter the definition of cruel, inhuman, or degrading treatment or punishment prohibited in the DTA and defined therein with reference to the 5th, 8th, and 14th amendments to the U.S. Constitution. Nor do the changes to the War Crimes Act alter U.S. obligations under the Geneva Conventions.

Mr. WARNER. I would associate myself with the comments from the Senator from Arizona.

Mr. LEVIN. Would you agree that nothing in this section or in this bill requires or should be interpreted to authorize any modification to the new Army Field Manual on interrogation techniques, which was issued last month and provides important guidance to our solders on the field as to what is and is not permitted to the interrogation of detainees?

Mr. WARNER. The executive branch has the authority to modify the Army Field Manual on Intelligence Interrogation at any time. I welcomed the new version of the field manual issued last

month and agree that it provides critical guidance to our solders in the field. That said, the content of the field manual is an issue separate from those at issue in this bill, and it was not my intent to effect any change in the field manual through this legislation.

Mr. MCCAIN. I concur wholeheartedly with the Senator from Virginia. As the Senator form Virginia is aware, there is a provision in the bill before the Senate that defines ''cruel and inhuman treatment'' under the War Crimes Act. I would note first that this definition is limited to criminal offenses under the War Crimes Act and is distinct from the broader prohibition contained in the Detainee Treatment Act. That act defined the term ''cruel, inhuman and degrading treatment'' with reference to the reservation the United States took to the Convention Against Torture.

In the war crimes section of this bill, cruel and inhuman treatment is defined as an act intended to inflict severe or serious physical or mental pain or suffering. It further makes clear that such mental suffering need not be prolonged to be prohibited. The mental suffering need only be more than transitory. It is important to note that the ''nontransitory'' requirement applies to the harm, not to the act producing the harm. Thus if a U.S. soldier is, for example, subjected to some terrible technique that lasts for a brief time but that causes serious and nontransitory mental harm, a criminal act has occurred.

Mr. WARNER. That is my understanding and intent as well, and I agree with the Senator's other clarifying remarks.

In the same section, the term ''serious physical pain or suffering'' is defined as a bodily injury that involves one of four characteristics: ''a substantial risk of death,'' ''extreme physical pain,'' ''a burn or physical disfigurement or a serious nature,'' or ''significant loss or impairment of the function of a bodily member, organ or mental faculty.'' I do not believe that the term ''bodily injury'' adds a separate requirement which must be met for an act to constitute serious physical pain or suffering.

Mr. MCCAIN. I am of the same view.

Mr. LEVIN. And would the Senator from Arizona agree with my view that section 8(a)(3) does not make lawful or give the President the authority to make lawful any technique that is not permitted by Common Article 3 or the Detainee Treatment Act?

Mr. MCCAIN. I do agree.

Mr. WARNER. I agree with both of my colleagues.

Mr. KENNEDY. Mr. President, in times of war, our obligation is to protect our Nation and to protect those men and women who risk their lives to defend us. This bill fails that duty. By failing to renounce torture, it inflames an already dangerous world and makes new enemies for America in our war against terror. This puts cause or people and our troops at greater risk. That is why so many respected military leaders oppose this bill.

Throughout our history, America has led the world in promoting human rights and decency. We have fought wars against tyranny and oppression. Our enemies have employed tactics that were rightly and roundly condemned by the civilized world. We maintained American strength and honor by refusing to stoop to the level of our enemies. And we should not stoop to the level of the terrorists in the war on terror.

I rise to express my profound opposition to this bill both in terms of its substance and the procedure by which it reached the floor. The Armed Service Committee reported out a bill that I supported. That bill was not perfect, but it preserved our commitment to the Geneva Conventions, limited the possibility that detainees would be treated abusively and set up procedures for military tribunals that generally respected the fundamental requirements of fairness.

Republican members of the Armed Services Committee then began a process of secret negotiation with the White House that produced a bill that is far worse than the committee bill. Indeed, we have continued to see changes in that bill as it has been moved toward the floor in a rush to achieve passage before the Senate recesses for the election. This rush to passage to serve a political agenda is no way to produce careful and thoughtful legislation on profound issues of national security and civil liberties. At this point, most Members of this body hardly know what they are being asked to approve.

The bill as it now appears on the floor works profound and disastrous changes in our law.

This legislation sets out an overly broad definition of unlawful enemy combatant. This definition would allow the President to pick up anyone citizen and legal residents included anywhere around the world, and throw them into prison in Guantanamo without even charging or trying them. These people would never get a day in court to prove their innocence. There is no check whatsoever on the President's ability to detain people in an arbitrary manner.

We already know that our military has made mistakes in detaining people. We are currently holding dozens of people at Guanatanamo who we know based on the military's own records are not guilty of anything. Yet they have not been let go.

This legislation also makes a distinction between citizens and lawful permanent residents. Citizens cannot be subject to military commissions and their flawed procedures. Yet lawful permanent residents, those green card holders who are on the path to citizenship, could be sent to military commissions. Green Card holders must obey our laws, pay taxes, and register for the draft. They are serving our country in Iraq. They have an obligation to protect our laws, and they deserve the protection of those same laws.

The Geneva Conventions were adopted in the wake of the horrific atrocities during World War II. These conventions reflect the international consensus on how individuals should be treated in times of war. They set a minimum floor of humane treatment for all prisoners, military and civilian alike. This floor is known as Common Article 3 because it is common to all of the conventions. Yet this bill also gives the President authority to decide what conduct violates Common Article 3 of the Geneva Conventions. Again, the President's authority to define the meaning of Common Article 3 is virtually unreviewable. He is required to publish his interpretation in the Federal Register, but the administration has already made clear that it will not make public which interrogation tactics are being used. Moreover, the bill expressly states that the Geneva Conventions cannot be relied upon in any U.S. court as a source of rights. The President's interpretation may well likely escape judicial review, as well.

As the final method of concealing its activities, the administration has stripped the courts of their ability to review the confinement or treatment of detainees. The administration won a provision that eliminates the ability of any detainee anywhere in the world to file a habeas corpus petition challenging the justification for or conditions of his or her confinement. The provision applies to all existing petitions and would require their dismissal, including the Hamdan case itself. There is no justification for stripping courts of jurisdiction to issue the great writ of habeas corpus, which has been a foundation of our legal system with roots in the Magna Carta. The availability of the Great Writ is assured in the Constitution itself, which permits its suspension only in times of invasion or rebellion. This provision of the bill is most likely unconstitutional.

The administration has pursued a strategy to defeat accountability since it first began to take detainees into custody. It chose Guantanamo and secret prisons abroad because it thought U.S. law would not apply. It fought hard to prevent detainees from obtaining counsel and then argued that U.S. Courts lacked jurisdiction to hear detainees' complaints. It sought the prohibition on habeas corpus petitions adopted in the Detainee Treatment Act and then urged courts to misconstrue it to wipe out all pending habeas cases. This new effort to prohibit habeas petitions is a continuation of this effort to escape judicial scrutiny.

The bill also for the first time in our history would authorize the introduction of evidence obtained by torture in a judicial proceeding. Our courts have always rejected this type of evidence

because it is inconsistent with fundamental notions of justice, and also because it is unreliable. We know that detainees were subjected to harsh interrogation techniques, and made statements as a result. Under this legislation, if those statements were made before the passage of the McCain Amendment last winter, then they are admissible. The Congress is saying for the first time in our nation's history that statements obtained by torture are admissible. This fact, alone, is a stunning statement about how far we have strayed from our bedrock values.

It defines conduct that can be prosecuted as a war crime in a very narrow way that appears designed to exclude many of the abusive interrogation practices that this administration has employed. While some have argued that cruel and inhumane practices such as waterboarding, induced hypothermia and sleep deprivation would surely be covered, the White House and the Republican leadership have refused to commit to this basic interpretation of the bill.

We tried to improve this bill. A number of amendments were offered and should have been adopted. I offered an amendment that responds to the lack of clarity about which practices are prohibited by the bill. Because the administration has refused to commit itself to stop using specific abusive interrogation procedures, our commitment to the standards of Common Article 3 of the Geneva Conventions is in doubt. That puts our own people at risk. As military leaders have repeatedly stated, our adherence to the Geneva Conventions is essential to protect our own people around the world. America has thousands of people across the globe who do not wear uniforms, but put their lives on the line to protect this country every day. CIA agents, Special Forces members, contractors, journalists and others will all be less safe if we turn our backs on the standards of Common Article 3.

The bill as it has reached the floor would diminish the security and safety of Americans everywhere and further erode our civil liberties. I strongly oppose this bill.

Mr. GRASSLEY. Mr. President, we hear on a daily basis about the war we are currently engaged in, the war on terror, but I don't think most of us stop to think about what that actually means.

As citizens of the greatest country in the world, we have become so accustomed to all the rights afforded us by our Constitution that we now take them for granted. We are incredibly fortunate to live in a nation where our freedom and safety is our Government's first priority.

We aren't living in the world I grew up in. Our Nation was rocked to its core 5 years ago when we were attacked on our own soil. Thousands of innocent Americans were murdered simply because they lived in the one country that, above all others, embodies freedom and democracy. The mastermind behind those attacks was Khalid Shaikh Mohammed, who is now in custody and soon will be brought to justice.

In the aftermath of these attacks, Congress authorized our President to ''use all necessary force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.'' President Bush used this authorization, combined with his constitutional powers to make these sorts of judgments during times of war, to try enemy combatants in military commissions.

Earlier this month, we observed the 5-year anniversary of the horrific attacks on America. I cannot imagine the reaction that would have come if, 5 years ago, Members of Congress had stood on this floor and suggested that we wouldn't do all we could to prevent another attack on our country. Five years ago, with the images of the collapsing Twin Towers and the burning Pentagon and the smoldering Pennsylvania field seared into our memories, we stood united in the proposition that we intended to protect Americans first.

In Hamdan v. Rumsfeld, which the Supreme Court decided earlier this year, the Court ruled that the administration's use of military commissions to try unlawful enemy combatants violated international law. This decision forced our interrogators, key in defending America from terrorist attack, to curtail their investigations. Without a clarification of the vague requirements, these interrogators might be subject to prosecution for war crimes. It also brought to an end the prosecution of unlawful enemy combatants through the military commissions.

It is key to point out that military commissions have been used throughout American history to bring enemy combatants to justice since before the United States was even officially formed. George Washington used them during the American Revolution, and since our Constitution was ratified, Presidents have used military commissions to try those who seek to harm Americans during every major conflict. Some of our most popular Presidents from history have taken this route, including Abraham Lincoln and Franklin Roosevelt. Whenever the leaders of this great Nation have seen threats posed by those who refuse to abide by the rules of war, they have taken the necessary steps to protect us.

Our President has come to us and asked for help in trying these terrorists whose sole goal is to kill those who love freedom. He has asked for our help in ensuring that those investigating potential terrorist plots against our Nation and our citizens are secure from arbitrary prosecution for undefined war crimes. These people are part of our first line of defense in securing the safety of our country—we owe it to them to protect them. Because of the Supreme Court's decision in Hamdan, the only way these terrorists will be brought to justice and our interrogators will be protected for doing their jobs is for Congress to write a new law codifying procedures for military commissions and clarifying our obligations under the Geneva Conventions.

I firmly believe that enemy combatants in our custody enjoyed ample due process in the military commissions established by the administration, which were brought to a halt by the Supreme Court. The compromise that we are considering here today gives more rights to terrorists who were caught trying to harm America and our allies than our own servicemembers would receive elsewhere, more than is required by the Geneva Conventions—yet some are still demanding more.

Mr. President, it is essential that we protect human dignity at every opportunity, but we have gone well beyond that with this legislation. The legislation before us responds to the Supreme Court's decision in Hamdan and seeks to protect national security while ensuring that the terrorists who seek to destroy America are properly dealt with. This bill affords these unlawful enemy combatants rights that they themselves would never consider granting American soldiers. It is beyond reasonable, beyond fair, and beyond time for Congress to act. We must pass this bill and reinstate the programs that, I believe, have been a crucial part of our Nation's security over the last 5 years.

Mr. WARNER. Mr. President, I ask unanimous consent to have printed in the RECORD a joint statement regarding alleged violations of the Geneva Conventions.

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

JOINT STATEMENT OF SENATORS MCCAIN, WARNER, AND GRAHAM ON INDIVIDUAL RIGHTS UNDER THE GENEVA CONVENTIONS, SEPTEMBER 28, 2006

Mr. President, we are submitting this statement into the record because it has been suggested by some that this legislation would prohibit litigants from raising alleged violations of the Geneva Conventions. This suggestion is misleading on three counts.

First, it presumes that individuals currently have a private right of action under Geneva. Secondly, it implies that the Congress is restricting individuals from raising claims that the Geneva Conventions have been violated as a collateral matter once they have an independent cause of action. Finally, this legislation would not stop in any way a court from exercising any power it has to consider the United States' obligations under the Geneva Conventions, regardless of what litigants say or do not say in the documents that they file with the court.

The Supreme Court's decision in Hamdan left untouched the widely-held view that the Geneva Conventions provide no private rights of action to individuals. And, in fact, the majority in Hamdan suggested that the Geneva Conventions do not afford individuals private rights of action, although it did not need to reach that question in its decision. This view has been underscored by judicial precedent—and even Salim Hamdan

himself did not claim in his court filings that he had a private right of action under Geneva.

Still, this legislation would not bar individuals from raising to our Federal courts in their pleadings any allegation that a provision of the Geneva Conventions—or, for that matter, any other treaty obligation that has the force of law—has been violated. It is not the intent of Congress to dictate what can or cannot be said by litigants in any case.

By the same token, this legislation explicitly reserves untouched the constitutional functions and responsibilities of the judicial branch of the United States. Accordingly, when Congress says that the President can interpret the meaning of Geneva, it is merely reasserting a longstanding constitutional principle. Congress does not intend with this legislation to prohibit the Federal courts from considering whether the obligations of the United States under any treaty have been met. To paraphrase an opinion written by Chief Justice Roberts recently, if treaties are to be given effect as Federal law under our legal system, determining their meaning as a matter of Federal law is the province and duty of the judiciary headed by the Supreme Court. So, though the President certainly has the constitutional authority to interpret our Nation's treaty obligations, such interpretation is subject to judicial review. It is not the intent of Congress to infringe on any constitutional power of the Federal bench, a co-equal branch of government.

Most importantly, the lack of judicial enforceability through a private right of action has absolutely no bearing on whether Geneva is binding on the executive branch. Even if the Geneva Conventions are not enforceable by individuals in our Nation's courts, the President and his subordinates are bound to comply with Geneva, a set of treaty obligations that forms part of our American jurisprudence. That is clear to us and to all who have negotiated this legislation in good faith.

Mrs. BOXER. Mr. President, I view this bill as a weak plan that will lead to delay after delay in convicting terrorists, endanger our troops on the field, and surrender one of the bedrock constitutional principles of our justice system—habeas corpus.

We had a chance to improve this bill with amendments, but this rubber stamp Senate defeated them one after another, leaving us with a flawed plan that will face a serious court challenge, and that makes us less safe.

The Republicans even voted against a bipartisan bill that came out of the Senate Armed Services Committee.

Mr. McCONNELL. Mr. President, I rise today in support of the Military Commissions Act of 2006. I support this legislation, first and foremost, because this bill recognizes that we are a Nation at war. We are a Nation at war, and we are at war with Islamic extremists. We are not conducting a law enforcement operation against a check-writing scam or trying to foil a bank heist. We are at war against extremists who want to kill our citizens, cripple our economy, and discredit the principles we hold dear—freedom and democracy.

Once you accept the premise that we are at war, the most important consideration should be, Does this bill protect the American people? I submit that this bill does just that. It does so by permitting the President's CIA interrogation program to continue. This is of profound importance.

If the attacks of September 11, 2001, taught us anything, it is that self-imposed limitations on our intelligence-gathering efforts can have devastating consequences. For instance, the wall of separation between the intelligence community and the law enforcement community that existed prior to 2001 proved to be an imposing hurdle to foiling the September 11 attacks. According to the report of the 9/11 Commission, in late summer 2001, the U.S. Government, in effect, conducted its search for 9/11 hijacker Khalid Mihdhar with one hand tied behind its back. As we all know, that search was unsuccessful. Comparable pre-9/11 efforts with respect to Zacarias Moussaoui were similarly frustrated in large part due to this wall.

Thankfully, with the PATRIOT Act, we removed this wall of separation, and now the intelligence and law enforcement arms of our Government can share information and more effectively protect us here at home.

Another lesson of September 11 was the premium that should be placed on human intelligence. Prior to September 11, we were woefully deficient in our human intelligence regarding al-Qaida. Al-Qaida is an extremely difficult organization to infiltrate. You can't just pay dues and become a member. But interrogation offers a rare and valuable opportunity to gather vital intelligence about al-Qaida's capabilities and plans before they attack us.

The CIA interrogation program provided crucial human intelligence that has saved American lives by helping to prevent new attacks. As the President has explained, 9/11 mastermind Khalid Shaikh Mohammed told the CIA about planned attacks on U.S. buildings in which al-Qaida members were under orders to set off explosives high enough in the building so the victims could not escape through the windows.

As the President also noted, the program has also yielded human intelligence regarding al-Qaida's efforts to obtain biological weapons such as anthrax. And it has helped lead to the capture of key al-Qaida figures, such as KSM and his accomplice, Ramzi bin al Shibh.

Another means of evaluating the importance of this program is by considering a grim hypothetical. What if al-Qaida or other terrorists organizations were able to get their hands on nuclear, chemical, or biological weapons and were trying to attack a major U.S. city? Thousands or even millions of lives could be at stake. Under such a chilling scenario, wouldn't we want our intelligence community to have all possible tools at its disposal? Would we want our intelligence community to respond with one hand tied behind its back as it did before September 11?

Unfortunately, that threat is all too real. The potential for al-Qaida to attack a U.S. city with a device that could kill millions of people reflects how vital it is to permit the intelligence community to make full use of the tools it needs to continue protecting American lives. The compromise preserves this crucial intelligence-gathering tool and allows the CIA and others on the front lines to continue protecting America.

In addition, this bill protects classified information from being released to al-Qaida terrorists. This also is a serious concern. The identities of U.S. intelligence officials and informants—men and women who put their lives at risk to defend this Nation—must be protected at all costs.

If we needed any reminding why terrorists should not be given sensitive information, we should just look at the prosecution of the 1993 World Trade Center bombers. According to the man who prosecuted these Islamic extremists, intelligence from U.S. Government files was supplied to the defendants through the discovery process.

This information was later delivered directly to Osama bin Laden while he was living in Sudan. Let me repeat that. Information given to the jihadist defendants, individuals who tried to destroy the World Trade Center in 1993, was later given directly to bin Laden himself.

Since we are at war, we should not be revealing classified information to the enemy. That is just common sense. This bill protects classified information.

Finally, while this bill preserves our ability to continue to protect America, it also provides detainees with fair procedural rights.

In fact, this legislation provides broader protections for defendants than did Nuremberg. Liberal law professor Cass Sunstein has written that the military commissions authorized by the President in 2001 ''provide far greater procedural safeguards than any previous military commission, including Nuremberg.'' Let me say that again: liberal law professor Cass Sunstein noted that the President's 2001 military order provided far greater procedural safeguards than any previous military commission, including Nuremberg. And in this legislation, we provide defendants with even broader procedural safeguards than the President's 2001 military order.

This system is exceedingly fair since al-Qaida in no way follows the Geneva Conventions or any other international norm. Al-Qaida respects no law, no authority, no legitimacy but that of its own twisted strain of radical Islam.

Al-Qaida grants no procedural rights to Americans they capture. Look at journalist Daniel Pearl, who was beheaded by al-Qaida in Pakistan in 2002. Al-Qaida simply executes those they capture, even civilians like Pearl. Not only do they unapologetically kill innocent civilians, they broadcast these brutal executions on the Internet for all to see.

Mr. President, I would just conclude by stating that this legislation is vitally important. It is vitally important because it is wartime legislation. It is vitally important because this bill protects our national security, it protects classified information, and it protects the rights of defendants. Most important, it protects America. For these reasons, I urge its passage.

Mr. CORNYN. Mr. President, once the Military Commissions Act, MCA, is signed into law and section 7 is effective, Congress will finally accomplish what it sought to do through the Detainee Treatment Act—DTA—last year. It will finally get the lawyers out of Guantanamo Bay. It will substitute the blizzard of litigation instigated by Rasul v. Bush with a narrow DC Circuit -only review of the Combatant Status Review Tribunal—CSRT—hearings.

Perhaps even more important than the narrow standards of review created by the DTA is the fact that that review is exclusive to the court of appeals. This is by design. Courts of appeals do not hold evidentiary hearings or otherwise take in evidence outside of the administrative record. The DC Circuit will operate no differently under the CSRT review provisions of the DTA. The circuit court will review the administrative record of the CSRTs to make sure that the right standards were applied, the standards that the military itself set for CSRTs. And it will determine whether the CSRT system as a whole is consistent with the Constitution and with Federal statutes.

There is no invitation in the DTA or MCA to reconsider the sufficiency of the evidence. Weighing of the evidence is a function for the military when the question is whether someone is an enemy combatant. Courts simply lack the competence—the knowledge of the battlefield and the nature of our foreign enemies—to judge whether particular facts show that someone is an enemy combatant. By making review exclusive to the DC Circuit, the DTA helps to ensure that the narrow review standards it sets do not somehow grow into something akin to Federal courts' habeas corpus review of State criminal convictions. The court's role under the DTA is to simply ensure that the military applied the right rules to the facts. It is not the court's role to interpret those facts and decide what they mean.

Because review under the DTA and MCA will be limited to the administrative record, there is no need for any lawyer to ever again go to Guantanamo to represent an enemy combatant challenging his detention. The military, I am certain, will make the paper record available inside the United States. This is one of the major benefits of enacting the MCA. As I and others have noted previously, the hundreds of lawyer visits to Guantanamo sparked by Rasul have seriously disrupted the operation of the Naval facility there. They have forced reconfiguration of the facility and consumed enormous resources, and have led to leaks of information that have made it harder for our troops there to do their job, to keep order at Guantanamo. Some of these detainee lawyers have even bragged about what a burden their activities have been on the military, and how they have disrupted interrogations at Guantanamo. Putting an end to that was the major purpose of the DTA. Today, with the MCA, we see to it that this goal is effectuated.

Another major improvement that the MCA makes to the DTA is that it tightens the bar on nonhabeas lawsuits contained in 28 U.S.C. §2241(e)(2). That paragraph, as enacted by the DTA, barred postrelease conditions-of-confinement lawsuits, but only if the detainee had been found to be properly detained as an enemy combatant by the U.S. Court of Appeals on review of a CSRT hearing. Although nothing in the DTA or MCA directly requires the military to conduct CSRTs, this limitation on the bar to non-habeas actions effectively did compel the military to hold CSRTs—and to somehow get the detainee to appeal to the DC Circuit. The alternative would have been to allow the detainee to sue U.S. troops at Guantanamo after his release.

The MCA revises section 2241(e)(2) by, among other things, adopting a much narrower exception to the bar on postrelease lawsuits. Under the MCA, 2242(e)(2) will bar nonhabeas lawsuits so long as the detainee ''has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.'' This new language does several things. First, it eliminates the requirement that the DC Circuit review a CSRT, or that a CSRT even be held, before nonhabeas actions are barred. This is important because many detainees were released before CSRTs were even instituted. We do not want those who were properly detained as enemy combatants to be able to sue the U.S. military. And we do not want to force the military to hold CSRT hearings forever, or in all future wars. Instead, under the new language, the determination that is the precondition to the litigation bar is purely an executive determination. It is only what the United States has decided that will matter.

In addition, the language of (e)(2) focuses on the propriety of the initial detention. There inevitably will be detainees who are captured by U.S. troops, or who are handed over to us by third parties, who initially appear to be enemy combatants but who, upon further inquiry, are found to be unconnected to the armed conflict. The U.S. military should not be punished with litigation for the fact that they initially detained such a person. As long as the individual was at least initially properly detained as an enemy combatant, the nonhabeas litigation is now barred, even if the U.S. later decides that the person was not an enemy combatant or no longer poses any threat. The inquiry created here is not unlike that for reviewing, in the civilian criminal justice context, the propriety of an arrest. An arrest might be entirely legal, might be based on sufficient probable cause, even if the arrestee is later conclusively found to be innocent of committing any crime. The arresting officer cannot be sued and held liable for making that initial arrest, so long as the arrest itself was supported by probable cause, simply because the suspect was not later convicted of a crime. Similarly, under 2241 (e)(2), detainees will not be able to sue their captors and custodians if the United States determines that it was the right decision to take the individual into custody.

Mr. SESSIONS. Mr. President, I would like to make a few comments about section 7 of the bill that is before us today. This section makes a number of improvements to the Detainee Treatment Act, which was passed by the Congress and signed into law on December 30 of last year. First, section 7 will fulfill one of the original objectives of the DTA: to get the lawyers out of Guantanamo Bay. As my colleague Senator GRAHAM has noted, these lawyers have even bragged about the fact that their presence and activities at Guantanamo have made it harder for the military to do its job. Mr. Michael Ratner, the director of the Center for Constitutional Rights, which coordinated much of the detainee habeas litigation, had this to say about his activities to a magazine:

> 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?

This is what Congress thought that it was putting an end to when it enacted the DTA in 2005. That act provided that ''no court, justice, or judge shall have jurisdiction to hear or consider'' claims filed by Guantanamo detainees, except under the review standards created by that Act. The DTA was made effective immediately upon the date of its enactment. And as Justice Scalia noted in his Hamdan v. Rumsfeld dissenting opinion, the DTA's jurisdictional removal made no exception for lawsuits that were pending when the statute was enacted. Justice Scalia also pointed out that ''[a]n ancient and unbroken line of authority attests that statutes ousting jurisdiction unambiguously apply to cases pending at their effective date.'' He also noted that up until the Hamdan decision, ''one cannot cite a single case in the history of Anglo-American law . . . in which a jurisdiction-stripping provision was denied immediate effect in pending cases, absent an explicit statutory reservation.''

The Hamdan majority, on the other hand, found that the Supreme Court's

precedents governing jurisdictional statutes were trumped in that case by a legislative intent to preserve the pending lawsuits. This congressional intent, the majority concluded, was manifested in minor changes that had been made to the language of the bill and, most expressly, in statements made by Senators regarding the intended effect of the bill. As Senator GRAHAM has explained in detail in remarks in the CONGRESSIONAL RECORD on August 3, at 152 Cong. Rec. S8779, it appears that the Supreme Court was misled about the legislative history of the DTA by the lawyers for Hamdan. Those lawyers misrepresented the nature of the statements made in the Senate and caused the court to believe that Congress had an intent other than that reflected in the text of the statute. It certainly was not my intent, when I voted for the DTA, to exempt all of the pending Guantanamo lawsuits from the provisions of that act.

Section 7 of the Military Commissions Act fixes this feature of the DTA and ensures that there is no possibility of confusion in the future. Subsection (b) provides that the bill's revised litigation bar ''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.'' I don't see how there could be any confusion as to the effect of this act on the pending Guantanamo litigation. The MCA's jurisdictional bar applies to that litigation ''without exception.''

The new bill also bars all litigation by anyone found to have been properly detained as an enemy combatant, regardless of whether the detainee has been through the DC Circuit under the DTA or has been through a Combatant Status Review Tribunal hearing. The previous version of this bar, in the DTA, allowed detainees to bring conditions-of-confinement lawsuits after their release if their detention was not reviewed by the DC Circuit. Obviously, the Government could not force the detainee to appeal, and there are some who were released before CSRT hearings were instituted. The new bill states that as long as the military decides that it was appropriate to take the individual into custody as an enemy combatant, as a security risk in relation to a war, that person cannot turn around and sue our military after he is released. It should not be held against our soldiers that they take someone into custody, believing in good faith that he appears to be connected to hostilities against the United States, and then determine that the individual is not an enemy combatant and release the person. The fact of release should not be an invitation to litigation, so long as the military finds that it was appropriate to take the individual into custody in the first place.

The biggest change that the MCA makes to section 2241(e) is that the new law applies globally, rather than just to Guantanamo detainees. We are legislating through this law for future generations, creating a system that will operate not only throughout this war, but for future wars in which our Nation fights. In the future, we may again find ourselves involved in an armed conflict in which we capture large numbers of enemy soldiers. It is not unlikely that the safest and most secure place to hold those soldiers will be inside the United States. The fact that we hold those enemy soldiers in this country should not be an invitation for each of them to sue our Government. We held very large numbers of enemy soldiers in this country during World War II. They did not sue our Government seeking release. The Rasul decision would seem to have required that enemy combatants held in this country during wartime can sue. If that court allowed enemy combatants held in Cuba to sue, it is inevitable that those held inside this country would have been allowed to sue as well. That is simply not acceptable. It would make it very difficult to fight a major war in the future if every enemy war prisoner detained inside this country could sue our military. Through section 7 of the MCA, we not only solve our current problems with Guantanamo, but we plan for future conflicts as well. We ensure that, if need be, we can again hold enemy soldiers in prison camps inside our country if we need to, without becoming embroiled in a tempest of litigation.

I imagine that, now that Congress has clearly shut off access to habeas lawsuits, the lawyers suing on behalf of the detainees will shift their efforts toward arguing for an expansive interpretation of the judicial review allowed under the DTA. Paragraphs 2 and 3 of section 1005(e) of the DTA allow the DC Circuit to review a CSRT enemy combatant determination. The Government has provided a CSRT hearing to every detainee held at Guantanamo, with the likely exception of those transferred there this month, so all of those detainees will now be allowed to seek DTA review in the DC Circuit. Paragraphs 2 and 3 allow the DC Circuit to ask whether the military applied its own standards and procedures for CSRTs to the detainee, and they allow the court to ask whether those standards are constitutional and are consistent with nontreaty Federal law. I think that those standards speak for themselves, that they clearly allow only a very limited review. In particular, they do not allow the courts to second-guess the military's evidentiary findings. The courts simply are not in a position, they do not have the expertise, to judge whether particular evidence suggests that an individual is an enemy combatant.

I would like to note here that this is the consensus view of the DTA at this time, at least for now. I have no doubt that in the future, lawyers will argue that these standards invite the court to reweigh the evidence, to take in evidence outside of the CSRT record, and to decide if the military was right about its factual judgment. At this time, however, both proponents and opponents of section 7 of the MCA seem to agree on what kind of review it will allow. Earlier today, for example, I heard Senator SPECTER, who opposes section 7, criticize the paragraph 2 and 3 review standards on the Senate floor. He said, ''the statute provides that the Combatant Status Review Tribunal may be reviewed by the Court of Appeals for the District of Columbia only to the extent that it was—the ruling was consistent with the standards and procedures specified by the Secretary of Defense. Now, to comply with the standards and procedures determined by the Secretary of Defense does not mean—excludes on its face—a factual determination as to what happens to the detainees.''

I have also come into possession of a so-called fact sheet on the DTA review standards that is being distributed on Capitol Hill by Human Rights First, a group that is lobbying Senators to oppose the MCA and to support the Specter amendment that was defeated earlier today. This fact sheet is titled, ''The Limited Review Allowed Under the DTA is No Substitute for Habeas.'' Here is what the Human Rights First fact sheet says:

> The DTA restricts the court to determining whether the prior CSRTs followed their own procedures.
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> * * * * *
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> It has been suggested that the court of appeals, in reviewing the CSRT decisions, can fix the problem simply by choosing to review the evidence itself. But that is simply not the way the statute reads. The government has taken the firm position in Bismullah that no review even of ''significant exculpatory evidence'' is permitted under the DTA. If Congress believes that the courts should be allowed to review the evidence—and they clearly should be—then it should change the statute to say so. It is no solution to hope that the courts will ignore the actual statutory language and rewrite the statute to correct the deficiency.

There you have it. Senators have been told in floor debate by the chairman of the Judiciary Committee that the DTA ''excludes on its face'' any factual determination with regard to the Guantanamo detainees. The groups lobbying Senators with regard to the MCA have pointed out that having courts make their own factual determinations, to judge the sufficiency of the evidence behind the military's findings, ''is simply not the way the statute reads.'' We are informed that the Justice Department has taken the ''firm position'' that no evidentiary review is permitted under the DTA. And we are told that if we disagree with this system, if we think that ''the courts should be allowed to review the evidence,'' then we ''should change the statute to say so.'' The Senate is clearly on notice as to how the DTA review

will work, what the statute says on its face, how the Justice Department has construed that statute. By rejecting the Specter amendment earlier today, and by passing the MCA later today, the Senate makes clear that it does not disagree with the Justice Department and does not want to change this system.

I will close my remarks by quoting at length from the testimony of U.S. Attorney General William Barr, who spoke on the matters addressed by this legislation before the Judiciary Committee on June 15, 2005. Mr. Barr's testimony informs our understanding of the history, law, and practical reality underlying the DTA and the MCA. I would commend his statement to anyone seeking to understand these statutes and the complex relationship between the President's war-making power and the judiciary. This relationship is superficially similar to, but is fundamentally different from, the judiciary's oversight of the civilian criminal justice system. I particularly found to be true Mr. Barr's emphasis that the proper role of the courts in this area is not accurately described as ''deference'' to military decisions because deference implies that the ultimate decisions still lie with the courts. As Mr. Barr notes, ''the point here is that the ultimate substantive decision rests with the President and that the courts have no authority to substitute their judgments for that of the President.''

Here is an extended excerpt from Attorney General Barr's testimony regarding the detention of alien enemy combatants:

The determination that a particular foreign person seized on the battlefield is an enemy combatant has always been recognized as a matter committed to the sound judgment of the Commander in Chief and his military forces. There has never been a requirement that our military engage in evidentiary proceedings to establish that each individual captured is, in fact, an enemy combatant. Nevertheless, in the case of the detainees at Guantanamo, the Deputy Secretary of Defense and the Secretary of the Navy have established Combatant Status Review Tribunals (''CSRTs'') to permit each detainee a fact-based review of whether they are properly classified as enemy combatants and an opportunity to contest such designation.

As to the detention of enemy combatants, World War II provides a dramatic example. During that war, we held hundreds of thousands of German and Italian prisoners in detention camps within the United States. These foreign prisoners were not charged with anything; they were not entitled to lawyers; they were not given access to U.S. courts; and the American military was not required to engage in evidentiary proceedings to establish that each was a combatant. They were held until victory was achieved, at which time they were repatriated. The detainees at Guantanamo are being held under the same principles, except, unlike the Germans and Italians, they are actually being afforded an opportunity to contest their designation as enemy combatants.

Second, once hostile forces are captured, the subsidiary question arises whether they belonged to an armed force covered by the protections of the Geneva Convention and hence entitled to POW status? If the answer is yes, then the captives are held as prisoners of war entitled to be treated in accord with the various requirements of the Convention. If the answer is no, then the captives are held under humane conditions according to the common law of war, though not covered by the various requirements of the Convention. The threshold determination in deciding whether the Convention applies is a ''group'' decision, not an individualized decision. The question is whether the military formation to which the detainee belonged was covered by the Convention. This requires that the military force be that of a signatory power and that it also comply with the basic requirements of Article 4 of the Treaty, e.g., the militia must wear distinguishing uniforms, retain a military command structure, and so forth. Here, the President determined that neither al-Qaeda nor Taliban forces qualified under the Treaty.

The third kind of action we are taking goes beyond simply holding an individual as an enemy combatant. It applies so far only to a subset of the detainees and is punitive in nature. In some cases, we are taking the further step of charging an individual with violations of the laws of war. This involves individualized findings of guilt. Throughout our history we have used military tribunals to try enemy forces accused of engaging in war crimes. Shortly after the attacks of 9/11, the President established military commissions to address war crimes committed by members of al-Qaeda and their Taliban supporters.

Again, our experience in World War II provides a useful analog. While the vast majority of Axis prisoners were simply held as enemy combatants, military commissions were convened at various times during the war, and in its immediate aftermath, to try particular Axis prisoners for war crimes. One notorious example was the massacre of American troops at Malmedy during the Battle of the Bulge. The German troops responsible for these violations were tried before military commissions.

Let me turn to address some of the challenges being made to the way we are proceeding with these al-Qaeda and Taliban detainees.

I. THE DETERMINATION THAT FOREIGN PERSONS ARE ENEMY COMBATANTS

The Guantanamo detainees' status as enemy combatants has been reviewed and rereviewed within the Executive Branch and the military command structure. Nevertheless, the argument is being advanced that foreign persons captured by American forces on the battlefield have a Due Process right under the Fifth Amendment to an evidentiary hearing to fully litigate whether they are, in fact, enemy combatants. In over 225 years of American military history, there is simply no precedent for this claim.

The easy and short answer to this claim is that it has been, as a practical matter, mooted by the military's voluntary use of the CSRT process, which gives each detainee the opportunity to contest his status as an enemy combatant. As discussed below, those procedures are clearly not required by the Constitution. Rather they were adopted by the military as a prudential matter.

Nonetheless, those procedures would plainly satisfy any conceivable due process standard that could be found to apply. In its recent Hamdi decision, the Supreme Court set forth the due process standards that would apply to the detention of an American citizen as an enemy combatant. The CSRT process was modeled after the Hamdi provisions and thus provides at least the same level of protection to foreign detainees as the Supreme Court said would be sufficient to detain an American citizen as an enemy combatant. Obviously, if these procedures are sufficient for American citizens, they are more than enough for foreign detainees who have no colorable claim to due process rights.

Moreover, most of the guarantees embodied in the CSRT parallel and even surpass the rights guaranteed to American citizens who wish to challenge their classification as enemy combatants. The Supreme Court has indicated that hearings conducted to determine a detainee's prisoner-of-war status, pursuant to the Geneva Convention, could satisfy the core procedural guarantees owed to an American citizen. In certain respects, the protocols established in the CSRTs closely resemble a status hearing, as both allow all detainees to attend open proceedings, to use an interpreter, to call and question witnesses, and to testify or not testify before the panel. Furthermore, the United States has voluntarily given all detainees rights that are not found in any prisoner-of-war status hearing, including procedures to ensure the independence of panel members and the right to a personal representative to help the detainee prepare his case. Nevertheless, there appear to be courts and critics who continue to claim that the Due Process Clause applies and that the CSRT process does not go far enough. I believe these assertions are frivolous.

I am aware of no legal precedent that supports the proposition that foreign persons confronted by U.S. troops in the zone of battle have Fifth Amendment rights that they can assert against the American troops. On the contrary, there are at least three reasons why the Fifth Amendment has no applicability to such a situation. First, as the Supreme Court has consistently held, the Fifth Amendment does not have extra-territorial application to foreign persons outside the United States. As Justice Kennedy has observed, ''[T]he Constitution does not create, nor do general principles of law create, any juridical relation between our country and some undefined, limitless class of non-citizens who are beyond our territory.'' Moreover, as far as I am aware, prior to their capture, none of the detainees had taken any voluntary act to place themselves under the protection of our laws; their only connection with the United States is that they confronted U.S. troops on the battlefield. And finally, the nature of the power being used against these individuals is not the domestic law enforcement power—we are not seeking to subject these individuals to the obligations and sanctions of our domestic laws—rather, we are waging war against them as foreign enemies, a context in which the concept of Due Process is inapposite.

In society today, we see a tendency to impose the judicial model on virtually every field of decision-making. The notion is that the propriety of any decision can be judged by determining whether it satisfies some objective standard of proof and that such a judgment must be made by a ''neutral'' arbiter based on an adversarial evidentiary hearing. What we are seeing today is an extreme manifestation of this—an effort to take the judicial rules and standard applicable in the domestic law enforcement context and extend them to the fighting of wars. In my view, nothing could be more farcical, or more dangerous.

These efforts flow from a fundamental error—confusion between two very distinct constitutional realms. In the domestic realm of law enforcement, the government's role is disciplinary—sanctioning an errant member of society for transgressing the internal

rules of the body politic. The Framers recognized that in the name of maintaining domestic tranquility an overzealous government could oppress the very body politic it is meant to protect. The government itself could become an oppressor of ''the people.''

Thus our Constitution makes the fundamental decision to sacrifice efficiency in the realm of law enforcement by guaranteeing that no punishment can be meted out in the absence of virtual certainty of individual guilt. Both the original Constitution and the Bill of Rights contain a number of specific constraints on the Executive's law enforcement powers, many of which expressly provide for a judicial role as a neutral arbiter or ''check'' on executive power. In this realm, the Executive's subjective judgments are irrelevant; it must gather and present objective evidence of guilt satisfying specific constitutional standards at each stage of a criminal proceeding. The underlying premise in this realm is that it is better for society to suffer the cost of the guilty going free than mistakenly to deprive an innocent person of life or liberty. The situation is entirely different in armed conflict where the entire nation faces an external threat. In armed conflict, the body politic is not using its domestic disciplinary powers to sanction an errant member, rather it is exercising its national defense powers to neutralize the external threat and preserve the very foundation of all our civil liberties. Here the Constitution is not concerned with handicapping the government to preserve other values. Rather it is designed to maximize the government's efficiency to achieve victory—even at the cost of ''collateral damage'' that would be unacceptable in the domestic realm.

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.

The Constitution's grant of ''Commander-in-Chief'' power must, at its core, mean the plenary authority to direct military force against persons the Commander judges as a threat to the safety of our forces, the safety of our homeland, or the ultimate military and political objectives of the conflict. At the heart of these kinds of military decisions is the judgment of what constitutes a threat or potential threat and what level of coercive force should be employed to deal with these dangers. These decisions cannot be reduced to tidy evidentiary standards, some predicate threshold, that must be satisfied as a condition of the President ordering the use of military force against a particular individual. What would that standard be? Reasonable suspicion, probable cause, substantial evidence, preponderance of the evidence, or beyond a reasonable doubt? Does anyone really believe that the Constitution prohibits the President from using coercive military force against a foreign person—detaining him—unless he can satisfy a particular objective standard of evidentiary proof?

Let me posit a battlefield scenario. American troops are pinned down by sniper fire from a village. As the troops advance, they see two men running from a building from which the troops believe they had received sniper fire. The troops believe they are probably a sniper team. Is it really being suggested that the Constitution vests these men with due process rights as against the American soldiers? When do these rights arise? If the troops shoot and kill them—i.e., deprive them of life—could it be a violation of due process? Suppose they are wounded and it turns out they were not enemy forces. Does this give rise to Bivens' Constitutional tort actions for violation of due process? Alternatively, suppose the fleeing men are captured and held as enemy combatants. Does the due process clause really mean that they have to be released unless the military can prove they were enemy combatants? Does the Due Process Clause mean that the American military must divert its energies and resources from fighting the war and dedicate them to investigating the claims of innocence of these two men?

This illustrates why military decisions are not susceptible to judicial administration and supervision. There are simply no judicially-manageable standards to either govern or evaluate military operational judgments. Such decisions inevitably involve the weighing of risks. One can easily imagine situations in which there is an appreciable risk that someone is an enemy combatant, but significant uncertainty and not a preponderance of evidence. Nevertheless, the circumstances may be such that the President makes a judgment that prudence dictates treating such a person as hostile in order to avoid an unacceptable risk to our military operations. By their nature, these military judgments must rest upon a broad range of information, opinion, prediction, and even surmise. The President's assessment may include reports from his military and diplomatic advisors, field commanders, intelligence sources, or sometimes just the opinion of frontline troops. He must decide what weight to give each of these sources. He must evaluate risks in light of the present state of the conflict and the overall military and political objectives of the campaign.

Furthermore, extension of due process concepts from the domestic prosecutive arena as a basis for judicial supervision of our military operations in time of war would not only be wholly unprecedented, but it would be fundamentally incompatible with the power to wage war itself, so altering and degrading that capacity as to negate the Constitution's grant of that power to the President.

First, the imposition of such procedures would fundamentally alter the character and mission of our combat troops. To the extent that the decisions to detain persons as enemy combatants are based in part on the circumstances of the initial encounter on the battlefield, our frontline troops will have to concern themselves with developing and preserving evidence as to each individual they capture, at the same time as they confront enemy forces in the field. They would be diverted from their primary mission—the rapid destruction of the enemy by all means at their disposal—to taking notes on the conduct of particular individuals in the field of battle. Like policeman, they would also face the prospect of removal from the battlefield to give evidence at post-hoc proceedings.

Nor would the harm stop there. Under this due process theory, the military would have to take on the further burden of detailed investigation of detainees' factual claims once they are taken to the rear. Again, this would radically change the nature of the military enterprise. To establish the capacity to conduct individualized investigations and adversarial hearings as to every detained combatant would make the conduct of war—especially irregular warfare—vastly more cumbersome and expensive. For every platoon of combat troops, the United States would have to field three platoons of lawyers, investigators, and paralegals. Such a result would inject legal uncertainty into our military operations, divert resources from winning the war into demonstrating the individual ''fault'' of persons confronted in the field of battle, and thereby uniquely disadvantage our military vis-à-vis every other fighting force in the world.

Second, the introduction of an ultimate decision maker outside of the normal chain of command, or altogether outside the Executive Branch, would disrupt the unitary chain of command and undermine the confidence of frontline troops in their superior officers. The impartial tribunals could literally overrule command decisions regarding battlefield tactics and set free prisoners of war whom American soldiers have risked or given their lives to capture. The effect of such a prospect on military discipline and morale is impossible to predict.

The Supreme Court's decision in Rasul v. Bush does not undercut these long-standing principles. In Rasul, the Supreme Court addressed a far narrower question—whether the habeas statute applies extraterritorially—and expressly refrained from addressing these settled constitutional questions. The Court, in concluding that the habeas statute reached aliens held at Guantanamo Bay, relied on the peculiar language of the statute and the ''extraordinary territorial ambit' of the writ at common law.'' Of course, the idiosyncrasies of the habeas statute do not have any impact on judicial interpretation of the reach of the Fifth Amendment or other substantive constitutional provisions. Moreover, the Court's recognition in Rasul that the United States exercises control, but ''not ultimate sovereignty'' over the leased Guantanamo Bay territory confirms the inapplicability of the Fifth Amendment to aliens held there.

Nevertheless, even if Guantanamo Bay is somehow deemed sovereign United States territory, the Fifth Amendment is still inapplicable. The Supreme Court, in addition to the requisite detention on sovereign United States territory, demands that the aliens only ''receive constitutional protections'' when they have also ''developed substantial connections with this country.'' Thus, under the Court's formulation, ''lawful but involuntary'' presence in the United States ''is not of the sort to indicate any substantial connection with our country'' sufficient to trigger constitutional protections. The ''voluntary connection'' necessary to trigger the Fifth Amendment's due process guarantee is sorely lacking with respect to enemy combatants.

Whatever else may be said, there can be no dispute that these individuals did not arrive at Guantanamo Bay by free choice. Captured enemy combatants that have been transported to Guantanamo Bay for detention thus are not entitled to Fifth Amendment due process rights. It should also be noted that the Supreme Court's decision in Rasul was a statutory ruling, not a constitutional

one. In other words, the Court concluded only that the federal habeas statute confers jurisdiction on federal district courts to hear claims brought by aliens detained at Guantanamo Bay. The Court nowhere suggested that the Constitution grants such aliens a right of access to American courts.

An important consequence follows: Congress remains free to restrict or even to eliminate entirely the ability of enemy aliens at Guantanamo Bay to file habeas petitions. Congress could consider enacting legislation that does so—either by creating special procedural rules for enemy alien detainees, by requiring any such habeas petitions to be filed in a particular court, or by prohibiting enemy aliens from haling military officials into court altogether.''

Mr. President, with the Military Commissions Act, the Senate today enacts Mr. Barr's third suggestion. We create a system that is consistent with our treaty obligations but that also is consistent with military tradition and the needs of our fighting forces in a time of war. It is a system that will serve this Nation well. I look forward to the act's passage and enactment.

Mr. HARKIN. Mr. President, since my years as a pilot with the U.S. Navy, nothing has been more important to me than protecting the American people and ensuring the security of our country.

Today, we are at war with extremists who want to do grievous harm to America. We all want to fight these extremists and defeat them. We all want to ensure that those who committed or supported acts of terror are brought to justice. The only disagreement is about how best to do that. What is the smartest, most effective way to fight and defeat our enemies?

Unfortunately, as the newly declassified National Intelligence Estimate testifies very clearly, our current course is, in many ways, playing into the hands of the terrorists. It is stirring up virulent anti-Americanism around the world, it is drawing new recruits to the jihadists' cause, and it is making America less safe.

We have to do a better job, and we can do a better job. It is not good enough to be strong and wrong. We need to be strong and smart. This is especially true when it comes to our policies on interrogating and trying suspected terrorists. Again, we all want to extract information from these suspects. We all want to try them and, if guilty, punish them. The only disagreement is about how best to do that. What is the smartest, most effective way to interrogate and to try these suspected terrorists?

There is plenty of evidence that our current course, which clearly includes torturing suspects and imprisoning them without trial, is not working. To take just one case in point, consider the Canadian citizen, whom we now know to be completely innocent, who was arrested by the CIA—I use the word ''arrested'' loosely. He was picked up by the CIA, bound, gagged, blindfolded, and sent to Syria for interrogation under torture. Not surprisingly, he told his torturers exactly what they wanted to hear—that he had received terrorist training in Afghanistan. The truth, of course, is that he was never in Afghanistan, had no terrorist ties, and is completely innocent.

The cost to the United States for this miscarriage of justice, in terms of our forfeited reputation and moral standing, has been disastrous—just as the revelations of torture and abuse at Abu Ghraib. What is more, it has endangered our troops in the field—now and in the future—should they fall into the hands of captors who say they have the right to subject American prisoners to the same torture and abuse.

Again, it is not enough to be strong and wrong. We need to be strong and smart. We need to be true to 230 years of American jurisprudence, our Constitution, and the humane values that define us as Americans.

Back during the dark days of McCarthyism in the 1950s, former Senator Joseph McCarthy went on a rampage. What he was basically saying to the American people is that we have to become like the Communists in order to defeat them. Cooler heads prevailed but not until Senator McCarthy had done a lot of damage in this country, not until a lot of innocent people were blacklisted, denied employment, many of whom committed suicide because they had no place to turn. The dark days of Joseph McCarthy come back to us in the guise of this military tribunal bill.

We do not have to become like the jihadists. We don't have to become like the terrorists in order to defeat them. The best way to defeat them is the same way we defeated Joseph McCarthy and the Communists. We stayed true to our American ideals, our American jurisprudence, and the humane values we cherish as a free society. Regrettably, the bill before us fails this test. I cannot, in good conscience, support it.

The bill includes no barrier on the President's reinterpreting our obligations under the Geneva Conventions as he pleases, allowing practices such as simulated drowning, induced hypothermia, and extreme sleep deprivation. The President can allow all of those to continue, in contravention of the Geneva Conventions.

The bill before us rewrites the War Crimes Act in a way that fails to give clarity as to interrogation techniques that are allowed or forbidden, effectively allowing the administration—any administration—to continue the abusive techniques I just mentioned.

The bill creates a very bizarre double standard, immunizing, on the one hand, policymakers and the CIA and its contractors for committing acts of torture—immunizing them—while leaving our military troops subject to prosecution under the Uniform Code of Military Justice for the exact same practices. Let me repeat that. The bill creates this double standard: it immunizes the CIA, for example, and any contractors with the CIA, for committing acts of torture, while at the same time those same acts, if committed by a military person, would subject that military person to prosecution under the Uniform Code of Military Justice.

What kind of a signal does this send? What kind of signal is this? The bill completely eliminates the ability of noncitizens to bring a habeas corpus petition, effectively removing the only remaining check on the administration's decision regarding torture and other abuses.

Indeed, the habeas provisions in this bill would permit—get this—the bill would permit a legal permanent resident of the United States—a legal permanent resident of the United States—to be snatched off the street in the dark of night, bound, blindfolded, subject to indefinite detention, even torture, with absolutely no way for that person to challenge it in court.

Is that what we want to become as a nation? A legal permanent resident in the United States, of which there are millions in this country, taken out of his or her home at night, and we don't know what happens to them? They go into the dark dungeons of who knows where. Maybe Guantanamo Bay.

Habeas corpus is the only independent remedy available to people being held in indefinite detention who, in fact, have no connection to terrorism.

I heard one of my colleagues on the other side of the aisle going on yesterday about this habeas provision. He went on about how habeas corpus is to protect U.S. citizens. It is in no way, he went on, aimed at protecting enemy combatants who are picked up.

Therein lies the problem. How do we know they are enemy combatants? Is it because the CIA says they are an enemy combatant? Who says they are an enemy combatant? This is not World War II, folks, where the Germans are on one side and they have uniforms, and the Japanese are on the other side and they have uniforms. This is an amorphous terrorist war where the terrorists don't wear uniforms. They can be dressed like you or me. They can look just like you or me. So we don't know.

We have instances where people have been thrown into Guantanamo, for example, and they were fingered by a neighbor who didn't like them and wanted their property or house or didn't like them because of something they had done to them in the past. They fingered them and said: Guess what. They are big terrorists. People were picked up and thrown in jail.

Habeas is the one provision that allows someone snatched off the streets here or anywhere else suspected of being a terrorist to at least come forward and say: What are the charges against me?

We have seen this happen in Guantanamo, people kept for months, for years, without ever having a charge filed against them, and many of them we found out were totally innocent.

What does this say to the rest of the world?

Senator OBAMA from Illinois told the story the other day about when he was in Chad in August and heard about an American citizen who was picked up in Sudan and held by the Sudanese. He made some calls to try to get this person released. It was an American journalist. After a while, he was released.

The American journalist came back and said: I was picked up by the Sudanese officials. I asked for permission to contact the U.S. Embassy with a phone call so I could talk to our Embassy.

The Sudanese captor said: Why should we let you do that? You don't let the people in Guantanamo Bay do that.

The use of habeas is not just to protect the people who are suspected so that we know whether they really are an enemy combatant. It is also as a protection for our troops, our soldiers, our civilians, our business people traveling around the world, people traveling on vacation, journalists, just like this one, who may be snatched, picked up by a foreign government. We want to be able to say to that government: Produce the person. What are the charges? If we don't allow it, we are giving the green light to every other would-be dictator anywhere in the world to do the same thing—any government anywhere.

If the moral argument against torture does not hold any weight with this administration, they should just examine the abundant evidence that torture simply doesn't work. This is not just my opinion, this is what the experts are saying.

Let me quote from a letter signed by 20 former U.S. Army interrogators and interrogation technicians:

> Prisoner/detainee abuse and torture are to be avoided at all costs, in part because they can degrade the intelligence collection effort by interfering with a skilled interrogator's efforts to establish rapport with the subject.

Simply put, torture does not help gather useful, reliable, actionable intelligence. In fact, it inhibits the collection of such intelligence.

Earlier this month, the U.S. Army released its new field manual 222.3: ''Human Intelligence Collector Operations,'' which covers interrogations by the U.S. military in detail. This manual replaces the previous manual and is to be used by our military personnel around the world in performing interrogations.

The Army Field Manual explicitly bans, among other things, beating prisoners, sexually humiliating them, threatening them with dogs, depriving them of food and water, performing mock executions, shocking them with electricity, burning them, causing other pain, or subjecting them to the technique called waterboarding, which simulates drowning.

So if these techniques are explicitly banned in the Army Field Manual, why shouldn't they be explicitly banned for CIA personnel or CIA contract personnel? Why do we have a high standard for our military and effectively no standard for the CIA and its contractors?

For me, this debate about illegal imprisonment and officially sanctioned torture is not an abstraction. It strikes very close to home for me.

Thirty-six years ago this summer at the height of the Vietnam war, I brought back photographs of the so-called tiger cages at Con Son Island where the Vietcong and North Vietnamese prisoners, as well as civilians who had committed no crime whatsoever, were being tortured and killed with the full knowledge and sanction of the U.S. Government. That was July of 1970 when I was a staff person in the House of Representatives working with a congressional delegation on a fact-finding trip to Vietnam.

We had all heard reports about the possible existence of these so-called tiger cages in which people were brutally tortured and killed. Our State Department and our military officials denied their existence. They said it was only Communist propaganda.

Through various sources, I thought that the reports about the tiger cages were at least credible and should be investigated further.

Thanks to the courage of Congressman William Anderson of Tennessee and Congressman Augustus Hawkins of California and to Don Luce, an American working for a nongovernmental organization, and because of the bravery of a young Vietnamese man who gave us the maps on how to find the prison, we were able to expose the tiger cages on Con Son Island.

This young Vietnamese man about whom I speak was let out of the tiger cages, but they kept his brother, and they said: If you breathe one word about this, we are going to kill your brother.

Why did they let him out of the tiger cages? Because he was president of the student body at Saigon University. What had been his crime? He had demonstrated against the war. So they picked up he and his brother and threw them in the tiger cages and tortured them.

The students refused to go back to class—this was a big deal—until they returned this young man to his university, which they did, but they kept his brother and said: If you breathe a word of this, we will kill him.

This young man decided he needed to take a chance, and he took a chance on me. He drew the maps and gave us the story on how to find these tiger cages which were well hidden, and without the maps we never would have found them. Fortunately, I had a camera and a hidden tape recorder which proved useful when I returned to the United States.

Supporters of the war claim that the tiger cages were not all that bad. But then Life magazine published my pictures, and the world saw the horrific conditions where, in clear violation of the Geneva code, North Vietnamese, Vietcong, as well as civilian opponents of the war—just civilians—who committed no crimes whatsoever—were all crowded together in these cages, as I said, in clear violation of the Geneva Conventions and the most fundamental principles of human rights.

At the same time, the U.S. Government had been insisting that the North Vietnamese abided by the Geneva Conventions in their treatment of prisoners in North Vietnam. Yet here we were condoning and even supervising the torture of civilian Vietnamese, along with Vietnamese soldiers and others in clear violation of the Geneva Conventions.

We may not have known about it—our public did not know about that—but the Vietnamese sure knew about it.

I thought we had learned our lesson from that, and then I saw Abu Ghraib and thought: Wait a minute. Haven't we learned our lesson? And, Mr. President, just as 37 years ago when the tiger cages were first talked about, they were denied—and they thought they could deny them because it was hard to get to the island. You couldn't really get out there. As far as they knew, no one had ever taken pictures of it and no one had really ever escaped from there, like a Devil's Island kind of place. So the military denied it. Our Government denied it year after year until I was able to take the pictures and bring back the evidence.

Mr. President, I submit to you and everyone here and the American people that had not that courageous soldier taken the pictures of Abu Ghraib and kept those pictures, they would have denied that ever happened. They would have denied to high Heaven that such things took place at Abu Ghraib. Thankfully, one courageous young soldier decided this was wrong, it was inhumane, it was not upholding the highest human standards of America, and it was in violation of the Geneva Conventions. Had he not taken those pictures, it would be denied forever that ever happened at Abu Ghraib.

So now, as if we learned nothing from that previous tragedy of the tiger cages 36 years ago or Abu Ghraib just a couple of years ago, here we go again denying obvious instances of torture and abuse, effectively giving the green light to torture by U.S. Government agents and contractors and watering down the War Crimes Act.

This is a betrayal of our laws. It is a betrayal of our values. It is a betrayal of everything that makes us unique and proud to be Americans.

The administration apparently thinks that we will just go along with this betrayal because there is an election in 6 weeks. Apparently they think we are afraid of being branded weak on terrorism. Indeed, some are no doubt hoping that we will vote against this bill so they can use it as a bludgeon against us in the election. All I can say is: Shame on them. What is more, it is not going to work. Because opposing

this bill, which would give the green light to torture, is far, far bigger than the outcome of the November election.

This is about preserving our core values as Americans. It is about standing up for our troops and ensuring that they do not become subject to the same acts of torture and retaliation. It is about standing up for American citizens, civilians, and others who may be caught up in some foreign land with false charges filed against them, and yet not even being able to contact our embassy. It is about protecting Americans. And it is about changing course and beginning to wage an effective war against the terrorists who attacked us on September 11, 2001.

It is time to quit being strong and wrong, and it is time to start being strong and smart. Being strong and wrong has been a disaster. It has bogged us down in a civil war in Iraq. It has turbocharged the terrorists. It has made America less safe. So it is time to be strong and smart. It is time to be true to who we are as Americans. It is time to say no to indefinite—indefinite—incarceration. It is time to say no to taking away the right of someone put away to at least have the charges pressed against them. It is time to say no to torture in all its forms now and at any time in the future.

Mr. President, I yield the floor.

Mr. BIDEN. Mr. President, I want to start by complimenting Senators WARNER, MCCAIN and GRAHAM and the work that they did to improve this bill, particularly in two areas.

First, our colleagues did the right thing by rejecting the attempt by the administration to reinterpret, by statute, Common Article III of the Geneva Conventions. That would have been an enormous mistake—and an invitation for other countries to define for themselves what the Geneva Conventions require.

Second, our colleagues were right to reject the use of secret evidence in military commissions. Such a proposal is not consistent with American jurisprudence, and would not have satisfied the requirements of the Supreme Court decision in Hamdan.

Overall, the bill provides a much better framework for trying unlawful enemy combatants than under the flawed order issued by the President. All this is positive, and our three colleagues deserve credit for their good work.

But the bill contains a significant flaw. It limits the right of habeas corpus in a manner that is probably unconstitutional. Don't take my word for it. Listen to the words of a conservative Republican, Kenneth Starr, who used to sit on this nation's second highest court, and is now one of the country's leading appellate advocates, in a letter written to Senator SPECTER earlier this week:

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 be problematic for Congress to modify the constitutionally protected writ of habeas corpus under current events.

Accordingly, I believe this bill is likely unconstitutional. I hope that I am wrong. But I fear that I am right, and that we will be back here in a few years debating this issue again.

We had one chance to get this right—to ensure that we don't end up back here again after a new round of litigation. There was no reason to rush. No one challenges our right to detain the high-value prisoners the President just transferred to Guantanamo. We are not about to release them—nor should we.

But rush we did. In the last week, there have been two different versions of the legislation that emerged from closed-door negotiations with the administration. My colleagues may be willing to trust the legal judgment and competence of this administration. But I am not.

Since 9/11, several major cases have gone to the Supreme Court that relate to the laws governing the war on al-Qaida and the President's powers. And the administration has been wrong too many times—wrong about whether habeas corpus rights applied to detainees in Guantanamo Bay, wrong about whether U.S. citizens detained as enemy combatants had a right to meaningful due process, and wrong about whether the military commissions the President established by order were legal. Simply put, I am not willing to trust the administration's legal judgment again. And it is clear that the administration has put its imprint on this legislation in several troubling respects, including in the stripping of habeas rights.

In the struggle in which we are engaged against radical fundamentalists, we must be both tough and smart. This bill is not smart because it risks continued litigation about how we detain and try unlawful enemy combatants.

It is also not smart because it risks continued harm to the image of the United States. The 9/11 Commission concluded that ''[a]llegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the government will need.'' The recently released National Intelligence Estimate made plain that there are several factors fueling the spread of the jihadist movement, including ''entrenched grievances, such as corruption, injustice, and fear of Western domination, leading to anger, humiliation, and a sense of powerlessness.'' The mistreatment of detainees at Abu Ghraib, and concerns about our policies governing detainees at Guantanamo Bay, undoubtedly fuel these grievances and anger against the United States. Our detainee policies have also made it harder for our allies to support our anti-terrorism policies. We have to get this right.

Therefore, even though our colleagues achieved significant improvements, I cannot support this legislation.

Mr. WARNER. Mr. President, at this point in time I yield to the distinguished Senator from Arizona 14 minutes.

I would say that I have been privileged to be a Member of this institution for now 28 years, and I first met JOHN MCCAIN through his father when I was Secretary of the Navy. So that goes back 28 plus another 5 years that I have known of JOHN MCCAIN.

This Chamber, and indeed all of America, knows full well about the extraordinary record that this man has in the service of his Nation, showing unselfishness, showing courage, showing foresight.

I am proud to have worked with him as a partner in these past weeks, indeed, months now, on this piece of legislation.

I just want to express my gratitude, and I think the gratitude of many people across this country, for the service he is rendering the Senate and hopefully will continue to render the Senate in the coming years.

When I step down under the caucus, it is my hope that JOHN MCCAIN is elected to succeed me as chairman of the Senate Armed Services Committee.

But at this point in time, I am proud to yield, as manager, my time to the Senator from Arizona.

Mr. LEVIN. Mr. President, will the Senator from Arizona yield?

Mr. MCCAIN. I would be glad to.

Mr. LEVIN. Mr. President, I heartily join my good friend from Virginia in his assessment of Senator MCCAIN. I know there has been some disagreement as to who would go first, but that should not in any way, I hope, cloud the real affection which I think everybody in this body holds for Senator MCCAIN and the effort he has made for so long to try to bring some kind of decency to the approaches we use to people whom we detain.

I thank the Senator.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 14 minutes.

Mr. MCCAIN. Mr. President, I thank both my friends of many years, Senator LEVIN and Senator WARNER, for the collegiality, the bipartisanship, and the effort that we all make under their leadership on the Armed Services Committee for the betterment of the men and women who serve our country and our Nation's defense. I am honored to serve under both.

For the record, I believe I just calculated, I say to my dear friend from Virginia, it has been 33 years since I came home from Vietnam and found that our distinguished Secretary of the Navy was very concerned about the welfare of those who had the lack of talent that we were able to get shot down. So I thank my friend from Virginia especially, and I thank my friend from Michigan. I believe our committee conducts itself in a fashion

which has been handed down to us from other great Members of the Senate, such as Richard Russell and others.

Mr. President, before I move on to other issues, I have heard some criticism on the Senate floor today about the way in which the bill treats admissibility of coerced testimony.

A New York Times editorial today said that in this legislation ''coercion is defined in a way that exempts anything done before the passage of the 2005 Detainee Treatment Act, and anything else Mr. Bush chooses'' in their own inimitable style.

This is thoroughly incorrect, and I would like to correct not only the impression but the facts.

This bill excludes any evidence obtained through illegal interrogation techniques, including those prohibited by the 2005 Detainee Treatment Act. The goal is to bolster the Detainee Treatment Act by ensuring that the fruits of any illegal treatment will be per se inadmissible in the military commissions.

For evidence obtained before passage of the Detainee Treatment Act, we adopted the approach recommended by the military JAGs. In order to admit such evidence, the judge—we leave it to the judge—must find that: it passes the legal reliability test—and, as applied in practice, the greater the degree of coercion, the more likely the statement will not be admitted; the evidence possesses sufficient probative value; and that the interests of justice would best be served by admission of the statement into evidence.

Mr. President, I ask unanimous consent that three different letters from three different JAGs—Air Force, Navy, and Marine Corps—be printed in the RECORD.

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

DEPARTMENT OF THE AIR FORCE,
HEADQUARTER U.S. AIR FORCE,
Washington DC, August 28, 2006.

Hon. JOHN MCCAIN,
Russell Senate Office Building,
Washington DC.

DEAR SENATOR MCCAIN: Thank you for your letter of 23 August 2006, in which you requested my written recommendations on the military commissions legislation Congress is expected to consider next month. You specifically ask for my personal views on the most pressing issues involving the legislation.

As of the date of this letter, several bills have been introduced and I believe the administration is also considering legislation for congressional consideration. I appreciate the opportunity to provide my personal perspective and comments on the general nature of the potential legislation.

I begin with the premise that legislation is appropriate. As the Supreme Court noted again in *Hamdan* v. *Rumsfeld*. 548 U.S. , 126 S.Ct. 2749 (2006), the President's powers in wartime are at their greatest when specifically authorized by Congress. While different approaches are feasible, I believe the Nation will be best served by a fresh start to the military commission process. Existing criminal justice systems, including the process established by Military Commission Order 1, should be reviewed to develop a system that will best serve the interests of justice and the United States. The Uniform Code of Military Justice (10 U.S.C. §801 et. seq.) (UCMJ) and the Manual for Courts-Martial (MCM) provide superb starting points. The processes and procedures in the UCMJ and MCM have served us well and can be readily adapted to meet the needs of military conmnssions.

As I have testified, Congress could enact a UCMJ Article 135a to establish the basic substantive requirements for military commissions, and an executive order could provide detailed guidance, just as the MCM provides detailed guidance for the trial of courts-martial. Alternatively, Congress could create a separate Code of Military Commissions as a new chapter in Title 10, modeled to an appropriate degree after the UCMJ, and similarly leave the details to an executive order. Either approach must address the requirements of the Geneva Conventions and the concerns articulated in Hamdan.

There will necessarily be differences between current court-martial procedures and the rules and procedures for military commissions. However, the processes and procedures in the UCMJ and MCM can be readily adapted to meet the needs of military commissions and still meet the requirements of criminal justice systems established by common Article 3 of the Geneva Conventions.

The legislation must appropriately address access to evidence and the accused's presence during the trial. Specifically, it is my strongly held view that all evidence admitted against an accused and provided to members of a military commission must also be provided to the accused and accused's counsel. Any statute that allows evidence to be admitted outside the presence of the accused would mean the military commission could convict (and possibly impose a sentence of death) without the accused ever fully knowing the evidence considered against him: Such a procedure is extremely problematic, both constitutionally and from a Common Article 3 perspective.

The accused's presence is a critical facet of this legislation. The United States is more than a nation of laws; it is a country founded upon strong moral principles of fairness to all. Moreover, our country—to the delight of our adversaries—has been heavily criticized because of the perception that the pre-Hamdan military commission process was unfair and did not afford ''all the judicial guarantees which are recognized as indispensable by civilized peoples.''

Now is the time to correct that perception and clearly establish procedures and rules that meet that standard. These procedures and rules will do more than merely correct legal deficiencies; they will help reestablish the United States as the leading advocate of the rule of law. I firmly believe doing so is an important facet of winning the global war on terrorism.

Inextricably tied to that concept is an awareness of reciprocity. We cannot hold out as acceptable a military commission process that we would consider to be unfair and illegal if used by a foreign authority to try captured United States servicemen and women for alleged offenses.

Additionally, concerns have been raised about other evidentiary and procedural issues, including the ability of the accused to represent himself, and the admissibility of hearsay, classified evidence, and an accused's own statements.

The right of an accused to represent himself pro se is well recognized in our jurisprudence. In the context of military commissions, it presents difficult issues. Current procedures allow an accused to expressly waive the right to be represented and conduct his defense personally. That option should be available if the accused competently demonstrates to the military judge he understands the potential disadvantages and consequences of self-representation and he voluntarily and knowingly waives the right to representation. The military judge should have the authority to require that a defense counsel remain present even if the waiver is granted and to revoke the waiver if the accused is disruptive or fails to follow basic rules of decorum and procedure. This right is obviously contingent on the accused's presence throughout the proceeding as well as access to the evidence.

Again, I recommend that Congress detail the basic evidentiary requirements in the legislation and then permit an executive order to flesh out the details, just as the MCM provides evidentiary details for the UCMJ. Evidence should be admissible if, in the judgment of an experienced military judge, there are guarantees of its trustworthiness, the evidence has probative value, and the interests of justice are best served by its admission.

There has been some comment that the admission of hearsay is improper. In my view, such criticisms reflect a misunderstanding of the rules of evidence used in Federal, military and state trials today. Under the Military Rules of Evidence (MRE), hearsay is not admissible except as provided in the MREs or by statute. The MREs further define statements that are not hearsay and provide for exceptions conditioned on the availability of the declarant. Additionally, there is a residual hearsay rule that permits the introduction of other statements, having equivalent circumstantial guarantees of trustworthiness, if the court determines that the statement is material evidence; has more probative value than other available evidence; and serves the interests of justice. The Supreme Court recently narrowed the application of residual hearsay as it applies to out-of-court statements that are testimonial in nature. Such statements are now barred unless there is a showing that the witness is unavailable and the accused had a prior opportunity to cross-examine the witness. The overall application of the residual hearsay rule is functionally very much like that used in international tribunals and requires a military judge to find the evidence is probative and reliable. These existing procedures provide a meaningful starting point for addressing the hearsay issues arising in military commissions.

As to the use of classified evidence, I believe the procedures of MRE 505 adequately protect national security. MRE 505 is based on the Classified Information Procedures Act (CIP A) (Title 18, U.S.C. App III). CIP A is designed to prevent unnecessary or inadvertent disclosures of classified information and advise the government of the national security implications of going forward with certain evidence. MRE 505 achieves a reasonable accommodation of the United States' interest in protecting information and the accused's need to be able to mount a defense. The rule permits in camera, ex parte consideration of the Government's concerns by a judge, the substitution of unclassified summaries or other alternative forms of evidence, and ensures fairness to the accused. Under MRE 505, both the prosecution and the accused rely on and know about the evidence going to the court. The accused knows all that is to be considered by the trier-of-fact, has an opportunity to respond, and is able to assist the defense counsel to respond appropriately.

Concerns about the admissibility of statements made by an accused primarily involve the current requirement to provide Miranda warnings (codified more broadly in the UCMJ at Article 31) and whether the statement is the product of torture or coercion.

The military commission process must recognize the battlefield is not an orderly place. The requirement to warn an individual before questioning is one area where deviation from the established UCMJ framework may well be warranted.

Generally, if a military judge concludes the confession or admission of an accused is involuntary, the statement is not admissible in a court-martial over the accused's objection. Commonly, a statement is involuntary if it is obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment to the Constitution of the United States; Article 31; or through the use of coercion, unlawful influence, or unlawful inducement. Each situation is obviously fact determinative and the military judge decides whether the statement is voluntary considering the totality of the circumstances. I trust the judgment of experienced military judges. Military commissions should not be permitted to consider evidence that is found to be unlawfully coerced and thus involuntary.

Finally, appellate jurisdiction over military commission decisions should be clearly established. That jurisdiction would be most appropriately vested in the United States Court of Appeals for the District of Columbia Circuit (consistent with the Detainee Treatment Act of 2005).

I hope this information is helpful. Please let me know if additional information or comments from me on this matter are desired.

Sincerely,

JACK L. RIVES,
Major General, USAF,
The Judge Advocate General.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL, WASHINGTON NAVY YARD,
Washington, DC, Aug. 31, 2006.

Hon. JOHN MCCAIN,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN. Thank you for your letter of August 23, 2006 requesting my personal views on military commission legislation.

Before proceeding with discussion of specific issues, I would like to note that I have had the opportunity to provide comment to the DoD General Counsel and the Department of Justice regarding draft commission legislation. As of this writing, I have not seen the final version of the Administration's draft.

Although existing courts-martial rules are not practical for the prosecution of unlawful enemy combatants, they provide a good starting point for the drafting of Commission legislation. I recommend that legislation establish the jurisdiction of military commissions, set baseline standards of structure, procedure, and evidence consistent with U.S. law and the law of war, and prescribe all substantive offenses. It also should authorize the President to promulgate supplemental rules of practice. In this regard, I believe we should follow the military justice model, whereby Congress establishes the legal framework (the Uniform Code of Military Justice, or in this case a Code for Military Commissions) and the President promulgates supplemental rules of practice (a Manual for Courts-Martial, or in this case a Manual for Military Commissions) .

Within that context, I recommend that the jurisdiction of military commissions be expanded to permit prosecution of all unlawful enemy combatants who engage in or attempt to engage in hostilities against the United States. In particular, we need the ability to prosecute before military commissions irregular belligerents who violate the laws of war while acting on behalf of foreign governments as well as terrorists not associated with al Qaida and/or the Taliban.

With regard to baseline standards of structure, procedure, and evidence, it is critically important that independent military judges preside at military commissions and have authority to make final rulings on all matters of law. Similarly, defense counsel must have an independent reporting chain of command, free from both actual and perceived influence of prosecution and convening authorities.

The introduction of evidence outside the presence of an accused is, in my view, inconsistent with U.S. law and the law of war. The Supreme Court held in *Hamdan* v. *Rumsfeld*, 126 S.Ct. 2749 (2006), that absent a sufficient practical need to deviate from existing U.S. laws and criminal trial procedures, an accused must be present at trial and have access to all evidence presented against him. A four-justice plurality also opined that Common Article 3 of the 1949 Geneva Conventions requires, at a minimum, that an accused be present at trial and have access to the evidence presented against him. Justice Kennedy, who was not part of the plurality, further signaled in a separate concurring opinion that introduction of evidence outside the presence of the accused would be ''troubling'' and, if done to the prejudice of the accused would be grounds for reversal. Furthermore, as a matter of policy, adopting such practice for military commissions may encourage others to reciprocate in kind against U.S. service members held in captivity.

I recommend that the legislation adopt Military Rule of Evidence 505 (M.R.E. 505), which is partly based on the Classified Information Procedures Act (CIPA). M.R.E. 505 permits a military judge to conduct an in camera, ex parte review of the Government's interest in protecting classified information and encourages the substitution of unclassified summaries or alternative forms of evidence in lieu of the classified information. This type of procedure ensures that classified information is not disclosed under circumstances that could injure national security.

While it is true that application of a M.R.E. 55–style process might conceivably result in the Government being unable to introduce evidence against an accused under certain circumstances, it is my view that we are better served by fully honoring the law of war, which requires that we afford even terrorists the judicial guarantees which are recognized as indispensable amongst civilized peoples when we choose to prosecute. For it is that very same law that allows us to hold terrorists for the duration of hostilities, however long those hostilities might last.

With regard to hearsay evidence, I have no objection to the introduction of hearsay evidence so long as the evidentiary standard is clarified to exclude information that is unreliable, not probative, unfairly prejudicial, confusing, or misleading, or when such exclusion is necessary to protect the integrity of the proceedings. Such an approach would be consistent with the practice of international war crimes tribunals supported by the United States in Rwanda and the former Yugoslavia. Those tribunals satisfy the requirements of the law of war including Common Article 3 of the Geneva Conventions of 1949.

With regard to statements alleged to have been derived from coercion, the presiding military judge should have the discretion and authority to inquire into the underlying factual circumstances and exclude any statement derived from coercion, in order to protect the integrity of the proceeding.

As I noted earlier, the legislation should enumerate all offenses triable by military commission. Conspiracy should be included, but only conspiracies to commit one of the substantive offenses specifically enumerated and there must be a requirement to prove the defendant committed an overt act in furtherance of the conspiracy. This would mean, for example, that conspiracy to commit murder in violation of the laws of war would be a cognizable offense, but affiliation with a terrorist organization, standing alone, would not be cognizable.

I would also like to address Common Article 3 of the Geneva Conventions. Common Article 3 is a baseline standard that U.S. Armed Forces have trained to for decades. Its application to the War on Terror imposes no new requirements on us. However, if Congress desires to clarify the Common Article 3 phrase ''outrages upon personal dignity, in particular humiliating and degrading treatment,'' this would be beneficial. The legislation might consider requiring an objective standard be used in interpreting this phrase, and define the language to encompass willful acts of violence, brutality, or physical injury, and so severely humiliating or degrading as to constitute an attack on human dignity. Examples of such conduct include forcing detainees to perform sexual acts, threatening a detainee with sexual mutilation, systematically beating detainees, and forcing them into slavery: Such an approach would accurately reflect established war crimes jurisprudence and adoption would prevent the perception that we are attempting to abrogate our obligations under the 1949 Geneva Conventions.

Thank you again for this opportunity to provide personal comment on military commission legislation. I hope that this information is helpful.

Sincerely,

BRUCE MACDONALD,
Rear Admiral, JAGC, U.S. Navy,
Judge Advocate General.

DEPARTMENT OF THE NAVY,
HEADQUARTERS U.S. MARINE CORPS,
Washington, DC, Aug. 31, 2006.

Hon. JOHN MCCAIN,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN. Thank you for your letter of 23 August 2006, in which you requested written recommendations from the service Judge Advocates General on the military commissions legislation Congress is expected to consider in September. You specifically asked for our personal views on the most pressing issues involving the legislation. I appreciate the opportunity to provide my personal perspective and comments.

Although I assumed the position of Staff Judge Advocate to the Commandant of the Marine Corps on 25 August, I am certainly familiar with the process to date, including the previous testimony of my predecessor, Brigadier General Kevin M. Sandkuhler, and the Judge Advocates General. Like them, I believe that military commissions, in some form, are both appropriate and necessary in prosecuting alleged terrorists while continuing to wage the Global War on Terror. I also believe that there is middle ground to be found between the Uniform Code of Military Justice (UCMJ) and the original military commissions process, which would comport with the requirements of Common Article 3 of the Geneva Conventions.

Any legislation must be approached with an eye toward both precedent and reciprocity. We must account for the values for which our nation has always stood, and also be cognizant of the fact that the solution we create may influence how our service members are judged internationally in the future.

I share in the strong position previously expressed by the Judge Advocates General

regarding the fundamental importance of an accused's access to evidence and presence at trial. Simply put, an accused (and his counsel) must be provided the evidence admitted against him. This may require the government to balance the need for prosecution on particular charges against the need to protect certain classified information. This balancing concept is not new. Domestically, the government must often weigh the sanctity of sensitive information against having to disclose it for use in a successful prosecution believe that the indispensable ''judicial guarantees'' referenced in Common Article 3 require the same sort of deliberative decision-making in the context of these commissions. Where the government intends to prosecute an accused using classified information, Military Rule of Evidence (MRE) 505 should serve as the evidentiary benchmark.

The commissions should be presided over by a certified and qualified (pursuant to Article 26 of the UCMJ) military judge, who is trained to make measured evidentiary rulings. While I recommend that Congress allow for an executive order to promulgate specific applicable evidentiary rules (same as with the Manual for Courts-Martial, or MCM), I do offer comment here on what I believe are two more notable evidentiary issues: hearsay and statements by an accused.

Regarding hearsay evidence, the residual hearsay exception found in the Military Rules of Evidence (MRE) provides a solid foundation upon which to build for the commissions. This exception requires that a military judge find the evidence to be probative and reliable—a standard with international acceptance. In practice, this standard could allow for alternatives to live testimony, such as by video teleconference, which take into account the global nature of the conflict.

I share previously expressed concerns about the admissibility of statements made by an accused as a product of torture or coercion. Without exception, statements obtained by torture, as defined in Title 18 of the U.S. Code, must be inadmissible. Coercion is a more nebulous concept. As a result, military judges should retain discretion to determine whether statements so alleged are admissible. After an examination of all the facts and circumstances surrounding the statement, the military judge could determine if it is inadmissible because it is either unreliable or lacking in probative value.

In closing, I submit that the jurisdiction of the military commissions should be broad enough to facilitate the prosecution of all unlawful enemy combatants, and not merely members of al Qaida, the Taliban, and associated organizations. Jurisdiction must extend to other terrorist groups, regardless of their level of organization, and the individual ''freelancers'' so common on the current battlefield.

Thank you again for the opportunity to provide comment. I look forward to continuing to work toward resolution of this matter.

Very respectfully,

JAMES C. WALKER,
Brigadier General, USMC,
Staff Judge Advocate to the Commandant.

Mr. MCCAIN. Mr. President, the JAG of the Air Force says:

. . . through the use of coercion, unlawful influence, or unlawful inducement. Each situation is obviously fact determinative and the military judge decides whether the statement is voluntary considering the totality of the circumstances. I trust the judgment of experienced military judges. Military commissions should not be permitted to consider evidence that is found to be unlawfully coerced and thus involuntary.

And the other two Judge Advocate Generals say the same thing, that the provisions of this bill are exactly in line with their opinions. Frankly, that had a great deal of weight in our adopting them.

Almost exactly 3 months ago, the Supreme Court decided the groundbreaking case of Hamdan v. Rumsfeld. In that case, a majority of the Court ruled that the military procedures used to try detainees held at Guantanamo Bay fell short of the standards of the Uniform Code of Military Justice and the Geneva Conventions.

The Court also determined that Common Article 3 of the Geneva Conventions applies to al-Qaida because our conflict with that terrorist organization is ''not of an international character.'' Some of my colleagues may disagree with the Court's decision, but once issued it became the law of the land.

Unfortunately, the Hamdan decision left in its wake a void and uncertainty that Congress needed to address—and address quickly—in order to continue fighting the war on terrorism. I believe this act allows us to do that in a way that protects our soldiers and other personnel fighting on the front lines and respects core American principles of justice. I would like to thank Senators GRAHAM and WARNER and many others for their unceasing work on this bill.

I would like to take a few moments to describe some of the key elements of the legislation.

As is by now well known, Senators WARNER, GRAHAM, and I, and others, have resisted any redefinition or modification of our Nation's obligations under Common Article 3 of the Geneva Conventions. We did so because we care deeply about legal protections for American fighting men and women and about America's moral standing in the world. More than 50 retired military generals and flag officers expressed grave concern about redefining our Geneva obligations, including five former Chairmen of the Joint Chiefs of Staff.

Mr. President, I ask unanimous consent to have printed in the RECORD letters from GEN Colin Powell, GEN Jack Vessey, and GEN Hugh Shelton, and a letter from the former Commandant of the Marine Corps, General Krulak.

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

SEPTEMBER 13, 2006.

DEAR SENATOR MCCAIN: I just returned to town and learned about the debate taking place in Congress to redefine Common Article 3 of the Geneva Convention. I do not support such a step and believe it would be inconsistent with the McCain amendment on torture which I supported last year.

I have read the powerful and eloquent letter sent to you by one of my distinguished predecessors as Chairman of the Joint Chiefs of Staff, General Jack Vessey. I fully endorse in tone and tint his powerful argument. The world is beginning to doubt the moral basis of our fight against terrorism. To redefine Common Article 3 would add to those doubts. Furthermore, it would put our own troops at risk.

I am as familiar with The Armed Forces Officer as is Jack Vessey. It was written after all the horrors of World War II and General George C. Marshall, then Secretary of Defense, used it to tell the world and to remind our soldiers of our moral obligations with respect to those in our custody.

Sincerely,

GENERAL COLIN L. POWELL, USA (RET.).

SEPTEMBER 12, 2006.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: Sometimes, the news is a little garbled by the time it reaches the forests of North-central Minnesota, but I call your attention to recent reports that the Congress is considering legislation which might relax the United States' support for adherence to Common Article 3 of the Geneva Convention. If that is true, it would seem to weaken the effect of the McCain Amendment on torture of last year. If such legislation is being considered, I fear that it may weaken America in two respects. First, it would undermine the moral basis which has generally guided our conduct in war throughout our history. Second, it could give opponents a legal argument for the mistreatment of Americans being held prisoner in time of war.

In 1950, 3 years after the creation of the Department of Defense, the then Secretary of Defense, General George C. Marshall, issued a small book, titled The Armed Forces Officer. The book summarized the laws and traditions that governed our Armed Forces through the years. As the Senate deals with the issue, it might consider a short quote from the last chapter of that book which General Marshall sent to every American Officer. The last chapter is titled ''Americans in Combat'' and it lists 29 general propositions which govern the conduct of Americans in war. Number XXV, which I long ago underlined in my copy, reads as follows:

''The United States abides by the laws of war. Its Armed Forces, in their dealing with all other peoples, are expected to comply with the laws of war, in the spirit and the letter. In waging war, we do not terrorize helpless non-combatants, if it is within our power to avoid so doing. Wanton killing, torture, cruelty or the working of unusual hardship on enemy prisoners or populations is not justified in any circumstance. Likewise, respect for the reign of law, as that term is understood in the United States, is expected to follow the flag wherever it goes. . . .''

For the long term interest of the United States as a nation and for the safety of our own forces in battle, we should continue to maintain those principles. I continue to read and hear that we are facing a ''different enemy'' in the war on terror; no matter how true that may be, inhumanity and cruelty are not new to warfare nor to enemies we have faced in the past. In my short 46 years in the Armed Forces, Americans confronted the horrors of the prison camps of the Japanese in World War II, the North Koreans in 1950–53, and the North Vietnamese in the long years of the Vietnam War, as well as knowledge of the Nazi's holocaust depredations in World War II. Through those years, we held to our own values. We should continue to do so.

Thank you for your own personal courage in maintaining those values, both in war and on the floor of the Senate. I hope that my information about weakening American support for Common Article 3 of the Geneva

Convention is in error, and if not that the Senate will reject any such proposal.

Very respectfully,

GENERAL JOHN. W. VESSEY, USA (Ret.).

SEPTEMBER 20, 2006.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I have followed with great interest the debate over whether to redefine in law Common Article 3 of the Geneva Conventions. I join my distinguished predecessors as Chairman of the Joint Chiefs of Staff, Generals Vessey and Powell, in expressing concern regarding the contemplated change. Such a move would, I believe, hinder our efforts to win America's wars and protect American soldiers.

Common Article 3 and associated Geneva provisions have offered legal protections to our troops since 1949. American soldiers are trained to Geneva standards and, in some cases, these standards constitute the only protections remaining after capture. Given our military's extraordinary presence around the world, Geneva protections are critical.

Should the Congress redefine Common Article 3 in domestic statute, the United States would be inviting similar reciprocal action by other parties to the treaty. Such an action would send a terrible signal to other nations that the United States is attempting to water down its obligations under Geneva. At a time when we are deeply engaged in a war of ideas, as well as a war on the battlefield, this would be an egregious mistake. I firmly believe that not only is such a move unnecessary, it potentially subjects our men and women in uniform to unnecessary danger.

The legislation sponsored by Senator Warner, which would enumerate war crime offenses while remaining silent on America's obligations under Common Article 3, is a better course of action. By doing so, our men and women in field will have the clarity they require, we can still interrogate terrorists, and our service personnel will have the undiluted protections offered by the Geneva Convention.

Respectfully,

GENERAL H. HUGH SHELTON.

SENATOR MCCAIN: This is the first time I have publically spoken about the administration policy regarding the war against terror but my professionalism and my conscience leads me to comment on the proposed ''interpretation/change'' to the Geneva Convention.

My concerns are as follows:

I. A redefinition or reinterpretation of the Geneva Convention, a document that has been taught to every recruit and officer candidate since its inception, would immediately attack the moral dimension with which every Soldier, Sailor, Marine and Airman is inculcated during their time as a member of the US Armed Forces. By weakening the moral link that these young men and women depend on . . . by allowing a redefinition of a lawful Convention . . . we run the risk of undermining the foundation upon which they willingly fight and die for our Country.

2. The mothers and fathers who give their sons and daughters to our care brought their children up to do ''right'' . . . to obey the law . . . to take the moral high ground. We do these parents a grave disservice by ''legalizing'' a different standard for their children.

3. This issue is NOT about what our enemy does to our servicemen and women when captured! This issue is all about how we, as Americans, act. Do we walk our talk. Do we change the rules of the game because our enemy acts in a horrific manner. Do we give up our honor because our enemy is without honor? If we do, we begin to mimic the very behavior we abhor.

4. Many countries already look at the United States as arrogant. This redefinition/reinterpretation would only serve to strengthen that conviction. The idea that the United States would ''pick and choose'' what portion of the Geneva Convention to follow . . . and what portion to ''redefine/reinterpret'' . . . goes against who we are as a people and as a Nation. The unintended consequence of this type of action is that it opens the door for other nations to make interpretations of their own . . . across a gamut of issues. The world is a dangerous place and our actions might well serve as precedents during the first battle of the NEXT war.

5. Finally, Duty-Honor-Country and Semper Fidelis are NOT just ''bumper stickers''. These words, and others like them, form the ethos of our Armed Forces. When you start to tamper with the laws governing warfare . . . laws recognized by countries around the world . . . you run the risk of bringing into question the very ethos that these men and women hold dear.

Semper Fidelis,

C.C. KRULAK,
General, USMC (Ret),
31st Commandant of the Marine Corps.

Mr. MCCAIN. These men express one common view: that modifying the Geneva Conventions would be a terrible mistake and would put our personnel at greater risk in this war and the next. If America is seen to be doing anything other than upholding the letter and spirit of the conventions, it will be harder, not easier, to defeat our enemies. I am pleased that this legislation before the Senate does not amend, redefine, or modify the Geneva Conventions in any way. The conventions are preserved intact.

The bill does provide needed clarity for our personnel about what activities constitute war crimes. For the first time, there will be a list of nine specific activities that constitute criminal violations of Common Article 3, punishable by imprisonment or even death. There has been much public discussion about specific interrogation methods that may be prohibited. But it is unreasonable to suggest that any legislation could provide an explicit and all-inclusive list of what specific activities are illegal and which are permitted. Still, I am confident that the categories included in this section will criminalize certain interrogation techniques, like waterboarding and other techniques that cause serious pain or suffering that need not be prolonged—I emphasize ''that need not be prolonged.''

Some critics of this legislation have asserted that it gives amnesty to U.S. personnel who may have committed war crimes since the enactment of the War Crimes Act. Nothing—nothing—could be further from the truth. As currently written, the War Crimes Act makes criminal any and all behavior that constitutes a violation of Common Article 3—specifically, any act that constitutes an ''outrage upon personal dignity.'' Observers have commented that, though such outrages are difficult to define precisely, we all know them when we see them. However, neither I nor any other responsible Member of this body should want to prosecute and potentially sentence to death any individual for violating such a vague standard.

The specificity that the bill provides to the War Crimes Act—and its retroactive effect—will actually make prosecuting war criminals a realistic goal. None of my colleagues should object to that goal.

It is also important to note that the acts that we propose to enumerate in the War Crimes Act are not the only activities prohibited under this legislation. The categories enumerated in the War Crimes Act list only those violations of Common Article 3 that are so grave as to constitute felonies potentially punishable by death. The legislation states explicitly that there are other, nongrave breaches of Common Article 3.

This legislation also requires the President to publish his interpretations of the Geneva Conventions, including what violations constitute nongrave breaches, in the Federal Register—in the Federal Register—for every American to see. These interpretations will have the same force as any other administrative regulation promulgated by the executive branch and, thus, may be trumped—may be trumped—by law passed by Congress.

Simply put, this legislation ensures that we respect our obligations under Geneva, recognizes the President's constitutional authority to interpret treaties, and brings accountability and transparency to the process of interpretation by ensuring that the Executive's interpretation is made public—the Executive's interpretation is made public. The legislation would also guarantee that Congress and the judicial branch will retain their traditional roles of oversight and review with respect to the President's interpretation of nongrave breaches of Common Article 3.

In short, whereas last year only one law—the torture statute—was deemed to apply to the treatment of all enemy detainees, now there is a set of overlapping and comprehensive legal standards that are in force: the Detainee Treatment Act, with its prohibition on cruel, inhuman, and degrading treatment as defined by the fifth, eighth, and fourteenth amendments to the Constitution, Common Article 3 of the Geneva Conventions, and the War Crimes Act. This legislation will allow—my colleagues, have no doubt—this legislation will allow the CIA to continue interrogating prisoners within the boundaries established in the bill.

Let me state this flatly: It was never our purpose to prevent the CIA from detaining and interrogating terrorists. On the contrary, it is important to the war on terror that the CIA have the ability to do so. At the same time, the CIA's interrogation program has to abide by the rules, including the standards of the Detainee Treatment Act.

I, like many of my colleagues, find troubling the reports that our intelligence personnel feel compelled to purchase liability insurance because of the lack of legal clarity that exists in the wake of the Hamdan decision. This legislation provides an affirmative defense for any Government personnel prosecuted under the War Crimes Act for actions they reasonably believed to be legal at the time. That is a longstanding precedent. In addition, it would eliminate any private right of action against our personnel based on a violation of the Geneva Conventions. The intent of this provision is to protect officers, employees, members of the Armed Forces, and other agents of the United States from suits for money damages or any other lawsuits that could harm the financial well-being of our personnel who were engaged in lawful—I emphasize ''lawful''—activities.

It is important to note, however, that the fact that the Geneva Conventions lack a private right of action—and the fact that this legislation does not create such a right—has absolutely no bearing on whether the Conventions are binding on the executive branch. Even if the Geneva Conventions do not enable detainees to sue our personnel for money damages, the President and his subordinates are nevertheless bound to comply with Geneva. That is clear to me and to all who have negotiated this legislation in good faith.

This point is critical, because our personnel deserve not only the legal protections written into this legislation, but also the undiluted protections offered since 1949 by the Geneva Conventions. Should the United States be seen as amending, modifying, or redefining the Geneva Conventions, it would open the door for our adversaries to do the same, now and in the future. The United States should champion the Geneva Conventions, not look for ways to get around them, lest we invite others to do the same. America has more personnel deployed, in more places, than any other country in the world, and this unparalleled exposure only serves to further demonstrate the critical importance of our fulfilling the letter and the spirit of our international obligations. To do any differently would put our fighting men and women directly at risk. We owe it to our fighting men and women to uphold the Geneva Conventions, just as we have done for 57 years.

For these reasons, this bill makes clear that the United States will fulfill all of its obligations under those Conventions. We expect the CIA to conduct interrogations in a manner that is fully consistent not only with the Detainee Treatment Act and the War Crimes Act, but with all of our obligations under Common Article 3 of the Geneva Conventions.

Finally, I note that there has been opposition to this legislation from some quarters, including the New York Times editorial page. Without getting into a point-by-point rebuttal here on the floor, I simply say that I have been reading the CONGRESSIONAL RECORD trying to find the bill that page so vociferously denounced. The hyperbolic attack is aimed not at any bill this body is today debating, nor even at the administration's original position. I can only presume that some would prefer that Congress simply ignore the Hamdan decision and pass no legislation at all. That, I suggest to my colleagues, would be a travesty.

This is a very long, difficult task. This is critical for the future security of this Nation, and we have done the very best we can. I believe we have come up with a good product. I believe good-faith negotiations have taken place. I hope we will pass this legislation very soon. I think you will find that people will be brought to justice and we can move forward with trials with treating people under the Geneva Conventions and restoring America's prestige in the world.

I thank my colleagues.

Mr. WARNER. Mr. President, I wish to commend our distinguished colleague on an excellent summary of the bill and his heartfelt expressions and interpretations of this bill, which I share.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, it is from strength that America should defend our values and our Constitution. It takes a commitment to those values to demand accountability from the Government. In standing up for American values and security, I will vote against this bill.

I can give you many reasons, but let me take one. We will turn back the protections of the Great Writ of habeas corpus. Since 13th century Anglo jurisprudence, we have had the Great Writ. We have had habeas corpus since the birth of our Nation. We fought a revolution to make sure we could retain it. We fought a civil war, and we fought through two world wars. Now, in a matter of hours, in a debate that has so often skirted the issues, we are ready to strip back habeas corpus. I cannot vote for that.

Senator SMITH spoke stirringly earlier today of the dangers of the bill's habeas provision, which would eliminate the independent judicial check on Government overreaching and lawlessness. He quoted from great defenders of liberty. It was Justice Robert H. Jackson who said in his role as Chief Counsel for the Allied Powers responsible for trying German war criminals after World War II: ''That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power ever has paid to Reason.'' He closed the Nuremberg trials about which Senator DODD spoke earlier by saying: ''Of one thing we may be sure. The future will never have to ask, with misgiving, 'What could the Nazis have said in their favor?' History will know that whatever could be said, they were allowed to say. They have been given the kind of a trial which they, in the days of their pomp and power, never gave to any man. But fairness is not weakness. The extraordinary fairness of these hearings is an attribute of our strength.''

He was right and his wisdom was echoed this week at our Judiciary Committee hearing when Admiral Hutson and Lieutenant Commander Swift testified that fairness and lawfulness are our greatest strengths. This legislation doesn't live up to that ideal. It strips away fairness.

The actions by the U.S. Government, this administration, for all its talk of strength, have made us less safe, and its current proposal is one that smacks of weakness and shivering fear. Its legislative demands reflect a cowering country that is succumbing to the threat of terrorism. I believe we Americans are better than that. I believe we are stronger than that. I believe we are fairer than that. And I believe America should be a leader in the fight for human rights and the rule of law, and that will strengthen us in our fight against terrorists.

We have taken our eye off the ball in this fight against terrorists. That is essentially what all of our intelligence agencies concluded in the National Intelligence Estimate that the administration had for six months while this was rolling along, but that they only shared a part of this past weekend. Our retooled and reorganized intelligence agencies, with leadership handpicked by the administration, have concluded, contrary to the campaign rhetoric of the President and Vice President, that the Iraq war has become a ''cause celebre'' that has inspired a new generation of terrorists. It hasn't stopped terrorists, it has inspired new terrorists. Surely, the shameful mistreatment of detainees at Guantanamo, at Abu Ghraib, at secret CIA prisons, and that by torturers in other countries to whom we have turned over people, have become other ''causes celebre'' and recruiting tools for our enemies.

Surely, the continued occupation of Iraq, when close to three-quarters of Iraqis want U.S. forces to depart their country, is another circumstance being exploited by enemies to demonize our great country.

Passing laws that remove the remaining checks against mistreatment of prisoners will not help us win the battle for the hearts and minds of the generation of young people around the world being recruited by Osama bin Laden and al-Qaida. Authorizing indefinite detention of anybody the Government designates, without any proceeding or without any recourse, putting them into the secret prisons we condemned during the Cold War, is what our worse critics claim the United States would do. That is not what American values, our traditions, and our rule of law would have us do.

This is not just a bad bill, this is truly a dangerous bill.

I have been asking Secretary Rumsfeld's question for the last several weeks: whether our actions are eliminating more of our enemies than are being created. But now we understand that we are creating more enemies than we are eliminating. Our intelligence agencies agree that the global jihadist movement is spreading and adapting; it is ''increasing in both number and geographic dispersion.'' We are putting ourselves more at risk.

''If this trend continues,'' our intelligence agencies say, that is, if we do not wise up and change course and adopt a winning new strategy, ''threats to U.S. interests at home and abroad will become more diverse, leading to increasing attacks worldwide.'' Attacks have been increasing worldwide over the last 5 years of these failing policies and are, according to the judgment of our own, newly reconstituted intelligence agencies, likely to increase further in the days and months and years ahead. The intelligence agencies go on to note ominously that ''new jihadist networks and cells, with anti-American agendas, are increasingly likely to emerge'' and further that the ''operational threat will grow,'' particularly abroad ''but also in the homeland.''

This is truly chilling. The Bush-Cheney administration not only failed to stop 9/11 from happening, but for 5 years they have failed to bring Osama bin Laden to justice, even though they had him cornered at Tora Bora. They yanked the special forces out of there to send them into Iraq. We have witnessed the growth of additional enemies.

And what do our intelligence agencies suggest is the way out of this dangerous quagmire? The National Intelligence Estimate suggests we have to ''go well beyond operations to capture or kill terrorist leaders,'' and we must foster democratic reforms. When America can be seen abandoning its basic American democratic values, its checks and balances, its great and wonderful legal traditions, and can be seen as becoming more autocratic and less accountable, how will that foster democratic reforms elsewhere? ''Do as I say and not as I do'' is a model that has never successfully inspired peoples around the world, and it doesn't inspire me.

The 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. Even they cannot dismiss the practices at Guantanamo as the actions of a few ''bad apples.''

With Senate adoption of the antitorture 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. In rejecting the Kennedy amendment today, the Senate has turned away from the wise counsel and judgment of military professionals. Of course, the President in his signing statement already undermined enactment of the antitorture law.

The administration is now obtaining license—before, they just did it quietly and against the law and on their own say-so, but now they are obtaining license—to engage in additional harsh techniques that the rest of the world will see as abusive, as cruel, as degrading, and even as torture. Fortunately, a growing number of our own people see it that way, too.

What is being lost in this debate is any notion of accountability and the guiding principles of American values and law. 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 for 5 years? The Republican leadership's legislation strips away all accountability and erodes our most basic national values without so much as an accounting of these facts and legal arguments. Senator ROCKEFELLER's amendment to incorporate some accountability in the process through oversight of the CIA interrogation program was unfortunately rejected by the Republican leadership in the Senate.

Secrecy for all time is to be the Republican rule of the day. Congressional oversight is no more. Checks and balances are no more. The fundamental check that was last provided by the Supreme Court is now to be taken away. This is wrong. This should be unconstitutional. It is certainly unconscionable. This is certainly not the action of any Senate in which I have served. It is not worthy of the United States of America. What we are saying is one person will make all of the rules; there will be no checks and balances. There will be no dissent, and there will be nobody else's view, and we will remove, piece by piece, every single law that might have allowed checks and balances.

We are rushing through legislation that would have a devastating effect on our security and our values. I implore Senators to step back from the brink 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 in January 2001 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 antiterror budget on September 10, the day before the worst foreign terrorist attack on U.S. soil in our history. This administration was focused on Star Wars, not terrorism. Time was of the essence when Osama bin Laden was trapped in Tora Bora. But this administration was more interested in going after Sadaam Hussein, who the President recently admitted had ''nothing'' to do with 9/11.

After 5 years of this administration's unilateral actions that have left us less safe, time is now of the essence to take real steps to keep us safe from terrorism. Real steps like those included in the Real Security Act, S. 3875. We should be focusing on getting the terrorists and securing the nuclear material that this administration has allowed for the last 5 years to be unaccounted for around the world. We should be doing the things Senator KERRY and others are talking about, such as strengthening our special forces and winning the peace in Afghanistan, where the Taliban has regrouped and is growing in strength.

Instead, the President and the Republican Senate leadership call for rubberstamping more flawed White House proposals just in time for the runup to another election and for the fundraising appeals to go out.

I had hoped that this time, for the first time, even though the Senate is controlled by the President's party, we could act as an independent branch of the Government and serve as a check on this administration. After this debate and the rejection of all amendments intended to improve this measure, I see that day has long passed. I will continue to speak out. That is my privilege as a Senator. But I weep for our country and for the American values, the principles on which I was raised and which I took a solemn oath to uphold. I applaud those Senators who stood up several times on the floor today and voted to uphold the best of American values.

Going forward, the bill departs even more radically from our most fundamental values. And 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 closed-door revisions over the past week. For example, the bill has been amended to eliminate habeas corpus review even for persons inside the United States, and even for persons who have not been determined to be enemy combatants. It has moved from detention of those who are captured having taken up arms against the United States on a battlefield to millions of law-abiding Americans that the Government might suspect of sympathies for Muslim causes and who knows what else—without any avenue for effective review.

Remember, we are giving a blank check to a Government whose incompetence was demonstrated in historic dimensions by the lack of preparation in response to Hurricane Katrina. This is the same Government which, in its fight against terrorism, has had Senator KENNEDY and Congressman LEWIS on terrorist watch lists, and could not get them off. This is a Government which repeatedly releases confidential family information about our Armed Forces and veterans. It is a Government which just refuses to admit any mistakes or to make any corrections but regards all of its representatives, from Donald Rumsfeld to Michael Brown, as doing a ''heckuva job.''

The proponents of this bill talk about sending messages. What message does it send to the millions of legal immigrants living in America, participating in American families, working for American businesses, and paying American taxes? Its message is 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—a term that the bill now defines in a tortured and unprecedentedly broad manner. And that power and any errors cannot be reviewed or corrected by a court. What message does that send about abuse of power? What message does that send to the world about America's freedoms?

Numerous press accounts have quoted administration officials who believe that a significant percentage of those detained at Guantanamo have no connection to terrorism. In other words, the Bush-Cheney administration has been holding for several years, and intends to hold indefinitely without trial or any recourse to justice, a substantial number of innocent people who were turned in by anonymous bounty hunters or picked up by mistake in the fog of war or as a result of a tribal or personal vendetta. The most important purpose of habeas corpus is to correct errors like that—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 the public Safety may require it.'' But court review has now embarrassed the Bush administration, as the U.S. Supreme Court has three times rejected its lawyers' schemes. And, so how does the administration respond? It insists that there be no more judicial check on its actions and errors.

When the Senate accedes to that demand, it abandons American principles and all checks on an imperial Presidency. The Senator from Vermont will not be a party to retreat from America's constitutional values. Vermonters don't retreat.

Senator SMITH, speaking this morning about the habeas provisions of this bill, quoted Thomas Jefferson, who said:

> The habeas corpus secures every man here, alien or citizen, against everything which is not law, whatever shape it may assume.

Jefferson said on another occasion:

> I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it.

With this bill, the Senate reverses that profound judgment of history, chooses against liberty, and succumbs to fear.

When former Secretary of State Colin Powell wrote last week of his concerns with the administration's bill, he wrote about doubts concerning our ''moral authority in the war against terrorism.'' This General, former head of the Joint Chiefs of Staff and former Secretary of State, was right. Now we have heard from a number of current and former diplomats, military lawyers, Federal judges, law professors and law school deans, the American Bar Association, and even the first President Bush's Solicitor General, Kenneth Starr, that they have grave concerns with the habeas corpus stripping provisions of this bill.

I agree with Mr. Starr that we should not suspend—and we should certainly not eliminate—the Great Writ. I also agree with more than 300 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 traditions.'' And I agree with more than 30 former U.S. Ambassadors and other senior diplomats, who say that eliminating habeas corpus for aliens detained by the United States will harm our interests abroad, and put our own military, diplomatic, and other personnel stationed abroad at risk. We cannot 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 9/11 attacks, and in the face 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, to shiver and quake, to rely on secrecy and torture. Those are ways of repression and oppression, not the American way.

We need to pursue the war on terror with strength and intelligence, but we need to uphold American ideals. 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 and cruel and inhumane treatment of detainees. He did not want clarity when spying on Americans without warrants. And he certainly did not want clarity while 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 withstand the light of day.

It seems the only clarity this administration wants is a clear green light from Congress to do whatever it wants. That is not clarity. That is immunity from crime. I cannot vote for that. 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 America's values.

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 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. Despite the President's calls for clarity, the new provisions are so purposefully ambiguous that we cannot know for sure whether they are covered. 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 and made us less safe. 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 the green light to change their laws 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 a 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.

This bill does not clarify the War Crimes Act. It authorizes and immunizes abhorrent conduct that violates our basic ideals. Perhaps that is why more than 40 religious organizations and human rights groups wrote to urge the Senate to take more time to consider the effects of this legislation on our safety, security, and commitment to the rule of law, and to vote against it if the serious problems in the bill are not corrected.

The proposed legislation would also allow the admission of evidence obtained through cruel and inhuman treatment into military commission proceedings. 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 commissions 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 obtained 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 arrested by our government on bad intelligence and sent 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 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 noncitizens alike—who have ''purposefully and materially supported hostilities'' against the United States or its allies. It also includes people determined to be unlawful enemy combatants by any ''competent tribunal'' established by the President or the Secretary of Defense. So the Government can select any person, including a United States 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.

I am sorry the Republican leadership passed up the chance to consider and pass bipartisan legislation that would have made 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. I will not participate in a legislative retreat out of weakness that undercuts everything this Nation stands for and that makes us more vulnerable and less secure.

The Senator from Vermont, consistent with my oath of office and my conscience and my commitment to the people of Vermont and the Nation, cannot—I will not—support this bill.

The PRESIDING OFFICER (Mr. CHAFEE). Who yields time? The Senator from Michigan.

Mr. LEVIN. Mr. President, I believe I have 4 minutes allocated.

The PRESIDING OFFICER. There is 3½ minutes remaining.

Mr. LEVIN. Mr. President, less than 2 weeks ago, the Armed Services Committee voted on a military commissions bill. The committee endorsed that bill on a bipartisan basis with a 15-to-9 vote. Yesterday, 43 of us voted for the same bill on the Senate floor.

The bill would have provided the administration with the tools that it needed to detain enemy combatants, conduct interrogations, and prosecute detainees for any war crimes they may have committed.

Unfortunately, that bill went off the tracks after it was approved by the Armed Services Committee. Instead of bringing to the Senate floor the bill that had been adopted by the Armed Services Committee on a bipartisan basis, we are voting now on a dramatically different bill based on changes made at the insistence of an administration that has been relentless in its determination to legitimize the abuse of detainees, to protect those who authorize the abuses, and to distort military commission procedures in order to ensure criminal convictions.

For example, the bill before us inexplicably fails to prohibit the use of statements or testimony obtained through cruel and inhuman treatment as long as those statements or testimony was obtained before December 30, 2005.

The argument has been made that the bill before us prohibits the use of statements that are obtained through torture. That was never in contention. The problem is that it permits the use of statements obtained through cruel and inhuman treatment that doesn't meet the strict definition of torture as long as those statements were obtained before December 30, 2005.

This is a compromise on the issue of cruelty—an issue on which there should be no compromise by our Nation or by the Senate. If we compromise on that, we compromise at our peril. The men and women who represent us in uniform will be in much greater danger if we compromise on the issue of statements obtained through cruelty and inhuman treatment.

A compromise on this issue endangers our troops because if other nations apply the same standard and allow statements or confessions obtained through cruelty to be used at so-called trials of our citizens, we will have little ground to stand on in our objecting to them.

This bill also does many other things which are dramatic changes from the bill that came out of the Armed Services Committee. For instance, the bill would authorize the use of evidence seized without a search warrant or other authorization, even if that evidence was seized from U.S. citizens inside the United States in clear violation of the U.S. Constitution.

Both the committee bill and the bill before us provide the executive branch with the tools it needs to hold enemy combatants accountable for any war crimes they may have committed. On this issue we are in agreement. We all agree that people who are responsible for the terrible events of September 11 and other terrorist attacks around the world should be brought to justice.

However, the bill before us differs dramatically from the Senate Armed Services Committee bipartisan-approved bill, particularly when it comes to the accountability of the administration for policies and actions leading to the abuses of detainees.

The bill before us contains provision after provision designed to ensure that the administration will not be held accountable for the abuse of prisoners in U.S. custody, for violations of U.S. law, or for the use of such tactics that have turned much of the world against us.

Over the last 2 days, we have debated the habeas corpus provision in the bill. Most of that debate has focused on the writ of habeas corpus as an individual right to challenge the lawfulness of detention. The writ of habeas corpus does serve that purpose.

But the writ of habeas corpus has always served a second purpose as well: for its 900-year history, the writ of habeas corpus has always served as a means of making the sovereign account for its actions. By depriving detainees of the opportunity to demonstrate that they were detained in error, this bill not only deprives individuals of a critical right deeply embedded in American law, it also helps ensure that the administration will not be held to account for the illegal or abusive treatment of detainees.

Indeed, the court-stripping provision in the bill does far more than just eliminate habeas corpus rights for detainees. It also prohibits the U.S. courts from hearing or considering ''any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial'' of an alien detainee. By depriving detainees of access to our courts, even if they have been subject to torture or to cruel and inhuman treatment, this provision seeks to ensure that the details of administration policies that appear to have violated our obligations under U.S. and international law will never be aired in court.

A number of other provisions in the bill before us appear to be directed at the same objective. For example, section 5 of the bill provides that no person—whether that person is an enemy combatant or anybody else—may invoke the Geneva Conventions as a source of rights in a habeas corpus or other proceeding in any court of the United States. Section 948b(g) of the military commissions part of the bill would similarly provide that no person subject to trial by military commission may invoke the Geneva Conventions as a source of rights. These provisions, like the habeas corpus provision, appear to be designed to ensure that administration policies that may have violated our obligations under U.S. and international law will never be aired in court.

Other provisions in the bill narrow the range of abuses that are covered by the War Crimes Act. As a result of these amendments, some actions that were war crimes at the time they took place will not be prosecutable. Indeed, because of a complex definition in the bill, some actions that violated the War Crimes Act at the time they took place and will violate that act if they take place in the future will not be prosecutable. In other words, this bill carves out a window to immunize actions of this administration from prosecution under the War Crimes Act.

The administration and its allies have argued that these provisions are necessary to protect CIA interrogators from prosecution for actions that they believed to be lawful and authorized at the time they were undertaken. However, we addressed that problem with the enactment of the Detainee Treatment Act last year. That law provides a defense to any U.S. agent who engaged in specific operational practices that were officially authorized or reasonably believed to be lawful at the time they were undertaken.

This bill, however, goes far beyond protecting the front line interrogators and agents who believed that their actions were lawful: it changes the law to ensure that the administration officials who provided the authorization and knew or should have known that there was no legal basis for that authorization, will not be held accountable for their actions.

Last year, this Congress took an important stand for the rule of law by enacting the McCain amendment, which prohibits the cruel, inhuman, or degrading treatment of detainees in the custody of any U.S. agency anywhere in the world. That landmark provision is at risk of being rendered meaningless, if we establish rules ensuring that it can never be enforced.

We need to provide the administration with the tools that are needed to prosecute unlawful enemy combatants for any war crimes that they may have committed. However, we should not do so in a way that is inconsistent with our own values as a Nation. We need to practice what we preach to the rest of the world.

The bill before us will put our own troops who might be captured in future conflicts at risk if other countries decide to apply similar standards to us, is likely to result in the reversal of convictions on appeal, and is inconsistent with American values. For these reasons, I will vote no on final passage.

The PRESIDING OFFICER. The minority leader.

Mr. REID. Mr. President, it is my understanding I am to speak and the majority leader will speak and then we will vote; is that true?

The PRESIDING OFFICER. That is correct.

Mr. REID. Mr. President, on a bright and sunny September morning 5 years ago, history changed in an instant. Our Nation was attacked. Nearly 3,000 of our citizens were murdered, and our lives as we knew them were forever changed.

The family members of those who died that day and we, their fellow Americans, have been waiting 5 years for those who masterminded that outrageous terrorist attack to be brought to justice. Osama bin Laden, a man whom we have seen on videotape bragging and laughing about his role in conceiving this deed, remains at large 5 years later. The American people are justifiably frustrated that he has not been caught. They have a right to ask whether our military and intelligence resources were unwisely diverted from that solemn task.

But some of Osama bin Laden's lieutenants were captured overseas years ago. There is no disagreement whatsoever between Republicans and Democrats on the need to bring these people to justice. We all want to make sure the President has the tools he needs to make this happen.

For 5 years, Democrats stood ready to work with the President and the Republican Congress to establish sound

procedures for military tribunals. Mr. President, why do you think the Democratic ranking member of the Judiciary Committee has been so outraged at what has been going on? He is outraged because as the top Democrat on the Judiciary Committee, he introduced a bill in 2002 to solve the problems that are now before the Senate—4 years ago. No wonder he is incensed.

Unfortunately, President Bush chose to ignore Senator LEAHY and the Congress and ignore the advice of uniformed military professionals. He set up a flawed and imbalanced military tribunal system that failed to prosecute a single terrorist. Not surprisingly, it was ruled unconstitutional by the U.S. Supreme Court.

Forced by the Court decision to ask Congress for help, the Bush administration initially asked us, the Congress, to rubberstamp basically the same system that the Supreme Court struck down. Their proposal for one-sided trials and murky interrogation rules was opposed by such well-respected leaders as GEN Colin Powell and former Secretary of State George Shultz, both Republicans, and many others, Democrats and Republicans.

I must say, a handful of principled Republican Senators, led by the chairman of the Armed Services Committee, Senator WARNER, Senator GRAHAM from South Carolina, and Senator MCCAIN from Arizona stepped forward and forced the White House to back down from the worst elements of its extreme proposal. I appreciate the position of those Republican Senators, the names I have given you.

I repeat, Mr. President, I admire their courage. I appreciate the improvements they managed to make in this bill. But for them what is before us would be a lot worse.

However, since those Senators announced their agreement with the administration last Friday, the compromise has become much worse. The bill before us now looks more and more like the administration bill these Senators fought so hard against.

I believe the bill approved by the Senate Armed Services Committee would have given the President all necessary authority. It was supported by the chairman and a bipartisan majority of that committee, as well as our Nation's uniformed military lawyers.

The bill before us diverges from the committee bill in many ways, but let me talk about two.

First, it makes less clear that the United States will abide by our obligations under the Geneva Conventions. The President says the United States does not engage in torture and there should be no ambiguity on that point, but this bill gives the President authority to reinterpret our obligations and limits judicial oversight of that process, putting our own troops at risk on the battlefield.

A four-star general, former Secretary of State, former Chairman of the Joint Chiefs of Staff, GEN Colin Powell, wrote:

The world is beginning to doubt the moral basis of our fight against terrorism. To redefine Common Article 3 would add to those doubts. Furthermore, it would put our own troops at risk.

Second, this bill authorizes a vast expansion of the President's power to detain people, even U.S. citizens, indefinitely and without charge. There are no procedures for doing so. There is no due process provided, and no time limit on the detention is set.

At the same time, the bill would deprive Federal judges of the power to review the legality of many such detentions. Judges—all judges—would have no power to review the legality of many such detentions. This is true even in the case of a lawful permanent resident arrested and held in the United States, and even if that person happens to be completely innocent.

The Framers of our Constitution understood the need for checks and balances. This bill has thrown that principle right out the window.

Many of the worst provisions were not in the committee-reported bill and were not in the compromise announced last Friday. They were added over the weekend. Remember, there was a bill that was put before the Senate last Thursday, and from Thursday to Monday, it changed after, I say, back-room meetings with White House lawyers.

We have tried to improve this legislation. My friend, the ranking member of the Armed Services Committee, Senator CARL LEVIN, proposed to substitute the bipartisan bill reported by the Armed Services Committee. That amendment was rejected basically on a party-line vote.

Senators SPECTER and LEAHY, the two Members who are responsible for the Judiciary Committee, the chairman and ranking member, offered an amendment to restore the right of judicial review. This amendment was rejected on a party-line vote.

And Senator ROCKEFELLER, the ranking Democrat on the Intelligence Committee, offered an amendment to improve congressional oversight of the CIA programs. This amendment was rejected on a party-line vote.

Senator KENNEDY offered an amendment to clarify that inhumane interrogation tactics prohibited by the Army Field Manual could not be used on Americans or on others. That amendment was rejected on a party-line vote. Senator BYRD, who has seen things come and go in this body and who has been a Member of Congress for more than 50 years, offered an amendment to sunset military commissions so Congress would be required to reconsider this far-reaching authority after 5 years of having it in effect. That commonsense, realistic amendment was rejected on a party-line vote.

I personally believe, having been in a few courtrooms, that this legislation is unconstitutional. It will certainly be struck down by the Supreme Court in the years ahead, and when that happens, we will be back here debating how to bring terrorists to justice.

The families of the 9/11 victims and the Nation have been waiting 5 years for the perpetrators of these attacks to be brought to justice. They should not have to wait longer. We should get this right now; we should do it right. We are not doing so by passing this bill.

The national security policies of this administration and this Republican Congress may have been tough, but they certainly haven't been smart. The American people are paying a tremendous price for their mistakes. History will judge our actions here today. I am convinced that future generations will view passage of this bill as a grave error. I will be recorded as voting against this piece of legislation.

Mr. President, I dislike, I find repulsive, and I do not condone these evil and horrible people, these terrorists. They should be brought before the bar of justice and given what they deserve. For 5 years, that has not been the case. We Democrats want terrorists brought to justice quickly and in a way in keeping with our Constitution and, in this manner, give honor to the sacrifices made by American patriots in days past.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, for the past month we have debated how best to keep America safe. On one point I know all of our colleagues agree is that Khalid Sheikh Mohammed should be brought to justice. He should be prosecuted for masterminding the mass murders of almost 3,000 Americans on September 11. I know the American people and the families of those victims share that goal.

Every terrorist should be held accountable for their crimes against the innocent, against our enduring freedoms, against the values that we all share. Unfortunately, due to the Supreme Court's decision in Hamdan v. Rumsfeld, prosecutions of suspected terrorists like Khalid Sheikh Mohammed are at a stand-still, and these prosecutions will remain at a standstill until we act to authorize military commissions to try these suspected terrorists.

In addition to halting prosecutions of suspected terrorists, the Hamdan decision has undermined effective interrogation methods employed by our intelligence community. These methods yield critical information that allows us to prevent terrorist attacks and to save innocent lives. The information provided by these enemy combatants is our primary source—our best source—of reliable intelligence.

Past interrogations have guided us to the precise location of terrorists in hiding, explained how al-Qaida leaders communicate with operatives in Iraq, and identified voices in intercepted calls. Without this information, we fight a blind war.

The bill we will vote on in a few minutes addresses the concerns raised by

the Hamdan decision. It provides the legislative framework authorizing military tribunals to prosecute suspected terrorists. It ensures certain protections and rights for the accused such as the right to counsel and the right to exclude evidence obtained through torture.

At the same time, the bill recognizes that because we are at war with a different type of enemy, we should not try terrorist detainees in the same way as our uniformed military or civilian criminals.

The bill also protects classified information from terrorists who could exploit it to plan another terrorist attack.

Finally, the bill allows key intelligence programs to continue while ensuring that our detention and interrogation methods comply with both domestic and international laws, including Geneva Conventions Common Article 3.

The bottom line is the bill before us allows us to bring terrorists to justice through full and fair military trials while preserving intelligence programs—intelligence programs that have disrupted terrorist plots and saved countless American lives.

Our national security demands that we pass this bill tonight. We need this tool in the war on terror. In the 5 years since 9/11 we have not suffered another terrorist attack on U.S. soil. One reason we have remained safe is by staying on the offense against emerging threats. This bill is another offensive strike against terrorism.

For the safety and security of the American people, Mr. President, I urge my colleagues to join us in supporting the Military Commission Act of 2006.

Mr. President, I yield the floor.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Maine (Ms. SNOWE).

Further, if present and voting, the Senator from Maine (Ms. SNOWE) would have voted ''yea.''

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

The result was announced—yeas 65, nays 34, as follows:

[Rollcall Vote No. 259 Leg.]

YEAS—65

Alexander	Burns	Collins
Allard	Burr	Cornyn
Allen	Carper	Craig
Bennett	Chambliss	Crapo
Bond	Coburn	DeMint
Brownback	Cochran	DeWine
Bunning	Coleman	Dole
Domenici	Lautenberg	Santorum
Ensign	Lieberman	Sessions
Enzi	Lott	Shelby
Frist	Lugar	Smith
Graham	Martinez	Specter
Grassley	McCain	Stabenow
Gregg	McConnell	Stevens
Hagel	Menendez	Sununu
Hatch	Murkowski	Talent
Hutchison	Nelson (FL)	Thomas
Inhofe	Nelson (NE)	Thune
Isakson	Pryor	Vitter
Johnson	Roberts	Voinovich
Kyl	Rockefeller	Warner
Landrieu	Salazar	

NAYS—34

Akaka	Dodd	Levin
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Obama
Boxer	Harkin	Reed
Byrd	Inouye	Reid
Cantwell	Jeffords	Sarbanes
Chafee	Kennedy	Schumer
Clinton	Kerry	Wyden
Conrad	Kohl	
Dayton	Leahy	

NOT VOTING—1

Snowe

The bill (S. 3930), as amended, was passed, as follows:

S. 3930

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

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''.

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

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I thank the Presiding Officer.

This matter has now been brought to conclusion.

I yield the floor.

SECURE FENCE ACT OF 2006—Resumed

CLOTURE MOTION

The PRESIDING OFFICER (Mr. ALLEN). Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The 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 Calendar No. 615, H.R. 6061, a bill to establish operational control over the international land and maritime borders of the United States.

Bill Frist, Lamar Alexander, Richard Burr, Gordon Smith, John Thune, Johnny Isakson, John Cornyn, Judd Gregg, Jim Inhofe, Saxby Chambliss, Sam Brownback, Tom Coburn, Jeff Sessions, Richard Shelby, Craig Thomas, Michael B. Enzi, Lisa Murkowski.

Mr. BYRD. Mr. President, I support cloture on H.R. 6061, the Secure Fence Act. The sooner the Congress passes this bill, the sooner the Congress can put aside the misguided amnesty legislation passed by the Senate earlier this year. The American people have listened and rejected the call to offer U.S. citizenship to illegal aliens. They have said NO to amnesty! Hallelujah!

Comprehensive immigration reform is a euphemism for amnesty, and I oppose it absolutely and unequivocally. I voted against the amnesty bill passed by the Senate, and I will continue to vote against amnesty as long as I am in the Senate.

I have seen how amnesties encourage illegal immigration, with the amnesties of the 1980s and 1990s corresponding with an unprecedented rise in the population of unlawful aliens.

I have seen how amnesties open the border to terrorists, with the perpetrators of terrorist plots against our country taking advantage of amnesties to circumvent the regular border and immigration checks.

I have seen how amnesties afford special rules to some immigrants. Amnesty undermines that great and egalitarian American promise that the rules will be applied equally and fairly to everyone.

We are a nation of immigrants to be sure, but that does not mean that we are obligated to give away U.S. citizenship. According to immigration experts, until 1986, the Congress never granted amnesty to any generation of immigrants. The Congress encouraged immigrants to learn the Constitutional principles of our Government and the history of our country. Immigrants learned English, and tried to assimilate. U.S. citizenship was their reward. The Congress did not reward illegal aliens with U.S. citizenship.

Now that this idea of amnesty has been rejected by the Congress, perhaps the administration will begin, at long last, to focus its efforts on actually reducing the number of illegal aliens already in the country. Such an effort will require a significant investment of funds to hire law enforcement and border security agents, and to give them the resources and equipment they need to do their job. In the years immediately after the September 11 attacks, those funds had not only been left out of the President's annual budgets but had been continuously blocked by the White House in the appropriations process. I and others tried to add funds where possible, but not until recently did the administration begin to respond to the inadequacies along the border. So much more is required and needs to be done.

The bill before the Senate today is a good bill. It would authorize two-layer fencing along the southern border where our security is weakest, and set timetables to which the Congress can hold the administration. But this bill will amount to little or no protection without the resources to implement it. The administration must do more. Without its continued support and a committed effort to prevent illegal immigration, the protective barrier called for in this bill will amount to nothing more than a line drawn in the sands of our porous Southern border.

Mr. KENNEDY. Mr. President, now we have 4 minutes that can be equally divided between those in favor and those in opposition; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

Let us review where we in the Senate have been on the issue of immigration.

Last May, we passed by 63 votes, with 1 favorable vote missing, a comprehensive measure to try to deal with a complex and difficult issue. The House of Representatives passed this bill, but they refused to meet with the Senate of the United States. The House of Representatives held 60 hearings all over the country at taxpayers' expense—millions and millions of dollars. What do they come up with? After all the pounding and finger-pointing, they came up with an 800-mile fence.

Listen to Governor Napolitano: You show me a 50-foot fence, and I will show you a 51-foot ladder.

This is a feel-good bumper-sticker vote. It is not going to work. Why? Because half of all the undocumented come here legally. They don't come over the fence.

Do you hear us? This is going to cost $9 billion.

Listen to what Secretary Chertoff said about this issue. Secretary Chertoff said: ''Don't give us old fences. Give us 20th century solutions.'' Tom Ridge, the former head of Homeland Security, said the same thing.

This is a waste of money. Let us do what we should have done in the first place. Let us sit down with the House, the way this institution is supposed to work, rather than just take what is served up by the House of Representatives that said take it or leave it. That is what they are saying to the Senate.

We have had a good debate which resulted in a comprehensive measure. Let

us have a conference with the House. But let us reject this bumper-sticker solution. It isn't going to work. It is going to be enormously costly.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we know that fencing works. It is a proven approach. The San Diego fence has been incredibly successful. The illegal entries have fallen from 500,000 to 100,000. Crime in San Diego County, the whole county, dropped 56 percent. It is an absolutely successful experiment and demonstration of this working.

The chief of Border Patrol told one of the House hearings that it multiplies the capacity of their agents to be effective. There is no way individual agents can run up and down the border without some barriers in these high-traffic areas.

Secretary Chertoff asked us explicitly for 800 miles of barriers and fencing. He asked for that. We voted for it in May. We voted 83 to 16 in favor of the fence, and in August we voted 93 to 3 in favor of funding. But we haven't gotten there yet.

This bill is the kind of bill which can allow us to go forward and complete what the American people would like to see, and maybe then we can have some credibility with the public and we can begin to deal with the very important, sensitive issues of comprehensive immigration reform which I favor. But I believe the present bill that came through the Senate did not meet the required standard. We can do much better.

We have voted for this. We voted for it at least three times to make it a reality. And then we will have some credibility with the American people after we do that and then begin to talk comprehensively about how to fix an absolutely broken immigration system.

I urge support of cloture.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Calendar No. 615, H.R. 6061, a bill to establish operational control over the international land and maritime borders of the United States, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Maine (Ms. SNOWE).

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

The yeas and nays resulted—yeas 71, nays 28, as follows:

[Rollcall Vote No. 260 Leg.]

YEAS—71

Alexander	Allen	Bayh
Allard	Baucus	Bennett
Biden	Ensign	Murkowski
Bond	Enzi	Nelson (FL)
Brownback	Feinstein	Nelson (NE)
Bunning	Frist	Pryor
Burns	Graham	Roberts
Burr	Grassley	Rockefeller
Byrd	Gregg	Santorum
Chambliss	Hagel	Sessions
Coburn	Hatch	Shelby
Cochran	Hutchison	Smith
Coleman	Inhofe	Specter
Collins	Isakson	Stabenow
Conrad	Johnson	Stevens
Cornyn	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Lincoln	Thomas
Dayton	Lott	Thune
DeMint	Lugar	Vitter
DeWine	Martinez	Voinovich
Dole	McCain	Warner
Domenici	McConnell	Wyden
Dorgan	Mikulski	

NAYS—28

Akaka	Harkin	Menendez
Bingaman	Inouye	Murray
Boxer	Jeffords	Obama
Cantwell	Kennedy	Reed
Carper	Kerry	Reid
Chafee	Kohl	Salazar
Clinton	Lautenberg	Sarbanes
Dodd	Leahy	Schumer
Durbin	Levin	
Feingold	Lieberman	

NOT VOTING—1

Snowe

The PRESIDING OFFICER. On this vote, the yeas are 71, the nays are 28. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The clerk will please report the bill.

The legislative clerk read as follows:

A bill (H.R. 6061) to establish operational control over the international land and maritime borders of the United States.

Pending:

Frist amendment No. 5036, to establish military commissions.

Frist amendment No. 5037 (to amendment No. 5036), to establish the effective date.

Motion to commit the bill to the Committee on the Judiciary, with instructions to report back forthwith, with an amendment.

Frist amendment No. 5038 (to the instructions of the motion to commit H.R. 6061 to the Committee on the Judiciary), to establish military commissions.

Frist amendment No. 5039 (to the instructions of the motion to commit H.R. 6061 to the Committee on the Judiciary), to establish the effective date.

Frist amendment No. 5040 (to amendment No. 5039), to amend the effective date.

Mr. KENNEDY. In May, the Senate passed a historic bipartisan bill that bolsters national security, ensures economic prosperity and protects families. The House passed a very different bill.

The logical next step would have been to appoint conferees and begin negotiating a compromise.

But, instead of working to get legislation to the President's desk, the House Republican leadership frittered away the summer, embarking on a political road show featuring 60 cynical onesided hearings, and wasting millions of precious taxpayer dollars.

Repeatedly, the American people have told us that they want our immigration system fixed, and fixed now. They know this complex problem requires border security, a solution for the 12 million undocumented, and a fair temporary worker program for future workers. All security experts agree.

So what does the Republican leadership have to show for its months of fist pounding and finger pointing?

All they have is old and failed plan—a fence bill. It makes for a good bumper sticker, but it is not a solution. It is a feel good vote that will do nothing but waste $9 billion.

The fence proposal we have before us: Goes far beyond what Secretary Chertoff needs; it doubles the size of the fence we have already approved. From 370 miles to 850 miles. It is also expensive. Estimates range from $3 million per mile. And it will not work. Fences will not stop illegal overstayers—who account for 40–50 percent of current undocumented population, or the many who continue to come here to work.

What the Republican leadership does not seem to get is that comprehensive immigration reform is all about security.

The American people want realistic solutions, not piecemeal feel-good measures that will waste billions of precious taxpayer dollars and do nothing to correct a serious problem.

Sacrificing good immigration policy for political expediency and hateful rhetoric is not just shameful—it is cowardly.

Let us be frank. This is about politics not policy.

I urge my colleagues to choose good policy over political expedience and oppose this cloture motion.

Mr. FEINGOLD. Mr. President, every Member of this body recognizes that border security is critical to our Nation's security. We can and must improve our efforts at the borders and prevent potential terrorists from entering our country. I have long supported devoting more personnel and resources to border security, and I will continue to do so.

But this bill is a misguided effort to secure our borders. I cannot justify pouring billions of Federal dollars into efforts that are not likely to be effective.

Recent Congressional Budget Office estimates indicate that border fencing can cost more than $3 million per mile. Under this legislation, we would be committing vast resources to an unproven initiative. Adding hundreds of miles of fencing along the border will almost certainly not stem the flow of people who are willing to risk their lives to come to this country.

Furthermore, there are very serious concerns about the environmental impact this type of massive construction project would have on fragile ecosystems in border areas. Before we pour precious Federal dollars into a massive border fencing system, at the very least we should do a thorough analysis of the most effective and fiscally responsible means of securing our borders against illegal transit. In fact, S. 2611, the Comprehensive Immigration Reform Act of 2006, would direct

the Attorney General, in cooperation with other executive branch officials, to conduct such a study on this question. The study would analyze the construction of a system of physical barriers along the southern international land and maritime border, including the necessity, feasibility, and impact of such barriers on the surrounding area.

Another reason that this bill is misguided is that improving our border security alone will not stem the tide of people who are willing to risk everything to enter this country. According to a recent Cato Institute report, the probability of catching an illegal immigrant has fallen over the past two decades from 33 percent to 5 percent, despite the fact that we have tripled the number of border agents and increased the enforcement budget tenfold. It would be fiscally irresponsible and self-defeating to devote more and more Federal dollars to border security efforts, like this fence, without also creating a realistic immigration system to allow people who legitimately want to come to this country to go through legal channels to do so.

That is why I oppose the House ''enforcement only'' bill. That is why business groups, labor unions and immigrant's rights groups have all come together to demand comprehensive immigration reform. And that is why I oppose this bill. We need a comprehensive, pragmatic approach that not only strengthens border security, but also brings people out of the shadows and ensures that our Government knows who is entering this country for legitimate reasons, so we can focus our efforts on finding those who want to do us harm. Border security alone is not enough. I will vote against cloture on this bill.

The PRESIDING OFFICER. The Senator from Alaska.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2007—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I ask unanimous consent that notwithstanding the provisions of rule XXII, the Senate I proceed to the immediate consideration of the conference report to accompany H.R. 5631, the Defense appropriations bill. I further ask unanimous consent that there be 2 hours of debate equally divided between the majority and minority, with that debate time not counting against the 30 hours postcloture, and that a vote on adoption of the conference report occur at 10 a.m. on Friday, September 29.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The report will be stated by title.

The legislative clerk read as follows:

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, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by all of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of September 25, 2006.)

The PRESIDING OFFICER. The Senator from Alaska. Mr. STEVENS. Mr. President, the time is equally divided, as I understand it.

The PRESIDING OFFICER. The Senator from Alaska is correct.

Mr. STEVENS. Mr. President, I am pleased to present the Defense appropriations conference report for fiscal year 2007 with my colleague from Hawaii, our cochairman, Senator INOUYE.

Two nights ago, in a strong measure of bipartisan support for our men and women in uniform, the House of Representatives passed this bill. There are only 4 days left in the fiscal year. The 2007 Defense appropriations conference report must be signed into law by the President before Saturday at midnight.

Finishing debate on this bill tonight and passing it tomorrow morning will ensure that this bill will get to the President in time so there will be no lapse in money available to our men and women in uniform to conduct the ongoing activities throughout the world.

This bill includes the continuing resolution for those appropriations bills which have not been completed. This continuing resolution, or CR, as we call it, was negotiated on a bicameral, bipartisan basis. It is what we call a clean CR. There is no other problem associated with this CR. It has been supported on both sides of the aisle, and we are grateful to the Members in both the House and the Senate for that approval.

Our conference report represents a balanced approach to fulfilling the financial needs of the Department for fiscal year 2007. It provides $436.5 billion in new discretionary spending authority for the Department of Defense. This amount also includes $70 billion in emergency spending for early fiscal year 2007 costs associated with the operations in Iraq and Afghanistan and the global war against terrorism.

The bill fully funds the 2.2 percent across-the-board military pay raise as proposed in the President's budget.

This conference agreement also provides $17.1 billion for additional fiscal year 2007 reset funding for the Army and $5.8 billion for the Marine Corps. These are specific amounts identified by the services as necessary to meet their fiscal year 2007 equipment requirements.

The additional reset funding provides for the replacement of aircraft lost in battle and the recapitalization and production of combat and tactical vehicles, ammunition, and communications equipment.

In addition, the conference report provides $1.1 billion for body armor and personal protection equipment and $1.9 billion to combat improvised explosive devices.

The bill also provides $1.5 billion for the Afghanistan security forces fund and $1.7 billion for the Iraq security forces fund. These funds will continue the training of indigenous security forces and provide equipment and infrastructure essential to developing capable security forces in Afghanistan and Iraq.

The bill does not address the funding for basic allowance for housing within the military personnel accounts, sustainment, readiness and modernization funds contained in the operation and maintenance accounts, environmental funding, or Defense Health Program funding. These accounts will be conferenced later this year with the House Appropriations subcommittee responsible for those accounts. They are separate from this bill.

Finally, I would like to note that the bill provides more than $3 billion for National Guard and Reserve equipment to improve their readiness in combat operations as well as their critical role in our Nation's response to natural disasters.

I urge all Members of the Senate to support this bill. It supports the men and women in uniform who risk their lives for our country each day. By voting for this measure, we show our support for what they do.

I also wish to thank my cochairman again, Senator INOUYE, for his support and invaluable counsel on the bill.

And before I recognize him, I would like to allocate 10 minutes of the time on our side to the distinguished Senator from Oklahoma. But I yield to my friend from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I rise to express my strong support for the conference report on H. R. 5631. This bill, as the chairman has noted, includes some $436.6 billion for the Department of Defense, including $70 billion to help offset the cost of war in Iraq and the global war on terrorism for the first several months of fiscal year 2007.

I want to remind my colleagues that the bill does not include funding, as noted by the chairman, for the Defense Health Program or for environmental and real property maintenance and related programs.

By agreement between the Appropriations Committees in both Houses, these amounts will be carried in the Military Construction bill which has not yet passed the Senate.

Accounting for this change, the bill is $9.3 billion higher than the bill which passed the Senate. Of this amount, approximately $4.7 billion is in emergency funding for the war on terror, and the balance is for regular appropriations.

This bill provides for the essential requirements of the Department of Defense and is a fair compromise between

the priorities of the House and the Senate.

To my colleagues on the democratic side, I would say this is a good bill.

It was fashioned in a bi-partisan manner and it funds our critical defense needs.

Several items which were added to this bill by democratic amendments are addressed favorably in this conference report.

The agreement urges the President to report his plans in the event of increased sectarian violence in Iraq. It urges the director of national intelligence to assess many elements of the potential for civil war in Iraq.

It includes an additional $100 million to help eradicate poppies in Afghanistan and it addresses concerns raised in the Senate about increasing funding to find the leaders of al-Qaida.

I point out to the Senate that all the members of the conference on both sides of the aisle supported this agreement.

I fully support the bill that the Chairman is recommending, and I urge my colleagues to support the measure as well.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I thank the Senator from Alaska for all his hard work and dedication on defense in this country and the hard work he put forward. This bill undoubtedly will pass this body, and probably unanimously. I will note that there were several things I have a criticism of in the bill and things I would like to have seen in it, but they are not there. But I also note that we are having trouble maintaining Abrams fighting vehicles, maintaining tanks.

As we look at this bill, the $70 billion we are going to have for the war, that is an emergency and it is appropriate, there is no question about it. What is not appropriate in this bill—and this body passed 96 to 1—is the fact that we agreed in this body that whatever the earmarks were in the bill, there ought to be a scorecard on them, on whether the earmarks met the mission of the Defense Department.

There are going to be a lot of earmarks that are good, but a lot of them are stinky. There are 2,000 earmarks in the bill directed by Members of Congress—somewhere around $8 billion—and a large portion of those don't have anything to do with the mission of the Defense Department, and they have everything to do with us failing to do the things we should do in terms of prioritizing and making the hard decisions in this country.

I am going to vote for the bill because of its importance for our country. But in this bill, you don't know who did the earmarks. They are very cleverly written. You cannot find out exactly what contractor they are going to. You don't know who is responsible. They are not listed. That is OK if we want to do things that way, but it is not OK if you are going to do that and not at least assess the effect of the earmarks.

We passed in this Chamber, 96 to 1, that we would, in fact, ask the Defense Department to assist in how effective the earmarks are in accomplishing their mission. My disappointment is, that is not in the bill. If out of that $5 billion to $8 billion worth of earmarks, $2 billion or $3 billion is waste, think what we could have done for the defense of this country. Think what we could have done for those who are depending on us and we cannot fully supply their needs, whether it is early childhood education, Head Start, or the AIDS drug assistance program, just to name a few.

We will try again next year. We will try to get the earmarks published, out in the open, and into the sunlight, so the American people can see what we are directing, to whom we are directing it, and who is doing the directing. I will be back on every bill until we come clean with the American people on the political games we are playing with earmarks. We either need to have the agencies say what they are doing with them and whether they meet their mission or we need to be upfront on who is doing what, why, and what for.

I appreciate the hard work of the chairman and Senator INOUYE in terms of bringing this bill to the floor. More importantly, I appreciate those who dedicate their lives to this country by becoming a part of our Armed Services and setting an example we could very well learn from in this body when it comes to earmarks just by following their example of service, courage, and integrity.

With that, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I ask unanimous consent for time off of Senator INOUYE's time.

The PRESIDING OFFICER. Without objection, the Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, let me thank the chairman, Senator STEVENS from Alaska, and his ranking member, the Senator from Hawaii, Mr. INOUYE, for their hard work on this Defense appropriations bill. As a member of that subcommittee, I have been pleased to work with them and their very able and diligent staffs to shape a Defense appropriations bill that does indeed meet the needs of our times and provides the funding resources our military needs in these very trying times.

Again, I express my support for the underlying bill, the Defense appropriations bill. Again, my gratitude goes to the Senator from Alaska and the Senator from Hawaii for all their hard work.

Mr. KENNEDY. Mr. President, I welcome the decision of the Defense Appropriations Subcommittee conferees to support the Senate's request for a new National Intelligence Estimate on conditions in Iraq.

Earlier this week, the American people were shocked to learn about an assessment from the intelligence community which unequivocally concluded that the war in Iraq is creating a new generation of terrorists. It was especially shocking, given the administration's repeated insistence that we are winning the war on terror and that America is safer because of the war in Iraq. That 5-month-old assessment addressed the impact of the Iraq war on the global threat of terrorism, outside of Iraq's borders.

But what about Iraq itself? What is the collective assessment of the intelligence community about the prospects for success in Iraq versus the likelihood of full-scale civil war? The President insists that we are winning in Iraq but, remarkably, the intelligence community has not prepared a National Intelligence Estimate on conditions inside Iraq for more than 2 years. That must change.

America is in deep trouble in Iraq, and it's mystifying that an Intelligence estimate focusing on the internal situation in Iraq has not been prepared since July 2004. We know that the President is determined to convince the American people that we are winning the war and that America is safer, but what does the intelligence community believe? The recent revelations about the April 6 estimate underscore the value and importance of obtaining the collective wisdom of the intelligence community to inform our policy judgments and to ensure that the American people have the facts, not just the political spin of the White House.

Stopping the slide into full-scale civil war is our greatest challenge and highest priority in Iraq. The continuing violence and death is ominous. The UN reports that more than 6,500 civilians were killed in July and August alone. Militias are growing in strength and continue to operate outside the law. Death squads are rampant. Reports of torture in official detention centers remain widespread. Kidnappings are on the rise, and so are the numbers of Iraqis fleeing the violence.

More than 140,000 American troops are on the ground. It's essential that we obtain—and obtain soon—a candid and comprehensive assessment from the intelligence community on whether Iraq is in or is descending into civil war and what can be done to stop the sectarian violence that is spiraling out of control.

The stakes are enormously high for our troops and our national security, and completing a new NIE on Iraq should be one of Director Negroponte's highest priorities.

After our Senate amendment requiring a new estimate was approved to this bill on August 3, Director Negroponte agreed to ask the intelligence community to prepare it.

Certainly nobody has an interest in unnecessarily rushing the intelligence community. But it has been more than

2 years since an NIE on Iraq was prepared, and that's too long. It has been nearly 2 months since Mr. Negroponte announced his decision to ask the intelligence community to prepare a new assessment, yet the the first step—determining the scope of the issues to be covered—is still not finished.

With Iraq on the brink of a full-scale civil war, preparation of this intelligence assessment cannot be delayed any longer. With more than 140,000 Americans under fire every hour of every day in Iraq, it's wrong to slow-roll this assessment. For the sake of our men and women in uniform, the intelligence community must move forward, and it must move forward soon.

Earlier today I sent a letter to Mr. Negroponte with Senators ROCKEFELLER, BIDEN, LEVIN, REID, and REED urging him to move forward and indicating that preparation and completion of this intelligence assessment cannot be delayed any longer.

As the intelligence community finalizes the terms of reference for the new Iraq National Intelligence Estimate, Mr. Negroponte should be mindful of the specific provisions in this conference agreement, which urge him to follow the parameters set out in the Senate amendment to this bill. Under the amendment, the following issues would be included in the new National Intelligence estimate in Iraq:

The prospects for controlling severe sectarian violence that could lead to civil war; the prospects for reconciling Iraq's ethnic, religious, and tribal divisions; an assessment of the extent to which militias are providing security and the extent to which the Government of Iraq has developed and implemented a credible plan to disarm, demobilize, and reintegrate the militias into the government security forces and is working to obtain a political commitment to ban militias; an assessment of whether Iraq is succeeding in creating a stable and effective unity government, and the likelihood that the government will address the concerns of the Sunni community; and the prospects for economic reconstruction and the impact it will have on security and stability.

It is obviously important that we obtain an open and honest assessment from the Director of National Intelligence, particularly on the question of civil war, and my colleagues and I look forward to such an assessment. It is also our view that an unclassified summary, consistent with the protection of sources and methods, should be made available when the estimate is completed.

We continue to believe the National Intelligence Estimate should be as thorough and comprehensive as possible. To this end, we would also benefit significantly by having it include the following areas:

An assessment addressing the threat from violent extremist-related terrorism, including al Qaeda, in and from Iraq, including the extent to which terrorist actions in Iraq are targeted at the United States presence there and the likelihood that terrorist groups operating in Iraq will target U.S. interests outside Iraq; an assessment of whether, and in what ways, the large-scale presence of multinational forces in Iraq helps or hinders the prospects for success in Iraq; a description of the optimistic, most likely, and pessimistic scenarios for the stability of Iraq through 2007; and an assessment of the extent to which the situation in Iraq is affecting our relations with Iran, Saudi Arabia, Turkey, and other countries in the region.

The war in Iraq continues to be an immense strategic blunder for our country, and having the most thorough and comprehensive National Intelligence estimate possible will greatly inform the ongoing debate about our options for the future.

A new National Intelligence estimate is long overdue. As John Adams said, ''Facts are stubborn things.'' It is abundantly clear that the facts matter on Iraq. They mattered before the war and during the war, and they matter now, as we try to deal effectively with the continuing quagmire.

I urge my colleagues to support this conference agreement, and I look forward to obtaining the new National Intelligence estimate on Iraq and to obtaining it soon.

Mr. President, I ask unanimous consent to have the letter to which I referred printed in the RECORD.

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

U.S. SENATE,
WASHINGTON, DC,
September 28, 2006.

Ambassador JOHN D. NEGROPONTE,
Director of National Intelligence, Office of the Director of National Intelligence, Washington, DC.

DEAR DIRECTOR NEGROPONTE: We welcome your response to our July 26 correspondence and our August 3 amendment to the Department of Defense Appropriations bill for fiscal year 2007 requiring an updated National Intelligence Estimate on Iraq. An NIE focusing on Iraq has not been prepared in more than two years, and we welcome your August 4 announcement that you will ask the intelligence community to prepare this document.

As the intelligence community finalizes the terms of reference for the new Iraq National Intelligence Estimate, we draw your attention to a provision in the conference agreement on the Department of Defense Appropriations bill which urges you to follow the parameters set out in our August 3 amendment on the NIE. Under the Senate amendment, the following issues would be included:

The prospects for controlling severe sectarian violence that could lead to civil war;

The prospects for Iraq's ethic, religious, and tribal divisions;

An assessment of the extent to which militias are providing security and the extent to which the Government of Iraq has developed and implemented a credible plan to disarm and demobilize and reintegrate the militias into the government security forces and is working to obtain a political commitment to ban militias;

An assessment of whether Iraq is succeeding in creating a stable and effective unity government, and the likelihood that the government will address the concerns of the Sunni community;

The prospects for economic reconstruction and the impact it will have on security and stability.

It's obviously important that we obtain an open and honest assessment from the intelligence community, particularly on the question of whether Iraq is in or is descending into civil war, and we look forward to the assessment from the intelligence community. It is also our view that an unclassified summary of the judgments, consistent with the protection of sources and methods, should be made available when the NIE is completed.

Additionally, we continue to believe the NIE should be as thorough and comprehensive as possible. To this end, we would also benefit significantly by having the following areas addressed in a new Iraq NIE:

An assessment addressing the threat from violent extremist-related terrorism, including al Qaida, ill and from Iraq, including the extent to which terrorist actions in Iraq are targeted at the United States presence there and the likelihood that terrorist groups operating in Iraq will target U.S. interests outside Iraq;

An assessment of whether, and in what ways, the large-scale presence of multinational forces in Iraq helps or hinders the prospects for success in Iraq;

A description of the optimistic, most likely, and pessimistic scenarios for the stability of Iraq through 2007;

An assessment of the extent to which the situation in Iraq is affecting our relations with Iran, Saudi Arabia, Turkey, and other countries in the region.

The stakes are enormously high in Iraq, and having the most thorough and comprehensive NIE possible will greatly inform the debate about our options in Iraq.

We look forward to hearing from you about the final terms of reference for the new Iraq NIE and to receiving the updated NIE. Certainly nobody has an interest in unnecessarily rushing the intelligence community. But it has been more than two years since an NIE on Iraq was prepared and nearly two months since you announced your decision to ask the intelligence community to prepare a new assessment. With more than 140,000 troops on the ground in Iraq, preparation of this intelligence assessment cannot be delayed any longer.

Sincerely,

JOHN D. ROCKEFELLER IV.
JOSEPH R. BIDEN, Jr.
CARL LEVIN.
HARRY REID.
EDWARD M. KENNEDY.
JACK REED.

Mr. LEAHY. Mr. President, the Senate is poised to approve the fiscal year 2007 Department of Defense Appropriations conference report. Like past Defense Appropriations bills, there are things in this bill that I support and there are others that I disagree with. Without taking much of the Senate's time today I want to mention one small but very important provision in this bill.

Section 9012 of the conference report states that no funds shall be made available for the establishment of permanent U.S. military bases in Iraq or to exercise U.S. control over any oil resource of Iraq. This language, which was sponsored by Senator BIDEN and which I strongly support, provides an important signal to the Iraqi people and to the sovereign government of Iraq that it is not the intent of the United States to control or maintain a

permanent military presence in their country. It is especially important in light of the recent surveys which indicate that a significant majority of Iraqis want United States military forces to withdraw from their country.

For many Vermonters and for people around the world who have concerns and suspicions about the Bush administration's intentions in Iraq, this makes clear that regardless of the disagreements among us over the continued deployment of U.S. troops in Iraq, we agree that they are not there to establish permanent bases or to control Iraqi oil resources.

Mr. McCONNELL. Mr. President, on a related note, one portion of the much publicized National Intelligence Estimate that came out this week failed to capture much attention. It was a segment that said, ''We cannot measure the extent of the spread [of jihadist terrorism] with precision . . .'' This candid admission reflects just how difficult good intelligence is to come by. It also reflects why it is so important that this bill permits the CIA interrogation program to continue—because it provides valuable intelligence.

Over the weekend, much was made about this selective leak of national security information. Some of our colleagues pounced on the media reports to bolster their argument that we should pull out of Iraq, pull out now.

But whoever leaked this report somehow forgot to mention a key finding of the intelligence community. As anyone who read the declassified report knows, the findings are clear: If we defeat the terrorists in Iraq, there will be fewer terrorists inspired to carry on the fight elsewhere. But if we leave Iraq to the terrorists, it will only inspire more terrorists to join the fight.

In other words, defeating terrorists in Iraq not only secures the new democracy there but prevents future attacks here.

The New York Times editorial board rightly pointed out that ''[t]he current situation will get worse if American forces leave.''

Mr. President, it is a banner day when the New York Times editorial board contradicts my colleagues across the aisle, and the Times is certainly right, at least in this regard: a policy of retreat will not stop terrorists there—or prevent attacks here.

I have said it before, but it bears repeating. Terrorism against the United States didn't start on 9/11 or the day our troops entered Baghdad—But attacks here at home did stop when we started fighting al-Qaida where they live rather than responding after they hit.

We don't need to guess what will happen if we leave Iraq to the terrorists. We already have a real-world example of what will happen. Recall that Afghanistan was a wholly owned subsidiary of al-Qaida before 9/11. It was from there that they planned and executed—with impunity—attacks against the United States and our allies. Think what Iraq would be like if we let al-Qaida take possession of the country—like bin Laden wants us to do.

And remember what the 9/11 Commission concluded, and I quote: ''If, for example, Iraq becomes a failed state, it will go to the top of the list of places that are breeding grounds for attacks against Americans at home.''

Mr. President, we know what will happen if we leave Iraq before the job is finished. That is simply not in dispute. Remember, bin Laden declared that, for him, Iraq was the ''capital of the Caliphate.'' We must not and we will not give him that victory.

RYAN WHITE CARE ACT

Mr. ENZI. Mr. President, I rise again today to ask unanimous consent that the Senate pass S. 2823, the Ryan White HIV/AIDS Treatment Modernization Act, and I will make the formal request in just a few moments.

I want to make a few comments first in hopes that some who have a hold on this bill will come down and lodge the objection themselves. Just last week we requested the unanimous consent agreement to pass this bipartisan, bicameral legislation as it passed out of the House Energy and Commerce Committee last week. At 9:30 tonight it will pass on the floor of the House, and I expect by significant margins. But five Senators from three States are blocking a vote to create a more equitable program for providing life-sparing treatment for individuals suffering from HIV and AIDS.

Now, 2 days ago I made this same request to pass this critical legislation, and the five Senators who are holding up this legislation chose not to come to the floor to discuss their concerns or to debate their issues. Instead, the Senator from Minnesota, Mr. DAYTON, was gracious enough to notify us of his objection, even though he stated he would vote for the bill.

So today I ask again the Senators from New York, New Jersey, and California, those who have holds on this critical legislation, to come to the floor themselves and lodge their objections to explain why their parochial interests should be permitted to deny lifesaving care to people who don't live in their States.

Now, I have a chart here that shows the New York and New Jersey situation. You can see that New York, under the current law, receives $509 per case above the national average. Under the reauthorization, they would still receive $304 above the national average per case. And not only that, at the end of the year, they have $29 million left over.

In New Jersey, they get $310 per case above the national average. Now, under the reauthorization, they would still get $88 more per case above the national average, and they have a little slush fund at the end of the year: $17.7 million.

These States have simply raised objections about what funds they will receive this year compared to last year. These States will still be overpaid per case, just no longer grossly overpaid. For example, New York is paid $509 more per AIDS case, as I showed my colleagues, than the national average and would get $304. They have been unable to spend $29 million in Ryan White funding. They can't spend the money they are taking in now. Yet those States' Senators still want more at the expense of many other States that are currently underfunded.

Now, these States have not objected to the underlying policies. Again, I must emphasize that these couple of States have been grossly overpaid for years, receiving well over the national average per patient with HIV. Even under this new bill, they will continue to be overpaid, although not quite as much.

Now, California is a little different situation. When the law was passed last time, we put some provisions into law, and we set a deadline for HIV/AIDS cases for fiscal year 2005 to have a conversion. Now, the Secretary opted to delay that until 2007 to give the States more time, and the CDC in 2005 urged all the States to transition immediately. California decided to transition in 2006. CDC offered resources and people in 2006 to help them make the transition. California declined.

There is a deadline. California will lose $74 million in 4 years under the current law for not meeting the deadline. When we pass this bill, under the new law, California would gain $60 million over the 4 years and have more time. So it is kind of a win-win situation for California. Under some of the formula, they were hoping, I think, to gain even more. But they can meet the deadline; extra help has been offered. So if they would take the extra help, they could meet that timeline, and under this bill, they would gain $60 million over 4 years instead of losing $74 million over that same 4 years by not complying with the transition language.

This bill would ensure that every State in the Nation has the appropriate funding to care for their residents living with HIV and AIDS.

Let me show you another chart. On the left-hand side, the States in red will have losses under the current law: 100,000 Americans get left out. This will happen on September 30 unless we pass a bill. On September 30, there will be huge penalties to these States. The bottom right shows the States that will gain under the reauthorization that we are doing, and you will notice that there are five States that will not gain, but only two of them are objecting. These five Senators who didn't come to the floor 2 days ago still continue to obstruct the Senate from passing a bill that can save more than 100,000 lives, including the lives of a growing number of women and minorities who are afflicted by this devastating disease.

As you can see from this chart, without this new law, people across the

country who are suffering from HIV and AIDS will be hurt unless we pass the new bipartisan, bicameral bill. That means that we have worked on this for a long period of time, and we have people from both sides of the aisle in agreement. We even have people on both ends of the building in agreement, and, in fact, the bill that the House is passing tonight is the same bill that we worked out and are ready to pass over here.

So holding up passage of this new law is wrong. By doing so, these Senators are denying growing numbers of minorities and women living with HIV and AIDS equal protection under the Ryan White CARE Act.

This chart shows Americans are at risk. More than half of the HIV/AIDS cases are not counted under the Federal law in the States that are marked in red. Those are ones that are not getting half of the money that they need right now, half that they ought to have if the bill was fair.

So we need to pass this bill. We need to pass this bill by September 30. Let's see, today is the 28th. We only have 2 days to pass this bill. And if we don't pass the bill, a whole bunch of States are going to be penalized severely under the old law.

I have gotten letters from several of the Senators who are worried about what is going to happen to their States under the old law come just 2 days from now. If the bill is not authorized by September 30, hundreds and thousands of people in the States and the District of Columbia will lose access to lifesaving services.

Therefore, Senators from three States are holding up a bill that would help Connecticut, Georgia, Kentucky, New Hampshire, Pennsylvania, Delaware, Illinois, Maine, Oregon, Washington State, California, Hawaii, Massachusetts, Maryland, Montana, Rhode Island, Vermont, and the District of Columbia. Hundreds of thousands of people living with HIV and AIDS who live in these States will be needlessly hurt if a few Senators continue obstructing good policy.

As you can see from the chart, more than half of the HIV/AIDS cases are not counted under current law. As we all know, the Ryan White Program provides critical health care services for people who are infected with HIV/AIDS. These individuals rely on this vital program for drugs and other services. We need to pass this legislation so that we can provide them with the treatment they desperately need.

I urge the Senators who are holding up this bill to stop playing the numbers game so that Ryan White CARE Act funding can address the epidemic of today, not 2 days or 2 years ago.

The HIV/AIDS epidemic of today affects more women, more minorities, and more people in rural areas in the South than ever before. While we have made significant progress in understanding and treating this disease, there is still much more to do to ensure equitable treatment for all Americans infected with HIV and AIDS. We must ensure that those infected with HIV and living with AIDS will receive our support and our compassion regardless of their race, regardless of their gender, regardless of where they live.

Therefore, I urge my colleagues to support this key legislation and stop playing the numbers game so we can assist those with HIV in America.

UNANIMOUS CONSENT REQUEST—S. 2823

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 580, S. 2823, the Ryan White Act. I ask unanimous consent the Enzi substitute at the desk be agreed to, the committee reported amendment as amended be agreed to, the bill as amended be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

The Senator from Minnesota.

Mr. DAYTON. Mr. President, reserving the right to object, I want to say that I thank the Senator for his courtesy and for warning me about his intention here tonight. I salute him for his leadership on this legislation, which I support, so I am in a bit of an awkward situation, as he has recognized. But I guess I would ask the chairman, if my information is correct, there are actually 14 States that would lose funding under the revised formula.

As the chairman said the other day, there is a hold-harmless clause that is in effect, as I understand, for 3 years, and this is a 5-year reauthorization, so at that point these other States would lose funding.

Does the chairman find it surprising that Senators from those States are doing what I think I would do if I were in that situation? I am grateful the formula adds money for Minnesota, but I find it unsurprising that they are doing what any of us I believe would do, which is to protect our States.

My second question to the chairman is: Given that this is a $12.2 billion reauthorization over 5 years, what would it cost in additional authorization to give these States over the next 5 years the same amount of money as they receive presently?

Mr. ENZI. Mr. President, I thank the Senator for his reluctant objection, although it still counts as an objection.

The PRESIDING OFFICER. Has the Senator from Minnesota objected?

Mr. DAYTON. Mr. President, I am reserving the right to object. I directed two questions to the chairman, if I may, Mr. President.

Mr. ENZI. Mr. President, I will go ahead and answer the questions, then, and hope this changes your mind on being the one willing to make the objection.

Would I protect my State if my State were losing money? I think we are elected to the Senate by the people in our States, but our obligation is to the people of the United States. And were my State grossly overpaid on an average, and I was still going to be grossly overpaid afterwards, and my State couldn't use the money each year that it received, I think I would have a terrible time trying to object to this bill. I hope we do not play that kind of numbers game, we don't get that parochial on bills around here.

Another bill I have been working on is the Older Americans Act, and it has a formula in it. Again, there are States that lose under that bill. But there are people who have been willing to work out a formula like we did on this. We must have run about 300 different programs trying to come up with something as equitable as possible. We even put in the 3 years hold harmless for people who were being grossly overpaid.

I think we have come up with as reasonable a bill as we possibly can. We need to get it passed, and we need to get it passed by September 30 so the penalties don't kick into effect for those States that have a big penalty coming up and that are desperately in need of making sure they get enough money to take care of the cases they presently have.

Mr. COBURN. Will the chairman yield for a question?

Mr. DAYTON. Mr. President, I haven't had my question answered.

Mr. ENZI. I have one more answer that I need to do.

The PRESIDING OFFICER. The Senator from Wyoming has the floor. His unanimous consent request is pending.

Is there objection?

Mr. ENZI. I will yield for some other questions as soon as I finish answering this question.

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

Mr. ENZI. There aren't 14 States that would lose money unless the new bill doesn't pass. There are only five States that will lose money under the new bill, the bill we are trying to get passed by unanimous consent—the bill that we are at least trying to be able to bring up by unanimous consent. We tried a number of different ways. There are just five States that are involved in losing money. Of those five, three have said we have to be fair. Two have said we don't care whether we are fair or not.

Mr. DAYTON. If I may direct a question again to the chairman, how much would it cost in addition to the $12.2 billion for this 5-year authorization? What additional authorization would it cost to give those five States the same level of funding over the next 5 years that they would receive as of today?

Mr. ENZI. Mr. President, I don't have that number. Like I say, we ran about 300 different iterations of different formulas. I will get the Senator that number.

But there is 3 years hold harmless in this. You are talking about 5 years hold harmless. Hold harmless means

that the dollars don't follow the person, that the State gets the money even if they have run out of people with HIV/AIDS, and if there are decreasing numbers of them they should not continue to get those dollars. What you are asking is we continue to give those dollars even if we run out of people. All we are trying to do with this bill is make sure the dollars follow the person. You get more people, you get more money. You get less people, you get less money. It is take care of the people.

It is not an economic development bill.

Mr. DAYTON. Mr. President, I appreciate the answers of the chairman. I respect him very highly for what he has done. I must, however, object on behalf of my colleagues whom I believe are doing properly what they must and should do to protect their own States. So I do object.

The PRESIDING OFFICER. Objection is heard. The Senator from Oklahoma.

Mr. COBURN. Mr. President, it really strikes me strange, when we are talking about protecting money from States that already have full treatment programs, and people are dying across this country because there is inequity in the funding for those States. If that is the basis for an objection, that is an obscene objection.

We are talking about people dying who have no access to medicines, who have no access to treatment, while we have—let me get to the specifics—while we have in New York alone, last year—the city of New York spent $9 million on hotel rooms averaging $329 a night to house people. They spent money, $2.2 million, on people who were dead, paying for rented rooms they weren't even in. And we are talking about objecting to fair treatment and access to care for people who have none now because we don't want to see the fluff associated with other programs decline.

The President has asked us to pass this bill. On October 1, lots of changes take place. They are going to impact lots of people in lots of States.

I find it unconscionable that somebody would have somebody object for them rather than to come down and defend their objection. If you object to making sure African-American women across this country have access to lifesaving drugs, you ought to come to the floor and say you object to that because that is what an objection means for this bill starting October 1. There is already a lack. There are people dying in three States right now because they have waiting lists for drugs for HIV for people who have no other resources to take care of themselves.

Last year I offered an amendment on this floor, fully paid for and offset, for $60 million for additional ADAP funds that would have taken care of the very people who are going to suffer from this bill, and the very same Senators who are blocking this bill voted against those funds for those people who have no treatment today. There is something very wrong in the Senate when the leaders of the charge for this bill, with the exception of Senator KENNEDY who has done miraculous work with Senator ENZI—the leaders in the charge for getting this bill and making sure everybody has equal access to care for HIV in this country are four conservative Senators.

We ought to ask a question about that. Why are we down here fighting for this? We believe in equal treatment. We believe in equal access. Where are the people who claim all the time to defend that? Why aren't they here on the floor of the Senate?

I want to make a couple of other points. The Labor-HHS bill that we are going to be voting on this fall has $1 billion in earmarks in it; $1 billion in earmarks. Most of it has zero, in comparison to saving somebody's life, like ADAP drugs and access to treatment if you are infected with HIV and you don't have any access to care whatsoever. We don't see anybody volunteering to give up their earmarks.

Here is a stack of earmarks for New York State alone, last year in excess of $1.5 billion—over 600 earmarks. Nobody volunteered to give up the earmarks, the special projects that politicians get benefits from that sometimes do good and sometimes don't do good—nobody offered to give those up to pay for this loss. We want to continue to do what we are doing, having the privileges and prerogatives of a Senator or a Congressman to grease the skids of our own reelection with an earmark, but we will not give some of that up to make sure somebody in a State that is not having access, who is going to die in the next 3 months, has access to lifesaving drugs.

That is an incrimination on this process. It is an incrimination on this body. Shame on us if we allow this to continue to be held up.

New York State carried over $27 million. The Department of HHS—here is another. This past weekend, HHS spent $400,000 sending people—78 employees—to Hollywood, FL, of which 2 out of the 3 days didn't have anything to do with the conference. It was a party. As a matter of fact, as a quote from the New York Times states, at the last AIDS conference in Toronto, 78 HHS employees went, and as the New York Times said, this was a star-studied rock concert, a circus-like atmosphere that made it seem more like a convention and social gathering than a scientific meeting. For these and other reasons a number of leading scientists have stopped attending and some supporters claimed the quality of the presentations have declined at recent conferences.

We can find more money. We can find money from earmarks. We can find money from conferences. We can find money from waste, fraud, and abuse. What we cannot find is the integrity to treat everybody equally in this country because we want to protect the parochial interests of our city or our State. That is wrong.

It is wrong that they are not down here defending that immoral position. I challenge them to come down and defend it.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I thank Chairman ENZI and Ranking Member KENNEDY for an incredible amount of work, not just within our committee but in a bicameral way with the House. Seldom do we get the opportunity to come to the floor of the Senate fully knowing that the House is on board to every word that is in a bill, which means even with the 2 days that the chairman has suggested we have before this bill adversely affects thousands in this country, we could actually have it on the President's desk and signed. But we are tonight, at almost 9 o'clock, with four Senators on the floor, finding absent the Senators who object to us bringing up this bill. Why would they object?

Senator DAYTON said because they owe it to their States to get as much money as they possibly can and to not be equitable under a distribution formula.

I tell you that could be the reason. But I think the reason they are not here is because their position is indefensible; to allow us to bring this bill to the floor one would challenge them on why they take the position that they do. Their position is indefensible because this formula is run on numbers.

It is very simple. The chairman stated it to the Senator from Minnesota very clearly. For every patient you have you get dollars to make sure that you provide the services and the pharmaceuticals that are needed. If you don't have the people, if you don't have the infected patients, you should not get the money. What is the fear? The fear is, they know they don't have the people. Therefore, they will not get the money. So why not have the debate? Stall and see what happens.

The chairman said there were a number of States—New York being the most egregious—where they received $2,122 per infected patient. The national average is $1,613. I represent the State of North Carolina. We have one of the fastest growing populations of HIV-infected individuals in the United States. Today what does North Carolina receive—$1,029 per individual infected with HIV/AIDS. Can any Member who blocks this come to the floor and tell me that is equitable? Can any Member come to the floor and suggest to me that this funding, designed to provide the drugs that these people need to live is equitable? That New York should get $2,122 per person but North Carolina should get $1,129 per person? Can they tell me that is equitable? It is not only not equitable, it is unjust. It is unfair. It is wrong.

You know what, the people in North Carolina say: We are tired. It can't happen anymore. You have to change it.

I have a State who, annually, has individuals on the ADAP waiting list—individuals waiting in line to be eligible to get pharmaceuticals, to stay alive. This is not the vision of America we have been taught. We have been taught that we need to make sure that safety net is there. But the argument tonight is that we are going to be denied the safety net in some States so that others can keep feeding at the trough—whether they have the population or not.

The people in North Carolina are tired of watching their State contribute the second highest percentage of dollars to the Ryan White Program but getting less Federal funding than States who barely contribute a dime on their own.

They are tired of seeing African-American women in the South of the United States 26 times more likely to be HIV-positive than a White woman and to see States that deny them the ability to provide the drugs that these women need. They are tired of hearing about HIV-positive people in San Francisco and New York getting dog-walking services and massages when some of my constituents can't even get HIV drugs.

They are tired of hearing terms such as ''double counting,'' ''hold harmless,'' ''duplication of names,'' ''grandfathered in.'' All of those terms translate to one word: unequal.

What is so wrong with the concept that Ryan White dollars follow HIV-infected individuals?

Recently, I had individuals in my office. They suggested that 3 years was not enough time to account for the infected population, that in fact they are going to be penalized because they have more individuals who are infected with HIV/AIDS than what we count today.

It is real simple. The chairman said 3 years hold harmless. They have 3 years to produce those names to verify that they are eligible for the funds, and if they don't do that then, in fact, that money goes elsewhere. So what was their argument? Three years is not enough time.

Every one of the individuals who is infected is enrolled in some type of program and service and receiving drugs and services. Clearly, if they receive those drugs and services on a regular basis, it is easy to account for who they are and where they are.

In fact, if they are not there, the last thing you want to do is have a program that accounts by an individual's name. But, in fact, that is what we do with this formula.

Right now, the Federal Government is giving exotic fruit to California and New York, and North Carolina is getting rotten apples. That is about the comparison. We allow them to have a Cadillac and, in fact, we don't even give those folks in North Carolina a car.

The transition that is going on in America is that the infected population is in rural America, and many of them are showing up in the southeastern part of the United States. They are not in urban areas; they are not in what we consider title I or title II towns. We don't get the enhanced dollars because of the concentration in a big city. They are at the end of a dirt road. They are 30 miles from an AIDS clinic.

When we look at how we service that newly infected population in the South, which is predominantly African-American women, it is not only where we get the money to supply the drug, it is where we get the money to provide the transportation so they can go to an AIDS clinic. Where do we get the money to provide the rest of the service for somebody who doesn't have a relationship with a health care professional? The closest thing they get to primary care is the day they walk in and get their drugs and they get a ''quickie'' check up. Then it is another process of a bus or a van or a friend who takes them to get it. But without that extra bit, they would never get the drug if, in fact, we didn't supply some type of transportation.

In 2000, North Carolina had 12,489 people living with HIV/AIDS. There are 6,000-plus infected people more today than that 2000 statistic. I know how many there are in North Carolina because we keep their names. We track the individuals.

We are not asking for more money than we have in infected patients. We are asking for this formula to be fair.

Through December 2004, North Carolina was a State with the 14th greatest number of AIDS cases in the Nation, and the highest ranking State—the only State in the top 17—without a title I city that had enhanced reimbursement you get because of the size of the city and the infected population.

In 2004, 66.7 percent of people living with AIDS in North Carolina were African American—the fifth highest rate in the Nation. The national average in 2004 was 39.9, and ours is 66.7.

I would like to think there would be 100 Senators down here talking about the outrage; that they would look at the racial disparity in this, the regional disparity; and that they would be down here arguing that this program has to be changed. It is not happening, and 72 percent of the new North Carolina cases in 2005 were minorities. It may be that the 66.7 percent of the infected population is, in fact, the low watermark, not the high watermark as we begin to see those new cases of minority individuals.

For those of us who are here arguing tonight that this should be changed, we recognize the fact that women of color in the South are 26 times more likely to be HIV-positive than White females.

This is an alarming trend that this Nation ought to turn around. We have a lot to do in 2 days—now a night and a day. We want to make that September 30 deadline.

It is clear that individuals in New York want to maintain the $2,100 per case and not accept the $1,613 average. The individuals in New Jersey want to keep their $1,923 and not settle for the $1,613 that is the national average. They are willing to suggest that is an equitable tradeoff with North Carolina that gets $1,129 per individual infected by HIV.

It is time that we show the leadership that we have to point out to people who are holding this up that we cannot let them hide behind some defense that ''I can't lose for my State'' money that they cannot prove goes in their State to save the lives of people who are dying in my State because they can't get the pharmaceutical products they need.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator ENZI, our chairman, for his great leadership and persuasive remarks earlier on this important issue.

My good friend, Dr. COBURN, has personally treated people with AIDS and has dealt with women who have had babies with AIDS. It is a matter deeply important to him.

Senator BURR is a force in our committee. He works extremely hard. His remarks go to the core of what we are all about here. He explained it in great detail. I am so appreciative of that.

I will just say a few things that I believe are important.

Senator DAYTON, I must tell you that my good friend Senator ENZI is a very fair man. If the chairman were asked, Chairman ENZI, why should New York give up anything? Why shouldn't they insist on keeping the special position they have?

Let me ask this question: How did New York get that special position? How did it happen? They came to the Congress a number of years ago. They said: We have an extraordinary problem in New York. Our problem is great. We have this growing problem with AIDS, and we need extra money.

The Nation said: We believe you are hurting, New York. We believe you have a special problem, and we will give you special money, extra money. You will get more than the rest of the country because it appears that the disease is more centered there and is spreading most rapidly there.

That was a good and decent thing for the country to do. It made sense that this bill passed. I am not disputing that. But I am telling you right now, as a representative of the people of the State of Alabama, having talked to the leadership that deals with AIDS in my State, they are really upset. They cannot imagine how it is possible that now my State and the entire Southern region is showing a faster increase in AIDS than any other region of the country—the South has the highest rate of increase of any region in the

country. I will show this chart. It is actually beginning to surge here. It is a crisis in our State. Even this new bill, as Chairman ENZI said, still provides more money per patient for a big-city State than we would get in Alabama, even though our AIDS rate increase is higher by far than the Northeast or other areas.

How can that be justified? I know the people of New York say that New York City deserves more money to protect itself from terrorists because terrorists are more likely to attack New York. They complain about this. But the truth is, they get a lot more money in New York for that protection than the rest of the country gets. I think current legislation will give them even more for it. Why? Because the terrorist threat is more real. Well, the AIDS threat is real here; more real in Alabama. And it is falling on poor people and it is falling on the African-American community and it is falling hardest on African-American women.

Senator BURR said that, and that is an absolute fact. The numbers bear it out without any doubt whatsoever. I believe a fair proposal is on the floor of the Senate. I believe if we had any pretense of passing legislation that deals fairly and objectively with the deadly disease of AIDS, we need to pass this legislation. It is absolutely not right to continue this disproportionate shifting of revenue from States all over America to big cities that are getting almost twice as much in some instances as the poorer States and the rural States. It is not right to continue that. We need to fix that.

The chairman didn't overreact. Maybe next time, if we can't get this bill passed, we ought to pass a bill that makes it completely level across the board and not leave some of these States with a continued advantage. They have had an advantage for years and years now. I suggest that we need to work on that and work on it hard.

Let me point out again the yellow line which represents the increase in the South—far higher than the Northeast and the West. That is where the big cities are that are getting the biggest amount of money per patient, not just more money total but more money per patient.

We have all read reports of abuses of those moneys and some of the worst things they are doing in some of those centers. Senator COBURN mentioned the great conferences they go to where they have rock concerts and spend this money that they claim they do not have, I guess, to treat people who are sick.

Let's look at the next chart just to make one more point about what this legislation that Chairman ENZI and the committee hammered out is trying to do. There are 1.185 million Americans living with HIV/AIDS, and 250,000 of them do not know they are infected. One of the greatest things we can do is to make sure that people who are infected with HIV/AIDS know it as soon as possible. Treatment will commence immediately. It can mean years of extra life, years of extra healthy ability to live a normal life if we diagnose them early.

This bill provides new moves toward early diagnosis, early detection, and early testing. It absolutely is the right thing to do.

I was in my home State talking to some of our AIDS people who work on a daily basis. They told me about a lady who came in pregnant, and they did a test on her. She was 7 months pregnant. She was positive for HIV. That was a tragedy, of course. But that child, given the right treatment, is almost certain to be born without AIDS because she was diagnosed as having it before the child was born. Had she not been diagnosed, there would have been a 50–50 chance that the child would have been born with AIDS. What a tragedy which was averted in that instance. They began to talk to her. They ended up talking to her boyfriend. He agreed to be tested. They found out that he was positive. He didn't know that. Had he known that, he would never have infected the lady. I am convinced of it. Most people are going to protect themselves and their partners if they know they have AIDS.

There are a lot of reasons for early detection. One is that it will help reduce the spread of AIDS because most people would not want their partners to be infected. And it would allow them to get on medication at the earliest possible time. So we made some real progress in that area. It can save lives and money in the long run.

I salute the chairman. How the Senator has time to work all the bills he is leading members on in the HELP committee, I do not know. It is a tremendous challenge and the Senator does it with good humor and consistent efforts to do right thing.

The Senator is exactly right on this important issue. I thank the Senator for his leadership. We must pass this reform. We must have equity in distribution of the money. It absolutely needs to show a shift of resources to the most threatened area of our country—that is the South, our poor, our African American community, and particularly, African American women.

I yield the floor.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Alabama for his kind comments and even more so for his passion and understanding on this issue. I thank the others who have spoken.

We had given those who are objecting to the Senate completing this bill an hour to state their case; no one showed up. We were pretty sure of that based on the fact they had one of the Members who is not running for office to be the one to object. They sent someone from a State that actually gains by having the bill completed. That tells something about how willing they are to defend the position they have on this bill.

This bill is critical to people all over the United States. There are HIV/AIDS families in every single State asking Congress to pass this bill and to pass it immediately.

Thirteen States, on September 30, will have huge losses in revenue. We are getting more calls, naturally.

This is not just a bill. This is not just policy. This is life and death to people across this country

We have heard people are on waiting lists that cannot get drugs because the money does not follow the person. The money goes to the States that had the money before. This bill readjusts that so the people who need the drugs get the drugs. It sounds like an American principle to me.

As I mentioned before, there are other bills we work on where we are changing the formula. I have been very fortunate the people working with those bills have said, yes, we have to be fair. We always transition into these things. This is no exception. Three years of hold-harmless. That means they get the same amount of money whether they deserve it or not for 3 years, while they count again to see if they have more or less people affected.

STANDARDS CONVERSION

Mr. SANTORUM. Mr. President, I realize that Senator ENZI has been working with Senator KENNEDY and others to craft this underlying bipartisan, bicameral product. Already today, he has discussed how the bill will ensure more equitable treatment, target key resources, and save lives through treatment. However, he has also mentioned that someone from California is holding up the bill, due to concerns about converting their HIV system to standards created by the Centers for Disease Control and Prevention. I am curious about that, given that Pennsylvania, like California, is also in the process of converting its system. How long have States under current law to change their system?

Mr. ENZI. The 2000 reauthorization stated that States need to have CDC accepted HIV data as early as 2005 but not later than 2007. Therefore, States have already had seven years to make this change.

Mr. SANTORUM. How many more years will California and Pennsylvania have to make that change?

Mr. ENZI. Under the bipartisan, bicameral product, California and Pennsylvania will have 4 more years to make the change. Thus, you both will have had over a decade to convert your systems. However, in fiscal year 2011, only CDC standards for HIV cases will be used for the funding formula.

Mr. SANTORUM. So, I understand that you have given States like my own Pennsylvania more time to change their system, so that they don't have losses just due to system issues when people still need care. What would Pennsylvania and California lose if those States did not receive the 4-year extension you are proposing?

Mr. ENZI. According to a February 2006 report by the GAO, Pennsylvania would lose $9 million and California would lose $18.5 million in 1 year. With this bill that allows those States to still count the people that matter while the systems are transitioning, Pennsylvania would instead gain $4.8 million and California would gain $15.4 million.

Mr. SANTORUM. Will CDC provide assistance to States that need to make this change? How will the Federal Government assist?

Mr. ENZI. CDC has offered to provide assistance to States throughout the process. In fact, I recently confirmed today that CDC has already offered California technical assistance—up to six staff for up to 6 months—to help them make this change. Further, given some confusion about that technical assistance, I have asked CDC to send a letter to California, restating that they would provide that assistance.

Mr. President, Senator HATCH was the chairman of this committee when the original Ryan White HIV/AIDS treatment bill went through. He is the one that selected the name of Ryan White. He has an explanation of how that came about and the differences this bill has made and the urgency with which this needs to be done right now.

Mr. HATCH. Mr. President, I rise to support the effort to call up and immediately adopt S. 2823, the Ryan White HIV/AIDS Treatment Modernization Act.

Adoption of this legislation offers us the opportunity to make a difference in the lives of the hundreds of thousands of people in the United States who are living with HIV/AIDS. We should not let this opportunity pass.

I am pleased to have joined HELP Committee Chairman ENZI and Ranking Minority Member KENNEDY, Majority Leader FRIST, and Senators DEWINE and BURR in introducing this reauthorization bill.

As my colleagues are aware, I was the author of the original legislation along with Senator KENNEDY and we introduced the first bill on this issue in the 101st Congress. The Ryan White Comprehensive AIDS Resources Emergency Act of 1990 was signed into public law on August 18, 1990 and became—excluding Medicaid and Medicare—the United States' largest Federally funded program for the care of those living with HIV and AIDS. It was a lot of hard work. But it was a lot of hard work for a very important cause.

Let us take a moment to remember one of the reasons why we did all that hard work in the first place. His name was Ryan White. Ryan was born in Kokomo, IN, in 1971. Three days after his birth, he was diagnosed with severe hemophilia. Fortunately for Ryan and his parents, there was a new blood-based product just approved by the Food and Drug Administration called Factor VIII, which contains the clotting agent found in blood.

While he was growing up, Ryan had many bleeds or hemorrhages in his joints which were very painful. A bleed occurs from a broken blood vessel or vein. Think of a water balloon. When the blood has nowhere to go, it swells up in a joint and creates painful pressure. Twice a week, Ryan would receive injections or IVs of Factor VIII, which clotted the blood and then broke it down.

In December of 1984, Ryan was battling severe pneumonia and had to have surgery to have 2 inches of his left lung removed. Two hours after the surgery, doctors told his mother that he had contracted AIDS as a result of his biweekly treatment with Factor VIII. He was given 6 months to live.

Ryan White was a fighter. He was determined to continue at his school and live life normally. But in 1985, not many people knew the truth about AIDS. Not very much was known about AIDS at all. Most of the so-called facts that people claimed to know were speculation. So Ryan faced a lot of discrimination, mostly based on the unknown.

Ryan was soon expelled from his high school because of the supposed health risk to other students. His situation became one of the most controversial cases in North America, with AIDS activists lobbying to have him reinstated while attempting to explain to the public that AIDS cannot be transmitted by casual contact.

After legal battles, Ryan and his mother settled with the school to have separate restrooms and use disposable silverware from the cafeteria. He agreed to drink from separate water fountains and no longer used the high school gymnasium.

But those concessions didn't stop much. Students vandalized his locker. Some restaurants threw his dishes away after he left. A bullet was even fired into his home.

Later, Ryan transferred to a different school where he was well-received by faculty and students who were fully educated into the nature of HIV. Ryan was a great student with an exceptional work ethic and perseverance. He was respected by his fellow students because of his admirable traits. They understood he was a human being—just like them, but living with a terrible disease.

Before he died on April 8, 1990, Ryan White worked to educate people on the nature of HIV and AIDS, to show that it was not a lifestyle disease and that, with a few precautions, it was safe to associate with people who were HIV-positive. His character sought to overcome stigma. He became an inspiration to patients and advocates throughout the United States and the rest of the world.

By the spring of 1990, over 128,000 people had been diagnosed with AIDS in the United States and 78,000 had died of the disease.

The Ryan White CARE Act was originally enacted in 1990 in response to the need for HIV primary care and support services. At that time, the focus of public policy was on research, public education, surveillance, and prevention. The CARE Act was the first approach developed to help people with HIV and AIDS to obtain primary care and support services to save and improve their lives. There is no doubt that the CARE Act has played a critical role in the Nation's response to the AIDS epidemic.

The CARE Act was reauthorized in 1996 and 2000 to address the fact that the epidemic continued to spread and that primary care and support services provided through the act were still vitally important to people living with HIV and AIDS.

Today, more than 944,000 cases of AIDS have been reported to the Centers for Disease Control and prevention, the CDC. Nearly 530,000 men, women, and children have died as the epidemic has spread over the last 25 years to both new populations and new geographic areas.

The public health burden and the economic burden of the AIDS epidemic have not been reduced since the CARE Act was passed. The continued need for services grows faster than the resources available.

Steady expansion and shifted demographics of the epidemic and the increasing survival rates for people living with AIDS have increased the stress on local health care systems in some areas. This strain is felt both in urban centers, where the epidemic continues to rage, and in smaller cities and rural areas, where the epidemic is expanding rapidly.

This reauthorization bill addresses those inequities and reevaluates funding formulas so that money for the program follows the epidemic. It keeps money for the AIDS Drug Assistance Program—known as ADAP—within ADAP, and even grants States flexibility to transfer funds to ADAP when they have demonstrated need. Currently, funds for the ADAP supplemental pool are frequently dipped into for other purposes, resulting in inadequate funding and waiting lists. It also protects States and eligible metropolitan areas from suffering catastrophic losses in funding.

I know that it is never easy to revise a bill that contains funding formulas. No matter what changes we make, they will always raise issues and questions. But let us move beyond the narrow fight and work for the greater good.

We have been talking a lot about numbers and codes and case counts and reporting data, but we need to remember that there are actual real people being affected by this, real people who need our help. Hundreds of thousands of people continue to live affected with and die from this disease, and we need to bring out all the tools within the Federal arsenal to help fight for them.

As of December 31, 2005, the Utah Department of Health reported a total of 1,907 people living with HIV and AIDS

in the State of Utah. Many of these individuals rely on Title II funding from the Ryan White Program to receive health care, vital medications and support services.

These individuals are also counting on me to fight for their continued access to care and services that have such a big impact on their survival and quality of life. We in Congress are being counted on to work together on behalf of the nearly 1 million people living with HIV/AIDS in our country.

The last reauthorization period for the Ryan White Program expired in 2005. It is incredibly important that we reauthorize the program again now in order to continue providing the care that is so critical to these populations and alleviate strain from shifts in the epidemic felt by health care providers.

There are real people counting on us. We need to move forward in reauthorizing the only Federal program that helps the neediest of people living with this devastating disease. This bill extends the availability of vital services, and it includes changes that intend to fix discrepancies that have resulted in Ryan White funds not following the epidemic.

This is a good bill and I urge my colleagues to support it.

Mr. ENZI. I am very distressed. I have had a lot of success on other bills we are trying to get through. People have been willing to listen to reason and understand the urgency of a lot of the issues, particularly in the health area, but also in the education, labor, and pensions area.

As a committee, we work on these things across the aisle and across the building. As a result, we have had 12 bills signed by the President. Of those 12 bills, we have only spent about 2 hours total in the Senate debating them because we work across the aisle and across the building. We work on important issues. We solve the parts we can and we bring them here. This is one of those where we thought we had the parts solved that we could. There are a lot of moving parts to a lot of these things. We work to get as much consensus as we can, but occasionally we reach a sticking point like this.

I am really disappointed we have reached a sticking point like this where people are going to die. If, by tomorrow, we have not passed this bill and in case we go longer than tomorrow, I am going to ask the leader to file cloture on this bill so we can see if five Senators can hold up a Senate bill.

If we leave tomorrow or the next day, it won't ripen yet, but it can ripen as soon as we can get back. We can spend the time debating it, and those States that are losing money on September 30, while they will not be able to retrieve all the money they will lose, they will have some breathing room for the future.

I am desperate. I usually do not have to do that sort of thing. I am willing to do it on this bill. I am very distressed. Usually we are able to get agreement. We went a long ways toward giving concessions to those States.

In all fairness, if you do not have the cases, you really should not have the money tomorrow, let alone 3 more years. We have tried to be reasonable. We have tried to help out States. We have run a bunch of formulas to make it as fair as we possibly could and to protect the States as much as we can, but it is time to be fair to the people with HIV/AIDS and to be fair to the families of people with HIV/AIDS.

I ask unanimous consent that a Washington Post article be printed in the RECORD.

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

[From the Washington Post, Sept. 28, 2006]

LAWMAKERS ARGUE OVER AIDS FUNDING BILL

(By Erica Werner)

WASHINGTON.—House members from rural areas and the South clashed with big-city lawmakers Thursday over who should get a bigger share of federal money to care for AIDS patients.

''It's shameful and disgraceful,'' shouted Rep. Eliot Engel, D–N.Y., denouncing amendments to the $2.1 billion Ryan White CARE Act that could take millions of dollars out of New York's health care coffers.

The HIV/AIDS epidemic is moving,'' countered Rep. Joe Barton, R–Texas. ''This is a very fair compromise. It begins to treat all states on an equal footing.''

The House was expected to vote on the bill later in the evening. A two-thirds vote was needed for passage.

Even if it passes the House, the bill faces uncertain prospects in the Senate before Congress recesses at the end of the week to campaign for re-election. Senators from New York, New Jersey and California are blocking it.

Supporters said the election-year updates were needed because of how AIDS has changed since the Ryan White law first passed in 1990. Once a big-city epidemic infecting mostly gay white men, the disease is now prevalent in the South and among minorities.

By some measures federal funding has not kept up, and states like California, New York and New Jersey get more money per patient than Alabama, Kentucky or North Carolina.

The Ryan White amendments, the first since 2000, make a number of changes aiming to spread money more equally around the country.

While current law only counts patients with full-blown AIDS, the revision also would count patients with the HIV virus who have not developed AIDS.

That change would favor parts of the country where the disease is a newer phenomenon, which tend to be southern and rural areas.

New York state stands to lose $100 million over the five years of the bill. New Jersey would lose $70 million.

Alabama, by contrast, would get an increase from $11 million a year to about $18 million a year.

''The problem is that the population of those needing services has grown, but the funding for Ryan White programs has not grown with it,'' said Rep. Henry Waxman, D–Calif. ''That means if we're going to give to some people who are very deserving, we're going to take from others who are very deserving.''

California and some other states are worried about a change in the bill that mandates counting HIV patients by name instead of codes. Some states used code-based systems out of concern for patient privacy. California could lose an estimated $50 million in the last year of the bill, when the name-based system would take effect, because it won't be prepared to make the transition.

Mr. ENZI. I have a unanimous consent that has been agreed to by the majority and minority leader. I yield back all time on the Defense appropriations conference report.

MORNING BUSINESS

Mr. ENZI. Mr. President, I ask that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

TIME ALLOCATION

Mr. ENZI. I further ask that all time after 9 p.m. tonight be counted postcloture, notwithstanding the adjournment of the Senate.

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

PRYOR NOMINATION TO PBS BOARD

Mr. PRYOR. Mr. President, I am very proud to say that my father has been nominated to a seat on the board of the Corporation for Public Broadcasting. I think he will do an excellent job. I think we will all be proud of his services there. However, because he is my father, I decided to recuse myself from that nomination and abstain from any votes. I don't think it has all been worked out yet, but my anticipation is that it will not be done by rollcall vote but by voice vote or some other type of vote.

I would like the record to show that I am abstaining from that vote and recusing myself from that nomination.

I thank the Chair.

Mr. WARNER. Mr. President, might I say that I was privileged not only to serve with the Senator's father but consider him a good personal and professional working partner. He is an extraordinary individual and the citizens of this country are fortunate if his nomination is confirmed and he takes up that service.

Mr. LEVIN. Mr. President, I add my compliments and congratulations to the Senator dad. I feel so close to him that I am tempted to recuse myself, but I won't do that. Instead, I will be very happy to vote for him whether it is a rollcall or a voice vote.

Mr. LEAHY. Mr. President, I was privileged to serve with David Pryor. I am proud of him. I think it is going to be a wonderful opportunity for the board to have his services.

DECENCY BLOCKING EDUCATIONAL CAMPAIGN

Mr. STEVENS. Mr. President, the television, cable, and satellite industries recently launched the ''Be the Boss of What Your Kids Watch'' campaign. This campaign, which is headed up by my good friend Jack Valenti, educates parents about how to protect their children from inappropriate television programming.

When Senator INOUYE and I first became co-chairmen of the Senate Commerce Committee, several groups and individuals approached us; they were concerned about decency in media content. In November 2005, our Committee began the process of bringing each of these groups together. We convened an Open Forum on Decency and held hearings. In all, more than 30 groups and individuals shared their concerns and insights with us.

The ''Be the Boss'' campaign is one noteworthy initiative which developed from these efforts. Surveys show that only three percent of Americans know how to use the V-chip, a feature in every television set which enables parents to block programs based on ratings. This $300 million ad campaign seeks to teach parents how to use this—and other—blocking technologies and will help them better monitor television programs.

In July, Jack Valenti and Peggy Conlon, the president of the Ad Council, kicked off the ''Be the Boss'' campaign when they showed our committee their first two public service announcements. Thanks to these announcements, and the campaign web site, www.thetvboss.org. parents now have information about the V-chip, cable and satellite controls, and television ratings.

Earlier this week, kits containing information about this campaign were delivered to every Member of Congress. I urge my colleagues to share these valuable resources with their constituents, and I thank Jack Valenti and his colleagues for their leadership on this issue.

I yield the floor.

TRIBUTE TO SPECIAL AGENT JOHN BAILEY

Mr. REID. Mr. President, I rise to honor the life of Special Agent John Lawrence Bailey. More than 15 years ago, Special Agent Bailey gave his life in the line of duty. Today, in a fitting memorial, law enforcement agents throughout Nevada enter the Federal Bureau of Investigation building in Las Vegas that bears his name.

John Bailey was an American success story. Born in 1942, he attended the University of Pittsburgh on an athletic scholarship. Shortly after receiving his degree, John enrolled in the United States Marine Corps. He would answer his nation's call by joining thousands of young men who went to Vietnam. There, John was awarded the Vietnam Campaign Medal, the Vietnam Service Award, and a Bronze Star. After Vietnam, John entered Quantico and began his distinguished career with the FBI.

While John had numerous work accomplishments, those who knew him best could say that he was most proud of his family. It is not easy being in Federal law enforcement, but his family was always supportive. Joined by his wife Beth and their two daughters, Amanda and Megan, the Baileys came to Nevada in 1977.

On the morning of June 25, 1990, Special Agent Bailey found himself in the middle of an armed robbery in a bank. Instead of standing by in fear, John confronted the robbers and drew his weapon. The robbers quickly turned and Special Agent Bailey fired. The bullet missed one suspect, but Agent Bailey was able to capture them and end the robbery. While securing the suspects, something distracted him. In that split second, a robber recovered his weapon and shot John. He died at the scene.

His heroism that day to save the lives of his fellow citizens was not out of the ordinary for those who knew John. As a 21 year veteran of the FBI, John was a highly decorated agent. He was known throughout the Nevada law enforcement community for his efforts to break up organized crime in Las Vegas. His work even touched my life.

John Bailey was a good man and a friend. When I was the commissioner of the Nevada Gaming Control Board, I worked with John to clean up the gaming industry. It wasn't an easy task because organized crime had deep roots in Las Vegas. Each day, I faced threats against my life and against my family. There were even attempts to bribe me. Special Agent Bailey made the arrests on the gangsters who were after me. I will never forget him.

For all these reasons, I was pleased that the FBI decided to name their building in Las Vegas after Special Agent Bailey. It is a fitting tribute for a fallen officer. Later this fall, the FBI will be moving to a new building in Las Vegas. It is important to the FBI—and to me personally—that the new building at 1787 West Lake Mead Boulevard continue to carry the name of Special Agent John Bailey. Soon, I look forward to touring this new ''John Lawrence Bailey Memorial Building.''

I am pleased to have this opportunity to honor John before the Senate. With the dedication of the new FBI building. I am hopeful that future generations of law enforcement officers will be able to take a moment to reflect on the life and accomplishments of this distinguished officer.

NORTHEASTERN NEVADA HISTORICAL SOCIETY

Mr. REID. Mr. President, I rise to recognize the 50th anniversary of the Northeastern Nevada Historical Society. This important event is a testament to the hard work of many individuals across Nevada, and it is worthy of recognition today.

Since its founding in 1956, the Historical Society has grown from a membership of 8 to include over 2,000 members this year. Throughout this half century, the Historical Society has dedicated itself to the preservation of Nevada's heritage. Its collection of documents, artifacts, and art has become a valuable resource for genealogists, historians, Nevada residents, and visitors.

Today, almost any member of the public has access to the extensive research materials of the Northeastern Nevada Historical Society. Legal documents, personal papers, newspapers, maps, oral histories, family histories, and municipal records combine with a library of more than 2,200 books and 33,000 photographs to enhance the collection.

In 1968, the Northeastern Nevada Historical Society founded a museum in Elko. The Northeastern Nevada Museum houses the Historical Society's collections and permanent displays as well as special exhibits. The museum has prospered through the years, adding exhibition space to accommodate an increasingly large collection and growing popularity among patrons. It is a source of pride for the entire Elko community.

The Historical Society's collections represent many different faces of Nevada. Exhibits on geology and natural history display the prehistory of Nevada. Another important exhibit is the treasure trove of artifacts from the Great Basin Indian tribes. History comes alive at the museum through representations of the Pony Express, mining camps, the California Trail, and the Basque and Chinese experience in the West. The museum's collection extends into the 21st century to reflect the well-preserved wilderness and contemporary art that define Nevada today.

The Historical Society has also reached out to the residents of northeastern Nevada. They welcome school groups, sponsor speaker series and slide shows, and host local artists. At the same time, the Historical Society extended its reach beyond the local region by publishing a quarterly journal and attracting museum visitors from many different states and countries.

I can confidently say that the people of Nevada are grateful for the Historical Society's dedicated effort to preserve the rich history of our State. I am proud to commend the Northeastern Nevada Historical Society and extend my congratulations on the Society's 50th anniversary. I am confident that the next 50 years will be just as successful as the past 50 have been.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate

crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On November, 9, 1996, Alan Fitzgerald Walker was murdered in his home in Fayetteville, AR. The tires on his car were slashed and anti-gay notes were written on the doors of the vehicle. Prosecutors say Adam Blackford and Yitzak Marta met Walker outside of a gay night club and murdered him. Marta testified at Blackford's trial that the motivation for this crime was the victim's sexual orientation.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

GLOBAL WARMING

Mr. INHOFE. This past Monday, I took to this floor for the eighth time to discuss global warming. My speech focused on the myths surrounding global warming and how our national news media has embarrassed itself with a 100-year documented legacy of coverage on what turned out to be trendy climate science theories.

Over the last century, the media has flip-flopped between global cooling and warming scares. At the turn of the 20th century, the media peddled an upcoming ice age—and they said the world was coming to an end. Then in the 1930s, the alarm was raised about disaster from global warming—and they said the world was coming to an end. Then in the 1970s an alarm for another ice age was raised—and they said the world was coming to an end. And now, today, we are back to fears of catastrophic global warming—and again they are saying the world is coming to an end.

Today I would like to share the fascinating events that have unfolded since my floor speech on Monday.

This morning, CNN ran a segment criticizing my speech on global warming and attempted to refute the scientific evidence I presented to counter climate fears.

First off, CNN reporter Miles O'Brien inaccurately claimed I was ''too busy'' to appear on his program this week to discuss my 50-minute floor speech on global warming. But they were told I simply was not available on Tuesday or Wednesday.

I did appear on another CNN program today—Thursday—which I hope everyone will watch. The segment airs tonight on CNN's Headline News at 7 p.m. and repeats at 9 p.m. and midnight eastern.

Second, CNN's O'Brien falsely claimed that I was all ''alone on Capitol Hill'' when it comes to questioning global warming.

Mr. O'Brien is obviously not aware that the U.S. Senate has overwhelmingly rejected Kyoto-style carbon caps when it voted down the McCain-Lieberman climate bill 60 to 28 last year—an even larger margin than its rejection in 2003.

Third, CNN's O'Brien, claimed that my speech earlier contained errors regarding climate science. O'Brien said my claim that the Antarctic was actually cooling and gaining ice was incorrect. But both the journals Science and Nature have published studies recently finding—on balance—Antarctica is both cooling and gaining ice.

CNN's O'Brien also criticized me for saying polar bears are thriving in the Arctic. But he ignored that the person I was quoting is intimately familiar with the health of polar bear populations. Let me repeat what biologist Dr. Mitchell Taylor from the Arctic Government of Nunavut, a territory of Canada, said recently: ''Of the 13 populations of polar bears in Canada, 11 are stable or increasing in number. They are not going extinct, or even appear to be affected at present.''

CNN's O'Brien also ignores the fact that in the Arctic, temperatures were warmer in the 1930s than today.

O'Brien also claimed that the ''Hockey Stick'' temperature graph was supported by most climate scientists despite the fact that the National Academy of Sciences and many independent experts have made it clear that the Hockey Stick's claim that the 1990s was the hottest decade of the last 100 years was unsupportable.

So it seems my speech struck a nerve with the mainstream media. Their only response was to cherry-pick the science in a failed attempt to refute me.

It seems that it is business as usual for many of them. Sadly, it looks like my challenge to the media to be objective and balanced has fallen on deaf ears.

Despite the traditional media's failed attempt to dismiss the science I presented to counter global warming alarmism, the American people bypassed the tired old traditional media by watching CSPAN or clicking on the Drudge Report and reading the speech online.

From the flood of overwhelming positive feedback I received, I can tell you the American people responded enthusiastically to my message.

The central theme was not only one of thanks, but expressing frustration with the major media outlets because they knew in their guts that what they have been hearing in the news was false and misleading.

Here is a brief sampling:

Janet of Saugus, MA: ''Thank you Senator INHOFE. Finally someone with the guts to stand up and call it what it is—a sham. I think you have taken over Toby Keith's place as my favorite Oklahoman.''

Al of Clinton, CT: ''It's about time someone with a loud microphone spoke up on the global warming scam. You have courage—if only this message could get into the schools where kids are being brow-beaten with the fear message almost daily.''

Kevin of Jacksonville, FL, writes: ''I'm so glad that we have leaders like you who are willing to stand up against the onslaught of liberal media, Hollywood and the foolish elected officials on this topic. Please keep up the fight.''

Steven of Phoenix, AZ, writes: ''As a scientist, I am extremely pleased to see that there is at least one Member of Congress who recognizes the global warming hysteria for what it is. I am extremely impressed by the Senator's summary and wish he was running for President.''

Craig of Grand Rapids, MI, writes: ''As a meteorologist, I strongly agree with everything you said.''

My speech ignited an Internet firestorm; so much so, that my speech became the subject of a heated media controversy in New Zealand. Halfway across the globe, a top official from the New Zealand Climate Science Coalition challenging New Zealand's television station to balance what he termed ''alarmist doomcasting'' and criticized them for failing to report the views of scientists in their own country that I cited here in America.

As the controversy in New Zealand shows, global warming hysteria has captured more than just the American media.

I do have to give credit to one publication here in America, Congressional Quarterly, or CQ for short. On Tuesday, CQ's Toni Johnson took the issues I raised seriously and followed up with phone calls to scientist-turned global warming pop star James Hansen's office. CQ wanted to ask Hansen about his partisan financial ties to the left-wing Heinz Foundation, whose money originated from the Heinz family ketchup fortune. But he was unavailable to respond to their questions, which is highly unusual for a man who finds his way into the media on an almost daily basis. Mr. Hansen is always available when he is peddling his increasingly dire predictions of climate doom.

The reaction to my speech keeps coming in: Just this morning, the Pittsburgh Tribune-Review newspaper wrote an editorial calling my speech ''an unusual display of reason'' on the Senate floor.

I have been engaged in this debate for several years and believe there is a growing backlash of Americans rejecting what they see as climate scare tactics. And as a result, global warming alarmists are becoming increasingly desperate.

Perhaps that explains why the very next day after I spoke on the floor, ABC News's Bill Blakemore on ''Good Morning America'' prominently featured James Hansen touting future scary climate scenarios that could, might, possibly happen.

The segment used all the well-worn tactics from the alarmist guidebook—warning of heat waves, wildfires, droughts, melting glaciers, mass extinctions unless mankind put itself on a starvation energy diet and taxed emissions.

But that is no surprise—Blakemore was already on the record that there was no scientific debate about man-made catastrophic global warming.

You have to be a pretty poor investigator to believe that. Why would 60 prominent scientists this last spring have written Canadian Prime Minister Harper that ''if, back in the mid-1990s, we knew what we know today about climate, Kyoto would almost certainly not exist, because we would have concluded it was not necessary.''

I believe it is these kinds of stories which explain why the American public is growing increasingly skeptical of the hype. Despite the enormous 2006 media campaign to instill fear into the public, the number of people who believe that weather naturally changes is increasing.

A Los Angeles Times/Bloomberg poll in August found that most Americans do not attribute the cause of recent severe weather events to global warming, and the portion of Americans who believe that climate change is due to natural variability has increased over 50 percent in the last 5 years. And that, my fellow Senators, is why the Hollywood elitists and the rest of the liberal climate alarmists are starting to panic.

I hope my other colleagues will join me on the floor and start speaking out to debunk hysteria surrounding global warming. This issue is too important to our generation and future generations to allow distortions and media propaganda to derail the economic health of our Nation.

WASTEWATER TREATMENT WORKS

Mr. INHOFE. Mr. President, I would like to discuss the urgent need for this legislation. The Nation's wastewater treatment works—POTWs—provide a vital service to our Nation. They ensure that municipal and industrial waste is cleaned to a level safe enough to be released back into the Nation's waterways.

After the tragic events of September 11, 2001, much more focus was placed on the Nation's water and wastewater facilities. POTWs not only release treated effluent into the Nation's waters but also consist of miles of pipes that run underground and are often large enough for someone to stand in. They are literally underground roadways.

In the 107th Congress, the House of Representatives passed by voice vote legislation—H.R. 5169—to provide POTWs with the resources they needed to conduct vulnerability assessments and secure their facilities. The bill, H.R. 866, was again introduced in the 108th Congress and passed by a vote of 413–2, with every Democrat who voted supporting the bill. I was pleased to introduce the companion to this legislation, S. 1039 with my colleague and then subcommittee Chairman, MIKE CRAPO. Last year, despite reporting the bill on a bipartisan vote of 13 to 6, members of the Senate minority objected to Senate consideration of S. 1039.

S. 2781 is a variation of S. 1039 with some important improvements, like the addition of site security plans and a more streamlined grantmaking progress. Senator LINCOLN CHAFEE, chairman of the Fisheries, Wildlife and Water Subcommittee and Senator LISA MURKOWSKI, a distinguished member of the EPW Committee joined me in sponsoring S. 2781.

Our bill passed the EPW Committee on a voice vote. Unfortunately, once again, my colleague from Vermont has objected to consideration of wastewater security legislation by the full Senate.

My colleagues in the minority argue that my bill is insufficient because it does not impose on POTW's unfunded federal mandates and because it does not assume that local officials are ignoring the security of their facilities.

POTWs are arms of local government. They are largely owned and operated by the Nation's cities and towns. In 1995 Congress passed the Unfunded Mandates Reform Act in which we pledged not to impose costly regulatory burdens on our partners in local government. Just as it is our obligation as U.S. Senators to serve the public good, preserve the public trust and protect the citizenry, so it is the obligation of locally elected, appointed and employed officials.

Why do so many of my colleagues assume that we at the Federal level care more about the citizens of the Nation's towns than the locally elected officials do? Why do so many of them assume that they know more about how to evacuate citizens, secure local treatment plants and protect local citizens than the very people who live in those towns whose jobs it is to protect them?

S. 2781 would simply provide towns with resources to conduct vulnerability assessments and to secure their facilities. It provides funds to research the means to secure the collection systems that are made up of the miles of underground pipes. There are logistical and financial problems with trying to secure these systems that need to be addressed, particularly before imposing an unfunded Federal mandate on the Nation's towns. My bill would support the already ongoing activities of many of the national wastewater associations and the Environmental Protection Agency, EPA, to develop assessment tools and industry security standards as well as conduct security trainings. The national water associations make up the Security Coordinating Council and regularly meet with the Environmental Protection Agency, the Agency charged with overseeing security at POTWs. The SCC and EPA are developing a sector security plan to, among other things, establish measures of security improvements.

My colleagues will argue that this is not enough. Local governments cannot be trusted to proceed on their own with a little Federal guidance because to date, they really have not done anything to secure their facilities. However, one need look no further than a March 2006 GAO report to see how much in fact they are doing. According to GAO, 74 percent of the largest 206 treatment works had completed or were in the process of completing a vulnerability assessment. Further, the majority of treatment works had made significant improvements to the physical security of their facility. They did so after careful review of their individual communities' needs. Most importantly, they have done so out of concern for their citizens, not in response to a Federal mandate.

My colleagues will also turn this discussion not into one about security but one about chlorine. Chlorine is by far the most effective disinfectant available and it is the least expensive. During these times of aging systems, growing Federal regulations and limited resources, cost is an important consideration. Washington, DC's treatment works, Blue Plains, spent $12.5 million to change technologies. San Jose, CA, spent $5 million to switch from gaseous chlorine to sodium hypochlorite. The city of Wilmington, DE, spent $160,000 to switch. However, there is much more to their story than that cost figure. Wilmington already had in place a sodium hypochlorite system that was serving as backup to its gaseous chlorine system. Further, Wilmington will spend hundreds of thousands of dollars more each year in operations and maintenance costs.

There are other considerations that must be factored in as well, such as downstream effects of a chlorine alternative. For example, the switch from chlorine to chloramines in Washington, DC's drinking water system was found to cause lead to leach out of service pipes and into the faucets of homes and businesses. Thus, decisions about chlorine must be fully evaluated and must be site-specific. Many POTWs are already undergoing these evaluations. After careful review of cost, technical feasibility and safety considerations, and without the presence of a Federal mandate on technology, 116 of the 206 largest POTWs do not use gaseous chlorine: According to the GAO report, another 20 plan to switch to a technology other than chlorine. To sum, nearly two-thirds of the Nation's largest POTWs are not using or will soon stop using chlorine. Those who continue to use chlorine have taken steps to ensure the chlorine is secure. My bill would provide POTWs who decide for themselves to switch treatment technologies with grant money to make the switch. However, my bill maintains trust in local officials who know best their water, the community and their security needs.

Let me be clear. This is an important security bill and I regret that for the second Congress in a row my colleagues on the other side of the aisle are obstructing it. Members of the minority have criticized the chemical security legislation for not covering these facilities. This legislation has basically passed the House of Representatives twice. The minority party in the Senate is blocking this important security bill.

TRIBUTE TO CONGRESSMAN JOEL T. BROYHILL

Mr. WARNER. Mr. President, I rise today to pay tribute to an outstanding Virginian, and dear friend, the former 10th District Congressman, Joel T. Broyhill, who died this past weekend.

Congressman Broyhill was an outstanding public servant. He had a certain ''joie de vivre'' that one does not often find—his presence, his spirit would fill up a whole room. His sense of civic responsibility—both through his service in the U.S. Army and as the Representative to Congress from Virginia's 10th District—was second to none. And his devotion to his three daughters, stepdaughter, grandchildren, and great-grandchildren was unmatched; they were the joys of his life.

A native of Hopewell, VA, Congressman Broyhill was born on November 14, 1919. He attended Fork Union Military Academy and George Washington University.

In 1942, he enlisted in the Army. He served as an officer in the European Theater in the 106th Infantry Division and was taken prisoner in the Battle of the Bulge. After 6 months in German prison camps, he escaped and rejoined the advancing American forces. On November 1, 1945, after 4 years of service, Congressman Broyhill was released from active duty as a captain.

In 1952, at the age of 33, Broyhill was elected as a Republican from Virginia's newly created 10th District to the 83d Congress, by 322 votes. Congressman Broyhill was reelected 10 times, serving 21 years in Congress, until December 1974.

Congressman Broyhill's prime source of political success was his dedication to constituent service. At the time of Congressman Broyhill's tenure in Congress, the 10th District contained more Federal employees than any other district in the United States. In 1972, Congressman Broyhill estimated that he had aided more than 100,000 district residents during his 20-plus years in office.

According to the 1974 Almanac of American Politics:

> [t]here are few congressional offices in which the demand for services is so high, given the number of Federal employees in Broyhill's district; and there are few indeed that take care of constituents' needs and complaints with more efficiency.

The 10th District of Virginia was shaped and forever changed by Congressman Broyhill's initiatives in Congress. He laid the foundation for major transportation projects, including the construction of Interstate 66, the Metrorail System, the Woodrow Wilson Bridge, and Washington Dulles International Airport.

The Almanac also describes Congressman Broyhill as one who ''should be credited with voting his conscience.''

Even after he left Congress, Congressman Broyhill continued serving constituents by maintaining an office to assist those with problems relating to the federal government. In fact, my Senate office would receive a call about once a month from the ''Broyhill Office'' asking us to follow up on a constituent inquiry.

In 1978, I was honored and proud to have my longtime friend come out of retirement to serve as General Chairman of my U.S. Senate campaign. It was great to see him back on the political stage in Virginia. Congressman Broyhill's knowledge of the Commonwealth and of campaign strategy were invaluable to me as he introduced a most interesting couple to the political scene. Congressman Broyhill helped me to convince my wife at the time, Elizabeth Taylor, that being a candidate's spouse was the best role she could play. Many times he accompanied Elizabeth to campaign events when I was unable to attend. He was an exemplary ambassador for my 1978 campaign.

Congressman Broyhill's ''house by the side of the road'' in Arlington was never without yard signs during any election. As one of the first Republicans elected in Virginia, he was a trailblazer and he helped every Republican member of the Virginia congressional delegation—including its two current U.S. Senators—to be elected under the Republican banner.

Congressman Broyhill was instrumental in building his father's real estate business, M.T. Broyhill & Sons. The company was started in Hopewell, and the family later relocated to northern Virginia when Congressman Broyhill was growing up.

Congressman Broyhill and his wife Suzy were stalwarts of charitable giving and have given both their time and resources to many organizations across the Commonwealth, and notably, to the Wolf Trap Foundation for the Performing Arts.

It is with a great sense of humility that we pay tribute today to the life of our dear friend and dedicated public servant, Congressman Joel T. Broyhill. We offer our condolences to his three daughters, Nancy, Jeanne and Jane Anne, his stepdaughter, Kimi, and his wife of 25 years, Suzy. He also has four grandchildren: Meredith, Maureen, Lindsay, and Kathleen, and three great-grandchildren: Molly, Jack, and Kara.

THAILAND

Mr. FEINGOLD. Mr. President, I remain deeply troubled by the military coup that occurred in Thailand on September 19. The forceful removal of Thai Prime Minister Thaksin Shinawatra was an assault on the democratic institutions of that country and is a dangerous development for a key ally in an increasingly important region. Now, almost 2 weeks after the coup, it is apparent that the coup leaders had only a tentative plan for transitioning back to democratic rule and that their rhetoric about restoring democracy to Thailand may not be as sincere as some had hoped. As the military junta fumbles through its next steps, it is critical that the United States show strong leadership in helping this critical ally reinstitute a civilian democratic government and that it do so immediately.

Mr. President, this coup is particularly troubling because it is a step backward from almost a decade of relatively positive democratic developments. During Thailand's last coup in February 1991, the military overthrew Prime Minister Chatichai Choonhavan and a bloody power transfer followed, culminating in what Thais call ''Black May.'' Those events kicked off a national dialogue that resulted in the establishment of a new constitution in 1997 that restored authority to civilian democratic institutions, ultimately ushering in democratic elections in 2001 and 2005. Thaksin's party, Thai Rak Thai—''Thais love Thai''—won both of those elections in landslide victories.

This recent coup rolls back these developments. There is no doubt that Thailand was suffering from extreme political divisiveness during Thaksin's tenure. When I met with him in Bangkok earlier this year, he was in the throes of a political battle against a growing opposition movement. He was also under fire for mishandling the insurgency in Thailand's three southernmost provinces in which 1,700 people have been killed since January 2004. It was evident that his ability to effectively manage the Thai Government had been diminished.

But this hardly provides justification for a military junta to overthrow a popularly elected government and to discard the nation's constitution. This new military junta, led by General Sonthi Boonyaratglin, and awkwardly self-titled the ''Council for Democratic Reform Under Constitutional Monarchy'', is deeply troubling.

This coup is a significant setback for Thailand's democracy. While the coup occurred in a matter of hours, it may take years before a new civilian and democratic government restores full authority and legitimacy in Bangkok. Unfortunately, this new military council has banned political gatherings and has put some restrictions on the media. It has disseminated a wide range of other decrees and rules, many of which have troubling consequences for freedom of expression and the democratic process. Given these early signs, we have no reason to believe that this council will be any different in nature

than previous military juntas. Additionally, this coup could have negative consequences for Thailand's simmering human rights problems and the insurgency in the south. The coup leaders have already stated that they will focus on quelling a separatist insurgency in southern Thailand. This is worrisome if the military council relies on a strictly military approach to the unrest.

The coup is also bad for the region. Events in Thailand are sending the wrong message to democracies throughout the region that are dealing with legacies of military coups. Secretary Rice has dismissed the notion that this could have a contagion effect throughout the region. While I hope this is true, we should not ignore the fact that a number of countries in Southeast Asia are still dealing with the legacies of military dictatorships. Indonesia is recovering from years of dictatorial military rule, and the Republic of the Philippines is still working to strengthen its democratic institutions and repair its recent history of military intervention. The coup is also, significantly, going to have a direct impact on Thailand's ability to serve as a broker between Burma and the rest of the world.

Finally, it will have an impact on U.S. interests in the region. Thailand is a critical strategic partner of the United States, and some may be tempted to maintain warm relations with the Thai military. Our close political and military relationship goes back decades and is a vital component of U.S. national security policies in the region. But this friendship must take into consideration the dangerous behavior of those who led this coup. We must resist the temptation to give the leaders of this coup a free pass. Instead, we must take strong action.

We need to signal a real sense of urgency to restoring legitimacy to the democratic institutions within Thailand. It is imperative that the Thai military restore the authority of democratic institutions in Thailand expeditiously. President Bush needs to weigh in decisively. The U.S. Government must signal that it will not accept this new interim authority as the status quo and that the Thais must take immediate actions to restore democracy to Thailand. There are four specific things that must occur.

First, the United States must pressure the military council to schedule national elections immediately. General Sonthi has promised elections by October 2007. This is insufficient. Elections should be held at the earliest possible date, understanding the logistical requirements involved in preparing to hold a national election. This is essential and is the only way the military council can prove that it does intend to reintroduce democracy to Thailand.

Second, the administration must immediately put into place sanctions that are required under U.S. law. This means cutting off military assistance now. As we learned in Indonesia, this in itself will send a powerful message to the Thai military that usurping democracy does not pay. The administration would do itself a favor by making the conditions for reinstituting military-to-military relations clear from the outset. Still, this must be a clean break and must be leveraged in the future to help restore democracy.

Third, the United States must work vigorously with other key players in the region to create a united front of disapproval for the coup. The United States can't be alone in its criticisms or in applying pressure on the Thai junta. Secretary Rice's use of the phrase ''U-Turn'' doesn't cut it. We need a strong message that recognizes the grave nature of these developments. ASEAN members, in particular, have a strong role to play. Thailand's neighbors and regional partners must speak out about this coup in strong ways and must use their economic, political, and social leverage to help reinstall democracy in Thailand.

Finally, and until national elections can be carried out, the military council must lift all restrictions on democratic parties, the press, and political leaders. This includes Thaksin supporters. Those who broke the law under the Thaksin Government should be held accountable in the courts of law, not a military junta. Political opposition parties must be allowed to convene, and press freedoms must be established.

Mr. President, I close by reiterating the concern I laid out at the beginning of this statement. The military's end-run of the country's democratic institutions will undermine Thailand's important role throughout the region and the world and will therefore harm our own country's national security interests in the region. Thailand is a critical partner in the region and in the broader fight against terrorist networks. We need a strong, democratic Thailand to serve as our partner. We can't do this if this new military dictatorship derails a democratic government. The United States and international community must urge the Thai military to take the necessary action to restore Thailand's democracy.

NUCLEAR MEDICINE WEEK

Mr. WARNER. Mr. President, I rise again this year to remind my colleagues that October 1 to 7 is Nuclear Medicine Week. Nuclear Medicine Week is the first week in October every year and is an annual celebration initiated by the Society of Nuclear Medicine. Each year, Nuclear Medicine Week is celebrated internationally at hospitals, clinics, imaging centers, educational institutions, corporations, and more.

I am particularly proud to note that the Society of Nuclear Medicine is headquartered in Reston, VA. The Society of Nuclear Medicine is an international scientific and professional organization of more than 16,000 members dedicated to promoting the science, technology, and practical applications of nuclear medicine. I commend the society staff and its professional members for their outstanding work in the field of nuclear medicine and for their dedication to caring for people with cancer and other serious and life-threatening illnesses.

Some of the more frequently performed nuclear medicine procedures include bone scans to examine orthopedic injuries, fractures, tumors or unexplained bone pain; heart scans to identify normal or abnormal blood flow to the heart muscle, to measure heart function or to determine the existence or extent of damage to the heart muscle after a heart attack; breast scans that are used in conjunction with mammograms to detect and locate cancerous tissue in the breasts; liver and gallbladder scans to evaluate liver and gallbladder function; cancer imaging to detect tumors; treatment of thyroid diseases and certain types of cancer; brain imaging to investigate problems within the brain itself or in blood circulation to the brain; and renal imaging in children to examine kidney function.

I thank all of those who serve in this very important medical field and join them in celebrating Nuclear Medicine Week during the first week of October.

TRIBUTE TO PARK B. SMITH

Mr. LEAHY. Mr. President, I would like to recognize the exceptional generosity and work of Park B. Smith and his wife, Linda Johnson Smith.

Park and I met through our mutual involvement in The Marine Corps—Law Enforcement Foundation, an organization that believes in and supports the potential of our youth. They provide scholarship bonds for children of active-duty Marines and Federal law enforcement personnel killed in the line of duty. Park has become a good friend and someone whom I admire.

Park, an alumnus of the College of the Holy Cross, and Linda have a strong belief in the value of education and have exemplified this dedication. Through their generosity, the College of the Holy Cross has been able to continue to grow and build its community. It is for this reason that I would like to ask unanimous consent to have an article about Park and Linda Smith from The Wall Street Journal printed in the RECORD.

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

[From the Wall Street Journal, Friday, Sept. 15, 2006]

GIVING BACK—DONOR TO TURN WINE INTO BREAD

(By Kelly Crow)

Park B. Smith has written his share of million-dollar checks to benefit his alma mater. Now, he has decided to donate by turning over part of his prized wine collection to a major auctioneer.

On Nov. 18, Sotheby's in New York will auction the equivalent of 14,000 bottles from Mr. Smith's private collection—including 50 cases of coveted 1982 Mouton Rothschild—in a sale estimated to bring in up to $4.8 million. His proceeds will go to build new athletic facilities at the College of the Holy Cross in Worcester, Mass. He's also planning a $25,000-a-plate dinner at his New York restaurant, Veritas, to benefit Holy Cross.

The Sotheby's auction represents a rare mix of beneficence and big auctioneer. In a more typical charity wine auction, nonprofits enlist local auctioneers to sell bottles donated by wineries or collectors. This season brings a range of such events: In Chicago, Hart Davis Hart Wine Co. is holding a Sept. 28 auction at Tru restaurant ($1,500 a plate) to help children with spina bifida. In Harrisburg, Pa., 600 people will bid to benefit the Whitaker Center for Science and the Arts. In California, Napa Valley winemaker John Schwartz, of Amuse Bouche, says he gets 25 letters a week from charities requesting wine. Mr. Schwartz is organizing his own Oct. 27 wine auction, in Phnom Penh, Cambodia, to benefit a Cambodian orphanage.

Mr. Smith, known in the home-furnishings industry for his namesake line of draperies and bedspreads, says he hopes to capitalize on the marketing muscle of Sotheby's to reach top connoisseurs. He also moved the auction date up a year to take advantage of the strong wine and art market. Mr. Smith is betting a high-profile sale will bring high prices, but by going with a big auctioneer he is also subject to its seller's commission rates (20 percent is standard, though Sotheby's says it will charge less because it's for a good cause). And he'll have to pay higher capital-gains taxes, as much as 28 percent, because the wine will be sold rather than given outright.

Mr. Smith started drinking wine while serving in the Marines (an early favorite was 89-cent bottles of Beaujolais) and has since gained a reputation for collecting top wines. One reason he isn't donating cash: His 65,000-bottle Connecticut cellar is at capacity. ''I'm raising money for Holy Cross but I'm also making more room,'' he says.

Mr. Smith, a 1954 graduate and trustee of the Jesuit liberal-arts college, has given the school $20 million over the years. Now he wants to fix its ''disgraceful'' field house. Father Michael McFarland, college president, says he's awed by Mr. Smith's generosity—and relieved he can accept auction proceeds rather than thousands of bottles: ''We don't even have a wine cellar—just a couple cases stuffed under a sink.''

VOTE EXPLANATION

Mr. LIEBERMAN. Mr. President, in early August, I was unable to be in Washington for the cloture vote on the so-called trifecta bill, which so insidiously tried to hold hostage a necessary increase in the minimum wage and necessary extensions of tax credits important to American families and business to an excessive and unjustifiable reduction in the estate tax paid by the richest families in our country. I want to make clear that I would not have voted to allow this bill to proceed and that my inability to cast a vote in no way undercut the effort to stop this outrageous legislation. Since it was necessary for proponents of the legislation to find 60 votes irrespective of the number of votes against cloture cast by those of us in opposition, the very act of not voting for the cloture motion was, in effect, a vote against the motion.

At the time of the vote, I issued a press statement expressing my disappointment over the Senate's failure to enact a minimum wage hike and my dismay at the Republican proponents' tactic of linking the wage hike to an estate tax giveaway that would have increased an already out-of-control Federal budget deficit. In that statement, I rejected the Republicans proponents' hollow claim to favor a minimum wage increase. In fact, they have actively opposed a minimum wage increase for years; in this trifecta bill, they were using the wage hike only as a cynical ploy to attract votes for the estate tax rollback.

In my statement, I noted that the failure of the trifecta bill, though a victory for fiscal sanity, was no cause for rejoicing. An inappropriately low national minimum wage has been a big part of the problem of working-family poverty for many years. It is a problem for workers in Connecticut where the State minimum wage is higher, since a low national minimum wage creates pressure for companies to move Connecticut jobs to low wage States. The minimum wage was last raised almost 10 years ago. We need to act this year to pass a minimum wage increase—without tying it to an excessive cut in the estate tax. It is also essential that we pass the tax ''extenders'' which will support families paying college tuition, promote work opportunities for low-income Americans, and give incentives to businesses pursuing important research and development. These and other important tax extenders were also taken hostage by the Republicans' irresponsible estate tax scheme.

I have cosponsored a separate bill that would raise the minimum wage and extend these important tax incentives for middle-class families and businesses. I will continue to work with my colleagues to accomplish these goals without paying the high cost of excessive estate tax cuts to the wealthiest sliver of the population.

Mr. President, I also wish to express my support for the pension reform legislation which passed the Senate on August 2. Had I been present, I would have voted in favor of the conference report.

While we all recognize that the legislation that passed was not perfect, it marked the end of a long and difficult legislative process that necessarily involved a great deal of compromise on all sides. It represents a success in terms of bipartisan cooperation in the Senate, something we need to see much more of in the future so we can truly begin to address many of the serious and complex problems our nation faces.

Senate passage of the pension reform bill was the culmination of more than a year of work by lawmakers concerned about record unfunded liabilities at the PBGC—which is supposed to be the bulwark against pension collapse—as well as what had become a widespread epidemic of chronic underfunding of pension plans.

The legislation as passed by the House and Senate, and now signed by the President, would require companies to fund 100 percent of their plan liabilities, up from 90 percent under current law. Those with funding shortfalls generally would have 7 years to make up the difference. Companies at risk of default would be subject to other restrictions and would have to make accelerated contributions.

The legislation provides specific relief for financially troubled airlines, giving up to 17 years to fully fund their plans. Some airlines were given more relief than others, so there may be an effort to pass a technical corrections bill to address this issue.

Also included in the legislation are provisions aimed at encouraging workers to make contributions to retirement savings plans, including allowing companies to automatically enroll employees in a 401(k). This will accomplish a relatively simple but tremendously effective change to ensure that more Americans are saving for their retirement

The legislation also contains many other improvements and protections to the necessarily complex system we have constructed to address the retirement security of tens of millions of our citizens. The bill would provide needed reforms to both single employer and multiemployer plans; to defined benefit as well as defined contribution plans; and to hybrid ''cash balance'' plans. It also provides greater security to spouses with respect to their share of a spouse's retirement plan after death or divorce.

Further, the bill includes tax incentives for charitable giving. Many of these incentives were in the CARE Act which I have sponsored in this as well as previous congresses.

TRIBUTE TO JUDGE GLEN MORGAN WILLIAMS

Mr. ALLEN. Mr. President, I rise today to speak about a wonderful gentleman and a respected judge who has served our country with distinction and also helped start my legal career, which has ultimately led to where I stand today: Judge Glen Morgan Williams.

As a newly minted graduate fresh out of the University of Virginia Law School, I had the honor of serving as a clerk to Judge Williams, an experience that had a profound affect on me. I was privileged to see first hand how Judge Williams' legal knowledge and fairness—as a judge on the U.S. District Court for the Western District of Virginia—has served the people of Virginia and America. I also had the unique privilege of hearing his stories of life, his commonsense wisdom and special humor and laughs.

Prior to serving as a Federal judge, Glen Williams served with distinction in the U.S. Navy during World War II.

Judge Williams served as a minesweeper in the Atlantic, Pacific and Mediterranean theaters and was decorated for his service with the Commander's Citation. Judge Williams participated in the invasion of Southern France and thereafter commanded the USS *Seer* in the Pacific until 1946.

Upon returning from the war, Judge Williams entered private law practice where he quickly became one of the leading trial lawyers in Virginia and one of the Nation's leading experts on Social Security, where he testified before Congress on Social Security reform.

Judge Williams began his tenure on the U.S. District Court for the Western District of Virginia, serving as a magistrate from 1963 to 1975.

On September 8, 1976, Judge Williams was nominated by President Gerald R. Ford to serve as a judge on that distinguished court and ultimately won Senate confirmation on September 17, 1976.

During his time on the court, Judge Williams has been instrumental in reestablishing the Big Stone Gap division of the court and the opening of the clerk's office down there in the far southwest part of Virginia.

During his 30 years of service on the bench, Judge Williams has written more than 300 published opinions in every area of Federal law. Judge Williams' opinions have been particularly influential in the coal mining industry weighing the rights of coal miners, operators and landowners and interpreting the constitutionality of the Surface Mining Control and Reclamation Act.

Judge Williams' 30 years of service have been instrumental in shaping jurisprudence in the Western District of Virginia and has been an admired, outstanding and loved mentor for scores of Virginia lawyers who have had the privilege of learning from his experience. Besides myself, former clerks also include a member of the Virginia Supreme Court and many of the best lawyers in Virginia and throughout the country.

I have the ability to speak today about this magnificent wonderful gentleman, lawyer and judge who has been so positively influential in my life and career. On behalf of all his clerks and staff throughout the years, I thank Judge Williams for his 30 years of exemplary service to our country on the Federal bench.

Moreover, I thank God for sending into our world and my life a character of a man with truly unmatched wit and wisdom, the truly honorable Glen M. Williams of Lee County, VA.

Mr. WARNER. Mr. President, it is my privilege today to speak in honor of a longtime servant to the Federal judiciary, the Honorable Glen Morgan Williams, U.S. District Judge for the Western District of Virginia.

I have been in the Senate now for 28 years. During that time, I have participated in the Senate's advice and consent process more than 2,000 times with respect to Federal judges. In fact, of all active Federal judges on the district court bench in Virginia, I have had the distinct privilege of voting for every single one.

There are two judges whose chambers exist in Abingdon, VA, whose service predates mine: Judge H. Emory Widener, Jr., and Judge Glen Morgan Williams. Judge Widener was confirmed to the district court in 1969, and then to the U.S. Court of Appeals for the Fourth Circuit in 1972. Judge Williams received his first judicial appointment, that of Magistrate Judge for the U.S. District Court for the Western District of Virginia, in 1963. Following 12 years as a magistrate, Judge Williams was nominated to be a district court judge by President Gerald R. Ford in 1976, and he was confirmed for this position by the Senate on September 17, 1976. Both judges are distinguished fixtures in the Virginia legal community, admired and respected by all who are fortunate enough to know them.

Because this year marks the thirtieth year that Judge Williams has served as a Federal district judge in the Western District, I join with my colleague from Virginia, Senator GEORGE ALLEN, in commending this exceptional jurist for his efforts.

As a young man, Glen Williams answered his Nation's call to duty in World War II. Earning a commander's citation, Mr. Williams served with distinction in the U.S. Navy from 1942 to 1946. Remarkably, his experience included the Atlantic, Pacific, and Mediterranean theaters and the Allies' invasion of southern France.

Mr. Williams and I followed similar paths to our respective careers after our naval tours in World War II; like me, he also received his training in law from the University of Virginia. Starting out as a sole practitioner after law school, Mr. Williams began his career in civilian public service as a Commonwealth's Attorney, followed by a term in the Virginia State Senate. During his career in private practice, he established himself as a leading expert on Social Security law, and Mr. Williams' testimony on this subject was sought by the Congress.

During his career on the bench, Judge Williams has produced more than 300 published opinions on a number of matters of great importance for our country, and certainly for those who live and work in the coal-mining regions of Virginia's beautiful Western District. In fact, the U.S. Supreme Court cited Judge Williams' opinions with respect to the funding of health care for beneficiaries of the United Mine Workers Health and Retirement Funds in its interpretation of the Coal Act.

While Judge Williams assumed senior status in the Western District in 1988, he remains active in both the Abingdon and Big Stone Gap divisions through the present day. In particular, he is to be commended for his diligence in reestablishing the Big Stone Gap division and for the reopening of both the clerk's office and the courthouse in this division.

Judge Williams remains an asset for our Federal judicial system, for his knowledge and insight as well as for his mentorship of the many judicial law clerks who have had the opportunity to work with him, including Senator ALLEN. In honor of his 30 years of service to our Federal judiciary as a Federal district court judge, I simply say to Judge Glen Williams, ''Well done, Your Honor.'' Your longevity and commitment to our Constitution, to our third branch of government, and to those four words that are forever engraved into the marble at the United States Supreme Court—''Equal Justice Under Law''—remain the hallmarks of your remarkable career.

HONORING CAROLE GRUNBERG

Mr. WYDEN. Today I honor Carole Grunberg for her years of service to me and to the Senate. Carole is retiring after serving as my legislative director for more than 10 years. In total, she has 16 years of Senate service along with more than a decade in the House of Representatives. I want to take this opportunity to talk about Carole and how much I appreciate everything she has done for the Nation, the State of Oregon, and me.

When it comes to legislative directors, Carole was truly the gold standard. Her skills and ability to get things done were unsurpassed. She was a master at designing strategies to take a concept, develop it into legislation, and guide it through Congress to become law. And she pursued each of these efforts with passion and commitment until the legislation made it into the statute books.

Known by many as one of this Nation's top ranked squash players, Carole brought that same competitive passion to the Senate's competitive marketplace of ideas and legislation. Keeping the Internet free of discriminatory taxes, recognizing electronic signatures as legally valid, protecting Oregon's vote by mail, retraining service workers displaced by trade, and our ongoing effort to end secret holds are just a few examples of initiatives Carole made into her personal quests.

Carole also brought out the best in our entire legislative team, using an approach that was part den mother and part drill sergeant. She proudly described our legislative staff as the best on Capitol Hill and pushed them to meet that standard every day. But the same big, competitive heart that made Carole expect the best from herself and her staff also filled her with enormous compassion and a burning desire for justice.

Carole always viewed the entire Wyden staff, from the most senior to the newest intern, as part of one team—Team Wyden. And she successfully marshaled all our staff in efforts ranging from shutting down Admiral

Poindexter's Total Information Awareness Program, which basically would have involved holding every American upside down and shaking them to see if anything bad fell out, to crafting my fair flat tax bill to simplify and reform the Tax Code.

Carole's team-building efforts extended well beyond the office. She organized and served as captain for a Wyden Team that ran the 195-mile relay race from Mt. Hood to the Oregon coast. As Carole saw it, there is no better way to build camaraderie than to have a bunch of sweaty runners crammed into a van together for 20 hours.

For someone who is used to spending her spare time running marathons and winning national championship squash tournaments, I don't see Carole's retirement as a glidepath to the rocking chair. She has got too much energy and too much passion to sit on the sidelines for long. I know that she and her longtime partner—and fellow Senate veteran—Kate Cudlipp, will be making certain that her skills and energy are put to good use. And in whatever she chooses to do, I know she will continue to shine.

Again, I can't thank Carole enough for all she has done for me, my staff, the State of Oregon, and the Nation. She will always be my dear friend and a member of our Team Wyden family. I wish her all the best for the next chapter of her life.

TRIBUTE TO CHARLIE BATTERY

Mr. THUNE. Mr. President, today I rise to thank Charlie Battery, 1st Battalion, 147th Field Artillery, and congratulate and welcome them home after a year spent proudly serving their country in Iraq. Charlie Battery, based in Yankton, SD, has certainly earned this homecoming and the gratitude of our Nation.

These brave soldiers have been away from their loved ones for over a year, and they have accomplished an enormous amount in that time. Charlie Battery served commendably in some of the most dangerous areas of Iraq. They performed transition team missions with Iraqi police and conducted joint patrols that included route security, reconnaissance, rescue and recovery, and personal security detachment missions all over Baghdad.

The soldiers of Charlie Battery were not immune to the violence that has plagued Iraq. On this day of celebration and reunion, let us remember those who were wounded and those who made the ultimate sacrifice protecting and serving our Nation, as well as the family members and friends they left behind. Those who gave their lives in Iraq include SSG Greg Wagner, SFC Richard Schild, SSG Daniel Cuka and SGT. Allen Kokesh, Jr.

But let us also remember that these sacrifices were not in vain. Charlie Battery, 1st Battalion, 147th Field Artillery, trained more than 1,000 Iraqi police and created stability in the southern and eastern districts of Baghdad. Charlie Battery's efforts enabled a district in the center of Baghdad to become the first to transition responsibility of security to Iraqi police. While the mission is not over, Charlie Battery has done the Iraqi and the American people a great service by their accomplishments, and they have made their country proud. I thank them, I applaud their courage, and I welcome them home.

COSPONSORS OF S. 3709

Mr. LUGAR. Mr. President, on July 24 the majority leader placed in the RECORD a list of the Senators who had sought to be cosponsors of S. 3709, the United States-India Peaceful Atomic Energy Cooperation Act.

Mr. President, I ask unanimous consent that an updated list of those who wish to be listed as cosponsors be printed in the RECORD.

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

LUGAR, BIDEN, HAGEL, CHAFEE, ALLEN, COLEMAN, VOINOVICH, ALEXANDER, SUNUNU, MURKOWSKI, MARTINEZ, DODD, KERRY, NELSON (FL), OBAMA, CORNYN, BAYH, HUTCHISON, and DEWINE.

ADDITIONAL STATEMENTS

TRUANCY COURT PROJECT

• Mr. THUNE. Mr. President, today I recognize the students who participated in the Truancy Court Project for the Pennington County Juvenile Diversion Program.

The students who participated are Emanuel Martindel Campo, Christopher Eagle Bull, Randolph Two Bulls, Alan Shaw, Corey Johnson, Alicia Moon, Brian Dooley, Jennifer Martell, Collin McCracken, Amanda Hastings, Shane Watkins, Timothy Gerry, Darrin Leenknecht, Adam Erickson, Eldon Jennesse, Corey Johnson, and Lalita Isabel.

These students successfully participated in the Truancy Court Project and deserve the special recognition they are receiving today. After starting off the school year with a rocky beginning, each individual student took it upon themselves to volunteer for this project and to excel at it. Each of them has improved attendance, improved their relationships with their teachers, and most importantly learned the value of education.

It gives me great pleasure to rise with the citizens of Rapid City and Ellsworth in congratulating the Truancy Court Project students for their successful participation in the program.•

TRIBUTE TO ROBERT LAURENZ

• Mr. THUNE. Mr. President, today I recognize Robert Laurenz, who was named the South Dakota Minority Small Business Person of the Year by the Small Business Administration. This is a prestigious award that reflects the quality of small businesses that are found in South Dakota.

Mr. Laurenz's business, Dakota 2000, Inc., was founded in 1995 and supports Federal, State, local, and tribal government agencies with information technology services. Dakota 2000, Inc., sells millions of goods and services annually and has successfully completed contracts with several government agencies. Businesses such as Dakota 2000, Inc., are vital to the health and economic well-being of South Dakota's future.

It gives me great pleasure to rise with Robert Laurenz and to congratulate him on receiving this well-earned award. I wish him and Dakota 2000, Inc., continued success in the years to come.•

TRIBUTE TO JAMES T. CASSIDY, MD

• Mr. BOND. Mr. President, today I wish to honor and recognize the immeasurable contribution Dr. James T. Cassidy has made to pediatric medicine in Missouri and across the United States.

Born in 1930 in Oil City, PA, Dr. Cassidy received his both undergraduate and medical education at the University of Michigan. He completed 2 years of active duty in the U.S. Navy and 7 years in the Naval Reserve. He returned to the University of Michigan to complete his residency in internal medicine and a rheumatology fellowship in the Rackham Arthritis Research Unit under the mentorship of Dr. Roseman and Dr. Johnson. He went on to the faculty in 1963 and worked his way up the ranks becoming professor of internal medicine and pediatrics in 1974. In 1984, he was recruited as professor and chair of pediatrics at Creighton University School of Medicine in Omaha, NE. Four years later he came to the University of Missouri-Columbia as a professor in the Department of Child Health and Internal Medicine and chief of pediatric rheumatology. He became emeritus professor in 1996 and continued to staff his arthritis clinics until this year. In 1991, Dr. Cassidy published with Ross Petty, M.D., the first ''Textbook of Pediatric Rheumatology,'' a textbook now in its fifth edition which remains the foremost authority in the field both nationally and internationally. He has received many awards, including ACR Master and the ACR Distinguished Clinical Scholar Award from the American College of Rheumatology.

I am particularly proud of his work in Missouri. As a professor in the Department of Child Health and Internal Medicine at the University of Missouri-Columbia, Dr. Cassidy has inspired cutting-edge research and shared his limitless expertise in pediatric

rheumatology. Yet Dr. Cassidy has done more than just teach, write, and research. Through his efforts, the Missouri Department of Health established the Juvenile Arthritis Care Coordination Program in 1993 to help families obtain family-centered, community-based, coordinated care for children diagnosed with juvenile arthritis. His efforts did not stop there.

Realizing that there were children in Southern Missouri who were too poor or too sick to travel to Columbia to receive treatment, Dr. Cassidy and his wife Nan would get in their car every other week and drive to a small clinic in Springfield, MO, and see as many as 25 young children suffering from juvenile arthritis. It didn't matter that they couldn't pay, Dr. Cassidy insisted on finding a way to get the children the treatments they needed. As one doctor said, ''Dr. Cassidy will go to any length to help a child.''

Dr. Cassidy's support extended to his patients' families as well. ''He is an incredibly compassionate physician,'' said one mother, ''who ensures that each family understands how juvenile arthritis affects their child and what parents can do to help their child lead normal and healthy lives.'' Dr. Cassidy was instrumental in building a community of support across Missouri and the United States for families living with juvenile arthritis. In 1980, it was through the encouragement and support of Dr. Cassidy that a mother of one of his patients and two other mothers from other States formed the American Juvenile Arthritis Organization, AJAO, which eventually became a council of the Arthritis Foundation.

Dr. Cassidy was instrumental in organizing the first juvenile arthritis educational conference for parents, children, and health professionals held in 1983 which became an annual national conference. He felt education for families of children with arthritis was critical to their care and helped coordinate many Missouri regional conferences in St. Joseph, Kansas City, St. Louis, and Columbia.

Perhaps the best measure of Dr. Cassidy's legacy as a doctor comes from the praise and admiration of his patients. Twelve years ago, Dr. Cassidy began treating two young sisters who suffered debilitating pain from juvenile arthritis. Throughout the years he persistently encouraged them, to their chagrin, to wear braces and take their medicine. Recently, Dr. Cassidy received a letter from the girls. They are starting college as healthy, happy, young women—a circumstance virtually unthinkable when Dr. Cassidy began his career. They thanked him for supporting them and giving them the opportunity to live life as they never thought they could.

Dr. Cassidy has led an extraordinary life in which he has practiced, researched, and guided aspiring doctors for almost 50 years. He has improved the understanding and awareness of pediatric rheumatology and changed the lives of thousands of children. On behalf of the children and families in Missouri and across the country, is my pleasure and honor to commemorate the distinguished career of Dr. Cassidy, a true pioneer in the field of pediatric rheumatology.●

HONORING CHARITIES FOR THE BLIND

● Mrs. BOXER. Mr. President, today I ask my colleagues to join me in recognizing Charities for the Blind, a nonprofit organization in southern California. This organization continues to make a positive impact on the lives of individuals who are blind or visually impaired.

Charities for the Blind is an organization that provides computer adaptive technology and training to blind and visually impaired individuals. The men and women who volunteer their time and energy to this organization provide an important service to the people of Southern California and our Nation.

Charities for the Blind was created by Craig Schneider in 2000 after he suffered a complete loss of his vision. Craig Schneider is a general building contractor who became blind after complications from radiation treatments and exposure to radon gas. He found it difficult to adapt to a visually impaired lifestyle. He took computer courses with the assistance of computer adaptive technology but found them difficult and frustrating. Other students were similarly frustrated, and when some began to drop out of classes, he knew that he was not alone. After seeking assistance from State rehabilitation authorities and blind charities, Craig Schneider recognized that there is an important need among the visually impaired that needed to be met.

According to the National Federation of the Blind, 70 percent of individuals who live with blindness or a visual impairment are unemployed. This overwhelming number of individuals have the potential to live highly productive lives and gain meaningful employment. Charities for the Blind recognizes this need and works to assist individuals with blindness and visual impairment, providing them with tools they need to overcome their disability.

In addition to providing training, counseling, and computer adaptive equipment to the visually impaired and blind, Charities for the Blind also employs blind individuals directly. Craig Schneider has five employees who work with him who are also blind, who help make Charities for the Blind possible. Craig Schneider funds the organization from his private business, which allows him to pay for computers and equipment, employees and technicians, and travel to and from people's homes to help train them in the use of adaptive equipment.

In its first year, Charities for the Blind gave away 12 computers. Today, the organization provides roughly 30 computers each month, with a short yet successful history of meeting needs in the blind and visually impaired community for individuals between the ages of 10 and 96. Those who have received counseling and equipment from Charities for the Blind have gained new levels of independence, and more and more blind and visually impaired individuals are being empowered and employed each day.

Today I salute the dedication and service of Charities for the Blind. This organization has recognized a tremendous need and works daily to help empower our Nation's blind and visually impaired. I applaud the work and commitment Charities for the Blind has made in bettering the lives of many.●

TRIBUTE TO EDGAR WAYBURN

● Mrs. BOXER. Mr. President, it is with great pleasure that today I ask my colleagues to join me in saluting the incomparable Dr. Edgar Wayburn on his 100th birthday. To Californians and others across the United States, Ed Wayburn is a living legacy and an environmental hero.

Ed Wayburn was born on September 17, 1906, in Macon, GA. He attended Harvard Medical School and moved to San Francisco in 1933 to start his medical practice. He found northern California's natural beauty intoxicating and refers to the Sierra Nevada and Yosemite National Park as his ''first wilderness love.''

Within 6 years of moving to California, Ed joined the Sierra Club. And over the next 50 years, his love and passion for nature and conservation grew. He served five terms as the Sierra Club's elected president.

Ed shared this love of nature with his wife Peggy Wayburn. Together they traveled throughout Alaska and fought to protect natural areas in California and the West for over 50 years.

More than 100 million acres of natural beauty throughout California and Alaska have been protected today thanks to Ed's hard work, including northern California's Golden Gate National Recreation Area and Point Reyes National Seashore and Alaska's Denali and Glacier Bay National Parks.

Dr. Wayburn is credited with saving more wilderness than any other person alive today.

I always say that one of my proudest honors is the Edgar Wayburn Award presented to me by the Sierra Club. It is a frequent reminder of the work Ed and I have done together. It is also a reminder of the important work which still remains to protect and preserve our natural surroundings.

Without Ed's efforts over the past decades, I would not want to imagine what the American landscape would look like today. Ed's leadership and perseverance have ensured the preservation of precious open space and wild areas for generations to come. His work will continue to be an inspiration

to countless environmental advocates and others working to effect change. His work is certainly an inspiration to me.

I extend my most heartfelt wishes to Ed Wayburn for a very happy 100th birthday. Thank you, Ed, for all you have done for the protection of our natural environment.●

TRIBUTE TO NATIONAL WEATHER SERVICE

● Mr. BAUCUS. Mr. President, I wish to commend the National Weather Service and the Billings, MT office.

This year Billings, MT, hosted the 13th national signature event commemorating the Bicentennial of the Lewis and Clark Corps of Discovery Exploration. The event at Pompeys Pillar was one of the most successful signature events in the country, and I was proud to participate in the opening ceremonies.

A great deal of preparation and partnership went into the planning surrounding those 4 days in July and the thousands of visitors expected to attend. Federal agencies stepped up to the table. Federal partnerships were key to this success. Specific concern centered on area wildfires already burning that had been started by lightning strikes from afternoon and evening storms. The National Weather Service took on major responsibility for these weather-related public safety issues.

On Saturday, July 22 and Sunday, July 23, late afternoon storms accompanied by upwards of 60-mph winds necessitated rapid evacuations of the public events at Pompeys Pillar. Efficient communication and clear direction from the National Weather Service, in coordination with the Bureau of Land Management, provided safe passage out of Pompeys Pillar in a swift and orderly fashion for the remaining public visitors, volunteers, and employees on those days.

It is apparent that the storm's effect and damage could have easily become a larger story attributed to the Pompeys Pillar signature event. That it was not is a testament to the science, technology, and public service and dedication of your agency and of your employees. Thanks to all of you for what you do for Montana. It is a job well done.●

CONGRATULATIONS TO SERGEANT LEIGH ANN HESTER

● Mr. BUNNING. Mr. President, I would like to recognize and congratulate U.S. Army SGT Leigh Ann Hester, a recent recipient of the United Service Organization's 'Service Member of the Year' Award. This honor is presented annually to one enlisted member from each branch of the Armed Forces and must be given to a soldier who demonstrates remarkable courage and skill, often risking their own lives to save the lives of others.

On March 20, 2005, Sergeant Leigh Ann Hester of the 617th Military Police Company, a National Guard unit out of Richmond, KY, was escorting a convoy of 26 supply vehicles when they were suddenly ambushed. According to military accounts of the firefight, about 40 insurgents attacked the convoy as it was traveling south of Baghdad, launching their assault from trenches alongside the road using rifles, machine guns, and rocketpropelled grenades. Despite being outnumbered five to one and coming under heavy enemy fire, Sergeant Hester led her team through the 'kill zone' and into a flanking position, where she assaulted a trench line with grenades and M203 grenade-launcher rounds.

Her quick thinking saved the lives of numerous convoy members. When the conflict ended, 27 insurgents were dead, 6 were wounded, and 1 was captured.

SGT Leigh Ann Hester is the first woman to receive the USO 'Service Member of the Year' Award and the first woman in over 60 years to receive the Silver Star—the Army's third highest award for valor in combat.

SGT Hester was only 23 years old at the time of this encounter. She was born in 1982 in Bowling Green, KY, later moved to Nashville, TN, and she joined the National Guard in April of 2001. As she continues the legacy of military service in her family—her uncle, Carl Sollinger, served honorably in Vietnam, and her grandfather, Oran Sollinger, was awarded a Bronze Star for his valor in World War II—Sergeant Hester intends to continue to serve our country by beginning a career in law enforcement.

On behalf of the people of Kentucky and the Senate, I thank SGT Leigh Ann Hester for her commitment to her country, community, and fellow soldiers. It is my honor to recognize her today for her bravery and her accomplishments. My thoughts and prayers are always with her and all the men and women who protect this Nation.●

RECOGNIZING SOUTH CAROLINA ORGANIZATIONS

● Mr. GRAHAM. Mr. President, today I wish to call attention to the good work of the Columbia, SC, Urban League and the Department of Veterans Affairs, VA. On September 11, 2006, the Columbia Urban League and the VA cohosted a training seminar for church leaders in South Carolina to help address the growing population of troubled military veterans returning from combat zones. This Veterans Ministry Workshop was led by a panel of 10 physicians from the Dorn VA Medical Center in Columbia, each of whom explained the various psychological challenges that face veterans returning from conflict. The panelists discussed methods for dealing with veterans' children and spouses while offering practical tips for church members to follow. Around 100 church leaders attended the event.

I salute the VA, the Columbia Urban League, and in particular its president, Mr. James T. McLawhorn, for their initiative in organizing the Veterans Ministry Workshop. It was Mr. McLawhorn, a member of the VA Advisory Committee on Minority Affairs, who originally proposed the idea in response to studies released by the Journal of the American Medical Association, JAMA. Without his leadership and the cooperation of VA officials on the ground in South Carolina, the Veterans Ministry Workshop may have never happened. I am confident that the workshop will have a tremendous impact on the veteran community in South Carolina, and I hope that the Columbia Urban League and VA will build on its success.●

WHITE LAKE SCHOOL DISTRICT

● Mr. JOHNSON. Mr. President, it is with great pleasure that today I publicly honor and congratulate White Lake School District on achieving blue ribbon status under the Federal No Child Left Behind Act. The prestigious blue ribbon designation is based on strong test scores and a myriad of other successes.

The White Lake School District is among only 250 entities to be recognized nationwide so far this year. For public schools like White Lake to qualify for blue ribbon status, they must meet State testing levels or have a student body comprised of a high percentage of economically disadvantaged students, yet demonstrate improvement. Achieving this goal is a wonderful accomplishment, and White Lake schools ought to be applauded.

This is not the first time White Lake schools have been honored. In both the 2003–2004 and 2004–2005 school years, the district was named a Distinguished District, due to high scores on the DakotaSTEP achievement test. The U.S. Department of Education has also named White Lake as a Title I Distinguished School. In order to apply to be a blue ribbon school, the White Lake School District submitted a 27-page application outlining their strategies and techniques for learning success.

Mr. President, I am proud to have this opportunity to honor White Lake School District. It is a privilege for me to share with my colleagues the exemplary leadership and tireless commitment to education that White Lake School District provides to its students. I strongly commend the hard work and dedication that the faculty, administrators, and staff devote to White Lake schools, and I am very pleased that their hard work and the students' substantial efforts are being publicly honored and celebrated. On behalf of all South Dakotans, I would like to congratulate this extraordinary school system and wish them continued success.●

TRIBUTE TO BETTY J. MARTIN

● Mr. LEVIN. Mr. President, I would like to take this opportunity to honor

the life of Betty J. Martin. Mrs. Martin passed away on August 30, 2006, at the age of 68. Throughout her life, Betty was a dedicated public servant who dedicated her life to serving less fortunate individuals in the Saginaw community. Her efforts over the years have brought aid and comfort to so many, and we should all be grateful for her work.

Betty made a meaningful impact in the city of Saginaw. Her life's work stands as a testament to her many successes. In 1979, she became the director of the Good Neighbor Mission in Saginaw, a food pantry that serves the local needy. In 1991, Betty founded the Restoration Community Outreach Center. This center has enabled thousands struggling with substance abuse, mental illness, or physical disabilities to get the necessary assistance to begin to repair their lives.

Over the years, Betty has received numerous awards for her efforts, including the 1996 U.S. Department of Housing and Urban Development Certificate of Recognition for Dedicated Service to the Homeless, the 2002 Salvation Army Appreciation Award and the 2005 Saginaw City Council Certificate of Recognition. She has created a legacy that will reverberate in the city of Saginaw for many years to come, and her commitment to serving the needy should serve as an example for us all.

Betty is survived by her husband of 42 years, Judge Martin, one son, Bernard Smith Abernathy, one step-daughter, Joyce Ann Martin, and nine grandchildren. I know my colleagues in the Senate join me in offering my condolences to her family, colleagues, and friends. I hope they take comfort in the amount of good she has done over the years.●

RETIREMENT OF JOHN STENCEL

● Mr. SALAZAR. Mr. President, today I honor John Stencel, who will soon retire as president of the Rocky Mountain Farmers Union. John has been a tireless advocate for rural America, and he can retire with the comfort that he has profoundly influenced an entire generation of farmers and ranchers in Colorado and across the Nation.

For almost 50 years John has worked with the Rocky Mountain Farmers Union, during which time he has served as a steady and pragmatic compass. He early on saw the benefits of cooperatives so that small farmers could add significant value to their products. He has embraced the potential of biobased fuels as an innovative pathway to power production and transportation fuel needs. He has recognized that responsible stewardship of the land should be a top priority for farmers and ranchers, as clean water, energy conservation, and biodiversity all enhance our society.

John is a tireless advocate for the future sustainability of the rural way of life. His leadership has shaped the next generation of rural citizens, serving as the president of Colorado 4–H Foundation, vice president of the Colorado Future Farmers of America, and as a board member of the Colorado State University Board of Agriculture. His leadership in these organizations ensures that the traits that have characterized him, that of perseverance, dedication, and moral fiber, will manifest themselves in future generations of agricultural leadership.

However, my deep respect for John Stencel isn't only based on his involvement with these organizations; it is based on the common values that underlie those efforts and have driven his policies and agendas. My respect is based on his commitment to sustain and strengthen family farm and ranch agriculture, and to preserve the rural way of life we know and love. These values are embodied by John Stencel.

John has been an influential and indispensable guide, and though he is retiring from his service to the Rocky Mountain Farmers Union, I take comfort in the longevity of our friendship and his steadfast leadership for rural America, and I wish him nothing but the best.●

TRIBUTE IN HONOR OF JIMMY WILLIAMSON

● Mr. SHELBY. Mr. President, today I honor Mr. Jimmy Williamson, who will become the first Alabamian to serve as chairman of the board for the American Institute of Certified Public Accountants.

This is a tremendous honor, both for Jimmy and for Alabama. The American Institute of Certified Public Accountants serves as the national professional association for more than 350,000 certified public accountants. Jimmy's education, experience, and passion for finance make him the best choice to take the helm of the organization.

Jimmy, a past president of the Alabama Society of CPAs, is a senior partner and stockholder in the MDA Professional Group accounting firm where he specializes in profit sharing plans, fringe benefits, nonqualified deferred compensation plans, estate and personal financial planning, business acquisitions, and investment review and analysis. I am also proud to say that Jimmy and I share an interest in fraud prevention and detection, one of the most important financial issues we face today. His professional work and leadership on committees, that are too plentiful to name, make him uniquely qualified and prepared for this position. I am proud to recognize his professional achievements and congratulate him on this important post.●

TRIBUTE IN HONOR OF BILL CHANDLER

● Mr. SHELBY. Mr. President, today I honor William ''Bill'' Chandler, a pillar of the Montgomery, AL community. Bill devoted 50 years of his life to developing the YMCA in Montgomery and influencing the lives of thousands of youth.

Bill, known as ''Mr. YMCA'' in Montgomery, was a father figure to many young men and women in need of guidance. Bill believed that civic education and open discussions were important to developing youth into productive citizens. He was instrumental in creating and implementing innumerable youth programs focused on leadership development including the Alabama Youth Legislature, the YMCA Youth Conference on National Affairs, Lions International Youth Camp, and the Hi-Y and Tri-Hi-Y programs. Without a doubt, many of Montgomery's, Alabama's, and the Nation's leaders have been directly influenced by Mr. Chandler and the programs he championed.

Mr. Chandler also proved himself to be an effective leader and businessman as president of the Montgomery YMCA. Under his leadership, Montgomery's single YMCA grew into the multiple branches operating across the city. His commitment to service was also recognized when he was chosen to serve as the president of Lion's Club International.

Mr. Chandler also served as an important leader in Alabama throughout times of racial tension in Montgomery and the State. He worked to open facilities in all parts of the Montgomery community to serve people from all walks of life and was at the forefront of providing integrated services. In 1983, when racial discord was near its boiling point in Montgomery, Mr. Chandler worked with community and civil rights leaders to develop the biracial Youth One Montgomery organization to allow Black and White youth to conduct an open dialog and better understand the issues surrounding race.

Bill Chandler, a graduate of Rice University and the University of Georgia, served with distinction as an officer in the U.S. Navy during World War II. An accomplished athlete himself, Bill was also responsible for the creation of a city sports league and the Jimmy Hitchcock award to honor character in high school athletes.

Bill was an inspiration to many, and I am truly grateful for the endless contributions he made to the youth in Alabama. He was preceded in death by his wife, Martha Spidle Chandler and will be missed by his three children, Carroll Chandler Phelps, Elizabeth Chandler Walston, and William Robert Chandler; his seven grandchildren; and his sister, Evelyn Chandler Berg. His dedication to community service will be remembered and shared by those whose lives he touched for generations to come.●

TRIBUTE TO 50TH ANNIVERSARY OF HOLT INTERNATIONAL

● Mr. SMITH. Mr. President, in the mid 1950s, Harry and Bertha Holt of Eugene, OR, saw a film about children in Korean orphanages who were in desperate need of help. Touched by what

they saw, the Holts sent money and clothes to the orphanages, but they still felt the need to do more.

As they thought and prayed about what to do, it dawned on the Holts that what the children needed more than money and clothes were families. So Harry and Bertha decided to provide that family. They decided to adopt eight Korean children. No matter what roadblocks were placed in the way of that decision—including the need to get Congress to pass a special law—the Holts persevered. Soon they were the parents of eight new sons and daughters.

The adoption was revolutionary. Previously, adoption was regarded as something to be kept secret. The Holts, however, proudly adopted children who were obviously not their birth children. In doing so, they showed that a family's love is greater than barriers of race and nationality.

But the Holts story did not end with the adoption of their children. As word spread about what they had done, others sought their advice and asked how they could adopt. Just 5 months after bringing his new family home, Harry headed back to Korea to match other children with new families. In 1956, financed almost entirely by Harry and Bertha's personal funds, Holt International was born.

Fifty years have now passed since Holt International was officially incorporated. Harry and Bertha are no longer with us. But their dream lives on. Today, Holt is the Nation's largest adoption agency, having united nearly 40,000 children with adoptive families in the United States. It is simply impossible to calculate how much happiness and joy have been brought into the life of those children and, in return, how much happiness and joy they have provided for their families.

As a U.S. Senator from Oregon, which continues to be home to the headquarters of Holt International, and as the father of three adopted children, I am privileged to rise today to extend my congratulations—and I know the congratulations of the entire Senate—to Holt on the occasion of their 50th anniversary. I stand ready to help them in any way possible as they continue their inspiring mission in the years ahead.

Mr. President, I will conclude with the eloquent words of Bertha Holt, who said, ''All children are beautiful when they are loved.'' May all children be as blessed as those adopted by the Holts.●

TRIBUTE TO THOMAS R. ETLING

● Mr. TALENT. Mr. President, today I wish to recognize the efforts of a good friend and to highlight his service to our Nation. Thomas R. Etling, of Chesterfield MO, is privileged to have served for 26 years as an adjunct faculty member of the Saint Louis Community College at Florissant Valley. In his years in the Business and Human Relations Division, he has taught a variety of subjects ranging from statistics, to marketing and human relations.

Throughout Mr. Etling's career, he has been honored with several distinctions for his hard work and dedication in the classroom. During the 2001–2002 academic year, he was selected as Adjunct Faculty Member of the Year. In 2004, Mr. Etling was named the Business Teacher of the Year, the first adjunct faculty member to be so honored.

Outside the classroom, Mr. Etling has continued to dedicate his time to serving the academic community. He has served on several committees, most notably as a member of the Academic Council and the Assessment Committee. Currently, he is working with the dean of the business division to develop a mentoring program to assist students who have the entrepreneurial spirit to help them develop their ideas. For this program, he has recruited a number of successful local business leaders and other faculty members. Mr. Etling looks forward to continuing to work for the success of the students and the college. I thank him for setting such a great example for us all.●

TRIBUTE TO BOYD ''BUTCH'' KITTERMAN

● Mr. THUNE. Mr. President, today I wish to honor Boyd ''Butch'' Kitterman of Wall, SD. Butch is being honored for his many years of volunteer service with the Wall Volunteer Fire Department.

Butch has been with the Wall Volunteer Fire Department for 50 years. He has served as fire chief, truck captain, and is currently treasurer for the department. South Dakota's communities depend on volunteers like Butch to keep our citizens and homes safe during times of trouble. His initiative, expertise, and dedication to serving the city of Wall for 50 years is truly commendable.

Today I rise with Butch Kitterman's friends and family in celebrating his 50 years of selfless dedication and service to the city of Wall.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and treaties which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED

At 10:23 a.m., a message from the House of Representatives, delivered by Ms. Chiappardi, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

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.

H.R. 683. An act to amend the Trademark Act of 1946 with respect to dilution by blurring or tarnishment.

H.R. 1036. An act to amend title 17, United States Code, to make technical corrections relating to Copyright Royalty Judges, and for other purposes.

H.R. 3127. An act to impose sanctions against individuals responsible for genocide, war crimes, and crimes against humanity, to support measures for the protection of civilians and humanitarian operations, and to support peace efforts in the Darfur region of Sudan, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

ENROLLED BILLS SIGNED

The following enrolled bills, previously signed by the Speaker of the House, were signed today, September 28, 2006, by the President pro tempore (Mr. STEVENS).

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.

At 3:35 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. 1556. An act to designate a parcel of land located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri, as the ''Clyde S. Cahill Memorial Park''.

H.R. 1711. An act to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes.

H.R. 2069. An act to authorize the exchange of certain land in Grand and Uintah Counties, Utah, and for other purposes.

H.R. 2110. An act to provide for a study of options for protecting the open space characteristics of certain lands in and adjacent to

the Arapaho and Roosevelt National Forests in Colorado, and for other purposes.

H.R. 2134. An act to establish the Commission to Study the Potential Creation of a National Museum of American Latino Heritage to develop a plan of action for the establishment and maintenance of a National Museum of American Latino Heritage in Washington, D.C., and for other purposes.

H.R. 2322. An act to designate the Federal building located at 320 North Main Street in McAllen, Texas, as the ''Kika de la Garza Federal Building''.

H.R. 3606. An act to modify a land grant patent issued by the Secretary of the Interior.

H.R. 3626. An act to authorize the Secretary of the Interior to study the feasibility of enlarging the Arthur V. Watkins Dam Weber Basin Project, Utah, to provide additional water for the Weber Basin Project to fulfill the purposes for which that project was authorized.

H.R. 4750. An act to authorize the Secretary of the Interior to conduct a study to determine the feasibility of implementing a water supply and conservation project to improve water supply reliability, increase the capacity of water storage, and improve water management efficiency in the Republican River Basin between Harlan County Lake in Nebraska and Milford Lake in Kansas.

H.R. 4766. An act to amend the Native American Programs Act of 1974 to provide for the revitalization of Native American languages through Native American language immersion programs; and for other purposes.

H.R. 4789. An act to require the Secretary of the Interior to convey certain public land located wholly or partially within the boundaries of the Wels Hydroelectric Project of Public Utility District No.1 of Douglas County, Washington, to the utility district.

H.R. 4876. An act to ratify a conveyance of a portion of the Jicarilla Apache Reservation to Rio Arriba County, State of New Mexico, pursuant to the settlement of litigation between the Jicarilla Apache Nation and Rio Arriba County, State of New Mexico, to authorize issuance of a patent for said lands, and to change the exterior boundary of the Jicarilla Apache Reservation accordingly, and for other purposes.

H.R. 4981. An act to amend the National Dam Safety Program Act.

H.R. 5016. An act to provide for the exchange of certain Bureau of Land Management land in Pima County, Arizona, and for other purposes.

H.R. 5026. An act to designate the Investigations Building of the Food and Drug Administration located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico, as the ''Andres Toro Building''.

H.R. 5160. An act to establish the Long Island Sound Stewardship Initiative.

H.R. 5340. An act to promote Department of the Interior efforts to provide a scientific basis for the management of sediment and nutrient loss in the Upper Mississippi River Basin, and for other purposes.

H.R. 5483. An act to increase the disability earning limitation under the Railroad Retirement Act and to index the amount of allowable earnings consistent with increases in the substantial gainful activity dollar amount under the Social Security Act.

H.R. 5503. An act to amend the National Housing Act to increase the mortgage amount limits applicable to FHA mortgage insurance for multifamily housing located in high-cost areas.

H.R. 5516. An act to allow for the renegotiation of the payment schedule of contracts between the Secretary of the Interior and the Redwood Valley County Water District, and for other purposes.

H.R. 5546. An act to designate the United States courthouse to be constructed in Greenville, South Carolina, as the ''Carroll A. Campbell, Jr. United States Courthouse''.

H.R. 5585. An act to improve the netting process for financial contracts, and for other purposes.

H.R. 5606. An act to designate the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, as the ''William M. Steger Federal Building and United States Courthouse''.

H.R. 5637. An act to streamline the regulation of nonadmitted insurance and reinsurance, and for other purposes.

H.R. 5690. An act to adjust the boundaries of the Ouachita National Forest in the States of Oklahoma and Arkansas.

H.R. 5692. An act to direct the Secretary of the Interior to conduct a special resource study to determine the feasibility and suitability of establishing a memorial to the Space Shuttle Columbia in the State of Texas and for its inclusion as a unit of the National Park System.

H.R. 5842. An act to compromise and settle all claims in the case of Pueblo of Isleta v. United States, to restore, improve, and develop the valuable on-reservation land and natural resources of the Pueblo, and for other purposes.

H.R. 5946. An act to amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improve monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.

H.R. 6014. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to improve California's Sacramento-San Joaquin Delta and water supply.

H.R. 6051. An act to designate the Federal building and United States courthouse located at 2 South Main Street in Akron, Ohio, as the ''John F. Seiberling Federal Building and United States Courthouse'' .

H.R. 6062. An act to enhance community development investments by financial institutions, and for other purposes.

H.R. 6072. An act to amend the Federal Deposit Insurance Act to provide further regulatory relief for depository institutions and clarify certain provisions of law applicable to such institutions, and for other purposes.

H.R. 6079. An act to require the President's Working Group on Financial Markets to conduct a study on the hedge fund industry.

H.R. 6106. An act to extend the waiver authority for the Secretary of Education under title IV, section 105, of Public Law 109–148.

H.R. 6115. An act to extend the authority of the Secretary of Housing and Urban Development to restructure mortgages and rental assistance for certain assisted multifamily housing.

H.R. 6138. An act to temporarily extend the programs under the Higher Education Act of 1965, and for other purposes.

H.R. 6198. An act to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 478. Concurrent resolution supporting the goals and ideals of ''Lights on Afterschool'', a national celebration of afterschool programs.

The message also announced that the House has passed the following bills, without amendment:

S. 56. An act to establish the Rio Grande Natural Area in the State of Colorado, and for other purposes.

S. 213. An act to direct the Secretary of the Interior to convey certain Federal land to Rio Arriba County, New Mexico.

The message further announced that the House has passed the bill (S. 362) to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes, with an amendment.

The message also announced that the House has passed the bill (S. 2430) to amend the Great Lakes Fish and Wildlife Restoration Act of 1990 to provide for implementation of recommendations of the United States Fish and Wildlife Service contained in the Great Lakes Fishery Resources Restoration Study, with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the bill (S. 2856) to provide regulatory relief and improve productivity for insured depository institutions, and her purposes, with an amendment, in which it requests the concurrence of the Senate.

At 5:55 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that it has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 6197. An act to amend the Older Americans Act of 1965 to authorize appropriations for fiscal years 2007 through 2011, and for other purposes.

The message also announced that the House has passed the following bills, without amendment:

S. 2464. An act to revise a provision relating to a repayment obligation of the Fort McDowell Yavapai Nation under the Fort McDowell Indian Community Water Rights Settlement Act of 1990, and for other purposes.

S. 2146. An act to extend relocation expenses test programs for Federal employees.

The message further announced that the House has agreed to the amendment of the Senate to the bill (H.R. 5574) to amend the Public Health Service Act to reauthorize support for graduate medical education programs in children's hospitals.

At 7:01 p.m., a message from the House of Representatives, delivered by Ms. Niland, 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. 4545. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Los Angeles County Water Supply Augmentation Demonstration Project, and for other purposes.

H.R. 4846. An act to authorize grants for contributions toward the establishment of the Woodrow Wilson Presidential Library.

H.R. 5108. An act to designate the facility of the United States Postal Service located at 1213 East Houston Street in Cleveland, Texas, as the ''Lance Corporal Robert A. Martinez Post Office Building'' .

H.R. 6162. An act to require financial accountability with respect to certain contract actions related to the Secure Border Initiative of the Department of Homeland Security.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 222. Concurrent resolution supporting the goals and ideals of National Pregnancy and Infant Loss Remembrance Day.

H. Con. Res. 473. Concurrent resolution supporting the goals and ideals of Gynecologic Cancer Awareness Month.

At 8:13 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4954) to improve maritime and cargo security through enhanced layered defenses, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the of the two Houses thereon, and appoints from the Committee on Homeland Security, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. KING of New York, Mr. YOUNG of Alaska, Mr. DANIEL E. LUNGREN of California, Mr. LINDER, Mr. SIMMONS, Mr. MCCAUL of Texas, Mr. REICHERT, THOMPSON of Mississippi, Ms. LORETTA SANCHEZ of California, Mr. MARKEY, Ms. HARMAN, and Mr. PASCRELL;

From the Committee on Energy and Commerce for consideration of titles VI and X and section 1104 of the Senate amendment, and modifications committed to conference: Mr. BARTON of Texas, Mr. UPTON, and Mr. DINGELL;

From the Committee on Science, for consideration of sections 201 and 401 of the House bill, and sections 111, 121, 302, 303, 305, 513, 607, 608, 706, 801, 802, and 1107 of the Senate amendment, and modifications committed to conference: Mr. BOEHLERT, Mr. SODREL, and Mr. MELANCON;

From the Committee on Transportation and Infrastructure, for consideration of sections 101–104, 107–109, and 204 of the House bill, and sections 101–104, 106–108, 111, 202, 232, 234, 235, 503, 507–512, 514, 517–519, title VI, sections 703, 902, 905, 906, 1103, 1104, 1107–1110, 1114, and 1115 of the Senate amendment, and modifications committed to conference: Mr. LOBIONDO, Mr. SHUSTER, and Mr. OBERSTAR;

From the Committee on Ways and Means, for consideration of sections 102, 121, 201, 203 and 301 of the House bill, and sections 201, 203, 304, 401–404, 407, and 1105 of the Senate amendment, and modifications committed to conference: Mr. THOMAS, Mr. SHAW, and Mr. RANGEL, as managers of the conference on the part of the House.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

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.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 3982. A bill to amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs.

S. 3983. A bill to amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs and to indemnify manufacturers and health care professional for the administration of medical products needed for biodefense.

S. 3992. A bill to amend the Exchange Rates and International Economic Policy Coordination Act of 1998 to clarify the definition of manipulation with respect to currency, and for other purposes.

S. 3993. A bill to amend title 18, United States Code, to provide penalties for aiming laser pointers at airplanes, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 28, 2006, she had presented to the President of the United States 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.

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.

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–8463. A communication from the Principal Deputy, Office of the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, the report of an officer authorized to wear the insignia of the grade of rear admiral in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC–8464. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Deepwater Ports'' ((RIN1625–AA20)(USCG–1998–3884)) received on September 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8465. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more from the Government of the Netherlands to the Government of Chile; to the Committee on Foreign Relations.

EC–8466. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more from the Government of the United Kingdom to the Government of Chile; to the Committee on Foreign Relations.

EC–8467. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more to Israel; to the Committee on Foreign Relations.

EC–8468. 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 (Sweden); to the Committee on Foreign Relations.

EC–8469. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more from the Republic of Germany to the Republic of Korea; to the Committee on Foreign Relations.

EC–8470. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of the termination of the 15% Danger Pay Allowance for East Timor as of August 20, 2006; to the Committee on Foreign Relations.

EC–8471. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the International Traffic in Arms Regulations: Partial Lifting of Arms Embargo Against Haiti'' (22 CFR Part 126) received on September 27, 2006; to the Committee on Foreign Relations.

EC–8472. 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 $100,000,000 or more to Italy; to the Committee on Foreign Relations.

EC–8473. A communication from the Staff Director, Commission on Civil Rights, transmitting, pursuant to law, the report of the appointment of members to the Connecticut Advisory Committee; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

H.R. 1463. A bill to designate a portion of the Federal building located at 2100 Jamieson Avenue, in Alexandria, Virginia, as the ''Justin W. Williams United States Attorney's Building''.

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. THOMAS (for himself and Mr. SPECTER):

S. 3963. A bill to amend title XVIII of the Social Security Act to provide for improved access to cost-effective, quality physical medicine and rehabilitation services under part B of the Medicare program, and for other purposes; to the Committee on Finance.

By Mr. LOTT:

S. 3964. A bill to provide for the issuance of a commemorative postage stamp in honor of Senator Blanche Kelso Bruce; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. BOXER:

S. 3965. A bill to address the serious health care access barriers, and consequently higher incidences of disease, for low-income, uninsured populations; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER:

S. 3966. A bill to provide assistance to State and nongovernmental entities to initiate public awareness and outreach campaigns to reduce teenage pregnancies; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. CLINTON:

S. 3967. A bill to require the International Trade Commission to report on the specific impact of each free trade agreement in force with respect to the United States on a sector-by-sector basis, and for other purposes; to the Committee on Finance.

By Mr. AKAKA (for himself and Mr. LAUTENBERG):

S. 3968. A bill to affirm the authority of the Comptroller General to audit and evaluate the programs, activities, and financial transactions of the intelligence community, and for other purposes; to the Select Committee on Intelligence.

By Mr. OBAMA (for himself and Mrs. CLINTON):

S. 3969. A bill to amend the Toxic Substances Control Act to assess and reduce the levels of lead found in child-occupied facilities in the United States, and for other purposes; to the Committee on Environment and Public Works.

By Mr. ALLEN:

S. 3970. A bill to amend the Energy Policy Act of 2005 to direct the President to establish an energy security working group; to the Committee on Energy and Natural Resources.

By Mr. SANTORUM (for himself, Mr. FRIST, Mr. CORNYN, Mr. NELSON of Florida, Mr. CRAPO, Mr. LOTT, Mr. DEWINE, and Mr. COLEMAN):

S. 3971. A bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran; to the Committee on Foreign Relations.

By Mr. GRASSLEY (for himself, Mr. ISAKSON, Mr. CHAMBLISS, Mr. BURR, and Ms. MURKOWSKI):

S. 3972. A bill to amend title XXI of the Social Security Act to reduce funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007; to the Committee on Finance.

By Mrs. HUTCHISON (for herself, Mr. SANTORUM, Mr. SPECTER, Mr. CORNYN, Mrs. BOXER, Mr. KERRY, Mrs. DOLE, and Mr. BOND):

S. 3973. A bill to ensure local governments have the flexibility needed to enhance decision-making regarding certain mass transit projects; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BUNNING (for himself and Mr. CONRAD):

S. 3974. A bill to permit a special amortization deduction for intangible assets acquired from eligible small businesses to take account of the actual economic useful life of such assets and to encourage growth in industries for which intangible assets are an important source of revenue; to the Committee on Finance.

By Mr. BINGAMAN:

S. 3975. A bill to amend the Public Health Service Act to provide grants to promote positive health behaviors in women and children; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ALLEN (for himself and Mr. GRASSLEY):

S. 3976. A bill to provide a mechanism for the determination on the merits of the claims of claimants who met the class criteria in a civil action relating to racial discrimination by the Department of Agriculture but who were denied that determination; to the Committee on the Judiciary.

By Mr. DURBIN (for himself and Mr. OBAMA):

S. 3977. A bill to provide a Federal income tax credit for Patriot employers, and for other purposes; to the Committee on Finance.

By Mrs. CLINTON:

S. 3978. A bill to provide consumer protections for lost or stolen check cards and debit cards similar to those provided with respect to credit cards, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEVIN:

S. 3979. A bill to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for the North Country National Scenic Trail; to the Committee on Energy and Natural Resources.

By Mr. DODD (for himself, Mr. FRIST, Mr. HARKIN, Mrs. CLINTON, Mr. REED, and Mr. DURBIN):

S. 3980. A bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop a policy for managing the risk of food allergy and anaphylaxis in schools, to establish school-based food allergy management grants, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KOHL (for himself and Mr. LEAHY):

S. 3981. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish requirements for certain petitions submitted to the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KENNEDY:

S. 3982. A bill to amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs; read the first time.

By Mr. KENNEDY:

S. 3983. A bill to amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs and to indemnify manufacturers and health care professional for the administration of medical products needed for biodefense; read the first time.

By Mr. HARKIN (for himself, Mr. LEAHY, Ms. MIKULSKI, and Mr. KERRY):

S. 3984. A bill to improve programs for the identification and treatment of post-deployment mental health conditions, including post-traumatic stress disorder, in veterans and members of the Armed Forces, and for other purposes; to the Committee on Veterans' Affairs.

By Ms. LANDRIEU:

S. 3985. A bill to promote the recovery of oil and gas revenues on the Outer Continental Shelf, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ALLARD:

S. 3986. A bill to designate as wilderness certain land within the Rocky Mountain National Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ISAKSON:

S. 3987. A bill to amend the Longshore and Harbor Workers' Compensation Act to improve the compensation system, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. OBAMA:

S. 3988. A bill to amend title 10 and 38, United States Code, to improve benefits and services for members of the Armed Forces, veterans of the Global War on Terrorism, and other veterans, to require reports on the effects of the Global War on Terrorism, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. BIDEN:

S. 3989. A bill to establish a Homeland Security and Neighborhood Safety Trust Fund and refocus Federal priorities toward securing the Homeland, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. 3990. A bill to designate the facility of the United States Postal Service located at 216 Oak Street in Farmington, Minnesota, as the ''Hamilton H. Judson Post Office''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. CONRAD (for himself, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. DORGAN, Mr. SALAZAR, Mr. COLEMAN, Mr. BAUCUS, Mr. JOHNSON, Mr. BURNS, Mr. HARKIN, Ms. CANTWELL, Mrs. CLINTON, Mr. SCHUMER, Mr. INOUYE, Mr. THUNE, Mr. DURBIN, Mr. OBAMA, and Mr. REID):

S. 3991. A bill to provide emergency agricultural disaster assistance, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BUNNING:

S. 3992. A bill to amend the Exchange Rates and International Economic Policy Coordination Act of 1998 to clarify the definition of manipulation with respect to currency, and for other purposes; read the first time.

By Mr. MARTINEZ:

S. 3993. A bill to amend title 18, United States Code, to provide penalties for aiming laser pointers at airplanes, and for other purposes; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SCHUMER:

S. Res. 589. A resolution commending New York State Senator John J. Marchi on his 50 years in the New York State Senate and on becoming the longest serving state legislator in the United States; to the Committee on the Judiciary.

By Mr. VITTER:

S. Res. 590. A resolution designating the second Sunday in December 2006, as ''National Children's Memorial Day'' in conjunction with The Compassionate Friends Worldwide Candle Lighting; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 484

At the request of Mr. WARNER, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 911

At the request of Mr. CONRAD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 911, a bill to amend title XVIII of the Social Security Act to provide for reimbursement of certified midwife services and to provide for more equitable reimbursement rates for certified nurse-midwife services.

S. 1082

At the request of Mrs. HUTCHISON, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 1082, a bill to restore Second Amendment rights in the District of Columbia.

S. 1172

At the request of Mr. SPECTER, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1173

At the request of Mr. DEMINT, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1173, a bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.

S. 1687

At the request of Ms. MIKULSKI, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1687, a bill to amend the Public Health Service Act to provide waivers relating to grants for preventive health measures with respect to breast and cervical cancers.

At the request of Mr. MENENDEZ, his name was added as a cosponsor of S. 1687, supra.

S. 1911

At the request of Mr. PRYOR, his name was added as a cosponsor of S. 1911, a bill to provide for the protection of the flag of the United States, and for other purposes.

S. 1915

At the request of Mr. ENSIGN, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 1915, a bill to amend the Horse Protection Act to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

S. 2010

At the request of Mr. HATCH, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2010, a bill to amend the Social Security Act to enhance the Social Security of the Nation by ensuring adequate public-private infrastructure and to resolve to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation, and for other purposes.

S. 2123

At the request of Mr. ALLARD, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2123, a bill to modernize the manufactured housing loan insurance program under title I of the National Housing Act.

S. 2395

At the request of Mr. GRASSLEY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2395, a bill to amend title 39, United States Code, to require that air carriers accept as mail shipments certain live animals.

S. 2506

At the request of Mr. MENENDEZ, his name was added as a cosponsor of S. 2506, a bill to require Federal agencies to support health impact assessments and take other actions to improve health and the environmental quality of communities, and for other purposes.

S. 2824

At the request of Mr. DEMINT, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 2824, a bill to reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

S. 3128

At the request of Mr. BURR, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 3128, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for uniform food safety warning notification requirements, and for other purposes.

S. 3508

At the request of Mr. SUNUNU, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 3508, a bill to authorize the Moving to Work Charter program to enable public housing agencies to improve the effectiveness of Federal housing assistance, and for other purposes.

S. 3516

At the request of Mr. BINGAMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 3516, a bill to amend title XVIII of the Social Security Act to permanently extend the floor on the Medicare work geographic adjustment under the fee schedule for physicians' services.

S. 3523

At the request of Mrs. FEINSTEIN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 3523, a bill to amend the Internal Revenue Code of 1986 to provide that the Tax Court may review claims for equitable innocent spouse relief and to suspend the running on the period of limitations while such claims are pending.

S. 3677

At the request of Mr. BINGAMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3677, a bill to amend title XVIII of the Social Security Act to eliminate the in the home restriction for Medicare coverage of mobility devices for individuals with expected long-term needs.

S. 3678

At the request of Mr. BURR, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 3678, a bill to amend the Public Health Service Act with respect to public health security and all-hazards preparedness and response, and for other purposes.

S. 3681

At the request of Mr. DOMENICI, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor 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. 3696

At the request of Mr. BROWNBACK, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S. 3696, a bill to amend the Revised Statutes of the 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.

S. 3705

At the request of Mr. MENENDEZ, his name was added as a cosponsor of S. 3705, a bill to amend title XIX of the Social Security Act to improve requirements under the Medicaid program for items and services furnished in or through an educational program or setting to children, including children with developmental, physical, or mental health needs, and for other purposes.

S. 3707

At the request of Mr. LOTT, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 3707, a bill to improve consumer access to passenger vehicle loss data held by insurers.

S. 3737

At the request of Mr. CARPER, his name was added as a cosponsor of S. 3737, a bill to amend the National Trails System Act to designate the Washington-Rochambeau Route National Historic Trail.

S. 3744

At the request of Mr. DURBIN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 3744, a bill to establish the Abraham Lincoln Study Abroad Program.

S. 3791

At the request of Mrs. HUTCHISON, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 3791, a bill to require the provision of information to parents and adults concerning bacterial meningitis and the availability of a vaccination with respect to such disease.

S. 3795

At the request of Mr. ROCKEFELLER, the name of the Senator from Massachusetts (Mr. KENNEDY) 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.

At the request of Mr. SMITH, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 3795, supra.

S. 3802

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3802, a bill to amend the Consolidated Omnibus Budget Reconciliation Act of 1985 to expand the county organized health insuring organizations authorized to enroll Medicaid beneficiaries.

S. 3819

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 3819, a bill to amend title XIX of the Social Security Act to provide for redistribution and extended availability of unexpended medicaid DSH allotments, and for other purposes.

S. 3847

At the request of Mrs. CLINTON, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 3847, a bill to designate the facility of the United States Postal Service located at 110 Cooper Street in Babylon, New York, as the ''Jacob Samuel Fletcher Post Office Building''.

S. 3853

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 3853, a bill to designate the facility of the United States Postal Service located at 39–25 61st Street in Woodside, New York, as the ''Thomas J. Manton Post Office Building''.

S. 3862

At the request of Mr. TALENT, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 3862, a bill to amend the Animal Health Protection Act to prohibit the Secretary of Agriculture from implementing or carrying out a National Animal Identification System or similar requirement, to prohibit the use of Federal funds to carry out such a requirement, and to require the Secretary to protect information obtained as part of any voluntary animal identification system.

S. 3884

At the request of Mr. LUGAR, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 3884, a bill to impose sanctions against individuals responsible for genocide, war crimes, and crimes against humanity, to support measures for the protection of civilians and humanitarian operations, and to support peace efforts in the Darfur region of Sudan, and for other purposes.

S. 3913

At the request of Mr. ROCKEFELLER, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Illinois (Mr. OBAMA) 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. 3918

At the request of Mr. MENENDEZ, his name was added as a cosponsor of S. 3918, a bill to establish a grant program for individuals still suffering health effects as a result of the September 11, 2001, attacks in New York City and at the Pentagon.

S. 3931

At the request of Mr. SPECTER, his name and the name of the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 3931, a bill to establish procedures for the review of electronic surveillance programs.

S. 3936

At the request of Mr. FRIST, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Florida (Mr. MARTINEZ) 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 name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor 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. 3952

At the request of Mr. BINGAMAN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of 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.

AMENDMENT NO. 5029

At the request of Mr. DURBIN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of amendment No. 5029 intended to be proposed to H.R. 6061, a bill to establish operational control over the international land and maritime borders of the United States.

AMENDMENT NO. 5033

At the request of Mr. LUGAR, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of amendment No. 5033 proposed to H.R. 3127, a bill to impose sanctions against individuals responsible for genocide, war crimes, and crimes against humanity, to support measures for the protection of civilians and humanitarian operations, and to support peace efforts in the Darfur region of Sudan, and for other purposes.

AMENDMENT NO. 5066

At the request of Mrs. HUTCHISON, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of amendment No. 5066 intended to be proposed to H.R. 6061, a bill to establish operational control over the international land and maritime borders of the United States.

AMENDMENT NO. 5087

At the request of Mr. SPECTER, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of amendment No. 5087 proposed to S. 3930, a bill to authorize trial by military commission for violations of the law of war, and for other purposes.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THOMAS (for himself and Mr. SPECTER):

S. 3963. A bill to amend title XVIII of the Social Security Act to provide for improved access to cost-effective, quality physical medicine and rehabilitation service under part B of the Medicare program, and for other purposes; to the Committee on Finance.

Mr. THOMAS. Mr. President, I am pleased to rise today to introduce the ''Access to Physical Medicine and Rehabilitation Services Improvement Act of 2006.'' This bill would improve patient access to physical medicine and rehabilitation services while also reducing Medicare costs.

As medicine has become increasingly specialized, the types of health professionals physicians employ to assist them in delivering high quality, cost-

effective healthcare has changed dramatically. While States have typically kept up with these developments by creating regulatory mechanisms to ensure that these health professionals are properly educated and trained, the Medicare program has not kept pace. In fact, a recent Medicare policy has actually turned back the clock on these innovative ways of delivering care and this is having a negative affect on not only the availability of services, but what Medicare pays for these services.

We are all well aware of the struggles the Medicare program has had trying to control spending for therapy services. In fact, we have had to impose a cap on beneficiary spending because it has gotten so out of control. Unfortunately, in the midst of our efforts to control aggregate spending on therapy services, the Centers for Medicare and Medicaid Services, CMS, has adopted policies that will lead to higher per beneficiary expenditures and make it even more difficult for seniors to get the care they need.

Since late in 2005, CMS has been enforcing a policy, sometimes referred to as the ''therapy incident-to'' rule, that prevents doctors from employing anyone other than a physical therapist to provide physical medicine and rehabilitation services in their offices. Frankly, this policy ignores the fact that there are many State licensed or certified health professionals who are qualified to offer identical services at a lower cost to Medicare.

Many of us are familiar with the devastating affects breast cancer has on millions of women and men each year. One of the consequences of breast cancer treatment is a condition called lymphedema. This is a debilitating and disfiguring swelling of the extremities that occurs from damage to the lymph nodes located in the arm pit. The only effective treatment for this condition is a specialized type of massage that should only be delivered by a certified lymphedema therapist. Due to CMS' policy, over ⅓ of the nationally certified lymphedema therapists can no longer provide this service to Medicare beneficiaries. Failure to treat lymphedema often results in long hospitals stays due to infection and can lead to amputation in the most extreme cases.

Prior to the adoption of the CMS rule, physicians had the freedom to choose the State licensed or authorized health professional they thought most appropriate to help their Medicare patients recover from injuries or debilitating conditions. I believe we should allow physicians, not government bureaucrats, to decide which State licensed healthcare professionals have the necessary education and training to provide the most high quality, cost-effective physical medicine and rehabilitation services to their patients. Additionally, the health professionals often approved to perform services are not readily available in many rural communities. This means patients must go without care or have to travel long distances to get services that were previously available in their home towns. As Republican Co-Chair of the Senate Rural Health Caucus, I have consistently supported policies and initiatives that help rural Medicare beneficiaries get and maintain access to services in their own communities in a more effective and efficient way.

Finally, it is important to note that access to state licensed, certified professionals will save the Medicare program money—not increase costs. The CMS rule implemented last year will result in higher Medicare expenditures than if the old policy had remained in place. In fact, a recent Medicare Payment Advisory Commission, MedPAC, report based on 2002 data showed that the most cost-effective place for Medicare beneficiaries to obtain physical therapy was in the physician's office. After reviewing the legislation, I hope that my colleagues will consider joining me in this important effort to restore physician judgment, patient choice, and common sense to the Medicare program.

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

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

S. 3963

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 Physical Medicine and Rehabilitation Services Improvement Act of 2006''.

SEC. 2. ACCESS TO PHYSICAL MEDICINE AND REHABILITATION SERVICES PROVIDED INCIDENT TO A PHYSICIAN.

Section 1862(a)(20) of the Social Security Act (42 U.S.C. 1395y(a)(20)) is amended by striking ''(other than any licensing requirement specified by the Secretary)'' and inserting ''(other than any licensing, education, or credentialing requirements specified by the Secretary)''.

SEC. 3. COVERAGE OF CERTIFIED ATHLETIC TRAINER SERVICES AND CERTIFIED LYMPHEDEMA THERAPIST SERVICES UNDER PART B OF THE MEDICARE PROGRAM.

(a) COVERAGE OF SERVICES.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) in subparagraph (Z), by striking ''and'' at the end;

(B) in subparagraph (AA), by adding ''and'' at the end; and

(C) by adding at the end the following new subparagraph:

''(BB) certified athletic trainer services (as defined in subsection (ccc)(1)) and lymphedema therapist services (as defined in subsection (ccc)(3)).''; and

(2) by adding at the end the following new subsection:

''Athletic Trainer Services and Lymphedema Therapist Services

''(ccc)(1) The term 'athletic trainer services' means services performed by a certified athletic trainer (as defined in paragraph (2)) under the supervision of a physician (as defined in section 1861(r)), which the athletic trainer is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, as would otherwise be covered if furnished by a physician (as so defined) or as an incident to a physician's professional service, to an individual—

''(A) who is under the care of a physician (as so defined); and

''(B) with respect to whom a plan prescribing the type, amount, and duration of services that are to be furnished to such individual has been established by a physician (as so defined).

Such term does not include any services for which a facility or other provider charges or is paid any amounts with respect to the furnishing of such services.

''(2) The term 'certified athletic trainer' means an individual who—

''(A) possesses a bachelor's, master's, or doctoral degree which qualifies for licensure or certification as an athletic trainer; and

''(B) in the case of an individual performing services in a State that provides for licensure or certification of athletic trainers, is licensed or certified as an athletic trainer in such State.

''(3) The term 'certified lymphedema therapist services' means services performed by a certified lymphedema therapist (as defined in paragraph (4)) under the supervision of a physician (as defined by paragraph (1) or (3) of section 1861(r)) which the lymphedema therapist is legally authorized to perform under State law (or the State regulatory mechanism provided by the State law) of the State in which such services are performed, as would otherwise be covered if furnished by a physician (as so defined) or as incident to a physicians professional service, to an individual—

''(A) who is under the care of a physician (as so defined); and

''(B) with respect to whom a plan prescribing the type, amount, and duration of services that are to be furnished to such individual has been established by a physician (as so defined).

Such term does not include any services for which a facility or other provider charges or is paid any amounts with respect to the furnishing of such services

''(4) The term 'certified lymphedema therapist' means an individual who—

''(A) possesses a current unrestricted license as a health professional in the State in which he or she practices;

''(B) after obtaining such a license, has successfully completed 135 hours of Complete Decongestive Therapy coursework which consists of theoretical instruction and practical laboratory work utilizing teaching methods directly aimed at the treatment of lymphatic and vascular disease from a lymphedema training program recognized by the Secretary for purposes of certifying lymphedema therapists; and

''(C) in the case of an individual performing services in a State that provides for licensure or certification of lymphedema therapists, is licensed or certified as a lymphedema therapist in such State.''.

(b) PAYMENT.—

(1) IN GENERAL.—Section 1832(a)(2)(B) of the Social Security Act (42 U.S.C. 1395k(a)(2)(B)) is amended by adding at the end the following new clause:

''(v) athletic trainer services and lymphedema therapist services; and''.

(2) AMOUNT.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking ''and (V)'' and inserting ''(V)''; and

(B) by inserting before the semicolon at the end the following: '', and (W) with respect to athletic trainer services and lymphedema therapist services under section 1861(s)(2)(BB), the amounts paid shall be 80 percent of the lesser of the actual charge for the service or the fee schedule amount under section 1848 for the same service performed by a physician''.

(c) INCLUSION OF SERVICES IN THE THERAPY CAP.—Services provided by a certified athletic trainer or a certified lymphedema therapist (as those terms are defined in section 1861(ccc) of the Social Security Act, as added by subsection (a)) shall be subject to the limitation on payments described in section 1833(g) of such Act (42 U.S.C. 13951(g)) in the same manner those services would be subject to limitation if the service had been provided by a physician personally.

(d) INCLUSION OF ATHLETIC TRAINERS AND LYMPHEDEMA THERAPISTS AS PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Section 1842(b)(18)(C) of the Social Security Act (42 U.S.C.1395u(b)(18)(C)) is amended by adding at the end the following new clauses:

''(vii) A certified athletic trainer (as defined in section 1861(ccc)(1)).

''(viii) A certified lymphedema therapist (as defined in section 1861(ccc)(2)).''.

(e) COVERAGE OF CERTAIN PHYSICAL MEDICINE AND REHABILITATION SERVICES PROVIDED IN RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking ''or by a clinical social worker (as defined in subsection (hh)(1))'' and inserting '', by a clinical social worker (as defined in subsection (hh)(1)), by a certified athletic trainer (as defined in subsection (ccc)(2)), or by a certified lymphedema therapist (as defined in subsection (ccc)(4))''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 2007.

By Mr. LOTT:

S. 3964. A bill to provide for the issuance of a commemorative postage stamp in honor of Senator Blanche Kelso Bruce; to the Committee on Homeland Security and Governmental Affairs.

Mr. LOTT. Mr. President, the first African American to serve a full term in the United States Senate represented my great State of Mississippi.

Blanche Kelso Bruce was elected to the Senate in 1874 by the Mississippi State Legislature where he served from 1875 until 1881.

On February 14, 1879, he broke a second barrier by becoming the first African American to preside over a Senate session. He was a leader in the nationwide fight for African American rights, fighting for desegregation of the Army and protection of voting rights.

Blanche Kelso Bruce was born into slavery near Farmville, VA, on March 1, 1841, and spent his early years in Virginia and Missouri. He was 20 years old when the Civil War broke out. He tried to enlist in the Union Army but was rejected because of his race.

He then turned his attention to teaching and while in Missouri organized that State's first school for African Americans.

In 1869 he moved to Mississippi to become a planter on a cotton plantation, and the Magnolia State is where he became active in Republican politics. He rose in Mississippi politics from membership on the Mississippi Levee Board, as the sheriff and tax collector for Bolivar County surrounding Cleveland, Mississippi, and as the Sergeant-at-Arms for the Mississippi State Senate. It was Blanche Kelso Bruce's perseverance, selfless public service and commitment to Mississippi that led to the Mississippi State Legislature's election of him to serve in the U.S. Senate.

In the Senate, he served on the Pensions, Manufacturers, Education and Labor committees. He chaired the Committee on River Improvements and the Select Committee to Investigate the Freedman's Savings and Trust Company.

Senator Bruce left the Senate in 1881 and was appointed Registrar of the Treasury by President James Garfield, a position he also held in 1897. He subsequently received appointments from Presidents Chester Arthur, Benjamin Harrison and William McKinley.

Senator Bruce joined the board of Howard University in Washington, D.C. where he received an honorary degree. He died in Washington on March 17, 1898, at the age of 57.

Four years ago, on September 17, 2002, in my position as Senate Majority Leader, I joined with Senator CHRIS DODD in honoring this revered adopted son of Mississippi by unveiling the portrait of Blanche Kelso Bruce in the U.S. Capitol.

Today I rise to further honor this great statesman and pioneer by introducing legislation to issue the Senator Blanche Kelso Bruce commemorative postage stamp. Mississippi takes great pride in our leaders who often quietly, with little fanfare, blaze paths for the rest of the Nation to follow. Senator Blanche Kelso Bruce is one such great pioneer, and I call on my colleagues to join me in honoring him.

By Mrs. BOXER:

S. 3965. A bill to address the serious health care access barriers, and consequently higher incidences of disease, for low-income, uninsured populations; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, today I rise to introduce the Latina Health Access Act. This important legislation addresses the serious health care access barriers, and consequently higher incidences of disease and poorer health outcomes, for the Latina population in the United States.

The United States has witnessed a tremendous growth in the Latino population across the Nation. There are now 35 million Latinos residing in the U.S., and Latinas are more than half of the total Latino population—for a total of 18 million Latinas in the United States. In my home State of California, 29 percent of the female population is Latina—this is approximately 5 million women. The number of Latinas is expected to continue to grow, and it is estimated that by 2050, one out of every four women in the U.S. will be a Latina. Despite their growing numbers, Latinas continue to disproportionately face serious health concerns, including sexually transmitted diseases, diabetes, and cancer, which are otherwise preventable, or treatable, with adequate health access.

Latinas are particularly at risk for being uninsured. It is estimated that 37 percent of Latinas are uninsured, almost double the rate of the national average. This lack of adequate health care results in health problems that could otherwise be prevented. For example, 1 in 12 Latinas will develop breast cancer nationwide. White women have the highest rates of breast cancer; however, Latinas have among the lowest rates of breast cancer screening, diagnosis and treatment. As a result, Latinas are more likely to die from breast cancer than white women. Also, the prevalence of diabetes is at least two to four times higher among Latinas than among white women. More than 25 percent of Latinas aged 65 to 74 have Type II diabetes. All of these health problems would be more effectively treated or prevented with adequate health care coverage.

To address these health concerns, the Latina Health Access Act provides a two-fold approach to dealing with this problem. First, the bill would provide greater health access to Latinas. Second, the bill would provide educational outreach programs targeted at Latinas in regards to health care access.

The bill would create a program at the Department of Health and Human Services (HHS) that provides funding for high-performing hospitals and community health centers targeted at serving the growing Latina population of the United States. Also, the bill would mandate that HHS provide grants to various nonprofits, state or local governments that serve Latino communities, and lastly to women of color who seek to create diversity in the health care community. Finally, the bill would direct HHS to provide $18 million for grants to fund research institutions so that they may conduct research on the health status of Latinas.

The Latina Health Access Act also focuses on educational outreach to the Latina population. The bill would fund health education programs targeted specifically to Latinas through community-centered informational forums, public service announcements and media campaigns.

Adequate health access is the key to diagnosing and treating diseases before they become deadly and rampant. We need to strengthen our efforts to bring greater health access to the Latina population. I urge my colleagues to join me in supporting this effort.

I ask unanimous consent that the text my 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. 3965

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 ''Latina Health Access Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) As of 2006, there are 18,000,000 Latinas residing in the United States. The number of Latinas is expected to grow considerably. It is estimated that by the year 2050, 1 out of every 4 women in the United States will be a Latina.

(2) Latinas are particularly at risk for being uninsured. 37 percent of Latinas are uninsured, almost double the national average.

(3) With respect to sexually transmitted diseases—

(A) the HIV infection rate is 7 times more for Latinas than their white counterparts, and Latinas represent 18 percent of new HIV infections among women;

(B) the AIDS case rate for Latinas is more than 5 times more than the rate for white women;

(C) the rate of chlamydia for Latinas is 4 times more than the rate for white women; and

(D) among Latinas, the gonorrhea incidence is nearly double that of white women.

(4) With respect to cancer—

(A) The national incidence rate for cervical cancer in Latinas over the age of 30 is nearly double that of non-Latinas;

(B) 1 in 12 Latinas nationwide will develop breast cancer; and

(C) while white women have the highest rates of breast cancer, Latinas have among the lowest rates of breast cancer screening, diagnosis and treatment and, as a result, are more likely to die from breast cancer compared to white women.

(5) The prevalence of diabetes is at least 2 to 4 times more among Latinas than among white women. More than 25 percent of Latinas aged 65 to74 have Type II diabetes.

(6) Heart disease is the main cause of death for all women, and heart disease risk and death rates are higher among Latinas partly because of higher rates of obesity and diabetes.

(7) Therefore, despite their growing numbers, Latinas continue to face serious health concerns (including sexually transmitted diseases, diabetes, and cancer) that are otherwise preventable, or treatable, with adequate health access.

SEC. 3. HEALTH ACCESS FOR UNINSURED AND LOW-INCOME INDIVIDUALS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXIX—HEALTH ACCESS FOR UNINSURED AND LOW-INCOME INDIVIDUALS

"SEC. 2901. HEALTH CARE ACCESS FOR PREVENTABLE HEALTH PROBLEMS.

''(a) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means—

''(1) a high-performing hospital or community health center that serves medically underserved areas with large numbers of uninsured and low-income individuals, such as Latina populations;

''(2) a State or local government; or

''(3) a private nonprofit entity.

''(b) IN GENERAL.—The Secretary shall award grants to eligible entities to enable the eligible entities to provide programs and activities that provide health care services to uninsured and low-income individuals in medically underserved areas.

''(c) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(d) AUTHORIZED ACTIVITIES.—An eligible entity receiving a grant under this section shall use grant funds to carry out programs and activities that provide access to care for a full spectrum of preventable and treatable health care problems in a culturally and linguistically appropriate manner, including—

''(1) family planning services and information;

''(2) prenatal and postnatal care; and

''(3) assistance and services with respect to asthma, cancer, HIV disease and AIDS, sexually transmitted diseases, mental health, diabetes, and heart disease.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $18,000,000 for fiscal year 2007 and each succeeding fiscal year.

"SEC. 2902. FOCUS ON UNINSURED AND LOW-INCOME POPULATIONS.

''(a) PRIORITIZING HEALTH GRANTS TO INCREASE FUNDING EQUITY.—In order to create a more diverse movement, cultivate new leaders, and address health issues within medically underserved areas, the Secretary shall, in awarding grants and other assistance under this Act, reserve a portion of the grants and assistance for entities that—

''(1) represent medically underserved areas or populations with a large number of uninsured and low-income individuals; and

''(2) otherwise meet all requirements for the grant or assistance.

''(b) RESEARCH BENEFITTING POPULATIONS WITH A LACK OF HEALTH DATA.—

''(1) GRANTS AUTHORIZED.—From amounts appropriated under paragraph (3) for a fiscal year, the Secretary shall award grants to research institutions in order to enable the institutions—

''(A) to conduct research on the health status of populations for which there is an absence of health data, such as the Latina population; or

''(B) to work with organizations that focus on populations for which there is an absence of health data, such as the Latina population, on developing participatory community-based research methods.

''(2) APPLICATION.—A research institution desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $18,000,000 for fiscal year 2007 and each of the succeeding fiscal years.

"SEC. 2903. EDUCATION AND OUTREACH.

''(a) JOINT EFFORT FOR HEALTH OUTCOMES.—In order to improve health outcomes for uninsured and low-income individuals, the Secretary shall, through a joint effort with health care professionals, health advocates, and community-based organizations in medically underserved areas, provide outreach, education, and delivery of comprehensive health services to uninsured and low-income individuals in a culturally competent manner.

''(b) TARGETED HEALTH EDUCATION PROGRAMS.—The Secretary shall carry out a health education program targeted specifically to populations of uninsured and low-income individuals, including the Latina population, through community centered informational forums, public service announcements, and media campaigns.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $18,000,000 for fiscal year 2007 and each succeeding fiscal year.''.

By Mrs. BOXER:

S. 3966. A bill to provide assistance to State and nongovernmental entities to initiate public awareness and outreach campaigns to reduce teenage pregnancies; to the Committee on Health, Education, and Pensions.

Mrs. BOXER. Mr. President, today I rise to reintroduce the HOPE (Hispanas Organized for Political Equality) Youth Pregnancy Prevention Act.

The United States has the highest rate of teen pregnancy in the Western industrialized world, and the U.S. teen-pregnancy rate is nearly twice that of Canada and Great Britain. Although overall teen pregnancy rates have decreased in recent years, the teen pregnancy rates for Hispanics and other ethnic and racial minority teens in the United States are significantly higher than the national average. For example, 51 percent of Latina girls in the U.S. will become pregnant once before the age 20.

The Latina population in the United States has grown tremendously. Currently, there are approximately 18 million Latinas that reside in the U.S. In my home State of California, 29 percent of all women are Latinas, this is approximately five million women. The number of Latinas is expected to continue to grow. It is estimated that by 2050, one out of every four women in the U.S. will be a Latina. Despite their growing numbers, Latinas continue to face serious health care access barriers and consequently higher incidences of teenage pregnancy.

To address the growing risk for many reproductive and other health concerns that are otherwise preventable, the HOPE Youth Pregnancy Prevention Act would provide a comprehensive solution and the resources to help prevent teen pregnancy among at-risk and minority youth.

Specifically, the bill would provide grants to States, localities, and nongovernmental organizations for teenage pregnancy prevention activities targeted to areas with large ethnic minorities and other at-risk youth. These grants could be used for a number of activities, including youth development, work-related interventions and other educational activities, parental involvement, teenage outreach and clinical services. The bill would authorize $30 million a year for five years for these grants.

The bill would also provide grants to States and non-governmental organizations to establish multimedia public awareness campaigns to combat teenage pregnancy. These campaigns would aim to prevent teen pregnancy through TV, radio and print ads, billboards, posters, and the Internet. Priority would be given to those activities that target ethnic minorities and other at-risk youth.

Over the past 10 years, we have made progress in reducing teen pregnancy, but our work is not done. We need to strengthen our efforts, especially among Latinas and other minority

youth. I urge my colleagues to join me in supporting this effort.

I ask unanimous consent that the text of my 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. 3966

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 ''HOPE Youth Pregnancy Prevention Act''.

SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

''SEC. 399Q. YOUTH PREGNANCY PREVENTION.

''(a) AT-RISK TEEN PREGNANCY PREVENTION GRANTS.—

''(1) IN GENERAL.—The Secretary shall award grants to eligible entities to enable such entities to carry out teenage pregnancy prevention activities that are targeted at areas with large ethnic minorities and other youth at-risk of becoming pregnant.

''(2) ELIGIBILITY.—To be eligible to receive a grant under paragraph (1), an entity shall—

''(A) be a State or local government or a private nonprofit entity; and

''(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(3) ELIGIBLE ACTIVITIES.—Activities carried out under a grant under this subsection may include—

''(A) youth development for adolescents;

''(B) work-related interventions and other educational activities;

''(C) parental involvement;

''(D) teenage outreach; and

''(E) clinical services.

''(b) MULTIMEDIA PUBLIC AWARENESS AND OUTREACH GRANTS.—

''(1) IN GENERAL.—The Secretary shall award grants to eligible entities to enable such entities to establish multimedia public awareness campaigns to combat teenage pregnancy.

''(2) ELIGIBILITY.—To be eligible to receive a grant under paragraph (1), an entity shall—

''(A) be a State government or a private nonprofit entity; and

''(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(3) ACTIVITIES.—The purpose of the campaigns established under a grant under paragraph (1) shall be to prevent teenage pregnancy through the use of advertising using television, radio, print media, billboards, posters, the Internet, and other methods determined appropriate by the Secretary.

''(4) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that express an intention to carry out activities that target ethnic minorities and other at-risk youth.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

''(1) to carry out subsection (a), $30,000,000 for each of fiscal years 2007 through 2011; and

''(2) to carry out subsection (b), $20,000,000 for each of fiscal years 2007 through 2011.''.

By Mrs. CLINTON:

S. 3967. A bill to require the International Trade Commission to report on the specific impact of each free trade agreement in force with respect to the United States on a sector-by-sector basis, and for other purposes; to the Committee on Finance.

Mrs. CLINTON. Mr. President, I am pleased today to introduce a bill that will help inform the Congress and the American people about our Nation's trade agreements.

The trade policy debate here in Washington is heated and polarized. Supporters of ''free trade'' often view trade agreements uncritically and without question while others are suspicious of any agreement that makes it easier to trade with other countries. I believe that trade policy decisions should be based on an understanding of the concrete results of these agreements and the impact that they have on our economy and the American people, rather than on preconceived notions.

My bill, the Trade Agreement Accountability Act, will inject factual analysis in to this debate. The bill requires the International Trade Commission to report on the effects of every trade agreement we sign. These reports will examine the good and the bad of every trade agreement after two years, after five years and then every five years after it goes into effect. They will study the effect of each trade agreement on a sector-by-sector basis, and conduct an assessment and quantitative analysis of how each agreement is fostering economic growth, improving living standards and helping to create jobs.

In short, this bill will help educate policymakers and the American people about this important debate. I hope that by evaluating the results of past agreements, we will be able to better understand the consequences of future ones.

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. 3967

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 '' Trade Agreement Assessment Act''.

SEC. 2. ITC REPORT.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, 5 years after the date of the enactment of this Act, and every 5 years thereafter, the International Trade Commission shall submit a report to Congress on each free trade agreement in force with respect to the United States. The report shall, with respect to each free trade agreement, contain an analysis and assessment of the analysis and predictions made by the International Trade Commission, the United States Trade Representative, and other Federal agencies, before implementation of the agreement and actual results of the agreement on the United States economy.

(b) CONTENTS OF REPORT.—Each report required by subsection (a) shall contain the following:

(1) With respect to the United States and each country that is a party to a free trade agreement, an assessment and quantitative analysis of how each agreement—

(A) is fostering economic growth;

(B) is improving living standards;

(C) is helping create jobs; and

(D) is reducing or eliminating barriers to trade and investment.

(2) An assessment and quantitative analysis of how each agreement is meeting the specific objectives and goals set out in connection with the implementation of that agreement, the impact of the agreement on the United States economy as a whole, and on specific industry sectors, including the impact the agreement is having on—

(A) the gross domestic product;

(B) exports and imports;

(C) aggregate employment, and competitive positions of industries;

(D) United States consumers; and

(E) the overall competitiveness of the United States.

(3) An assessment and quantitative analysis of how each agreement is meeting the goals and objectives for the agreement on a sector-by-sector basis, including—

(A) trade in goods;

(B) customs matters, rules or origin, and enforcement cooperation;

(C) sanitary and phytosanitary measures;

(D) intellectual property rights;

(E) trade in services;

(F) electronic commerce;

(G) government procurement;

(H) transparency, anti-corruption; and regulatory reform; and

(I) any other issues with respect to which the International Trade Commission submitted a report under section 2104(f) of the Bipartisan Trade Promotion Authority Act of 2002.

(4) A summary of how each country that is a party to an agreement has changed its labor and environmental laws since entry into force of the agreement.

(5) An analysis of whether the agreement is making progress in achieving the applicable purposes, policies, priorities, and objectives of the Bipartisan Trade Promotion Authority Act of 2002.

By Mr. AKAKA (for himself and Mr. LAUTENBERG):

S. 3968. A bill to affirm the authority of the Comptroller General to audit and evaluate the programs, activities, and financial transactions of the intelligence community, and for other purposes; to the Select Committee on Intelligence.

Mr. AKAKA. Mr. President, I rise to introduce ''The Intelligence Community Audit Act of 2006,'' with Senator LAUTENBERG which would reaffirm the Comptroller General of the United States and head of the Government Accountability Office's, GAO, authority to audit the financial transactions and evaluate the programs and activities of the intelligence community (IC). Representative BENNIE THOMPSON, ranking member of the House Homeland Security Committee, is introducing similar legislation.

The bill Senator LAUTENBERG and I offer today is in keeping with legislation introduced in 1987 by Senator John Glenn, the former chairman of the Governmental Affairs Committee, to ensure more effective oversight of the Central Intelligence Agency (CIA) in the wake of the Iran-Contra scandal.

The need for greater oversight and availability of information to appropriate congressional committees is not new. What is new is that Congress does not have the luxury of failure in this era of terrorism. Failure brings terrible consequence.

Since 9/11, effective oversight is needed now more than ever for two very basic reasons: First, intelligence reforms have spawned new agencies with new intelligence functions demanding even more inter-agency cooperation. The Congress needs to ensure that these agencies have the assets, resources, and capability to do their job in protecting our national security. However, now the Congress cannot do its job properly, in part, because its key investigative arm, the Government Accountability Office, is not given adequate access to the intelligence community, led by the Director of National Intelligence (DNI).

Moreover, intelligence oversight is no longer the sole purview of the Senate and House intelligence committees. Other committees have jurisdiction over such departments as Homeland Security, State, Defense, Justice, Energy, and even Treasury and Commerce, which, in this war on terrorism, have intelligence collection and sharing responsibilities. Nor is the information necessary for these committees to exercise their oversight responsibilities restricted to the two intelligence committees as their organizing resolutions make clear. Unfortunately, the intelligence community stonewalls the GAO when committees of jurisdiction request that GAO investigate problems despite the clear responsibility of Congress to ensure that these agencies are operating effectively to protect America.

This is not always the case. Some agencies recognize the valuable contribution that GAO makes in improving the quality of our intelligence. As Lieutenant General Lew Allen, Jr., then Director of the National Security Agency (NSA), observed in testimony before the Senate Select Committee To Study Governmental Operations With Respect To Intelligence Activities, on October 29, 1975: ''Another feature of congressional review is that since 1955 resident auditors of the General Accounting Office have been assigned at the Agency to perform on-site audits. Additional GAO auditors were cleared for access in 1973, and GAO, in addition to this audit, is initiating a classified review of our automatic data processing functions.'' Not surprisingly, this outpost of the GAO still exists at the NSA.

Second, and equally important, is the inability of Congress to ensure that unfettered intelligence collection does not trample civil liberties. New technologies and new personal information data bases threaten our individual right to a secure private life, free from unlawful government invasion. The Congress must ensure that private information being collected by the intelligence community is not misused and is secure.

Over 30 years ago, Senator Charles Percy urged Congress to ''act now to gain control over the Government's dangerously proliferating police, investigative, and intelligence activities.'' He noted that ''we find ourselves threatened by the specter of a 'watchdog' Government, breeding a nation of snoopers.''

The privacy concerns expressed by our former colleague have become vastly more complicated. As I have noted, the institutional landscape has become littered with new intelligence agencies with ever-increasing demands and responsibilities on law enforcement at every level of government since the establishment of the Department of Homeland Security and the passage of the Intelligence Reform and Terrorism Prevention Act of 2004. They have the legitimate mission to protect the country against potential threats. Congress' role is to ensure that their mission remains legitimate.

The intelligence community today consists of 19 different agencies or components: the Office of the Director of National Intelligence; Central Intelligence Agency; Department of Defense; Defense Intelligence Agency; National Security Agency; Departments of the Army, Navy, Marine Corps, and Air Force; Department of State; Department of Treasury; Department of Energy; Department of Justice; Federal Bureau of Investigation; National Reconnaissance Office; National Geospatial-Intelligence Agency; Coast Guard; Department of Homeland Security, and the Drug Enforcement Administration.

I ask unanimous consent that a memorandum prepared by the Congressional Research Service, entitled ''Congressional Intelligence Oversight,'' be included in the RECORD.

As both House Rule 48 and Senate Resolution 400 establishing the intelligence oversight committees state, ''Nothing in this [charter] shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the [House/Senate] to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.''

Despite this clear and unambiguous statement, the ability of non-intelligence committees to obtain information, no matter how vital to improving the security of our Nation, has been restricted by the various elements of the intelligence community.

Two recent incidents have made this situation disturbingly clear. At a hearing entitled ''Access Delayed: Fixing the Security Clearance Process, Part II,'' before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on which I serve as Ranking Member, on November 9, 2005, GAO was asked about steps it would take to ensure that the Office of Personnel Management (OPM), the Office of Management and Budget, and the intelligence community met the goals and objectives outlined in the OPM security clearance strategic plan. Fixing the security clearance process, which is on GAO's high-risk list, is essential to our national security. But as GAO observed in a written response to a question raised by Senator VOINOVICH, ''while we have the authority to do such work, we lack the cooperation we need to get our job done in that area.'' The intelligence community is blocking GAO's work in this essential area.

A similar case arose in response to a GAO investigation for the Senate Homeland Security Committee and the House Government Reform Committee on how agencies are sharing terrorism-related and sensitive but unclassified information. The report, entitled ''Information Sharing, the Federal Government Needs to Establish Policies and Processes for Sharing Terrorism-Related and Sensitive but Unclassified Information'' (GAO–06–385), was released in March 2006.

At a time when Congress is criticized by members of the 9–11 Commission for failing to implement its recommendations, we should remember that improving terrorism information sharing among agencies was one of the critical recommendations of the 9–11 Commission. Moreover, the Intelligence Reform and Terrorism Prevention Act of 2004 mandated the sharing of terrorism information through the creation of an Information Sharing Environment. Yet, when asked by GAO for comments on the GAO report, the Office of the Director of National Intelligence refused, stating that ''the review of intelligence activities is beyond GAO's purview.''

However, as a Congressional Research Service memorandum entitled ''Overview of 'Classified' and 'Sensitive but Unclassified' Information,'' concludes, ''it appears that pseudo-classification markings have, in some instances, had the effect of deterring information sharing for homeland security.'' I ask unanimous consent that the memo be printed in the RECORD following my remarks.

Unfortunately I have more examples, that predate the post 9–11 reforms. Indeed, in July 2001, in testimony entitled ''Central Intelligence Agency, Observations on GAO Access to Information on CIA Programs and Activities'' (GAO–01–975T) before the House Committee on Government Reform, the GAO noted, as a practical matter, ''our access is generally limited to obtaining information on threat assessments when the CIA does not perceives [sic] our audits as oversight of its activities.'' I ask consent that this testimony also be printed following my remarks.

It is inconceivable that the GAO—the audit arm of the U.S. Congress—has been unable to conduct evaluations of the CIA for over 40 years.

If the GAO had been able to conduct basic auditing functions of the CIA, perhaps some of the problems that were so clearly exposed following the terrorist attacks in September 2001 would have been resolved. And yet, it is extraordinary that five years after 9–11 the same problems persist.

Once more I refer to Senator Glenn's bill S. 1458, the ''General Accounting Office-Central Intelligence Agency Audit Act of 1987.'' On its introduction he said, ''in the long run, I believe carefully controlled GAO audits of CIA will lower the probability of future abuses of power, boost the credibility of CIA management, increase the essential public support the Agency's mission deserves, assist the Congress in conducting meaningful oversight, and in no way compromise the CIA mission.'' Unfortunately, S. 1458 did not become law, and nearly 20 years later, the CIA's apparent management challenges led to the creation of the Director of National Intelligence with the Intelligence Reform Act of 2004. If Senator Glenn's proposal made in 1987 had been accepted, perhaps, again, some of the problems that became apparent with our intelligence agencies following 9–11 might never have occurred.

I want to be clear that my legislation does not detract from the authority of the intelligence committees. In fact, the language makes explicit that the Comptroller General may conduct an audit or evaluation of intelligence sources and methods or covert actions only upon the request of the intelligence committees or at the request of the congressional majority or minority leaders. The measure also prescribes for the security of the information collected by the Comptroller General.

However, my bill reaffirms the authority of the Comptroller General to conduct audits and evaluations—other than those relating to sources and methods, or covert actions—relating to the management and administration of elements of the intelligence community in areas such as strategic planning, financial management, information technology, human capital, knowledge management, information sharing, and change management for other relevant committees of the Congress.

Attached is a detailed description of the legislation. I urge my colleagues to join me in supporting this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection the materials were ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, September 14, 2006.

Subject: Congressional Oversight of Intelligence.

From: Alfred Cumming, Specialist in Intelligence and National Security Foreign Affairs, Defense, and Trade Division.

This memorandum examines the intelligence oversight structure established by Congress in the 1970s, including the creation of the congressional select intelligence committees by the U.S. House of Representatives and the Senate, respectively. It also looks at the intelligence oversight role that Congress reserved for congressional committees other than the intelligence committees; examines certain existing statutory procedures that govern how the executive branch is to keep the congressional intelligence committees informed of U.S. intelligence activities; and looks at the circumstances under which the two intelligence committees are expected to keep congressional standing committees, as well as both chambers, informed of intelligence activities.

If I can be of further assistance, please call at 707–7739.

BACKGROUND

In the wake of congressional investigations into Intelligence Community activities in the mid-1970s, the U.S. Senate in 1976 created a select committee on intelligence to conduct more effective oversight on a continuing basis. The U.S. House of Representatives established its own intelligence oversight committee the following year.

Until the two intelligence committees were created, other congressional standing committees—principally the Senate and House Armed Services and Appropriations committees—shared responsibility for overseeing the intelligence community. Although willing to cede primary jurisdiction over the Central Intelligence Agency (CIA) to the two new select intelligence committees, these congressional standing committees wanted to retain jurisdiction over the intelligence activities of the other departments and agencies they oversaw. According to one observer, the standing committees asserted their jurisdictional prerogatives for two reasons—to protect ''turf,'' but also to provide ''a hedge against the possibility that the newly launched experiment in oversight might go badly.''

INTELLIGENCE COMMITTEES' STATUTORY OBLIGATIONS

Under current statute, the President is required to ensure that the congressional intelligence committees are kept ''fully and currently informed'' of U.S. intelligence activities, including any ''significant anticipated intelligence activity, and the President and the intelligence committees are to establish any procedures as may be necessary to carry out these provisions.

The statute, however, stipulates that the intelligence committees in turn are responsible for alerting the respective chambers or congressional standing committees of any intelligence activities requiring further attention. The intelligence committees are to carry out this responsibility in accordance with procedures established by the House of Representatives and the Senate, in consultation with the Director of National Intelligence, in order to protect against unauthorized disclosure of classified information, and all information relating to sources and methods.

The statute stipulates that: ''each of the congressional intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.''

This provision was included in statute after being specifically requested in a letter from then Senate Foreign Relations Chairman Frank Church and Ranking Minority Member Jacob Javits in an Apr. 30, 1980 letter to then-intelligence committee Chairman Birch Bayh and Vice Chairman Barry Goldwater.

INTELLIGENCE COMMITTEE OBLIGATIONS UNDER RESOLUTION

In an apparent effort to address various concerns relating to committee jurisdiction, the House of Representatives and the Senate, in the resolutions establishing each of the intelligence committees, included language preserving oversight roles for those standing committees with jurisdiction over matters affected by intelligence activities.

Specifically, each intelligence committee's resolution states that: ''Nothing in this [Charter] shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.''

Both resolutions also stipulate that:

Nothing in this [charter] shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the [House/Senate] to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

Finally, both charters direct that each intelligence committee alert the appropriate standing committees, or the respective chambers, of any matter requiring attention. The charters state:

The select committee, for the purposes of accountability to the [House/Senate] shall make regular and periodic reports to the [House/Senate] on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the [House/Senate] or to any other appropriate committee or committees of the [House/Senate] any matters requiring the attention of the [House/Senate] or such other appropriate committee or committees.

CROSS-OVER MEMBERSHIP

Both resolutions also direct that the membership of each intelligence committee include members who serve on the four standing committees that historically have been involved in intelligence oversight. The respective resolutions designate the following committees as falling in this category: Appropriations, Armed Services, Judiciary, and the Senate Foreign Relations Committee and the House International Relations Committee.

Although each resolution directs that such cross-over members be designated, neither specifies whether cross-over members are to play any additional role beyond serving on the intelligence committees. For example, neither resolution outlines whether cross-over members are to inform colleagues on standing committees they represent. Rather, each resolution directs only that the ''intelligence committee'' shall promptly call such matters to the attention of standing committees and the respective chambers if the committees determine that they require further attention by those entities.

SUMMARY CONCLUSIONS

Although the President is statutorily obligated to keep the congressional intelligence committees fully and currently informed of intelligence activities, the statute obligates the intelligence committees to inform the respective chambers, or standing committees, of such activities, if either of the two committees determine that further oversight attention is required.

Further, resolutions establishing the two intelligence committees make clear that the intelligence committees share intelligence oversight responsibilities with other standing committees, to the extent that certain intelligence activities affect matters that fall under the jurisdiction of a committee other than the intelligence committees.

Finally, the resolutions establishing the intelligence committees provide for the designation of ''cross-over'' members representing certain standing committees that

played a role in intelligence oversight prior to the establishment of the intelligence committees in the 1970s. The resolutions, however, do not specify what role, if any, these ''cross-over'' members play in keeping standing committees on which they serve informed of certain intelligence activities. Rather, each resolution states that the respective intelligence committee shall make that determination.

CONGRESSIONAL RESEARCH SERVICE, JULY 18, 2006.

MEMORANDUM

Subject: Overview of ''Classified'' and ''Sensitive but Unclassified'' Information

From: Harold C. Relyea, Specialist in American National Government, Government and Finance Division

Prescribed in various ways, federal policies may require the protection of, or a privileged status for, particular kinds of information. This memorandum provides a brief introduction to, and overview of, two categories of such information policy. The first category is demarcated largely in a single policy instrument—a presidential executive order—with a clear focus and in considerable detail: the classification of national security information in terms of three degrees of harm the disclosure of such information could cause to the nation, resulting in Confidential, Secret, and Top Secret designations. The second category is, by contrast with the first, much broader in terms of the kinds of information it covers, to the point of even being nebulous in some instances, and is expressed in various instruments, the majority of which are non-statutory: the marking of sensitive but unclassified (SBU) information for protective management, although its public disclosure may be permissible pursuant to the Freedom of Information Act (FOIA). These two categories are reviewed in the discussion set out below.

SECURITY CLASSIFIED INFORMATION

Current security classification arrangements, prescribed by an executive order of the President, trace their origins to a March 1940 directive issued by President Franklin D. Roosevelt as E.O. 8381. This development was probably prompted somewhat by desires to clarify the authority of civilian personnel in the national defense community to classify information, to establish a broader basis for protecting military information in view of growing global hostilities, and to manage better a discretionary power seemingly of increasing importance to the entire executive branch. Prior to this 1940 order, information had been designated officially secret by armed forces personnel pursuant to Army and Navy general orders and regulations. The first systematic procedures for the protection of national defense information, devoid of special markings, were established by War Department General Orders No. 3 of February 1912. Records determined to be ''confidential'' were to be kept under lock, ''accessible only to the officer to whom intrusted.'' Serial numbers were issued for all such ''confidential'' materials, with the numbers marked on the documents, and lists of same kept at the offices from which they emanated. With the enlargement of the armed forces after the entry of the United States into World War I, the registry system was abandoned and a tripartite system of classification markings was inaugurated in November 1917 with General Orders No. 64 of the General Headquarters of the American Expeditionary Force.

The entry of the United States into World War II prompted some additional arrangements for the protection of information pertaining to the nation's security. Personnel cleared to work on the Manhattan Project for the production of the atomic bomb, for instance, in committing themselves not to disclose protected information improperly, were ''required to read and sign either the Espionage Act or a special secrecy agreement,'' establishing their awareness of their secrecy obligations and a fiduciary trust which, if breached, constituted a basis for their dismissal.

A few years after the conclusion of World War II, President Harry S. Truman, in February 1950, issued E.O. 10104, which, while superseding E.O. 8381, basically reiterated its text, but added a fourth Top Secret classification designation to existing Restricted, Confidential, and Secret markings, making American information security categories consistent with those of our allies. At the time of the promulgation of this order, however, plans were underway for a complete overhaul of the classification program, which would result in a dramatic change in policy.

E.O. 10290, issued in September 1951, introduced three sweeping innovations in security classification policy. First, the order indicated the Chief Executive was relying upon ''the authority vested in me by the Constitution and statutes, and as President of the United States'' in issuing the directive. This formula appeared to strengthen the President's discretion to make official secrecy policy: it intertwined his responsibility as Commander in Chief with the constitutional obligation to ''take care that the laws be faithfully executed.'' Second, information was now classified in the interest of ''national security,'' a somewhat new, but nebulous, concept, which, in the view of some, conveyed more latitude for the creation of official secrets. It replaced the heretofore relied upon ''national defense'' standard for classification. Third, the order extended classification authority to nonmilitary entities throughout the executive branch, to be exercised by, presumably, but not explicitly limited to, those having some role in ''national security'' policy.

The broad discretion to create official secrets granted by E.G. 10290 engendered widespread criticism from the public and the press. In response, President Dwight D. Eisenhower, shortly after his election to office, instructed Attorney General Herbert Brownell to review the order with a view to revising or rescinding it. The subsequent recommendation was for a new directive, which was issued in November 1953 as E.O. 10501. It withdrew classification authority from 28 entities, limited this discretion in 17 other units to the agency head, returned to the ''national defense'' standard for applying secrecy, eliminated the ''Restricted'' category, which was the lowest level of protection, and explicitly defined the remaining three classification areas to prevent their indiscriminate use.

Thereafter, E.G. 10501, with slight amendment, prescribed operative security classification policy and procedure for the next two decades. Successor orders built on this reform. These included E.O. 11652, issued by President Richard M. Nixon in March 1972, followed by E.O. 12065, promulgated by President Jimmy Carter in June 1978. For 30 years, these classification directives narrowed the bases and discretion for assigning official secrecy to executive branch documents and materials. Then, in April 1982, this trend was reversed with E.O. 12356, issued by President Ronald Reagan. This order expanded the categories of classifiable information, mandated that information falling within these categories be classified, authorized the reclassification of previously declassified documents, admonished classifiers to err on the side of classification, and eliminated automatic declassification arrangements.

President William Clinton returned security classification policy and procedure to the reform trend of the Eisenhower, Nixon, and Carter Administrations with E.O. 12958 in April 1995. Adding impetus to the development and issuance of the new order were changing world conditions: the democratization of many eastern European countries, the demise of the Soviet Union, and the end of the Cold War. Accountability and cost considerations were also significant influences. In 1985, the temporary Department of Defense (DOD) Security Review Commission, chaired by retired General Richard G. Stilwell, declared that there were ''no verifiable figures as to the amount of classified material produced in DOD and in defense industry each year.'' Nonetheless, it concluded that ''too much information appears to be classified and much at higher levels than is warranted.'' In October 1993, the cost of the security classification program became clearer when the General Accounting Office (GAO) reported that it was ''able to identify government-wide costs directly applicable to national security information totaling over $350 million for 1992.'' After breaking this figure down—it included only $6 million for declassification work—the report added that ''the U.S. government also spends additional billions of dollars annually to safeguard information, personnel, and property.'' E.O. 12958 set limits for the duration of classification, prohibited the reclassification of properly declassified records, authorized government employees to challenge the classification status of records, reestablished the balancing test of E.O. 12065 weighing the need to protect information vis-a-vis the public interest in its disclosure, and created two review panels—one on classification and declassification actions and one to advise on policy and procedure.

Most recently, in March 2003, President George W. Bush issued E.O. 13292, amending E.O. 12958. Among the changes made by this order were adding infrastructure vulnerabilities or capabilities, protection services relating to national security, and weapons of mass destruction to the categories of classifiable information; easing the reclassification of declassified records; postponing the automatic declassification of protected records 25 or more years old, beginning in mid-April 2003 to the end of December 2006; eliminating the requirement that agencies prepare plans for declassifying records; and permitting the Director of Central Intelligence to block declassification actions of the Interagency Security Classification Appeals Panel, unless overruled by the President.

The security classification program has evolved during the past 66 years. One may not agree with all of its rules and requirements, but attention to detail in its policy and procedure result in a significant management regime. The operative executive order, as amended, defines its principal terms. Those who are authorized to exercise original classification authority are identified. Exclusive categories of classifiable information are specified, as are the terms of the duration of classification, as well as classification prohibitions and limitations. Classified information is required to be marked appropriately along with the identity of the original classifier, the agency or office of origin, and a date or event for declassification. Authorized holders of classified information who believe that its protected status is improper are ''encouraged and expected'' to challenge that status through prescribed arrangements. Mandatory declassification reviews are also authorized to determine if protected records merit continued classification at their present level, a lower level, or at all. Unsuccessful classification challenges

and mandatory declassification reviews are subject to review by the Interagency Security Classification Appeals Panel. General restrictions on access to classified information are prescribed, as are distribution controls for classified information. The Information Security Oversight Office (ISOO) within the National Archives and Records Administration (NARA) is mandated to provide central management and oversight of the security classification program. If the director of this entity finds that a violation of the order or its implementing directives has occurred, it must be reported to the head of the agency or to the appropriate senior agency official so that corrective steps, if appropriate, may be taken.

While Congress, thus far, has elected not to create statutorily mandated security classification policy and procedures, the option to do so has been explored in the past, and its legislative authority to do so has been recognized by the Supreme Court. Congress, however, has established protections for certain kinds of information—such as Restricted Data in the Atomic Energy Acts of 1946 and 1954, and intelligence sources and methods in the National Security Act of 1947—which have been realized through security classification arrangements. It has acknowledged properly applied security classification as a basis for withholding records sought pursuant to the Freedom of Information Act. Also, with a view to efficiency and economy, as well as effective records management, committees of Congress, on various occasions, have conducted oversight of security classification policy and practice, and have been assisted by GAO and CRS in this regard.

SENSITIVE BUT UNCLASSIFIED INFORMATION

The widespread existence and use of information control markings other than those prescribed for the security classification of information came to congressional attention in March 1972 when a subcommittee of what is now the House Committee on Government Reform launched the first oversight hearings on the administration and operation of the Freedom of Information Act (FOIA). Enacted in 1966, FOIA had become operative in July 1967. In the early months of 1972, the Nixon Administration was developing new security classification policy and procedure, which would be prescribed in E.O. 11652, issued in early March. Preparatory to this hearing, the panel had surveyed the departments and agencies in August 1971, asking, among other questions, ''What legend is used by your agency to identify records which are not classifiable under Executive Order 10501 [the operative order at the time] but which are not to be made available outside the government?'' Of 58 information control markings identified in response to this question, the most common were For Official Use Only (11 agencies); Limited Official Use (nine agencies); Official Use Only (eight agencies); Restricted Data (five agencies); Administratively Restricted (four agencies); Formerly Restricted Data (four agencies); and Nodis, or no dissemination (four agencies). Seven other markings were used by two agencies in each case. A CRS review of the agency responses to the control markings question prompted the following observation.

Often no authority is cited for the establishment or origin of these labels; even when some reference is provided it is a handbook, manual, administrative order, or a circular but not statutory authority. Exceptions to this are the Atomic Energy Commission, the Defense Department and the Arms Control and Disarmament Agency. These agencies cite the Atomic Energy Act, N.A.T.O. related laws, and international agreements as a basis for certain additional labels. The Arms Control and Disarmament Agency acknowledged it honored and adopted State and Defense Department labels.

Over three decades later, it appears that approximately the same number of these information control markings are in use; that the majority of them are administratively, not statutorily, prescribed; and that many of them have an inadequate management regime, particularly when compared with the detailed arrangements which govern the management of classified information. A recent press account illustrates another problem. In late January 2005, GCN Update, the online, electronic news service of Government Computer News, reported that ''dozens of classified Homeland Security Department documents'' had been accidently made available on a public Internet site for several days due to an apparent security glitch at the Department of Energy. Describing the contents of the compromised materials and reactions to the breach, the account stated the ''documents were marked 'for official use only,' the lowest secret-level classification.'' The documents, of course, were not security classified, because the marking cited is not authorized by E.O. 12958. Interestingly, however, in view of the fact that this misinterpretation appeared in a story to which three reporters contributed, perhaps it reflects, to some extent, the current confusion of these information control markings with security classification designations.

Broadly considering the contemporary situation regarding information control markings, a recent information security report by the JASON Program Office of the MITRE Corporation proffered the following assessment.

The status of sensitive information outside of the present classification system is murkier than ever. ''Sensitive but unclassified'' data is increasingly defined by the eye of the beholder. Lacking in definition, it is correspondingly lacking in policies and procedures for protecting (or not protecting) it, and regarding how and by whom it is generated and used.

A contemporaneous Heritage Foundation report appeared to agree with this appraisal, saying:

The process for classifying secret information in the federal government is disciplined and explicit. The same cannot be said for unclassified but security-related information for which there is no usable definition, no common understanding about how to control it, no agreement on what significance it has for U.S. national security, and no means for adjudicating concerns regarding appropriate levels of protection.

Concerning the current Sensitive but Unclassified (SBU) marking, a 2004 report by the Federal Research Division of the Library of Congress commented that guidelines for its use are needed, and noted that ''a uniform legal definition or set of procedures applicable to all Federal government agencies does not now exist.'' Indeed, the report indicates that SBU has been utilized in different contexts with little precision as to its scope or meaning, and, to add a bit of chaos to an already confusing situation, is ''often referred to as Sensitive Homeland Security Information.

Assessments of the variety, management, and impact of information control markings, other than those prescribed for the classification of national security information, have been conducted by CRS, GAO, and the National Security Archive, a private sector research and resource center located at The George Washington University. In March 2006, GAO indicated that, in a recent survey, 26 federal agencies reported using 56 different information control markings to protect sensitive information other than classified national security material. That same month, the National Security Archive offered that, of 37 agencies surveyed, 24 used 28 control markings based on internal policies, procedures, or practices, and eight used 10 markings based on statutory authority. These numbers are important in terms of the variety of such markings. GAO explained this dimension of the management problem.

[T]here are at least 13 agencies that use the designation For Official Use Only [FOUO], but there are at least five different definitions of FOUO. At least seven agencies or agency components use the term Law Enforcement Sensitive (LES), including the U.S. Marshals Service, the Department of Homeland Security (DHS), the Department of Commerce, and the Office of Personnel Management (OPM). These agencies gave differing definitions for the term. While DHS does not formally define the designation, the Department of Commerce defines it to include information pertaining to the protection of senior government officials, and OPM defines it as unclassified information used by law enforcement personnel that requires protection against unauthorized disclosure to protect the sources and methods of investigative activity, evidence, and the integrity of pretrial investigative reports.

Apart from the numbers, however, is another aspect of the management problem, which GAO described in the following terms.

There are no governmentwide policies or procedures that describe the basis on which agencies should use most of these sensitive but unclassified designations, explain what the different designations mean across agencies, or ensure that they will be used consistently from one agency to another. In this absence, each agency determines what designations to apply to the sensitive but unclassified information it develops or shares.

These markings also have implications in another regard. The importance of information sharing for combating terrorism and realizing homeland security was emphasized by the National Commission on Terrorist Attacks Upon the United States. That the variously identified and marked forms of sensitive but unclassified (SBU) information could be problematic with regard to information sharing was recognized by Congress when fashioning the Homeland Security Act of 2002. Section 892 of that statute specifically directed the President to prescribe and implement procedures for the sharing of information by relevant federal agencies, including the accommodation of ''homeland security information that is sensitive but unclassified.'' On July 29, 2003, the President assigned this responsibility largely to the Secretary of Homeland Security. Nothing resulted. The importance of information sharing was reinforced two years later in the report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction. Congress again responded by mandating the creation of an Information Sharing Environment (ISE) when legislating the Intelligence Reform and Terrorism Prevention Act of 2004. Preparatory to implementing the ISE provisions, the President issued a December 16, 2005, memorandum recognizing the need for standardized procedures for SBU information and directing department and agency officials to take certain actions relative to that objective. In May 2006, the newly appointed manager of the ISE agreed with a March GAO assessment that, oftentimes, SBU information, designated as such with some marking, was not being shared due to concerns about the ability of recipients to adequately protect it. In brief, it appears that pseudo-classification markings have, in some instances, had the effect of deterring information sharing for homeland security purposes.

Congressional overseers have probed executive use and management of information

control markings other than those prescribed for the classification of national security information, and the extent to which they result in ''pseudo-classification'' or a form of overclassification. Relevant remedial legislation proposed during the 109th Congress includes two bills (H.R. 2331 and H.R. 5112) containing sections which would require the Archivist of the United States to prepare a detailed report regarding the number, use, and management of these information control markings and submit it to specified congressional committees, and to promulgate regulations banning the use of these markings and otherwise establish standards for information control designations established by statute or an executive order relating to the classification of national security information. A section in the Department of Homeland Security appropriations legislation (H.R. 5441), as approved by the House, would require the Secretary of Homeland Security to revise DHS MD (Management Directive) 11056 to include (1) provision that information that is three years old and not incorporated in a current, active transportation security directive or security plan shall be determined automatically to be releasable unless, for each specific document, the Secretary makes a written determination that identifies a compelling reason why the information must remain Sensitive Security Information (SSI); (2) common and extensive examples of the individual categories of SSI cited in order to minimize and standardize judgment in the application of SSI marking; and (3) provision that, in all judicial proceedings where the judge overseeing the proceedings has adjudicated that a party needs to have access to SSI, the party shall be deemed a covered person for purposes of access to the SSI at issue in the case unless TSA or DHS demonstrates a compelling reason why the specific individual presents a risk of harm to the nation. A May 25, 2006, statement of administration policy on the bill strongly opposed the section, saying it ''would jeopardize an important program that protects Sensitive Security Information (SSI) from public release by deeming it automatically releaseable in three years, potentially conflict with requirements of the Privacy and Freedom of Information Acts, and negate statutory provisions providing original jurisdiction for lawsuits challenging the designation of SSI materials in the U.S. Courts of Appeals.'' The statement further indicated that the section would create a ''burdensome review process'' for the Secretary of Homeland Security and ''would result in different statutory requirements being applied to SSI programs administered by the Departments of Homeland Security and Transportation.''

It is not anticipated that this memorandum will be updated for reissuance.

TESTIMONY BEFORE THE SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS, AND THE SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS, AND INTERNATIONAL RELATIONS, COMMITTEE ON GOVERNMENTAL REFORM, HOUSE OF REPRESENTATIVES

United States General Accounting Office

CENTRAL INTELLIGENCE AGENCY

OBSERVATIONS ON GAO ACCESS TO INFORMATION ON CIA PROGRAMS AND ACTIVITIES

Statement of Henry L. Hinton, Jr., Managing Director Defense Capabilities and Management

Messrs. Chairmen and Members of the Subcommittees:

We are pleased to be here to discuss the subject of access by the General Accounting Office (GAO) to information from the Central Intelligence Agency (CIA). Specifically, our statement will provide some background on CIA and its oversight mechanisms, our authority to review CIA programs, and the history and status of GAO access to CIA information. As requested, our remarks will focus on our relationship with the CIA and not with other intelligence agencies. Our comments are based upon our review of historic files, our legal analysis, and our experiences dealing with the CIA over the years.

SUMMARY

Oversight of the CIA generally comes from two select committees of Congress and the CIA's Inspector General. We have broad authority to evaluate CIA programs. In reality, however, we face both legal and practical limitations on our ability to review these programs. For example, we have no access to certain CIA ''unvouchered'' accounts and cannot compel our access to foreign intelligence and counterintelligence information. In addition, as a practical matter, we are limited by the CIA's level of cooperation, which has varied through the years. We have not actively audited the CIA since the early 1960s, when we discontinued such work because the CIA was not providing us with sufficient access to information to perform our mission. The issue has arisen since then from time to time as our work has required some level of access to CIA programs and information. However, given a lack of requests from the Congress for us to do specific work at the CIA and our limited resources, we have made a conscious decision not to further pursue the issue.

Today, our dealings with the CIA are mostly limited to requesting information that relates either to governmentwide reviews or analyses of threats to U.S. national security on which the CIA might have some information. The CIA either provides us with the requested information, provides the information with some restrictions, or does not provide the information at all. In general, we are most successful at getting access to CIA information when we request threat assessments and the CIA does not perceive our audits as oversight of its activities.

BACKGROUND

As you know, the General Accounting Office is the investigative arm of the Congress and is headed by the Comptroller General of the United States—currently David M. Walker. We support the Congress in meeting its constitutional responsibilities and help improve the performance and accountability of the federal government for the American people. We examine the use of public funds, evaluate federal programs and activities, and provide analyses, options, recommendations, and other assistance to help the Congress make effective oversight, policy, and funding decisions. Almost 90 percent of our staff days are in direct support of Congressional requestors, generally on the behalf of committee chairmen or ranking members.

The U.S. Intelligence Community consists of those Executive Branch agencies and organizations that work in concert to carry out our nation's intelligence activities. The CIA is an Intelligence Community agency established under the National Security Act of 1947 to coordinate the intelligence activities of several U.S. departments and agencies in the interest of national security. Among other functions, the CIA collects, produces, and disseminates foreign intelligence and counterintelligence; conducts counterintelligence activities abroad; collects, produces, and disseminates intelligence on foreign aspects of narcotics production and trafficking; conducts special activities approved by the President; and conducts research, development, and procurement of technical systems and devices.

OVERSIGHT OF CIA ACTIVITIES

Currently, two congressional select committees and the CIA's Inspector General oversee the CIA's activities. The Senate Select Committee on Intelligence was established on May 19, 1976, to oversee the activities of the Intelligence Community. Its counterpart in the House of Representatives is the House Permanent Select Committee on Intelligence, established on July 14, 1977. The CIA's Inspector General is nominated by the President and confirmed by the Senate. The Office of the Inspector General was established by statute in 1989 and conducts inspections, investigations, and audits at headquarters and in the field. The Inspector General reports directly to the CIA Director. In addition, the President's Foreign Intelligence Advisory Board assesses the quality, quantity, and adequacy of intelligence activities. Within the Board, there is an intelligence oversight committee that prepares reports on intelligence activities that may be unlawful or otherwise inappropriate. Finally, the Congress can charter commissions to evaluate intelligence agencies such as CIA. One such commission was the Commission on the Roles and Capabilities of the United States Intelligence Community, which issued a report in 1996.

GAG'S AUTHORITY TO REVIEW CIA PROGRAMS

Generally, we have broad authority to evaluate agency programs and investigate matters related to the receipt, disbursement, and use of public money. To carry out our audit responsibilities, we have a statutory right of access to agency records. Federal agencies are required to provide us information about their duties, powers, activities, organization, and financial transactions. This requirement applies to all federal agencies, including the CIA. Our access rights include the authority to file a civil action to compel production of records, unless (a) the records relate to activities the President has designated as foreign intelligence or counterintelligence activities, (b) the records are specifically exempt from disclosure by statute, or (c) the records would be exempt from release under the Freedom of Information Act because they are predecisional memoranda or law enforcement records and the President or Director of the Office of Management and Budget certifies that disclosure of the record could be expected to impair substantially the operations of the government.

The National Security Act of 1947 charges the CIA Director with protecting intelligence sources and methods from unauthorized disclosure. In terms of our statutory access authority, however, the law creates only one specific exemption: the so-called ''unvouchered'' accounts. The exemption pertains to expenditures of a confidential, extraordinary, or emergency nature that are accounted for solely on the certification of the Director. These transactions are subject to review by the intelligence committees. Amendments to the law require the President to keep the intelligence committees fully and currently informed of the intelligence activities of the United States. The CIA has maintained that the Congress intended the intelligence committees to be the exclusive means of oversight of the CIA, effectively precluding oversight by us.

While we understand the role of the intelligence committees and the need to protect intelligence sources and methods, we also believe that our authorities are broad enough to cover the management and administrative functions that the CIA shares with all federal agencies.

We have summarized the statutes relevant to our relationship with the CIA in an appendix attached to this testimony.

GAO'S ACCESS TO THE CIA HAS BEEN LIMITED

We have not done audit work at the CIA for almost 40 years. Currently, our access to the CIA is limited to requests for information that relates either to governmentwide reviews or programs for which the CIA might have relevant information. In general, we have the most success obtaining access to CIA information when we request threat assessments, and the CIA does not perceive our audits as oversight of its activities.

GAO ACCESS TO CIA HAS VARIED THROUGH THE YEARS

After the enactment of the National Security Act of 1947, we began conducting financial transaction audits of vouchered expenditures of the CIA. This effort continued into the early 1960s. In the late 1950s, we proposed to broaden its work at the CIA to include an examination of the efficiency, economy, and effectiveness of CIA programs. Although the CIA Director agreed to our proposal to expand the scope of our work, he placed a number of conditions on our access to information. Nonetheless, in October 1959, we agreed to conduct program review work with CIA-imposed restrictions on access.

Our attempt to conduct comprehensive program review work continued until May 1961, when the Comptroller General concluded that the CIA was not providing us with sufficient access to the information necessary to conduct comprehensive reviews of the CIA's programs and announced plans to discontinue audit work there. After much discussion and several exchanges of correspondence between GAO, the CIA, and the cognizant congressional committees, the Chairman of the House Armed Services Committee wrote to the Comptroller General in July 1962 agreeing that, absent sufficient GAO access to CIA information, GAO should withdraw from further audit activities at the CIA. Thus, in 1962, we withdrew from all audits of CIA activities.

The issue of our access has arisen periodically in the intervening years as our work has required some level of access to CIA programs and activities. In July 1975, Comptroller General Elmer Staats testified on our relationship with the intelligence community and cited several cases where CIA had not provided us with the requested information. In July 1987, Senator John Glenn introduced a bill (S. 1458) in the 100th Congress to clarify our audit authority to audit CIA programs and activities. In 1994, the CIA Director sought to further limit our audit work of intelligence programs, including those at the Department of Defense. We responded by writing to several key members of the Congress, citing our concerns and seeking assistance. As a result, we and the CIA began negotiations on a written agreement to clarify our access and relationship. Unfortunately, we were unable to reach any agreement with CIA on this matter. Since then, GAO has limited its pursuit of greater access because of limited demand for this work from Congress, particularly from the intelligence committees. Given a lack of Congressional requests and our limited resources, we have made a conscious decision to deal with the CIA on a case-by-case basis.

CURRENT ACCESS FALLS INTO THREE CATEGORIES

Currently, the CIA responds to our requests for information in three ways: it provides the information, it provides the information or a part of it with some restriction, or it does not provide the information at all. Examples of each of these three situations, based on the experiences of our audit staff in selected reviews in recent years, are listed below.

Sometimes the CIA straightforwardly fulfills our requests for briefings or reports related to threat assessments. This is especially true when we ask for threat briefings or the CIA's assessments or opinions on an issue not involving CIA operations.

For our review of the State Department's Anthrax Vaccination Program for the Senate Foreign Relations and House International Relations Committees, we requested a meeting to discuss the CIA's perspective on a recent threat assessment of chemical and biological threats to U.S. interests overseas. The CIA agreed with our request, provided a meeting within 2 weeks, and followed up with a written statement.

While we were reviewing U.S. assistance to the Haitian justice system and national police on behalf of the Senate Foreign Relations and House International Relations Committees, we requested a meeting to discuss the Haitian justice system. The CIA agreed with our request and met with our audit team within 3 weeks of our request.

For our review of chemical and biological terrorist threats for the House Armed Services Committee, and subcommittees of the House Government Reform Committee and the House Veterans Affairs Committee, we requested meetings with CIA analysts on their threat assessments on chemical and biological weapons. The CIA cooperated and gave us access to documents and analysts.

On several of our reviews of counterdrug programs for the House Government Reform Committee and the Senate Foreign Relations Committee we requested CIA assessments on the drug threat and international activities. The CIA has provided us with detailed briefings on drug cultivation, production, and trafficking activities in advance of our field work overseas.

During our reviews of Balkan security issues and the Dayton Peace Accords for the House Armed Services Committee and the Senate Foreign Relations Committee, we asked the CIA for threat assessments relevant to our review objectives. The CIA provided us with appropriate briefings and agreed to provide one of our staff members with access to regular intelligence reports.

In some instances, the CIA provides information with certain access restrictions or discusses an issue with us without providing detailed data or documentation.

During our evaluation of equal employment opportunity and disciplinary actions for a subcommittee of the House Committee on the Post Office and Civil Service, the CIA provided us with limited access to information. CIA officials allowed us to review their personnel regulations and take notes, but they did not allow us to review personnel folders on individual disciplinary actions. This was in contrast to the National Security Agency and Defense Intelligence Agency, which gave us full access to personnel folders on individual terminations and disciplinary actions.

For our review of the Department of Defense's efforts to address the growing risk to U.S. electronic systems from high-powered radio frequency weapons for the Joint Economic Committee, the CIA limited our access to one meeting. Although the technology associated with such systems was discussed at the meeting, the CIA did not provide any documentation on research being conducted by foreign nations.

On some of our audits related to national security issues, the CIA provides us with limited access to its written threat assessments and analyses, such as National Intelligence Estimates. However, the CIA restricts our access to reading the documents and taking notes at the CIA or other locations. Examples include our readings of National Intelligence Estimates related to our ongoing work evaluating federal programs to combat terrorism.

In other cases, the CIA simply denies us access to the information we requested. The CIA's refusals are not related to the classification level of the material. Many of our staff have the high-level security clearances and accesses needed to review intelligence information. But the CIA considers our requests as having some implication of oversight and denies us access.

For our evaluation of national intelligence estimates regarding missile threats for the House National Security Committee, the CIA refused to meet with us to discuss the general process and criteria for producing such estimates or the specific estimates we were reviewing. In addition, officials from the Departments of Defense, State, and Energy told us that CIA had asked them not to cooperate with us.

During our examination of overseas arrests of terrorists for the House Armed Services Committee and a subcommittee of the House Government Reform Committee, the CIA refused to meet with us to discuss intelligence issues related to such arrests. The CIA's actions were in contrast to those of two other departments that provided us full access to their staff and files.

On our review of classified computer systems in the federal government for a subcommittee of the House Government Reform Committee, we requested basic information on the number and nature of such systems. The CIA did not provide us with the information, claiming that they would not be able to participate in the review because the type of information is under the purview of congressional entities charged with overseeing the Intelligence Community.

For our review of the policies and procedures used by the Executive Office of the President to acquire and safeguard classified intelligence information, done for the House Rules Committee, we asked to review CIA forms documenting that personnel had been granted appropriate clearances. The CIA declined our request, advising us that type of information we were seeking came under the purview of congressional entities charged with overseeing the intelligence community.

CONCLUSION

Our access to CIA information and programs has been limited by both legal and practical factors. Through the years our access has varied and we have not done detailed audit work at CIA since the early 1960s. Today, our access is generally limited to obtaining information on threat assessments when the CIA does not perceives our audits as oversight of its activities. We foresee no major change in our current access without substantial support from Congress—the requestor of the vast majority of our work. Congressional impetus for change would have to include the support of the intelligence committees, who have generally not requested GAG reviews or evaluations of CIA activities. With such support, we could evaluate some of the basic management functions at CIA that we now evaluate throughout the federal government.

This concludes our testimony. We would be happy to answer any questions you may have.

GAO Contacts and Staff Acknowledgment

For future questions about this testimony, please contact Henry L. Hinton, Jr., Managing Director, Defense Capabilities and Management at (202) 512–4300. Individuals making key contributions to this statement include Stephen L. Caldwell, James Reid, and David Hancock.

APPENDIX I: LEGAL FRAMEWORK FOR GAO AND CIA

GAO'S AUDIT AUTHORITY

The following statutory provisions give GAO broad authority to review agency programs and activities:

31 U.S.C. 712: GAO has the responsibility and authority for investigating matters relating to the receipt, disbursement, and use of public money, and for investigating and reporting to either House of Congress or appropriate congressional committees.

1 U.S.C. 717: GAO is authorized to evaluate the results of programs and activities of federal agencies. Reviews are based upon the initiative of the Comptroller General, an order from either House of Congress, or a request from a committee with jurisdiction.

31 U.S.C. 3523: This provision authorizes GAO to audit financial transactions of each agency, except as specifically provided by law.

31 U.S.C. 3524: This section authorizes GAO to audit unvouchered accounts (*i.e.*, those accounted for solely on the certificate of an executive branch official). The President may exempt sensitive foreign intelligence and counterintelligence transactions. CIA expenditures on objects of a confidential, extraordinary, or emergency nature under 50 U.S.C. 403j(b) are also exempt. Transactions in these categories may be reviewed by the intelligence committees.

GAO'S ACCESS-TO-RECORDS AUTHORITY

31 U.S.C. 716: GAO has a broad right of access to agency records. Subsection 716(a) requires agencies to give GAO information it requires about the ''duties, powers, activities, organization, and financial transactions of the agency.'' This provision gives GAO a generally unrestricted right of access to agency records. GAO in turn is required to maintain the same level of confidentiality for the information as is required of the head of the agency from which it is obtained.

Section 716 also gives GAO the authority to enforce its requests for records by filing a civil action in federal district court. Under the enforcement provisions in 31 U.S.C. 716(d)(1), GAO is precluded from bringing a civil action to compel the production of a record if:

1. the record relates to activities the President designates as foreign intelligence or counterintelligence (see Executive Order No. 12333, defining these terms);
2. the record is specifically exempted from disclosure to GAO by statute; or
3. the President or the Director of the Office of Management and Budget certifies to the Comptroller General and Congress that a record could be withheld under the Freedom of Information Act exemptions in 5 U.S.C. 552(b)(5) or (7) (relating to deliberative process and law enforcement information, respectively), and that disclosure of the information reasonably could be expected to impair substantially the operations of the government.

Although these exceptions do not restrict GAO's basic rights of access under 31 U.S.C. 716(a), they do limit GAO's ability to compel the production of particular records through a court action.

RELEVANT CIA LEGISLATION

The CIA has broad authority to protect intelligence-related information but must keep the intelligence committees fully and currently informed of the intelligence activities of the United States.

50 U.S.C. 403–3(c)(6) and 403g: Section 403–3 requires the Director of the CIA to protect ''intelligence sources and methods from unauthorized disclosure. . . .'' Section 403g exempts the CIA from laws ''which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. With the exception of unvouchered expenditures, CIA's disclosure of information to GAO would be an authorized and proper disclosure under 31 U.S.C. 716(a).

50 U.S.C. 403j: The CIA has broad discretion to use appropriated funds for various purposes (e.g., personal services, transportation, printing and binding, and purchases of firearms) without regard to laws and regulations relating to the expenditure of government funds. The statute also authorizes the Director to establish an unvouchered account for objects of a confidential, extraordinary, or emergency nature. We recognize that the CIA's unvouchered account authority constitutes an exception to GAO's audit and access authority, but this account deals with only a portion of CIA's funding activities.

50 U.S.C. 413: This section provides a method for maintaining congressional oversight over intelligence activities within the executive branch. The statute requires the President to ensure that the intelligence committees (the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence are kept fully and currently informed of U.S. intelligence activities.

REPORT LANGUAGE

Section 1 of the Act provides that the Act may be cited as the ''Intelligence Community Audit Act of 2006''.

Section 2(a) of the Act adds a new Section (3523a) to title 31, United States Code, with respect to the Comptroller General's authority to audit or evaluate activities of the intelligence community. New Section 3523a(b)(1) reaffirms that the Comptroller General possesses, under his existing statutory authority, the authority to perform audits and evaluations of financial transactions, programs, and activities of elements of the intelligence community and to obtain access to records for the purposes of such audits and evaluations. Such work could be done at the request of the congressional intelligence committees or any committee of jurisdiction of the House of Representatives or Senate (including the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate), or at the Comptroller General's initiative, pursuant to the existing authorities referenced in new Section 3523a(b)(1). New Section 3523a(b)(2) further provides that these audits and evaluations under the Comptroller General's existing authority may include, but are not limited to, matters relating to the management and administration of elements of the intelligence community in areas such as strategic planning, financial management, information technology, human capital, knowledge management, information sharing, and change management. These audits and evaluations would be accompanied by the safeguards that the Government Accountability Office (GAO) has in place to protect classified and other sensitive information, including physical security arrangements, classification and sensitivity reviews, and restricted distribution of certain products.

This reaffirmation is designed to respond to Executive Branch assertions that GAO does not have the authority to review activities of the intelligence community. To the contrary, GAO's current statutory audit and access authorities permit it to evaluate a wide range of activities in the intelligence community. To further ensure that GAO's authorities are appropriately construed in the future, the new Section 3523a(e), which is described below, makes clear that nothing in this or any other provision of law shall be construed as restricting or limiting the Comptroller General's authority to audit and evaluate, or obtain access to the records of, elements of the intelligence community absent specific statutory language restricting or limiting such audits, evaluations, or access to records.

New Section 3523a(c)(1) provides that Comptroller General audits or evaluations of intelligence sources and methods, or covert actions may be undertaken only upon the request of the Select Committee on Intelligence of the Senate, or the Permanent Select Committee on Intelligence of the House of Representatives, or the majority or the minority leader of the Senate or the House of Representatives. This limitation is intended to recognize the heightened sensitivity of audits and evaluations relating to intelligence sources and methods, or covert actions.

The new Section 3523a(c)(2)(A) provides that the results of such audits or evaluations under Section 3523a(c) may be disclosed only to the original requestor, the Director of National Intelligence, and the head of the relevant element of the intelligence community. Since the methods GAO uses to communicate the results of its audits or evaluations vary, this provision restricts the dissemination of GAO's findings under Section 3523a(c), whether through testimony, oral briefings, or written reports, to only the original requestor, the Director of National Intelligence, and the head of the relevant element of the intelligence community. Similarly, under new Section 3523a(c)(2)(B), the Comptroller General may only provide information obtained in the course of such an audit or evaluation to the original requestor, the Director of National Intelligence, and the head of the relevant element of the intelligence community.

The new Section 3523a(c)(3)(A) provides that notwithstanding any other provision of law, the Comptroller General may inspect records of any element of the intelligence community relating to intelligence sources and methods, or covert actions in order to perform audits and evaluations pursuant to Section 3523a(c). The Comptroller General's access extends to any records which belong to, or are in the possession and control of, the element of the intelligence community regardless of who was the original owner of such information. Under new Section 3523a(c)(3)(B), the Comptroller General may enforce the access rights provided under this subsection pursuant to section 716 of title 31. However, before the Comptroller General files a report pursuant to 31 U.S.C. 716(b)(1), the Comptroller General must consult with the original requestor concerning the Comptroller General's intent to file a report.

The new Section 3523a(c)(4) reiterates the Comptroller General's obligations to protect the confidentiality of information and adds special safeguards to protect records and information obtained from elements of the intelligence community for audits and evaluations performed under Section 3523a(c). For example, pursuant to new Section 3523a(c)(4)(B), the Comptroller General is to maintain on site, in facilities furnished by the element of the intelligence community subject to audit or evaluation, all workpapers and records obtained for the audit or evaluation. Under new Section 3523a(c)(4)(C), the Comptroller General is directed, after consulting with the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, to establish procedures to protect from unauthorized disclosure all classified and other sensitive information furnished to the Comptroller General under Section 3523a(c). Under new Section 3523a(c)(4)(D), prior to initiating an audit or evaluation under Section 3523a(c), the Comptroller General shall provide the Director of National Intelligence and the head of the relevant element of the intelligence community with the name of each officer and employee of the Government Accountability Office who has obtained appropriate security clearances.

The new Section 3523a(d) provides that elements of the intelligence community shall cooperate fully with the Comptroller General and provide timely responses to Comptroller General requests for documentation and information.

The new Section 3523a(e) makes clear that nothing in this or any other provision of law shall be construed as restricting or limiting the Comptroller General's authority to audit and evaluate, or obtain access to the records of, elements of the intelligence community absent specific statutory language restricting or limiting such audits, evaluations, or access to records.

S. 3968

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 ''Intelligence Community Audit Act of 2006''.

SEC. 2. COMPTROLLER GENERAL AUDITS AND EVALUATIONS OF ACTIVITIES OF ELEMENTS OF THE INTELLIGENCE COMMUNITY.

(a) REAFFIRMATION OF AUTHORITY; AUDITS OF INTELLIGENCE COMMUNITY ACTIVITIES.—Chapter 35 of title 31, United States Code, is amended by inserting after section 3523 the following:

''§ 3523a. Audits of intelligence community; audit requesters

''(a) In this section, the term 'element of the intelligence community' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''(b) Congress finds that—

''(1) the authority of the Comptroller General to perform audits and evaluations of financial transactions, programs, and activities of elements of the intelligence community under sections 712, 717, 3523, and 3524, and to obtain access to records for purposes of such audits and evaluations under section 716, is reaffirmed; and

''(2) such audits and evaluations may be requested by any committee of jurisdiction (including the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate), and may include but are not limited to matters relating to the management and administration of elements of the intelligence community in areas such as strategic planning, financial management, information technology, human capital, knowledge management, information sharing (including information sharing by and with the Department of Homeland Security), and change management.

''(c)(1) The Comptroller General may conduct an audit or evaluation of intelligence sources and methods or covert actions only upon request of the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives, or the majority or the minority leader of the Senate or the House of Representatives.

''(2)(A) Whenever the Comptroller General conducts an audit or evaluation under paragraph (1), the Comptroller General shall provide the results of such audit or evaluation only to the original requestor, the Director of National Intelligence, and the head of the relevant element of the intelligence community.

''(B) The Comptroller General may only provide information obtained in the course of an audit or evaluation under paragraph (1) to the original requestor, the Director of National Intelligence, and the head of the relevant element of the intelligence community.

''(3)(A) Notwithstanding any other provision of law, the Comptroller General may inspect records of any element of the intelligence community relating to intelligence sources and methods, or covert actions in order to conduct audits and evaluations under paragraph (1).

''(B) If in the conduct of an audit or evaluation under paragraph (1), an agency record is not made available to the Comptroller General in accordance with section 716, the Comptroller General shall consult with the original requestor before filing a report under subsection (b)(1) of that section.

''(4)(A) The Comptroller General shall maintain the same level of confidentiality for a record made available for conducting an audit under paragraph (1) as is required of the head of the element of the intelligence community from which it is obtained. Officers and employees of the Government Accountability Office are subject to the same statutory penalties for unauthorized disclosure or use as officers or employees of the intelligence community element that provided the Comptroller General or officers and employees of the Government Accountability Office with access to such records.

''(B) All workpapers of the Comptroller General and all records and property of any element of the intelligence community that the Comptroller General uses during an audit or evaluation under paragraph (1) shall remain in facilities provided by that element of the intelligence community. Elements of the intelligence community shall give the Comptroller General suitable and secure offices and furniture, telephones, and access to copying facilities, for purposes of audits and evaluations under paragraph (1).

''(C) After consultation with the Select Committee on Intelligence of the Senate and with the Permanent Select Committee on Intelligence of the House of Representatives, the Comptroller General shall establish procedures to protect from unauthorized disclosure all classified and other sensitive information furnished to the Comptroller General or any representative of the Comptroller General for conducting an audit or evaluation under paragraph (1).

''(D) Before initiating an audit or evaluation under paragraph (1), the Comptroller General shall provide the Director of National Intelligence and the head of the relevant element with the name of each officer and employee of the Government Accountability Office who has obtained appropriate security clearance and to whom, upon proper identification, records, and information of the element of the intelligence community shall be made available in conducting the audit or evaluation.

''(d) Elements of the intelligence community shall cooperate fully with the Comptroller General and provide timely responses to Comptroller General requests for documentation and information.

''(e) Nothing in this section or any other provision of law shall be construed as restricting or limiting the authority of the Comptroller General to audit and evaluate, or obtain access to the records of, elements of the intelligence community absent specific statutory language restricting or limiting such audits, evaluations, or access to records.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 35 of title 31, United States Code, is amended by inserting after the item relating to section 3523 the following:

''3523a. Audits of intelligence community; audits and requesters.''.

By Mr. OBAMA (for himself and Mrs. CLINTON):

S. 3969. A bill to amend the Toxic Substances Control Act to assess and reduce the levels of lead found in child-occupied facilities in the United States, and for other purposes; to the Committee on Environment and Public Works.

Mr. OBAMA. Mr. President, I rise today to introduce the Lead Poisoning Reduction Act of 2006. I am pleased that Senator CLINTON is joining me in this effort.

Lead is a poison we have known about for a long time. Studies have long linked lead exposure to learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death. Lead is particularly damaging to children because their developing brains are more susceptible to harm.

A study released last week found that children with even very low levels of lead exposure have four times the risk of attention-deficit hyperactivity disorder (ADHD) than normal and that childhood lead exposure leads to 290,000 cases of ADHD.

The major source of lead exposure among U.S. children is lead-based paint. In 1978, the Consumer Product Safety Commission recognized this hazard and banned leaded paints. But today, 30 years later, about 24 million older homes, and millions of other buildings, have deteriorating lead paint and elevated levels of lead-contaminated dust.

We know how children are typically exposed. We know what the health effects from exposure are. And we know how to fix the source of the exposure. The one thing we don't know how to do is reverse the brain damage once it has occurred. So, otherwise healthy children wind up facing a lifetime of disadvantage because we have failed to eradicate this insidious problem.

Every day, millions of American parents drop their children off at child care facilities on their way to work. Nearly 12 million children under age 5 spend 40 hours a week in child care. And every day, many of those children in older buildings may be exposed to lead poisoning.

While many child care facilities have taken steps to ensure sources of potential lead exposure are eliminated, too many operate in older buildings that need repair or remodeling to ensure these sources are contained. These facilities may be in wealthy communities, but more often than not, they are in poor communities where parents have few choices for child care. I'm sure many of these facilities would fix the problem if they only had the resources.

The Lead Poisoning Reduction Act protects our children in two ways.

First, the bill establishes a five-year, $42.6 million grant program to help communities reduce lead exposure in facilities such as day care centers, Head Start centers, and kindergarten classrooms where young children spend a great deal of time. Communities

could use the funds for testing, abatement, and communicating the risks of lead to children and parents.

Second, the bill requires the Environmental Protection Agency to establish regulations to eliminate sources of lead exposure in child care facilities, starting with new facilities in 18 months and all facilities in five years.

It's a straightforward fix to a straightforward problem. I hope my colleagues join me in helping to create lead-safe environments in all child care facilities.

Mrs. CLINTON. Mr. President, I join my colleague, Senator OBAMA, in support of the Lead Poisoning Reduction Act of 2006. This legislation would close an important gap in primary prevention strategies by providing critical resources to make all nonhome-based childcare facilities and Head Start Programs lead-safe within 5 years.

Lead is highly toxic and continues to be a serious, persistent, and entirely preventable threat to the health and well-being of our children. Lead poisoning continues to pose an unacceptable environmental health risk to infants, children, and pregnant women in the United States, particularly in minority and low-income communities. A CDC survey conducted between 1999 and 2002, estimated that 310,000 American children under 6 were at risk for exposure to harmful lead levels in United States. Childhood lead poisoning has been linked to impaired growth and function of vital organs and problems with intellectual and behavioral development. A study from the New England Journal of Medicine also found that children suffered up to a 7.4-percent decrease in IQ at lead levels that CDC considers safe. At very high levels, lead poisoning can cause seizures, coma, and even death.

It is critical that we remove lead hazards where our children live, learn, and play. We especially need to eliminate these risks and hazards that continue to persist in childcare facilities and schools. Nearly 12 million children under age 5 spend 40 hours a week in childcare. Lead paint in older buildings is a primary source of exposure, but significant lead exposure can also come from tap water. The Department of Housing and Urban Development estimates that about 14,200 childcare facilities have considerable lead-based hazards present. In addition, a recent report by the U.S. Government Accountability Office, GAO, identified significant, systemic problems with the way in which the Environmental Protection Agency, EPA, monitors and regulates the levels of lead in our Nation's drinking water, including a complete lack of reliable data on which to make assessments and decisions. The GAO study found that few schools and childcare facilities nationwide have tested their water for lead, and no focal point exists at either the national or State level to collect and analyze test results. Few States have comprehensive programs to detect and remediate lead in drinking water at schools and childcare facilities. Only five States have required general lead testing for schools, and of those, only four require childcare facilities to test for lead when obtaining or renewing their licenses. Almost half the States reported having no lead efforts of any kind. State and local officials need more information on the pervasiveness of lead contamination to know how best to address the issue.

Each year in New York State an additional 10,000 children under the age of 6 years are newly identified as having elevated blood lead levels, and over 200,000 children in New York have had documented lead poisoning between 1992 to 2004. Exposure to lead results in increased expenses each year for New York in the form of special educational and other educational expenses, medical care for lead-poisoned children, and expenditures for delinquent youth and others needing special supervision. It is estimated that these increased expenses, as well as lost earnings, exceed $4 billion annually. New York City and Rochester have been at the forefront of grassroots efforts to combat lead poisoning, and this bill would provide important resources and incentives to implement their model programs nationwide.

By Mr. GRASSLEY (for himself, Mr. ISAKSON, Mr. CHAMBLISS, Mr. BURR, and Ms. MURKOWSKI):

S. 3972. A bill to amend title XXI of the Social Security Act to reduce funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I am pleased to introduce the ''Fiscal Accountability, Integrity and Responsibility in SCHIP'' or FAIR–SCHIP Act. I am pleased to be joined in this effort by Senator JOHNNY ISAKSON, R–GA, Senator SAXBY CHAMBLESS, R–GA, SENATOR RICHARD BURR, R–NC and Senator LISA MURKOWSKI, R–AK. This legislation is a targeted one year approach to addressing a looming problem in the State Children's Health Insurance Program (SCHIP).

According to estimates prepared by the Congressional Research Service, as many as 17 States will run out of SCHIP funds in 2007. Several States will run shortfalls in the hundreds of millions of dollars. These shortfalls will result in States having to limit the coverage available to low-income children. These shortfalls are deep and they will get deeper.

One of my principal objectives in the 110th Congress will be to reauthorize the SCHIP program. There are a number of compelling issues associated with the SCHIP program that will require thoughtful review and discussion by Members of Congress.

Reauthorization will not be easy. Legislating on an issue as complex and sensitive as children's health care is never easy. However, if the Congress does not act to address some of these policies as well as the SCHIP formula, one thing is certain: The current State entitlement is not sufficient, in the long term, to cover the costs of maintaining the current level of coverage provided by the States.

I am aware of legislation introduced in the Senate and the House that would simply appropriate additional funds to cover the SCHIP shortfalls. This is not a viable option.

If the Congress perpetuates a scenario where the SCHIP funding formula is not improved and other programmatic changes are not enacted, yet State SCHIP shortfalls covered year after year, there will be no practical difference between SCHIP, which is a capped allotment, and Medicaid, which is an open ended entitlement.

I do not believe there is majority support for turning the SCHIP program into an entitlement program. I am concerned what going down a path that essentially does treat SCHIP as a de facto entitlement program means for the long standing viability of SCHIP. Therefore, the approach envisioned in FAIR–SCHIP takes a balanced, moderate approach to addressing this issue.

FAIR–SCHIP recognizes that additional resources will be needed if States are to be able to continue to provide the current level of coverage for children.

FAIR–SCHIP also recognizes that funding under the SCHIP programs can be more equitably distributed.

FAIR–SCHIP takes a moderate, balanced approach by appropriating approximately half of the estimated Fiscal Year 07 shortfall.

FAIR–SCHIP also includes a modest redistribution scenario that would occur in the second half of the fiscal year and only affect the 05 allotments of States which have a 200 percent surplus of SCHIP funds, relative to their projected 07 spending.

FAIR–SCHIP is a fiscally sound, responsible approach to the issue of SCHIP shortfalls that will position the Congress to achieve important programmatic improvements in the 110th Congress, when the SCHIP program will need to be reauthorized.

I ask unanimous consent that the text of the bill be printed in the RECORD.

I hope my colleagues will support the approach envisioned by FAIR–SCHIP.

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

S. 3972

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 ''Fiscal Accountability, Integrity, and Responsibility in SCHIP Act of 2006''or the ''FAIR-SCHIP Act of 2006''.

SEC. 2. FUNDING OF THE SCHIP ALLOTMENT SHORTFALLS FOR FISCAL YEAR 2007.

(a) IN GENERAL.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by adding at the end the following new subsection:

''(h) SPECIAL RULES TO ADDRESS FISCAL YEAR 2007 SHORTFALLS.—

''(1) INITIAL DOWN PAYMENT ON SHORTFALL FOR FISCAL YEAR 2007.—The provisions of subsection (d) shall apply with respect to fiscal year 2007 in the same manner as they apply to fiscal year 2006, except that, for purposes of this paragraph—

''(A) any reference to 'fiscal year 2006', 'December 16, 2005', '2005', '2004', 'September 30, 2006' and 'October 1, 2006' shall be deemed a reference to 'fiscal year 2007', 'December 16 2006', '2006', '2005', 'September 30, 2007' and 'October 1, 2007' respectively;

''(B) there shall be substituted for the dollar amount specified in subsection (d)(1), and shall be treated as the amount appropriated under such subsection, $450,000,000;

''(C) paragraphs (3)(B) and (4) of subsection (d) shall not apply (and paragraph (4) of this subsection shall apply in lieu of paragraph (4) of such subsection);

''(D) if the dollar amount specified in subparagraph (B) is not at least equal to the total of the shortfalls described in subsection (d)(2) (as applied under this paragraph), the amounts under subsection (d)(3) (as applied under this paragraph) shall be ratably reduced.

''(2) FUNDING REMAINDER OF SHORTFALL FOR FISCAL YEAR 2007 THROUGH REDISTRIBUTION OF CERTAIN UNUSED FISCAL YEAR 2005 ALLOTMENTS.—

''(A) IN GENERAL.—Subject to subparagraph (C), the Secretary shall provide for a redistribution under subsection (f) from amounts made available for redistribution under paragraph (3), to each shortfall State described in subparagraph (B) that is one of the 50 States or District of Columbia, such amount as the Secretary determines will eliminate the estimated shortfall described in such subparagraph for the State.

''(B) SHORTFALL STATE DESCRIBED.—For purposes of this paragraph, a shortfall State described in this subparagraph is a State with a State child health plan approved under this title for which the Secretary estimates, on the basis of the most recent data available to the Secretary as of March 31, 2007, that the projected expenditures under such plan for such State for fiscal year 2007 will exceed the sum of—

''(i) the amount of the State's allotments for each of fiscal years 2005 and 2006 that will not be expended by the end of fiscal year 2006;

''(ii) the amount, if any, that is to be redistributed to the State during fiscal year 2007 in accordance with subsection (f) (other than under this paragraph);

''(iii) the amount of the State's allotment for fiscal year 2007; and

''(iv) the amount of any additional allotment to the State under paragraph (1).

''(C) PRORATION RULE.—If the amounts available for redistribution under paragraph (3) are less than the total amounts computed under subparagraph (A), the amount computed under subparagraph (A) for each shortfall State shall be reduced proportionally.

''(3) TREATMENT OF CERTAIN STATES WITH FISCAL YEAR 2005 ALLOTMENTS UNEXPENDED AT THE END OF THE FIRST HALF OF FISCAL YEAR 2007.—

''(A) IDENTIFICATION OF STATES.—The Secretary—

''(i) shall identify those States that received an allotment for fiscal year 2005 under subsection (b) which have not expended all of such allotment by March 31, 2007; and

''(ii) for each such State shall determine—

''(I) the portion of such allotment that was not so expended by such date; and

''(II) whether the State is a described in subparagraph (B).

''(B) STATES WITH FUNDS IN EXCESS OF 200 PERCENT OF NEED.—A State described in this subparagraph is a State for which the Secretary determines, as of March 31, 2007, the total of all available allotments under this title as of such date, is at least equal to 200 percent of the total projected expenditures under this title for the State for fiscal year 2007.

''(C) REDISTRIBUTION AND LIMITATION ON AVAILABILITY.—

''(i) APPLICATION TO PORTION OF UNUSED ALLOTMENTS FOR CERTAIN STATES.—In the case of a State identified under subparagraph (A)(i) that is also described in subparagraph (B), notwithstanding subsection (e), the percentage specified by the Secretary in clause (ii) of the amount described in subparagraph (A)(ii)(I) shall not be available for expenditure on or after April 1, 2007.

''(ii) PERCENTAGE SPECIFIED.—The Secretary shall specify a percentage which—

''(I) does not exceed 75 percent; and

''(II) when applied under clause (i) results in the total of the amounts under such clause equaling the total of the amounts under paragraph (2)(A).

''(4) USE OF ADDITIONAL ALLOTMENT.—Additional allotments provided under this subsection are only available for amounts expended under a State plan approved under this title for child health assistance for targeted low-income children or child health assistance or other health benefits coverage for pregnant women.

''(5) RETROSPECTIVE ADJUSTMENT.—The Secretary may adjust the determinations made under paragraphs (2) and (3) as necessary on the basis of the amounts reported by States not later than November 30, 2007, on CMS Form 64 or CMS Form 21, as the case may be and as approved by the Secretary, but in no case may the percentage specified in paragraph (3)(C)(ii) exceed 75 percent.

''(6) 1-YEAR AVAILABILITY; NO REDISTRIBUTION OF UNEXPENDED ADDITIONAL ALLOTMENTS.—

''(A) IN GENERAL.—Notwithstanding subsections (e) and (f), amounts allotted or redistributed to a State pursuant to this subsection for fiscal year 2007 shall only remain available for expenditure by the State through September 30, 2007, and any amounts of such allotments or redistributions that remain unexpended as of such date, shall not be subject to redistribution under subsection (f). Nothing in the preceding sentence shall be construed as limiting the ability of the Secretary to adjust the determinations made under paragraphs (2) and (3) in accordance with paragraph (5).

''(B) REVERSION UPON TERMINATION OF RETROSPECTIVE ADJUSTMENT PERIOD.—Any amounts of such allotments or redistributions that remain unexpended as of September 30, 2007, shall revert to the Treasury on December 31, 2007.''.

(b) EXTENDING AUTHORITY FOR QUALIFYING STATES TO USE CERTAIN FUNDS FOR MEDICAID EXPENDITURES.—Section 2105(g)(1)(A) of such Act (42 U.S.C. 1397ee(g)(1)(A)) is amended by striking ''or 2005'' and inserting ''2005, 2006, or 2007''.

By Mr. BINGAMAN:

S. 3975. A bill to amend the Public Health Service Act to provide grants to promote positive health behaviors in women and children; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today, entitled the ''Community Health Workers Act of 2006,'' would improve access to health education and outreach services to women in medically underserved areas, including the U.S. border region along New Mexico.

Lack of access to adequate health care and health education is a significant problem on the southern New Mexico border. While the access problem is in part due to a lack of insurance, it is also attributable to non-financial barriers to access. These barriers include a shortage of physicians and other health professionals, and hospitals; inadequate transportation; a shortage of bilingual health information and health providers; and culturally insensitive systems of care.

This legislation would help to address the issue of access by providing $15 million per year for a three year period in grants to State, local, and tribal organizations, including community health centers and public health departments, for the purpose of hiring community health workers to provide health education, outreach, and referrals to women and families who otherwise would have little or no contact with health care services.

Recognizing factors such as poverty and language and cultural differences that often serve as barriers to health care access in medically underserved populations, community health workers are in a unique position to improve health outcomes and quality of care for groups that have traditionally lacked access to adequate services. They often serve as ''community specialists'' and are members of the communities in which they work. As such they can effectively serve hard-to-reach populations.

A shining example of how community health workers serve their communities, a group of so-called ''promotoras'' in Dona Ana County were quickly mobilized during a recent flood emergency in rural New Mexico. These community health workers assisted in the disaster recovery efforts by partnering with FEMA to find, inform and register flood victims for Federal disaster assistance. Their personal networks and knowledge of the local culture, language, needs, assets, and barriers greatly enhanced FEMA's community outreach efforts. The promotoras of Dona Ana County demonstrate the important role community health workers could play in communities across the nation, including increasing the effectiveness of new initiatives in homeland security and emergency preparedness, and in implementing risk communication strategies.

The positive benefits of the community health worker model also have been documented in research studies. Research has shown that community health workers have been effective in increasing the utilization of health preventive services such as cancer screenings and medical follow up for elevated blood pressure and improving enrollment in publicly funded health insurance programs. In the case of uninsured children, a study by Dr. Glenn Flores, ''Community-Based Case Management in Insuring Uninsured Latino Children,'' published in the December

2005 issue of Pediatrics found that uninsured children who received community-based case management were eight times more likely to obtain health insurance coverage than other children involved in the study because case workers were employed to address typical barriers to access, including insufficient knowledge about application processes and eligibility criteria, language barriers and family mobility issues, among others. This study confirms that community health workers could be highly effective in reducing the numbers of uninsured children, especially those who are at greatest risk for being uninsured. Preliminary investigation of a community health workers project in New Mexico similarly suggests that community health workers could be useful in improving enrollment in Medicaid and the Children's Health Insurance Program, SCHIP.

According to a 2003 Institute of Medicine, IOM, report entitled, ''Unequal Treatment: Confronting Racial and Ethnic Disparities in Healthcare,'' community health workers offer promise as a community-based resource to increase racial and ethnic minorities' access to health care and to serve as a liaison between healthcare providers and the communities they serve.''

Although the community health worker model is valued in the New Mexico border region as well as other parts of the country that encounter challenges of meeting the health care needs of medically underserved populations, these programs often have difficulty securing adequate financial resources to maintain and expand upon their services. As a result, many of these programs are significantly limited in their ability to meet the ongoing and emerging health demands of their communities.

The IOM report also noted that ''programs to support the use of community health workers . . . especially among medically underserved and racial and ethnic minority populations, should be expanded, evaluated, and replicated.''

I am introducing this legislation to increase resources for a model that has shown significant promise for increasing access to quality health care and health education for families in medically underserved communities.

I ask unanimous consent that the text of the bill and Dr. Flores' study on community-based case management be printed in the RECORD.

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

S. 3975

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 Health Workers Act of 2006''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Chronic diseases, defined as any condition that requires regular medical attention or medication, are the leading cause of death and disability for women in the United States across racial and ethnic groups.

(2) According to the National Vital Statistics Report of 2001, the 5 leading causes of death among Hispanic, American Indian, and African-American women are heart disease, cancer, diabetes, cerebrovascular disease, and unintentional injuries.

(3) Unhealthy behaviors alone lead to more than 50 percent of premature deaths in the United States.

(4) Poor diet, physical inactivity, tobacco use, and alcohol and drug abuse are the health risk behaviors that most often lead to disease, premature death, and disability, and are particularly prevalent among many groups of minority women.

(5) Over 60 percent of Hispanic and African-American women are classified as overweight and over 30 percent are classified as obese. Over 60 percent of American Indian women are classified as obese.

(6) American Indian women have the highest mortality rates related to alcohol and drug use of all women in the United States.

(7) High poverty rates coupled with barriers to health preventive services and medical care contribute to racial and ethnic disparities in health factors, including premature death, life expectancy, risk factors associated with major diseases, and the extent and severity of illnesses.

(8) There is increasing evidence that early life experiences are associated with adult chronic disease and that prevention and intervention services provided within the community and the home may lessen the impact of chronic outcomes, while strengthening families and communities.

(9) Community health workers, who are primarily women, can be a critical component in conducting health promotion and disease prevention efforts in medically underserved populations.

(10) Recognizing the difficult barriers confronting medically underserved communities (poverty, geographic isolation, language and cultural differences, lack of transportation, low literacy, and lack of access to services), community health workers are in a unique position to reduce preventable morbidity and mortality, improve the quality of life, and increase the utilization of available preventive health services for community members.

(11) Research has shown that community health workers have been effective in significantly increasing health insurance coverage, screening and medical follow-up visits among residents with limited access or underutilization of health care services.

(12) States on the United States-Mexico border have high percentages of impoverished and ethnic minority populations: border States accommodate 60 percent of the total Hispanic population and 23 percent of the total population below 200 percent poverty in the United States.

SEC. 3. GRANTS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN WOMEN.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

''SEC. 399P. GRANTS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN WOMEN.

''(a) GRANTS AUTHORIZED.—The Secretary, in collaboration with the Director of the Centers for Disease Control and Prevention and other Federal officials determined appropriate by the Secretary, is authorized to award grants to States or local or tribal units, to promote positive health behaviors for women in target populations, especially racial and ethnic minority women in medically underserved communities.

''(b) USE OF FUNDS.—Grants awarded pursuant to subsection (a) may be used to support community health workers—

''(1) to educate, guide, and provide outreach in a community setting regarding health problems prevalent among women and especially among racial and ethnic minority women;

''(2) to educate, guide, and provide experiential learning opportunities that target behavioral risk factors including—

''(A) poor nutrition;

''(B) physical inactivity;

''(C) being overweight or obese;

''(D) tobacco use;

''(E) alcohol and substance use;

''(F) injury and violence;

''(G) risky sexual behavior; and

''(H) mental health problems;

''(3) to educate and guide regarding effective strategies to promote positive health behaviors within the family;

''(4) to educate and provide outreach regarding enrollment in health insurance including the State Children's Health Insurance Program under title XXI of the Social Security Act, Medicare under title XVIII of such Act and Medicaid under title XIX of such Act;

''(5) to promote community wellness and awareness; and

''(6) to educate and refer target populations to appropriate health care agencies and community-based programs and organizations in order to increase access to quality health care services, including preventive health services.

''(c) APPLICATION.—

''(1) IN GENERAL.—Each State or local or tribal unit (including federally recognized tribes and Alaska native villages) that desires to receive a grant under subsection (a) shall submit an application to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may require.

''(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

''(A) describe the activities for which assistance under this section is sought;

''(B) contain an assurance that with respect to each community health worker program receiving funds under the grant awarded, such program provides training and supervision to community health workers to enable such workers to provide authorized program services;

''(C) contain an assurance that the applicant will evaluate the effectiveness of community health worker programs receiving funds under the grant;

''(D) contain an assurance that each community health worker program receiving funds under the grant will provide services in the cultural context most appropriate for the individuals served by the program;

''(E) contain a plan to document and disseminate project description and results to other States and organizations as identified by the Secretary; and

''(F) describe plans to enhance the capacity of individuals to utilize health services and health-related social services under Federal, State, and local programs by—

''(i) assisting individuals in establishing eligibility under the programs and in receiving the services or other benefits of the programs; and

''(ii) providing other services as the Secretary determines to be appropriate, that may include transportation and translation services.

''(d) PRIORITY.—In awarding grants under subsection (a), the Secretary shall give priority to those applicants—

''(1) who propose to target geographic areas—

''(A) with a high percentage of residents who are eligible for health insurance but are uninsured or underinsured;

''(B) with a high percentage of families for whom English is not their primary language; and

''(C) that encompass the United States-Mexico border region;

''(2) with experience in providing health or health-related social services to individuals who are underserved with respect to such services; and

''(3) with documented community activity and experience with community health workers.

''(e) COLLABORATION WITH ACADEMIC INSTITUTIONS.—The Secretary shall encourage community health worker programs receiving funds under this section to collaborate with academic institutions. Nothing in this section shall be construed to require such collaboration.

''(f) QUALITY ASSURANCE AND COST-EFFECTIVENESS.—The Secretary shall establish guidelines for assuring the quality of the training and supervision of community health workers under the programs funded under this section and for assuring the cost-effectiveness of such programs.

''(g) MONITORING.—The Secretary shall monitor community health worker programs identified in approved applications and shall determine whether such programs are in compliance with the guidelines established under subsection (f).

''(h) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to community health worker programs identified in approved applications with respect to planning, developing, and operating programs under the grant.

''(i) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 4 years after the date on which the Secretary first awards grants under subsection (a), the Secretary shall submit to Congress a report regarding the grant project.

''(2) CONTENTS.—The report required under paragraph (1) shall include the following:

''(A) A description of the programs for which grant funds were used.

''(B) The number of individuals served.

''(C) An evaluation of—

''(i) the effectiveness of these programs;

''(ii) the cost of these programs; and

''(iii) the impact of the project on the health outcomes of the community residents.

''(D) Recommendations for sustaining the community health worker programs developed or assisted under this section.

''(E) Recommendations regarding training to enhance career opportunities for community health workers.

''(j) DEFINITIONS.—In this section:

''(1) COMMUNITY HEALTH WORKER.—The term 'community health worker' means an individual who promotes health or nutrition within the community in which the individual resides—

''(A) by serving as a liaison between communities and health care agencies;

''(B) by providing guidance and social assistance to community residents;

''(C) by enhancing community residents' ability to effectively communicate with health care providers;

''(D) by providing culturally and linguistically appropriate health or nutrition education;

''(E) by advocating for individual and community health or nutrition needs; and

''(F) by providing referral and followup services.

''(2) COMMUNITY SETTING.—The term 'community setting' means a home or a community organization located in the neighborhood in which a participant resides.

''(3) MEDICALLY UNDERSERVED COMMUNITY.—The term 'medically underserved community' means a community identified by a State—

''(A) that has a substantial number of individuals who are members of a medically underserved population, as defined by section 330(b)(3); and

''(B) a significant portion of which is a health professional shortage area as designated under section 332.

''(4) SUPPORT.—The term 'support' means the provision of training, supervision, and materials needed to effectively deliver the services described in subsection (b), reimbursement for services, and other benefits.

''(5) TARGET POPULATION.—The term 'target population' means women of reproductive age, regardless of their current childbearing status.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2007, 2008, and 2009.''.

A RANDOMIZED, CONTROLLED TRIAL OF THE EFFECTIVENESS OF COMMUNITY-BASED CASE MANAGEMENT IN INSURING UNINSURED LATINO CHILDREN

(By Flores, MD; Milagros Abreu, MD; Christine E. Chaisson, MPH; Alan Meyers, MD, MPH; Ramesh C. Sachdeva, MD, PhD, MBA; Harriet Fernandez, BA; Patricia Francisco, BA; Beatriz Diaz, BA; Ana Milena Diaz, BA; and Iris Santos-Guerrero, BA)

Abstract. Background. Lack of health insurance adversely affects children's health. Eight million U.S. children are uninsured, with Latinos being the racial/ethnic group at greatest risk for being uninsured. A randomized, controlled trial comparing the effectiveness of various public insurance strategies for insuring uninsured children has never been conducted.

Objective. To evaluate whether case managers are more effective than traditional methods in insuring uninsured Latino children.

Design. Randomized, controlled trial conducted from May 2002 to August 2004.

Setting and Participants. A total of 275 uninsured Latino children and their parents were recruited from urban community sites in Boston.

Intervention. Uninsured children were assigned randomly to an intervention group with trained case managers or a control group that received traditional Medicaid and State Children's Health Insurance Program (SCHIP) outreach and enrollment. Case managers provided information on program eligibility, helped families complete insurance applications, acted as a family liaison with Medicaid/SCHIP, and assisted in maintaining coverage.

Main Outcome Measures. Obtaining health insurance, coverage continuity, the time to obtain coverage, and parental satisfaction with the process of obtaining insurance for children were assessed. Subjects were contacted monthly for 1 year to monitor outcomes by a researcher blinded with respect to group assignment.

Results. One hundred thirty-nine subjects were assigned randomly to the intervention group and 136 to the control group. Intervention group children were significantly more likely to obtain health insurance (96% vs 57%) and had less than 8 times the adjusted odds (odds ratio: 7.78; 95% confidence interval: 5.20–11.64) of obtaining insurance. Seventy-eight percent of intervention group children were insured continuously, compared with 30% of control group children. Intervention group children obtained insurance significantly faster (mean: 87.5 vs 134.8 days), and their parents were significantly more satisfied with the process of obtaining insurance.

Conclusions. Community-based case managers are more effective than traditional Medicaid/SCHIP outreach and enrollment in insuring uninsured Latino children. Case management may be a useful mechanism to reduce the number of uninsured children, especially among high-risk populations. Pediatrics 2005; 116:1433–11441; insurance, Latino, Medicaid, medically uninsured, child health services, community health services.

There were 8.4 million children without health insurance coverage in the United States in 2003, equivalent to 11.4% of children 0 to 17 years old. Latino children have the highest risk of being uninsured of any racial/ethnic group of U.S. children, with 21% of Latino children being uninsured, compared with 7% of non-Latino white children, 14% of African American children, and 12% of Asian/Pacific Islander children. Other documented risk factors among children for having no insurance include poverty and noncitizen status of the parent and child.

Compared with children who have health insurance, uninsured children have less access to health care, are less likely to have a regular source of primary care, and use medical and dental care less often. Uninsured children are significantly more likely than insured children to be in poor or fair health; to not have a regular physician or other medical provider, to have made no medical visit in the past year, to be immunized inadequately, to experience adverse hospital outcomes as newborns, and to have higher mortality rates associated with trauma and coarctation of the aorta.

To expand insurance coverage for uninsured children, Congress enacted the State Children's Health Insurance Program (SCHIP) in 1997. This program targets uninsured children <19 years old with family incomes <200% of the federal poverty level who are ineligible for Medicaid and are not covered by private insurance. SCHIP is a matched block grant program that allocates more than $39 billion in federal funds over 10 years. It provides for states to increase coverage of uninsured children by raising the income limits of the Medicaid program so that more children are eligible, by creating a new state insurance program separate from Medicaid, or by implementing both measures. Multiple studies have documented that previously uninsured children experience significant increases in both access to health care and more appropriate use of services after enrollment in SCHIP and Medicaid.

Since the inception of SCHIP enrollment in January 1998, SCHIP has provided coverage to 3.9 million children, and the proportion of uninsured US children has decreased from 15.4 percent to 11.4 percent. In the past 4 years, however, the numbers and proportions of uninsured children essentially have not changed, wavering between 8.4 and 8.6 million and 11.4 percent to 11.9 percent, respectively. It has been estimated that well over one half of uninsured children (~5 million) are eligible for Medicaid or SCHIP, which suggests that more-effective outreach and enrollment strategies are needed. Indeed, recent research indicates that SCHIP may be failing to reach the ''hardest-to-reach'' subpopulations of uninsured children, such as Latinos and those who have never been insured.

A randomized, controlled trial has never been performed comparing traditional SCHIP and Medicaid outreach and enrollment versus alternative strategies in terms of their effectiveness in insuring uninsured children. Recent research revealed that the parents of uninsured Latino children viewed community-based case managers as an acceptable and helpful intervention for families seeking to insure their uninsured children. The aim of this study, therefore, was to conduct a randomized, controlled trial comparing community-based case management

with traditional SCHIP and Medicaid outreach and enrollment with respect to their effectiveness in insuring uninsured Latino children.

METHODS

Study Participants

Enrollment occurred from May 14, 2002, to September 30, 2003. Study participants were uninsured Latino children and their parents from 2 communities in the greater Boston area confirmed in prior research to have large proportions of both uninsured children and Latino children, ie, East Boston, where 37 percent of Latino children were found to be uninsured in prior studies and 39 percent of the population is Latino, and Jamaica Plain, where 27 percent of Latino children were found to be uninsured in prior studies and 24 percent of the population is Latino. Eligibility criteria included the following: (1) the child was 0 to 18 years old, (2) the child had no health insurance coverage and had been uninsured for ≥ 3 months (unless the child was an infant who had never been insured), (3) the parent identified her or his uninsured child's ethnicity as Latino, (4) the parent's primary language was English or Spanish, and (5) the parent was willing to be contacted monthly by telephone or through a home visit by research personnel (if no functioning telephone was present in the household). The focus of the intervention was Latino children because they are the racial/ethnic group of US children at greatest risk for being uninsured. When > 1 child in a family was uninsured, the youngest child was enrolled in the study as the ''index'' child (to ensure consistency), and data were collected only for that child.

Study participants were recruited primarily from the following community sites in East Boston and Jamaica Plain, which were confirmed in prior studies to have many eligible potential participants willing to take part in research: supermarkets, bodegas, self-service laundries, beauty salons, and churches. The remaining participants were recruited through referral by other participants and in response to notices posted at consulates and schools. Community sites for recruitment were selected to obtain samples of parents consisting of both documented and undocumented families in proportions reflecting the population in each community. This sampling method was chosen because traditional census block methods have the potential to undercount undocumented children and their families, given their fear of deportation when a stranger appears at the front door of a dwelling. The primary caretaker (herein referred to as the parent) of each uninsured child enrolled in the study received a $50 participation honorarium at enrollment and a $5 honorarium after each monthly follow-up contact.

Written informed parental consent (in English or Spanish, depending on parental preference) was obtained for all children enrolled. To avoid selection bias against parents with low literacy levels, parents could request that the written informed consent form be read to them by research personnel, in English or Spanish, before they signed the form. The study was approved by the institutional review boards of Boston Medical Center and the Children's Hospital of Wisconsin.

Baseline Assessments

Parents of eligible children completed a brief, verbally administered screening questionnaire (in English or Spanish, according to parental preference) to confirm eligibility, determine relevant baseline characteristics, and record contact information. Data were collected on the ages of the child and parent, the self-identified Latino subgroup, the number of years the parent had lived in the United States, parental English proficiency, the highest level of parental education, the employment status of the parent and spouse (if currently living in the same household), the annual combined family income, and the citizenship status of the parent. Additional information collected included the names of the parent and child, whether there was a functioning telephone in the household, the telephone number, the preferred alternate telephone number of friends or family members (if there was no functioning telephone in the household), and the family's address.

Randomization

Subjects were allocated to the case management intervention group or the control group with a computer-generated, stratified, randomization process. Stratified randomization ensures that compared maneuvers in a randomized trial are distributed suitably among pertinent subgroups. Randomization was stratified by community site, with separate allocation schedules prepared for participants from East Boston and Jamaica Plain. The randomization schedule was prepared with the RANUNI function of SAS software, version 8.2. Sequentially numbered, opaque, sealed envelopes were produced for each community site, to ensure adequate allocation concealment. Potential participants were informed that, depending on the randomization, some parents would get a case manager free of charge, who would help families obtain health insurance for their children, whereas other parents would get no case manager and would just be contacted monthly. Bilingual Latina research assistants who did not participate in any aspect of preparation of randomization schedules opened the envelopes in the presence of enrolled participants, to inform them of their group assignment. Parents of uninsured children allocated to the intervention group immediately were assigned a bilingual, Latina, community-based, case manager (the research assistant who opened the randomization envelope with the parent became the case manager for children assigned to the intervention group).

Study Intervention

Case managers performed the following functions for intervention group children and their families: (1) providing information on the types of insurance programs available and the application processes; (2) providing information and assistance on program eligibility requirements; (3) completing the child's insurance application with the parent and submitting the application for the family; (4) expediting final coverage decisions with early frequent contact with the Division of Medical Assistance (DMA) (the state agency administering Medicaid in Massachusetts) or the Department of Public Health (DPH) (the state agency responsible for the Children's Medical Security Plan [CMSP], which insures nonMedicaid-eligible children in Massachusetts, including noncitizens); (5) acting as a family advocate by being the liaison between the family and DMA or DPH; and (6) rectifying with DMA and DPH situations in which a child was inappropriately deemed ineligible for insurance or had coverage inappropriately discontinued.

All case managers received a 1-day intensive training session on major obstacles to insuring uninsured children reported by Latino parents in 6 focus groups, parents' perspectives on how a case manager would be most useful in assisting with the process of insuring uninsured children, completing the Medical Benefit Request (the single application used to enroll children in MassHealth [Medicaid in Massachusetts] and CMSP), following up on submitted applications, obtaining final coverage decisions, disputing applications that were rejected or deemed ineligible, and the study protocol for subject recruitment, enrollment, consent, and follow-up monitoring. These training sessions were held in collaboration with representatives from DMA and DPH. Case managers also received the following training: a 1-week session on MassHealth eligibility requirements conducted by DMA, a 4–hour session on insurance eligibility rules conducted by a DPH outreach coordinator, a 2–hour session on MassHealth managed care programs and rules, a 1-day session on CMSP conducted by a DPH representative, a 1-day seminar on insurance programs and general assistance for impoverished families conducted by Health Care for All (a nonprofit organization dedicated to improving access to health care for all people in the state of Massachusetts), monthly DMA technical forums on MassHealth, and 1 week of supervised case manager training in the community.

The case managers were bilingual Latina women (of Dominican, Puerto Rican, Mexican, or Colombian ethnicity) between 22 and 36 years old. All had graduated from high school, some had obtained college degrees, and 1 had postgraduate training. None had any prior experience working as case managers insuring uninsured children. They were recruited through job listings posted in the employment offices of local Boston colleges and universities.

Control Group

Control group subjects received no intervention other than the SCHlP standard-of-care outreach and enrollment efforts administered by the MassHealth and CMSP programs. In Massachusetts, DMA has stated that they ''have made every effort to implement broad-based outreach activities designed to draw attention of families, teachers, child care workers, health providers, youth and community organizations to enhanced opportunities in the Commonwealth for obtaining health insurance.'' These efforts include the use of (1) direct mailings, press releases, newspaper inserts, health fairs, and door-to-door canvassing of target neighborhoods; (2) special attempts to reach Latino communities, such as radio advertisements on Spanish-language programs and bilingual flyers; (3) mini-grants to community organizations to provide outreach and assistance with applications; and (4) a toll-free telephone number for applying for health benefits.

Outcome Measures

Using standardized telephone interview methods, a trained bilingual Latina research assistant who was blinded to participant group assignment obtained outcome data from the parents monthly for 11 months, beginning 1 month after the date of study enrollment. The research assistant also made home visits to families that lacked telephones in the household and to those that did not respond to ≥10 attempted telephone contacts. To ensure ongoing rigorous blinding, we asked parents not to reveal their group assignment at any time to the outcomes research assistant (and the blinded research assistant reported that no parents revealed their child's group assignment during the study).

The primary outcome measure was the child obtaining health insurance coverage, as determined in an interview with the parent and confirmed, when possible, through inspection of the coverage notification letter received by the family. Three secondary outcomes also were assessed. The number of days from study enrollment to obtaining coverage was determined by using the interval between the date of the participant's study enrollment and the date on which the

parent reported being notified officially that the child had obtained coverage. Episodic coverage was defined as obtaining but then losing insurance coverage at any time during the 12–month follow-up period and was determined through parental report and inspection of written notification. Parental satisfaction with the process of obtaining coverage for the child was determined by asking the parent, ''How satisfied were you with the process of trying to obtain health insurance coverage for your child?'' Parents responded by using a 5–point Likert scale (1 = very satisfied, 2 = satisfied, 3 = uncertain, 4 = dissatisfied, and 5 = very dissatisfied). Overall parental satisfaction (regardless of whether insurance coverage was obtained) was determined during the final (11th month) follow-up contact. In addition, for the subset of children who obtained insurance, we assessed parental satisfaction during the first monthly follow-up contact after the child obtained coverage. All survey instruments were translated into Spanish and then back-translated by a separate observer, to ensure reliability and validity.

Statistical Analyses

All data analyses were performed as intention-to-treat analyses with SAS software, version 8.2. Prestudy calculations with the x^2 test of equal proportions indicated that a sample size in each study arm of 90 participants provided 90 percent power to detect a 20 percent difference in the rates of insuring uninsured children (assuming that 10 percent of the control group and a minimum of 30 percent of the intervention group would be insured at the end of the study), allowing for 2-sided $\alpha = .05$ and assuming ≥1 contact during the 12–month follow-up period. The initial combined target recruitment sample of N = 300 assumed that up to 40 percent of participants might drop out or be lost to follow-up monitoring; subsequently, recruitment was terminated at a sample size of N = 275 when the attrition rate was observed to be ~17 percnt.

The baseline sociodemographic characteristics of the intervention and control groups were compared with x^2, Fisher's exact, and t tests. All reported P values are 2-tailed, with $P < .05$ considered statistically significant. Analyses of all outcomes, including obtaining insurance, time to insurance, and satisfaction with the process of obtaining insurance, were restricted to subjects who completed ≥1 follow-up visit.

Unadjusted analyses of intergroup differences in obtaining insurance coverage (any, continuous, and sporadic) were performed with the x^2 test. We then fitted longitudinal regression models adjusting for time and intrasubject correlations by using generalized estimating equations implemented in PROC GENMOD in the SAS software. An independent working correlation model and empirical variance estimator were used for the generalized estimating equation model.

Multivariate analyses were performed to adjust for policy changes in the MassHealth and CMSP programs that occurred during the study. In November 2002, an enrollment cap was imposed on CMSP, which resulted in a waiting list of thousands of uninsured children, and premiums were increased for both CMSP and MassHealth. On February 1, 2003, the CMSP enrollment freeze was lifted, children on the waiting list began to be enrolled in the programs, and the premium increases were reduced (but not to levels before the November 2002 policy change). Study outcomes therefore were adjusted according to when the study participant was recruited, ie, before, during, or after the restrictive policy change (with construction of a 3-level variable for which the reference group was recruitment before the policy change). Because some subjects were not affected by the policy change, a second variable also was constructed, consisting of a dummy indicator for participants affected by the policy change. Both policy change variables were included in the adjusted models. On the basis of significant intergroup differences noted in bivariate analyses (for parental employment status and state insurance policy changes) and factors previously reported to be associated with being uninsured, the final adjusted model included the following covariates: the child's age, the family's poverty status (dichotomized as an annual combined family income that was 0–100% of the federal poverty threshold for the family [individualized for each family according to the number of people in the family unit and the number of related children <18 years old in the household] at the time of the study versus an income that was above the federal poverty threshold), parental citizenship status, parental employment status, and participant recruitment in relation to policy changes in state insurance coverage options available for uninsured children.

Unadjusted analyses of the number of days from study enrollment to obtaining coverage were performed for the subset of subjects who obtained insurance with the *t* test and then for all subjects with the Kaplan-Meier method. An adjusted cumulative incidence curve for the time to obtaining insurance was then plotted. Parental satisfaction with the process of trying to obtain insurance was analyzed by coding the 5-point Likert scale results both as a categorical variable (using the x^2 test) and as a continuous variable (using the *t* test).

RESULTS

Participants

A total of 275 uninsured Latino children (and their families) who met all enrollment criteria were identified at the 2 study sites; 139 were assigned randomly to receive the community-based case management intervention and 136 were allocated to the control group. Figure 1 summarizes the enrollment, randomization, follow-up, and data analysis for all study participants. At least 1 monthly follow-up contact was made for 97% ($n = 135$) of the intervention group and 90% ($n = 122$) of the control group, and follow-up contact 1 year after study enrollment occurred successfully for 72% ($n = 97$) of the intervention group and 62% ($n = 76$) of the control group. The 18 subjects who were assigned randomly but then were lost to follow-up monitoring or withdrew before any follow-up contacts were more likely than other subjects to have been allocated to the control group (75% in the control group vs 48% in the control group among subjects with ≥1 follow-up contact; $P < .04$), but there were no significant differences between these 2 groups in any other characteristic, including the children's age, number of children in the family, annual combined family income, or parental age, citizenship, and employment status.

There were no baseline differences between the 2 groups in the mean ages of the children or parents; annual combined family income; number of children in the family; parental ethnicity, citizenship, English proficiency, marital status, or education; mean number of subject follow-up contacts; or recruitment site (Table 1). Case management group families, however, were more likely to have ≥1 parent employed full-time, and there was a statistically significant but minor intergroup difference in the proportions of subjects recruited before, during, and after the policy change in state coverage of uninsured children, with a slightly greater proportion of intervention group subjects being recruited before the policy change and slightly greater proportions of control group children being recruited while the restrictive policy change was in effect and after reestablishment of most of the prior policy. There also was a slight but statistically significant difference in the number of subjects lost to follow-up before any follow-up interviews (3% of the intervention group vs 9% of the control group; $P = .04$).

Insurance Coverage of Children

Children who received community-based case management were substantially more likely to obtain health insurance coverage compared with children in the control group (96% vs 57%; $P < .0001$) (Table 2). Intervention group children also were significantly more likely than control group children to be insured continuously throughout the 1-year follow-up period (78% vs 30%; $P < .0001$) and significantly less likely to be insured sporadically (18% vs 27%; $P < .0001$) or uninsured continuously (4% vs 43%; $P < .0001$) during the 1-year follow-up period.

The case management group was almost 8 times more likely than the control group to obtain insurance coverage (odds ratio: 7.78; 95% confidence interval: 5.20–11.64), after multivariate adjustment for potential confounders (the child's age, family income, parental citizenship, parental employment, and the period of policy change in state coverage of uninsured children) (Table 3). The adjusted incidence curve (Fig 2) shows that the marked difference between the groups in obtaining insurance coverage emerged at ~30 days and was sustained. Multivariate analyses also revealed that older children and adolescents and participants enrolled during the state freeze on CMSP had lower adjusted odds of obtaining insurance coverage (Table 3).

Time to Obtaining Insurance Coverage

Among the children who obtained health insurance, case management group children were insured substantially more quickly than control children (Table 2), with a mean of just under 3 months to obtain coverage, compared with a mean of >4.5 months for control children (87.5 ± 68 days for the intervention group vs 134.8 ± 102 days for the control group; $P < .0001$).

Parental Satisfaction With the Process of Obtaining Insurance

Parents of children in the intervention group were substantially more likely than parents of control group children to report being very satisfied with the process of obtaining health insurance for their child (80% vs 29%; $P < .0001$) (Table 2). Conversely, control group parents were considerably more likely than intervention group parents to report being very dissatisfied (14% vs 1%; $P < .0001$) or either dissatisfied or very dissatisfied (27% vs 3%; $P < .0001$) with the process of obtaining the child's insurance. Similar intergroup differences were observed when parental satisfaction was examined with Likert scale scores (where 1 = very satisfied and 5 = very dissatisfied); the mean satisfaction score for intervention group parents was significantly better than that for control group parents (1.3 vs 2.4; $P < .0001$). These significant intergroup satisfaction differences persisted when the analysis was restricted to subjects who had obtained insurance; at the first follow-up contact with parents of children who obtained insurance, 74% of intervention group parents but only 24% of control group parents reported being very satisfied with the process of obtaining coverage for their children ($P < .0001$), and the respective Likert scale satisfaction scores (mean ± SD) were 1.19 ± 0.46 vs 1.56 ± 0.72 ($P < .0001$).

DISCUSSION

Community-based case managers were found to be substantially more effective in obtaining health insurance for uninsured

Latino children than traditional Medicaid and SCHIP outreach and enrollment. In addition, compared with control group children, children in the case management group obtained insurance coverage sooner, were more likely to be insured continuously during 1 year of follow-up, and had parents who were much more satisfied with the process of obtaining coverage for their children.

Several characteristics of the case management intervention might account for its greater effectiveness in comparison with traditional Medicaid and SCHIP outreach and enrollment. First, case managers received training and focused their efforts on addressing barriers to insuring uninsured children that had been identified specifically by Latino families in prior research, including lack of knowledge about the application process and eligibility, language barriers, immigration issues, income cutoff values and verification, hassles, pending decisions, family mobility, misinformation from insurance representatives, and system problems. Second, case managers were active agents in the process of obtaining insurance coverage for children, assisting parents with application completion and acting as a family liaison and advocate whenever complications or setbacks occurred; traditional SCHIP and Medicaid outreach and enrollment tended to be much more passive, with outreach being heavily reliant on direct mailings, flyers, radio advertisements, and toll-free telephone numbers, but frequently with little or no assistance with the enrollment process. Third, the case managers were all bilingual, bicultural Latinas, which enhanced the cultural competency of the process and eliminated the often considerable language barriers faced by Latino parents seeking to insure their uninsured children. Therefore, the evidence-based, customized, active, culturally competent features in a community-based setting distinguish this intervention from traditional case management approaches and may account for its effectiveness.

The success of the community-based case management intervention is noteworthy, given a study population characterized by multiple factors known to place children at especially high risk for being uninsured. All intervention group children were Latino, 69 percent lived in poverty, 96 percent lived in families with incomes ≤200 percent of the federal poverty threshold, only 10 percent of parents were U.S. citizens, and one fifth of parents were unemployed. These findings suggest that community-based case management might prove especially useful in regions characterized by large proportions of uninsured children who are Latino, poor, immigrants, and have parents who are unemployed. Additional research is needed to determine whether community-based case managers would be equally effective in insuring uninsured children from other racial/ethnic groups and socioeconomic strata and those with parents who are primarily U.S. citizens and employed.

The effectiveness of community-based case management suggests that it could play an important role in states with large proportions of uninsured Latino children. In Texas, for example, where 21 percent of children (equivalent to 1.4 million children) are uninsured and an estimated 56 percent of uninsured children are Latino, community-based case management potentially could insure >750000 uninsured Latino children, assuming the 96 percent effectiveness of case management observed in this study. The study findings suggest that community-based case management has the potential to be highly effective in reducing the number of uninsured children even in states such as Texas where children from undocumented families are not eligible for insurance programs; community-based case management was found to be more effective than traditional Medicaid and SCHIP outreach and enrollment even after adjustment for parental citizenship, and more than one half of all uninsured U.S. children are eligible for Medicaid or SCHIP. As demonstrated in our study, however, in states with relatively small proportions of uninsured children, such as Massachusetts, case management might prove to be an important means of insuring the hardest-to-reach populations of uninsured children who have continued to be uninsured despite 7 years of SCHIP and Medicaid expansion, such as Latinos, poor children, and those with noncitizen parents. Our study findings may be of particular relevance for states such as Florida, which, like Massachusetts, has a SCHIP program (the Florida KidCare program) that covers both citizen and qualified noncitizen children.

Certain limitations of this study should be noted. The case management intervention was studied only among Latino children; therefore, the results may not pertain to other racial/ethnic groups. The Latino subgroups represented in the study sample were typical of an urban area in the Northeast, and the findings may not be generalizable to populations with greater proportions of Mexican Americans, in other regions of the country, or in rural or suburban areas. Because the study aim was to determine the effectiveness of the case management intervention, a cost analysis was not performed, and the cost-effectiveness of the intervention could not be determined. However, we did evaluate the feasibility of conducting a cost-effectiveness analysis by collecting pilot data on 10 consecutive families enrolled in the study. Pilot data collected included the number of missed school days, the number of missed work days, out-of-pocket expenses incurred during a child's illness, the number of emergency department and clinic visits, hospitalizations, and estimates of the costs of implementing the program, including personnel salaries and time spent implementing the intervention. These pilot data suggest that a formal cost-effectiveness analysis of the intervention is feasible for this population and could be performed in future studies. Future cost-effectiveness analyses of this intervention should consider comprehensive evaluation of direct, indirect, and opportunity costs associated with implementing the case management intervention in other communities and populations.

It can be speculated that insuring children through community-based case managers might have the potential to contribute to the revitalization of impoverished Latino communities. Case management not only could effectively reduce the number of uninsured children in a community but also might serve as a means of enhancing a community's employment opportunities. The case managers could be trained individuals from the community who serve their own community, drawn from welfare-to-work and other local and state employment programs. Part of each case manager's earnings, in turn, might be spent at local businesses, resulting in a ''triple effect'' of reducing the number of uninsured children, increasing parental employment, and stimulating the local economy. Under this scenario, SCHIP and Medicaid programs could partner with state employment agencies to train and to hire the community case managers. As an intervention that is comprehensive, community-based, and focused on the family, community-based case management shares key features with several established family support programs considered to be effective in improving child health outcomes, such as Head Start and early intervention programs for children with special health care needs.

CONCLUSIONS

This randomized, controlled trial indicates that community-based case managers are significantly more effective than traditional SCHIP/Medicaid outreach and enrollment in insuring uninsured Latino children. Community case management seems to be a useful mechanism for reducing the number of uninsured children, especially among children most at risk for being uninsured.

TABLE 1.—BASELINE CHARACTERISTICS OF STUDY PARTICIPANTS

Characteristic	Case management (n=139)	Control (n=136)	P
Child's age, y, mean ± SD	8.9 ± 5.0	8.9 ± 4.9	.96
Parent's age, y, mean ± SD	36.7 ± 9.1	36.7 ± 8.9	.98
Annual combined family income, median (range)	$13,200 ($0–72,000)	$12,945 ($0–48,000)	.41
Annual combined family income, no. (%)[1]:			.57
0–100% of federal poverty threshold	92 (69)	86 (73)	
101–200% of federal poverty threshold	36 (27	30 (25)	
>200% of federal poverty threshold	5 (4)	2 (2)	
Number of children in family, no. (%):			.64
1	49 (35)	42 (31)	
2	52 (37)	54 (40)	
3	25 (18)	21 (15)	
≥4	13 (9)	18 (13)	
Parent's ethnicity, no. (%):			.51
Colombian	58 (42)	47 (35)	
Dominican	27 (19)	24 (18)	
Salvadoran	29 (21)	32 (24)	
Guatemalan	7 (5)	13 (10)	
Mexican	3 (2)	6 (4)	
Other	15 (11)	14 (10)	
At least 1 parent employed full-time, no. (%)	119 (86)	99 (73)	.01
Parental citizenship, no. (%):			.96
US citizen	14 (10)	15 (11)	
Legal resident	69 (51)	67 (49)	
Undocumented	56 (40)	54 (40)	
Parent limited in English proficiency, no. (%)[2]	127 (91)	126 (93)	.96

TABLE 1.—BASELINE CHARACTERISTICS OF STUDY PARTICIPANTS—Continued

Characteristic	Case management (n=139)	Control (n=136)	P
Parental marital status, no. (%):			.82
Married	63 (45)	59 (43)	
Separated	19 (14)	15 (11)	
Divorced	9 (6)	9 (7)	
Single	29 (21)	39 (29)	
Common law	16 (12)	12 (9)	
Widowed/other	3 (2)	2 (1)	
Parental educational attainment, no. (%):			.75
None/grade school	43 (31)	38 (28)	
6th to 11th grade	24 (17)	20 (15)	
High school graduate	38 (28)	44 (32)	
Some college	11 (8)	15 (11)	
College degree [3]	22 (16)	19 (14)	
Lost/withdrew from study before any follow up contact, no. (%)	4 (3)	12 (9)	.04
Follow-up contacts, no., mean ±SD [4]	8.3 ±2.2	7.9 ±2.3	.14
Recruitment site, no. (%):			.91
East Boston	101 (73)	98 (72)	
Jamaica Plain	38 (27)	38 (28)	
Participant recruitment in relation to policy change in state coverage of uninsured children, no. (%):			.02
Before policy change	38 (27)	20 (15)	
Restrictive change in effect	14 (10)	22 (17)	
Reestablishment of most of prior policy	87 (63)	94 (70)	

[1] Three parents in the intervention group and 18 in the control group chose not to answer questions on family income.
[2] U.S. Census definition of self-rated English-speaking ability of less than very well (ie, well, not very well, or not at all).
[3] Associate, bachelor's, or postgraduate degree.
[4] Among participants with any follow-up contacts.

TABLE 2.—STUDY OUTCOMES ACCORDING TO GROUP ASSIGNMENT

Outcome	Case management (n = 139)	Control (n = 136)	P
Child obtained health insurance coverage, %	96	57	<.0001
Continuously insured	78	30	<.0001
Sporadically insured [1]	18	27	<.0001
Child continuously uninsured, %	4	43	<.0001
Mean time to obtain insurance, d, mean ± SD	87.5 ± 68	134.8 ± 102.4	<.009
Parental satisfaction with process of obtaining child's insurance, % [2]:			
Very satisfied	80	29	[3] <.0001
Satisfied	12	41	
Uncertain	5	4	
Dissatisfied	2	13	
Very dissatisfied	1	14	
Mean parental satisfaction score for process of obtaining child's insurance (5-point Likert scale), mean ± SD [2 4]	1.33 ± 0.77	2.40 ± 1.40	<.0001

[1] Obtained but then lost health insurance coverage.
[2] Regardless of whether child was insured or continuously uninsured; data were collected at the final 1-year follow-up contact.
[3] By Wilcoxon 2-sample test, Kruskal-Wallis test, and Cochran-Armitage trend test.
[4] Where 1 = very satisfied, 2 = satisfied, 3 = uncertain, 4 = dissatisfied, and 5 = very dissatisfied.

TABLE 3.—MULTIPLE LOGISTIC-REGRESSION ANALYSIS OF FACTORS ASSOCIATED WITH CHILDREN OBTAINING INSURANCE COVERAGE

Independence variable	Adjusted odds ratio (95% confidence interval) for obtaining insurance coverage
Group assignment:	
Control	Referent
Case management	7.78 (5.20–11.64)
Child's age:	
0–5 y	Referent
6–11 y	0.32 (0.19–0.56)
12–18 y	0.35 (0.019–0.63)
Annual combined family income:	
At or below federal poverty threshold	Referent
Above poverty threshold	1.19 (0.70–2.02)
Parental citizenship:	
Undocumented	Referent
Legal resident	1.42 (0.82–2.44)
U.S. citizen	2.40 (0.08–7.48)
Parental employment:	
Employed	Referent
Unemployed	0.78 (0.45–1.37)
Participant recruitment in relation to policy change in state coverage of uninsured children:	
Before policy change	Referent
Restrictive change in effect	0.46 (0.22–0.99)
Reestablishment of most of prior policy	0.74 (0.45–1.21)

By Mr. DURBIN (for himself and Mr. OBAMA):

2. 3977. A bill to provide a Federal income tax credit for Patriot employers, and for other purposes; to the Committee on Finance.

Mr. DURBIN. Mr. President, when companies make headlines today it is often for all the wrong reasons: fraud, tax avoidance, profiteering, etc. Yet many of the companies that are currently providing jobs across America are conscientious corporate citizens that strive to treat their workers fairly even as they seek to create good products that consumers want and to maximize profits for their shareholders. I believe that we should reward such companies for providing good jobs to American workers, and create incentives that encourage more companies to do likewise. The Patriot Employers bill does just that.

This legislation, which I am introducing today along with Senator OBAMA, would provide a tax credit to reward the companies that treat American workers best. Companies that provide American jobs, pay decent wages, provide good benefits, and support their employees when they are called to active duty should enjoy more favorable tax treatment than companies that are unwilling to make the same commitment to American workers. The Patriot Employers tax credit would put the tax code on the side of those deserving companies by acknowledging their commitments.

The Patriot Employers legislation would provide a tax credit equal to 1 percent of taxable income to employers that meet the following criteria:

First, invest in American jobs, by maintaining or increase the number of full-time workers in America relative to the number of full-time workers outside of America and also by maintaining their corporate headquarters in America if the company has ever been headquartered in America.

Second, pay decent wages, by paying each worker an hourly wage that would ensure that a full-time worker would earn enough to keep a family of three out of poverty, at least $8.00 per hour.

Third, prepare workers for retirement, either by providing either a defined benefit plan or by providing a defined contribution plan that fully matches at least 5 percent of worker contributions for every employee.

Fourth, provide health insurance, by paying at least 60 percent of each worker's health care premiums.

Fifth, support our troops, by paying the difference between the regular salary and the military salary of all National Guard and Reserve employees who are called for active duty, and also by continuing their health insurance coverage.

In recognition of the different business circumstances that small employers face, companies with fewer than 50 employees could achieve Patriot Employer status by fulfilling a smaller number of these criteria.

There is more to the story of corporate American than the widely-publicized wrong-doing. Patriot Employers should be publicly recognized for doing right by their workers even while they do well for their customers and shareholders. I urge my colleagues to join Senator OBAMA and me in supporting this effort. Our best companies, and our American workers, deserve nothing less.

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

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

S. 3977

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

SECTION 1. REDUCED TAXES FOR PATRIOT EMPLOYERS.

(a) IN GENERAL.—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 section:

"SEC. 45N. REDUCTION IN TAX OF PATRIOT EMPLOYERS.

''(a) IN GENERAL.—In the case of any taxable year with respect to which a taxpayer is certified by the Secretary as a Patriot employer, the Patriot employer credit determined under this section for purposes of section 38 shall be equal to 1 percent of the taxable income of the taxpayer which is properly allocable to all trades or businesses with respect to which the taxpayer is certified as a Patriot employer for the taxable year.

''(b) PATRIOT EMPLOYER.—For purposes of subsection (a), the term 'Patriot employer' means, with respect to any taxable year, any taxpayer which—

''(1) maintains its headquarters in the United States if the taxpayer has ever been headquartered in the United States,

''(2) pays at least 60 percent of each employee's health care premiums,

''(3) if such taxpayer employs at least 50 employees on average during the taxable year—

''(A) maintains or increases the number of full-time workers in the United States relative to the number of full-time workers outside of United States,

''(B) compensates each employee of the taxpayer at an hourly rate (or equivalent thereof) not less than an amount equal to the Federal poverty level for a family of three for the calendar year in which the taxable year begins divided by 2,080,

''(C) provides either—

''(i) a defined contribution plan which for any plan year—

''(I) requires the employer to make nonelective contributions of at least 5 percent of compensation for each employee who is not a highly compensated employee, or

''(II) requires the employer to make matching contributions of 100 percent of the elective contributions of each employee who is not a highly compensated employee to the extent such contributions do not exceed the percentage specified by the plan (not less than 5 percent) of the employee's compensation, or

''(ii) a defined benefit plan which for any plan year requires the employer to make contributions on behalf of each employee who is not a highly compensated employee in an amount which will provide an accrued benefit under the plan for the plan year which is not less than 5 percent of the employee's compensation, and

''(D) provides full differential salary and insurance benefits for all National Guard and Reserve employees who are called for active duty, and

''(4) if such taxpayer employs less than 50 employees on average during the taxable year, either—

''(A) compensates each employee of the taxpayer at an hourly rate (or equivalent thereof) not less than an amount equal to the Federal poverty level for a family of 3 for the calendar year in which the taxable year begins divided by 2,080, or

''(B) provides either—

''(i) a defined contribution plan which for any plan year—

''(I) requires the employer to make nonelective contributions of at least 5 percent of compensation for each employee who is not a highly compensated employee, or

''(II) requires the employer to make matching contributions of 100 percent of the elective contributions of each employee who is not a highly compensated employee to the extent such contributions do not exceed the percentage specified by the plan (not less than 5 percent) of the employee's compensation, or

''(ii) a defined benefit plan which for any plan year requires the employer to make contributions on behalf of each employee who is not a highly compensated employee in an amount which will provide an accrued benefit under the plan for the plan year which is not less than 5 percent of the employee's compensation.''.

(b) ALLOWANCE AS GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code or 1986 is amended by striking ''and'' at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting '', and'', and by adding at the end the following:

''(27) the Patriot employer credit determined under section 45N.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

Mr. OBAMA. Mr. President, I rise today, with my good friend and colleague, the senior Senator from the great State of Illinois, to introduce the Patriot Employers Act of 2006.

This measure is designed to help businesses and American workers seeking to compete in the global economy. By reducing corporate taxes for those firms that invest in America and American employees, the Patriot Employers Act rewards companies that, among other things, pay decent benefits, provide health coverage and support our troops by paying a full differential salary for deployed National Guard employees.

Too often we hear troubling news reports of American companies outsourcing jobs and exploiting corporate tax loopholes—by setting up incorporated offices, for example, in the Cayman Islands to avoid paying their fair share of taxes. Such companies fail to see that they are connected to the markets in which they operate, and by dodging their financial responsibilities, they are harming the very economy that they, too, will need to rely on in the future.

Recognizing these challenges, this bill says that we are going to align our corporate tax policy with the corporate practices we want to encourage.

The Patriot Employers Act cuts taxes for American companies that: maintain headquarters in the U.S.; pay at least 60 percent of employees' healthcare premiums; maintain or increase their U.S. workforce relative to their workforce located abroad; pay an hourly rate several dollars above the outdated minimum wage; provide either a defined benefit retirement plan or a defined contribution plan with an employer match; and provide full differential salary and benefits for National Guard employees called into active duty.

It is important that our American firms remain competitive and innovate, in part by investing in the long-term health of those workers and communities in which they operate and impact. Increasing corporate shareholder value and acting in the interests of the public good are not mutually exclusive goals, and this legislation recognizes that point. All of us have a stake in improving returns to all corporate stakeholders, including investors, managers, employees, consumers, and our communities.

To this end, I am proud to be an original cosponsor of this bill and I hope that it will renew attempts by lawmakers—both legislative and otherwise—to engage productively with the business community to address their long-term market concerns while promoting the well-being of American workers. Government does not create jobs; entrepreneurs and businesses do. The future of the American economy requires that American businesses continue to grow and improve their productivity and competitiveness. It requires that American companies have the very best workforce and infrastructure to compete and win in every market they enter.

Ensuring American competitiveness will demand new thinking from leaders in business, labor, education, and government: it will demand new responses and roles, new coalitions and collaborations, among these stakeholders. Long-term American competitiveness will demand bipartisan commitment to strengthening all parts of our economy and improving opportunities for all Americans.

The Patriot Employers Act is an important step in this process. Let's align business incentives with the investments we need in the future of the American workforce. Let's begin the conversation about how to ensure American competitiveness for the 21st century and beyond.

I urge quick support for this important legislation.

By Mrs. CLINTON:

S. 3978. A bill to provide consumer protections for lost or stolen check cards and debit cards similar to those provided with respect to credit cards, and for other purposes, to the Committee on Banking, Housing, and Urban Affairs.

Mrs. CLINTON. Mr. President, today I am introducing the Debit and Check Card Consumer Protection Act of 2006, an important piece of legislation in the battle against consumer fraud. Despite consumers' best efforts, debit and check card fraud is a serious problem making consumer liability an important issue. Unfortunately, current consumer protection laws do not adequately protect debit and check card holders from fraud.

Over the last decade, debit and check card use has experienced double digit growth and now over 80 percent of American consumer households possess a debit or check card. This growth has outpaced that of credit cards and recent reports indicate that between 2001 and 2003 consumers made 42.5 billion

transactions with debit cards, 2.3 billion more transactions than with credit cards.

While debit and check card growth benefits the American economy, consumers continually face greater challenges to prevent and protect themselves from debit and check card fraud. Recent statistics show that in 2005, ATM/debit card fraud in the United States generated losses of $2.75 billion. During the same period, ATM fraud alone affected 3 million U.S. consumers.

Despite these findings, debit and check card consumer liability protections under the law remain substandard as compared to credit cards. Under current law, debit and check card holders are liable for fraudulent transactions dependent upon when they report the fraud. In some cases the consumer can be held accountable for $500 worth of fraudulent transactions. Conversely, credit card holders who face similar consumer challenges are liable for a maximum payment of $50 and are allowed to refuse or ''chargeback'' a payment when goods or services fail to arrive or they are dissatisfied with a transaction. Debit and check card holders are not provided with similar ''chargeback'' protections. Fortunately, some debit and check card issuers provide customers with stronger liability protections; however, it is essential that consumers are assured liability protections under the law, not just through a company's policy.

The Debit and Check Card Consumer Protection Act of 2006 remedies these inconsistencies between credit card liability protections and debit and check card liability protections by simply affording the same level of protection to debit and check card users given to credit card users. This legislation is an important step in ensuring consumer protections in an economy increasingly driven by electronic commercial transactions, and I am proud that Consumers Union, one of the largest nonpartisan advocate organizations for consumer rights, has endorsed it.

The time has come to strengthen debit and check card liability protections for the American consumer, and I urge my colleagues to support this simple and commonsense remedy to a growing problem. 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. 3978

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 ''Debit and Check Card Consumer Protection Act of 2006''.

SEC. 2. FINDINGS.

Congress finds that—

(1) debit and check card use has experienced double digit growth for longer than a decade, and more than 80 percent of American consumer households now posses a debit or check card;

(2) between 2001 and 2003, consumers made 42,500,000,000 transactions with debit cards, eclipsing credit card transactions by 2,300,000,000;

(3) as of 2003, debit cards accounted for ⅓ of all purchases in stores;

(4) in addition to the rise in debit and check card use, debit and check card fraud increasingly challenges American consumers;

(5) in 2005, debit card and ATM fraud accounted for losses of $2,750,000,000;

(6) despite that growth, statutory debit and check card consumer liability protections remain substandard, as compared to credit cards;

(7) the debit and check card industry has, in some instances, instituted liability protections that often exceed the requirements set forth under the provisions of law; and

(8) the law should be changed to ensure a continued level of liability protection.

SEC. 3. CAP ON DEBIT CARD LIABILITY.

Section 909(a) of the Electronic Funds Transfer Act (15 U.S.C. 1693g(a)) is amended—

(1) by striking ''Notwithstanding the foregoing'' and all that follows through ''whichever is less.''; and

(2) by striking ''meana'' and inserting ''means''.

SEC. 4. DEBIT CARD ERROR RESOLUTION.

Section 908(f) of the Electronic Funds Transfer Act (15 U.S.C. 1693f(f)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) a charge for goods or services not accepted by the consumer or the designee thereof, or not delivered to the consumer or the designee thereof, in accordance with the agreement made at the time of a transaction;''.

SEC. 5. CONSUMER RIGHTS.

Section 908 of the Electronic Funds Transfer Act (15 U.S.C. 1693f) is amended by adding at the end the following:

''(g) RIGHTS OF CONSUMERS WITH RESPECT TO ACCEPTED CARDS.—

''(1) IN GENERAL.—Subject to the limitation contained in paragraph (2), the issuer of an accepted card to a consumer shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the accepted card is used as a method of payment, if—

''(A) the consumer has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the accepted card;

''(B) the amount of the initial transaction exceeds $50; and

''(C) the transaction was initiated by the consumer in the same State as the mailing address previously provided by the consumer, or within 100 miles from such address, except that the limitations set forth in subparagraphs (A) and (B) with respect to the right of a consumer to assert claims and defenses against the issuer of the card shall not be applicable to any transaction in which the person honoring the accepted card—

''(i) is the same person as the card issuer;

''(ii) is controlled by the card issuer;

''(iii) is under direct or indirect common control with the card issuer;

''(iv) is a franchised dealer in the products or services of the card issuer; or

''(v) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the accepted card issued by the card issuer.

''(2) LIMITATION.—The amount of claims or defenses asserted by the cardholder under this subsection may not exceed the amount paid by the cardholder with respect to the subject transaction at the time at which the cardholder first notifies the card issuer or the person honoring the accepted card of such claim or defense.''.

SEC. 6. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue final regulations to carry out the amendments made by this Act, which regulations shall be consistent, to the extent practicable, with regulations issued to carry out similar provisions under the Truth in Lending Act.

By Mr. DODD (for himself, Mr. FRIST, Mr. HARKIN, Mrs. CLINTON, Mr. REED, and Mr. DURBIN):

S. 3980. A bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop a policy for managing the risk of food allergy and anaphylaxis in schools, to establish school-based food allergy management grants, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, food allergies are an increasing food safety and public health concern in this country, especially among young children. I know first-hand just how frightening food allergies can be in a young person's life. My own family has been personally touched by this troubling condition and we continue to struggle with it each and every day. Sadly, there is no cure for food allergies.

In the past 5 years, the number of Americans with food allergies has nearly doubled from 6 million to almost 12 million. While food allergies were at one time considered relatively infrequent, today they rank 3rd among common chronic diseases in children under 18 years old. Peanuts are among several allergenic foods that can produce life-threatening allergic reactions in susceptible children. Peanut allergies have doubled among school-age children from 1997 to 2002.

Clearly, food allergies are of great concern for school-age children Nationwide, and yet, there are no Federal guidelines concerning the management of life-threatening food allergies in our Nation's schools.

I have heard from parents, teachers and school administrators that students with severe food allergies often face inconsistent food allergy management approaches when they change schools—whether they get promoted or move to a different city. Too often, families are not aware of the food allergy policy at their children's school, or the policy is vastly different from the one they knew at their previous school, and they are left wondering whether their child is safe.

Last year, Connecticut became the first State to enact school-based guidelines concerning food allergies and the

prevention of life-threatening incidents in schools. I am very proud of these efforts, and I know that the parents of children who suffer from food allergies in Connecticut have confidence that their children are safe throughout the school day. Other States, such as Massachusetts, have enacted similar guidelines. Tennessee school districts are poised to implement their statewide guidelines in July. But too many States across the country have food allergy management guidelines that are inconsistent from one school district to the next.

In my view, this lack of consistency underscores the need for enactment of uniform, Federal policies that school districts can choose to adopt and implement.

For this reason, my colleague, Senator FRIST, and I introduce the Food Allergy and Anaphylaxis Management Act of 2006 today to address the growing need for uniform and consistent school-based food allergy management policy. I thank Senator FRIST for his hard work and commitment to this important legislation.

The legislation does two things. First, it directs the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop and make available voluntary food allergy management guidelines for preventing exposure to food allergens and assuring a prompt response when a student suffers a potentially fatal anaphylactic reaction.

Second, the bill provides for incentive grants to school districts to assist them with adoption and implementation of the Federal Government's allergy management guidelines in all K–12 public schools.

I wish to acknowledge and offer my sincere appreciation to the members of the Food Allergy and Anaphylaxis Network for their commitment to this legislation and for raising public awareness, providing advocacy, and advancing research on behalf of all individuals who suffer from food allergies.

I hope that my colleagues in the Senate and in the House will consider and pass this important legislation before the end of the year so that the Department of Health and Human Services can begin work on developing national guidelines as soon as possible. Schoolchildren across the country deserve nothing less than a safe and healthy learning environment.

Mr. FRIST. Mr. President, 6 years ago, my great-nephew had some peanut butter. He was 13 months old. For most 13-month-old children, this wouldn't be an issue. But for McClain Portis, it was.

You see, unbeknownst to him or his parents at the time, McClain is allergic to peanuts. When he ate that peanut butter, he had an anaphylactic reaction.

Within 30 seconds, his lips and eyes swelled shut, his face turned bright red, and he developed what is called a full body hive.

But McClain's parents were quick thinkers. They called 911, and he was soon better after a dose of epinephrine. That's what calms the anaphylactic reaction, if administered in time.

But 6 hours later, the epinephrine wore off. McClain had a biphasic reaction and had to return to the pediatrician to receive steroids. His older sister, just 4 years old at the time, asked their mother, ''Is my brother going to die?''

McClain is 7 years old now—in first grade. He's an active boy, with many friends. And he enjoys school. But school hasn't been easy—for McClain or his parents.

It's that way for a lot of children with food allergies, especially when they find themselves switching schools.

I recently met another young man from Nashville—Andrew Wright. He's 14 now, and he attends the same high school from which I graduated.

He's endured food allergies nearly his entire life—but somehow the high-spirited teen keeps a positive outlook on life.

For a long time, every year he and his parents had to start from scratch. They had to teach the schools how to recognize and treat an allergic reaction. And they had to teach them about his allergens—sheep's milk, tree nuts, peanuts, and possibly shellfish. That's stressful work—for Andrew, for his parents, and even for the schools.

Andrew and McClain aren't alone in their struggles. Across the country, 3 million children suffer from food allergies.

Milk. Eggs. Fish. Shellfish. Tree nuts. Peanuts. Wheat. Soy.

Foods that most people enjoy. But these 8 foods account for 90 percent of all food allergic reactions.

And for 3 million American children, these foods frequently aren't safe. Their immune system makes a mistake. It treats something in a certain food as if it's dangerous.

The food itself isn't harmful, but the body's reaction is.

Within a few hours—or sometimes, only minutes—of consuming a food allergen, a host of symptoms can burst forth, affecting the eyes, nose, throat, respiratory system, skin, and digestive system. The reaction could be mild—or it could be more severe, like it was for my great-nephew McClain.

Food-allergic reactions are the leading cause of anaphylaxis. If left untreated for too long, anaphylaxis can prove fatal. But it's treatable—with adrenaline, or epinephrine.

In fact, studies have demonstrated an association between a delay in the administration of epinephrine—or non-administration—and anaphylaxis fatalities.

So it makes sense that we'd want schools to keep epinephrine on hand—in case a child experiences a food-allergic reaction leading to anaphylaxis. And it makes sense that we'd want school personnel to know how to recognize and treat food-allergic reactions.

But currently, there are no Federal guidelines concerning the management of life-threatening food allergies in the school setting.

In fact, in a recent survey, three-fourths of elementary school nurses reported developing their own training guidelines for responding to food allergies.

This means that when children change schools—they're promoted, they move, they're redistricted—for whatever reason—they and their parents face different food allergy management approaches. And there's no across-the-board consistency.

That's why Senator DODD and I have introduced the Food Allergy and Anaphylaxis Management Act of 2006.

We believe the Federal Government should establish uniform, voluntary food allergy management guidelines—and schools should be strongly encouraged to adopt and implement such guidelines.

The bill directs the Secretary of Health and Human Services—in consultation with the Secretary of Education—to develop voluntary food allergy management guidelines.

The guidelines would help prevent exposure to food allergens and help ensure a prompt response when a child suffers a potentially fatal anaphylactic reaction. Under the bill, these guidelines must be developed and made available within one year of enactment.

Additionally, the bill provides for school-based allergy management incentive grants to local education agencies. These grants assist with the adoption and implementation of food allergy management guidelines in public schools.

There are 3 million American children who suffer from food allergies. We can't cure them of their allergies. But we can help prevent allergic reactions, and we can help ensure timely treatment of them when they occur.

I urge my colleagues to support this bipartisan measure—so we can help keep America's children healthy.

By Mr. KOHL (for himself and Mr. LEAHY):

S. 3981. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish requirements for certain petitions submitted to the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KOHL. Mr. President, I rise today to introduce the Citizen Petition Fairness and Accuracy Act of 2006. This legislation will help speed the introduction of cost-saving generic drugs by preventing abuses of the Food and Drug Administration citizen petition process.

Consumers continue to suffer all across our country from the high—and ever rising—cost of prescription drugs. A recent independent study found that prescription drug spending has more than quadrupled since 1990, and now accounts for 11 percent of all health care

spending. At the same time, the pharmaceutical industry is one of the most profitable industries in the world, returning more than 15 percent on their investments.

One key method to bring prescription drug prices down is to promote the introduction of generic alternatives to expensive brand name drugs. Consumers realize substantial savings once generic drugs enter the market. Generic drugs cost on average of 63 percent less than their brand-name equivalents. One study estimates that every 1 percent increase in the use of generic drugs could save $4 billion in health care costs.

This is why I have been so active in the last year in pursuing legislation designed to combat practices which impede the introduction of generic drugs—including S. 3582, the Preserve Access to Generics Act, which would forbid payments from brand name drug manufacturers to generic manufacturers to keep generic drugs off the markets, and S. 2300, the Lower Priced Drugs Act, legislation I co-sponsored to combat other conduct which impedes the marketing of generic drugs. The legislation I introduce today targets yet another practice by brand name drug companies to impede or block the marketing of generic drugs—abuse of the FDA citizen petition process.

FDA rules permit any person to file a so-called ''citizen petition'' to raise concerns about the safety or efficacy of a generic drug that a manufacturer is seeking FDA approval to bring to market. While this citizen petition process was put in place for a laudable purpose, unfortunately in recent years it has been abused by frivolous petitions submitted by brand name drug manufacturers (or individuals acting at their behest) whose only purpose is to delay the introduction of generic competition. The FDA has a policy of not granting any new generic manufacturer's drug application until after it has considered and evaluated any citizen petitions regarding that drug. The process of resolving a citizen petition (even if ultimately found to be groundless) can delay the approval by months or years. Indeed, brand name drug manufacturers often wait to file citizen petitions until just before the FDA is about to grant the application to market the new generic drug, solely for the purpose of delaying the introduction of the generic competitor for the maximum amount of time possible. This gaming of the system should not be tolerated.

In recent years, FDA officials have expressed serious concerns about the abuse of the citizen petition process. Last year, FDA Chief Counsel Sheldon Bradshaw noted that ''[t]he citizen petition process is in some cases being abused. Sometimes, stakeholders try to use this mechanism to unnecessarily delay approval of a competitor's products.'' He added that he found it ''particularly troublesome'' that he had ''seen several examples of citizen petitions that appear designed not to raise timely concerns with respect to the legality or scientific soundness of approving a drug application, but rather to delay approval by compelling the agency to take the time to consider the arguments raised in the petition, regardless of their merits, and regardless of whether the petitioner could have made those very arguments months and months before.''

And a simple look at the statistics gives credence to these concerns. Of the 21 citizen petitions for which the FDA has reached a decision since 2003, 20 or 95 percent of them have been found to be without merit. Of these, ten were identified as ''eleventh hour petitions'', defined as those filed less than 6 months prior to the estimated entry date of the generic drug. None of these ten ''eleventh hour petitions'' were found to have merit, but each caused unnecessary delays in the marketing of the generic drug by months or over a year, causing consumers to spend millions and millions more for their prescription drugs than they would have spent without these abusive filings.

Despite the expense these frivolous citizen petitions cause consumers and the FDA, under current law the government has absolutely no ability to sanction or penalize those who abuse the citizen petition process, or who file citizen petitions simply to keep competition off the market. Our legislation will correct this obvious shortcoming and give the Department of Health and Human Services—the FDA's parent agency—the power to sanction those who abuse the process.

Our bill will, for the first time, require all those who file citizen petitions to affirm certain basic facts about the truthfulness and good faith of the petition, similar to what is required of every litigant who makes a filing in court. The party filing the citizen petition will be required to affirm that the petition is well grounded in fact and warranted by law; is not submitted for an improper purpose, such as to harass or cause unnecessary delay in approval of competing drugs; and does not contain any materially false, misleading or fraudulent statement. The Secretary of the Department of Health and Human Services is empowered to investigate a citizen petition to determine if it has violated any of these principles, was submitted for an improper purpose, or contained false or misleading statements. Further, the Secretary is authorized to penalize anyone found to have submitted an abusive citizen petition. Possible sanctions include a fine up to one million dollars, a suspension or permanent revocation of the right of the violator to file future citizens' petition, and a dismissal of the petition at issue. HHS is also authorized to refer the matter to the Federal Trade Commission so that the FTC can undertake its own investigation as to the competitive consequences of the frivolous petition and take any action it finds appropriate. Finally, the bill directs the HHS that all citizen petitions be adjudicated within six months of filing, which will put an end to excessive delays in bringing needed generic drugs to market because of the filings of these petitions.

While our bill will not have any effect on any person filing a truly meritorious citizen petition, this legislation will serve as a strong deterrent to attempts by brand name drug manufacturers or any other party that seeks to abuse the citizen petition process to thwart competition. It will thereby remove one significant obstacle exploiting by brand name drug companies to prevent or delay the introduction of generic drugs. I urge my colleagues to support this legislation.

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. 3981

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 ''Citizen Petition Fairness and Accuracy Act of 2006''.

SEC. 2. CITIZEN PETITIONS AND PETITIONS FOR STAY OF AGENCY ACTION.

Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) is amended by adding at the end the following:

''(G)(i) Notwithstanding any other provision of law, any petition submitted under section 10.30 or section 10.35 of title 21, Code of Federal Regulations (or any successor regulation), shall include a statement that to the petitioner's best knowledge and belief, the petition—

''(I) includes all information and views on which the petitioner relies, including all representative data and information known to the petitioner that is favorable or unfavorable to the petition;

''(II) is well grounded in fact and is warranted by law;

''(III) is not submitted for an improper purpose, such as to harass or cause unnecessary delay (including unnecessary delay of competition or agency action); and

''(IV) does not contain a materially false, misleading, or fraudulent statement.

''(ii) The Secretary shall investigate, on receipt of a complaint, a request under clause (vi), or on its own initiative, any petition submitted under such section 10.30 or section 10.35 (or any successor regulation), that—

''(I) does not comply with the requirements of clause (i);

''(II) may have been submitted for an improper purpose as described in clause (i)(III); or

''(III) may contain a materially false, misleading, or fraudulent statement as described in clause (i)(IV).

''(iii) If the Secretary finds that the petitioner has knowingly and willingly submitted the petition for an improper purpose as described in clause (i)(III), or which contains a materially false, misleading, or fraudulent statement as described in clause (i)(IV), the Secretary may—

''(I) impose a civil penalty of not more than $1,000,000, plus attorneys fees and costs of reviewing the petition and any related proceedings;

''(II) suspend the authority of the petitioner to submit a petition under such section 10.30 or section 10.35 (or any successor regulation), for a period of not more than 10 years;

''(III) revoke permanently the authority of the petitioner to submit a petition under such section 10.30 or section 10.35 (or any successor regulation); or

''(IV) dismiss the petition at issue in its entirety.

''(iv) If the Secretary takes an enforcement action described in subclause (I), (II), (III), or (IV) of clause (iii) with respect to a petition, the Secretary shall refer that petition to the Federal Trade Commission for further action as the Federal Trade Commission finds appropriate.

''(v) In determining whether to take an enforcement action described in subclause (I), (II), (III), or (IV) of clause (iii) with respect to a petition, and in determining the amount of any civil penalty or the length of any suspension imposed under that clause, the Secretary shall consider the specific circumstances of the situation, such as the gravity and seriousness of the violation involved, the amount of resources expended in reviewing the petition at issue, the effect on marketing of competing drugs of the pendency of the improperly submitted petition, including whether the timing of the submission of the petition appears to have been calculated to cause delay in the marketing of any drug awaiting approval, and whether the petitioner has a history of submitting petitions in violation of this subparagraph.

''(vi)(I) Any person aggrieved by a petition filed under such section 10.30 or section 10.35 (or any successor regulation), including a person filing an application under subsection (b)(2) or (j) of this section to which such petition relates, may request that the Secretary initiate an investigation described under clause (ii) for an enforcement action described under clause (iii).

''(II) The aggrieved person shall specify the basis for its belief that the petition at issue is false, misleading, fraudulent, or submitted for an improper purpose. The aggrieved person shall certify that the request is submitted in good faith, is well grounded in fact, and not submitted for any improper purpose. Any aggrieved person who knowingly and intentionally violates the preceding sentence shall be subject to the civil penalty described under clause (iii)(I).

''(vii) The Secretary shall take final agency action with respect to a petition filed under such section 10.30 or section 10.35 (or any successor regulation) within 6 months of receipt of such petition. The Secretary shall not extend such 6-month review period, even with consent of the petitioner, for any reason, including based upon the submission of comments relating to a petition or supplemental information supplied by the petitioner. If the Secretary has not taken final agency action on a petition by the date that is 6 months after the date of receipt of the petition, such petition shall be deemed to have been denied on such date.

''(viii) The Secretary may promulgate regulations to carry out this subparagraph, including to determine whether petitions filed under such section 10.30 or section 10.35 (or any successor regulation) merit enforcement action by the Secretary under this subparagraph.''.

By Mr. HARKIN (for himself, Mr. LEAHY, Ms. MIKULSKI, and Mr. KERRY):

S. 3984. A bill to improve programs for the identification and treatment of post-deployment mental health conditions, including post-traumatic stress disorder, in veterans and members of the Armed Forces, and for other purposes; to the Committee on Veterans' Affairs.

Mr. HARKIN. Mr. President, more than 41 million Americans suffer from a moderate or serious mental disorder each year. Unfortunately, because of the lingering stigma attached to mental illness, and lack of coverage under health insurance, these disorders often go untreated. I am particularly concerned that we are neglecting the mental health of our returning war veterans.

Earlier this year, I introduced a bill directing the Department of Veterans Affairs to create a program to address the shocking rate of suicide among veterans returning from combat in Iraq and Afghanistan. That bill, the Joshua Omvig Suicide Prevention Act of 2006, was named in honor of a young hero from Grundy Center who killed himself soon after returning from a tour of duty in Iraq.

But we also need a broader strategy for addressing the mental health needs of service members exposed to the stress and trauma of war.

And that is why I introduced legislation today directing the Department of Veterans Affairs to develop a comprehensive plan to improve the diagnosis and treatment of Post Traumatic Stress Disorder, PTSD, in our veterans. My bill would require the VA to create a curriculum and required protocols for training VA staff to better screen PTSD. It also would require the VA to commit additional staff and resources to this challenge.

During my years in the Navy, I learned one of the most important lessons of my entire life: Never leave a buddy behind. That's true on the battlefield—and it's also true after our service members return home.

Often, the physical wounds of combat are repaired, but the mental damage—the psychological scars of combat—can haunt a person for a lifetime.

One study shows that about 17 percent of active-duty service members who served in Iraq screened positive for anxiety, depression, or PTSD. This number is comparable to rates of PTSD experienced by Vietnam War veterans. But, in the decades since, scientists have learned that quick intervention is critical to ensuring that an acute stress reaction does not become a chronic mental illness.

This is exactly the aim of my bill: to improve early detection and intervention . . . to save lives . . . and to prevent long-term mental illness. The Federal Government has a moral contract with those who have fought for our country and sacrificed so much. This bill is about making good on that contract.

By Mr. OBAMA:

S. 3988. A bill to amend title 10 and 38, United States Code, to improve benefits and services for members of the Armed Forces, veterans of the Global War on Terrorism, and other veterans, to require reports on the effects of the Global War on Terrorism, and for other purposes; to the Committee on Veterans' Affairs.

Mr. OBAMA. Mr. President, I rise today to introduce legislation that is significant both in the problems it seeks to address and the man it seeks to honor.

Since the day he arrived in Congress more than two decades ago, LANE EVANS has been a tireless advocate for the men and women with whom he served. When Vietnam vets started falling ill from Agent Orange, he led the effort to get them compensation. LANE was one of the first in Congress to speak out about the health problems facing Persian Gulf war veterans. He's worked to help veterans suffering from Post-Traumatic Stress Disorder, and he's also helped make sure thousands of homeless veterans in our country have a place to sleep.

LANE EVANS has fought these battles for more than 20 years, and even in the face of his own debilitating disease, he kept fighting. Today, veterans across America have LANE EVANS to thank for reminding this country of its duty to take care of those who have risked their lives to defend ours.

I am very proud today to introduce the Lane Evans Veterans Healthcare and Benefits Improvement Act of 2006. This bill honors a legislator who leaves behind an enduring legacy of service to our veterans. The legislation also is an important step towards caring for our men and women who are currently fighting for us.

Today, nearly 1.5 million American troops have been deployed overseas as part of the global war on terror. These brave men and women who protected us are beginning to return home. Six hundred thousand people who served in Iraq and Afghanistan are now veterans, and at least 184,400 have already received treatment at the VA. That number is increasing every day. Many of these fighting men and women are coming home with major injuries. As a country, we are only beginning to understand the true costs of the global war on terror.

For instance, last week, the Government Accountability Office reported that VA has faced $3 billion in budget shortfalls since 2005 because it underestimated the costs of caring for Iraq and Afghanistan veterans. The VA wasn't getting the information it needed from the Pentagon and was relying on outdated data and incorrect forecasting models. We cannot let these kind of bureaucratic blunders get in the way of the care and support we owe our servicemembers.

To avoid these costly shortfalls in the future, we have to do a better job keeping track of veterans. That's why the first thing the Lane Evans Act does is to establish a system to track global war on terror veterans. The VA established a similar data system following the Persian Gulf War. That effort has

been invaluable in budget planning as well as in monitoring emerging health trends and diseases linked to the gulf war. The Gulf War Veterans Information System also has been important to medical research and improved care for veterans. The sooner we begin keeping accurate track of our fighting men and women in Iraq, Afghanistan and beyond, the better and more efficiently we will be able to care for them.

The Lane Evans Act also tackles Post-Traumatic Stress Disorder. Mental health patients account for about a third of the new veterans seeking care at the VA. The VA's National Center for PTSD reports that ''the wars in Afghanistan and Iraq are the most sustained combat operations since the Vietnam War, and initial signs imply that these ongoing wars are likely to produce a new generation of veterans with chronic mental health problems.''

This bill addresses PTSD in 2 ways. First, it extends the window during which new veterans can automatically get care for mental health from 2 years to 5 years. Right now, any servicemember discharged from the military has up to 2 years to walk into the VA and get care, no questions asked. After that, vets have to prove that they are disabled because of a service-connected injury, or they have to prove their income is below threshold levels. Unfortunately, it can take years for symptoms of PTSD to manifest themselves. The time it takes to prove service-connection for mental health illness is valuable time lost during which veterans are not receiving critically needed treatment. The Lane Evans Act allows veterans to walk into a VA any time 5 years after discharge and get assessed for mental health care. This both extends the window and shortens the wait for vets to get care.

Second, the legislation makes face-to-face physical and mental health screening mandatory 30 to 90 days after a soldier is deployed in a war zone. This will ensure that our fighting force is ready for battle, and that we can identify and treat those at risk for PTSD. By making the exams mandatory, we can help eliminate the stigma associated with mental health screening and treatment.

Another problem veterans face is that the VA and DoD do not effectively share medical and military records. Older veterans often have to wait years for their benefits as the Department of Defense recovers aging and lost paper records. Under the Lane Evans Act, the Department of Defense would provide each separating service member at the time of discharge with a secure full electronic copy of all military and medical records to help them apply for healthcare and benefits. DoD possesses the technology to do this now. The information could be useful to VA to quickly and accurately document receipt of vaccinations or deployment to a war zone. The electronic data will also be helpful in future generations when family members of veterans seek information about military service, awards, and wartime deployment that goes well beyond the existing single-sheet DD–214 discharge certificate, which is all veterans currently receive.

Finally, the legislation improves the transition assistance that guardsmen and reservists receive when they return from deployment. A 2005 GAG report found that because demobilization for guardsmen and reservists is accelerated, reserve units get abbreviated and perfunctory transition assistance including limited employment training. VA should provide equal briefings and transition services for all service members regarding VA healthcare, disability compensation, and other benefits, regardless of their duty status.

Lane Evans dedicated his life to serving this country and dedicated his time in Congress to serving veterans. The legislation I am introducing today, honors both the man and his mission, and will continue his legacy to the next generation of American veterans.

By Mr. BIDEN:

S. 3989. A bill to establish a Homeland Security and Neighborhood Safety Trust Fund and refocus Federal priorities toward securing the Homeland, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. BIDEN. Mr. President, I rise today to introduce the Homeland Security Trust Fund Act of 2006. And, I do so because it is my sincere belief, that in order to better prevent attacks here at home, we must dramatically reorder the priorities of the Federal Government.

This legislation, which I unsuccessfully attempted to attach to the port security legislation 2 weeks ago, will reorder our priorities by creating a homeland security trust fund that will set aside $53.3 billion to invest in our homeland security over the next 5 years. Through this trust fund we will allocate an additional $10 billion per year over the next 5 years to enhance the safety of our communities.

Everyone in this body knows that we are not yet safe enough. Independent experts, law enforcement personnel, and first responders have warned us that we have not done enough to prevent an attack and we are ill-equipped to respond to one. Hurricane Katrina, which happened just over a year ago, demonstrated this unfortunate truth and showed us the devastating consequences of our failure to act responsibly here in Washington. And, last December, the 9/11 Commission issued their report card on the administration's and Congresses' progress in implementing their recommendations. The result was a report card riddled with D's and F's.

And, to add to this, the FBI reported earlier this summer that violent crime and murders are on the rise for the first time in a decade. Given all of this, it is hard to argue that we are as safe as we should be.

To turn this around, we have to get serious about our security. If we establish the right priorities, we can do the job. We can fund local law enforcement, which the President has attempted to slash by over $2 billion for fiscal year 2007. We can give the FBI an additional 1,000 agents to allow them to implement reforms without abandoning local crime. We can secure the soft targets in our critical infrastructure, to ensure that our chemical plants and electricity grids are protected from attacks. We can immediately re-allocate spectrum from the television networks and give it to our first responders so they can talk during an emergency.

I know what many of my colleagues here will argue. They will argue that it is simply too expensive to do everything. This argument is complete malarkey. This is all about priorities. And, quite frankly this Congress and this administration have had the wrong priorities for the past 5 years.

For example, this year the tax cut for Americans that make over $1 million is nearly $60 billion. Let me repeat that, just one year of the Bush tax cut for Americans making over $1 million is nearly $60 billion. In contrast, we dedicate roughly one-half of that—approximately $32 billion—to fund the operations of the Department of Homeland Security. We have invested twice as much for a tax cut for millionaires—less than 1 percent of the population—than we do for the Department intended to help secure the entire nation.

For a Nation that is repeatedly warned about the grave threats we face, how can this be the right priority? The Homeland Security Trust Fund Act of 2006 would change this by taking less than 1 year of the tax cut for millionaires—$53.3 billion—and investing it in homeland security over the next 5 years. By investing this over the next 5 years at just over $10 billion per year, we could implement all the 9/11 Commission recommendations and do those commonsense things that we know will make us safer.

For example, under this amendment, we could hire 50,000 additional police officers and help local agencies create locally based counter-terrorism units. We could hire an additional 1,000 FBI agents to help ensure that FBI is able to implement critical reforms without abandoning its traditional crime fighting functions. We could also invest in security upgrades within our critical infrastructure and nearly double the funding for state homeland security grants. And, the list goes on.

We continually authorize funding for critical homeland security programs, but a look back at our recent appropriations bills tells us that the funding rarely matches the authorization. Just this July we passed the Department of Homeland Security Appropriations Budget. In that legislation, the Senate allocated only $210 million for port security grants—which is just over one-half of the amounts authorized in the

bipartisan port security legislation that passed the Senate 2 weeks ago.

Yet, another example of this problem is our shameful record on providing funding for rail security. For the last two Congresses, the Senate has passed bipartisan rail security legislation sponsored by myself, Senator MCCAIN and others. This legislation authorizes $1.2 billion to secure the soft targets in our rail system, such as the tunnels and stations. Notwithstanding, we have only allocated $150 million per year for rail and transit security with less than $15 million allocated for intercity passenger rail security.

So, while it is critical that we have acknowledged the need for increased rail security funding by passing authorizations, unless we invest the money, it doesn't really mean much. Unfortunately, this is an example that is repeated over and over.

We know that the murder rate is up and that there is an officer shortage in communities throughout the Nation. Yet, we provide $0 funding for the COPS hiring program and we've slashed funding for the Justice Assistance Grant.

We know that our first responders can't talk because they don't have enough interoperable equipment. Yet, we have not forced the networks to turn over critical spectrum, and we vote down funding to help local agencies purchase equipment every year.

We know that only 5 percent of cargo containers are screened, yet we do not invest in the personnel and equipment to upgrade our systems.

We know that our critical infrastructure is vulnerable. Yet, we allow industry to decide what is best and provide scant resources to harden soft targets.

The 9/11 Commission's report card issued last December stated bluntly that ''it is time we stop talking about setting priorities and actually set some.''

This legislation will set some priorities. First, we provide the funding necessary to implement the recommendations of the 9/11 Commission. Next, we take the commonsense steps to make our Nation safer. We make sure that law enforcement and first responders have the personnel, equipment, training they need, and are sufficiently coordinated to do the job by providing $1.15 billion per year for COPS grants; $160 million per year to hire 1,000 FBI agents; $200 million to hire and equip 1,000 rail police. $900 million for the Justice Assistance Grants; $1 billion per year for interoperable communications; $1 billion for Fire Act and SAFER grants.

In addition, we could invest in new screening technologies to protect the American people by providing $100 million to improve airline screening checkpoints and $100 million for research and development on improving screening technologies. We also set aside funding to soften hard targets by setting aside $500 million per year for general infrastructure grants; $500 million per year for port security grants, and $200 million per year to harden our rail infrastructure. And the list goes on.

I will conclude where I started. This is all about setting the right priorities for America. Instead of giving a tax cut to the richest Americans who don't need it, we should take some of it and dedicate it towards the security of all Americans. Our Nation's most fortunate are just as patriotic as the middle class. They are just as willing to sacrifice for the good of our Nation. The problem is that no one has asked them to sacrifice.

The Homeland Security Trust Fund Act of 2006 will ask them to sacrifice for the good of the Nation, and I'm convinced that they will gladly help us out. And to those who say this won't work, I would remind them that the 1994 Crime Bill established the Violent Crime Reduction Trust Fund, specifically designated for public safety, that put more than 100,000 cops on the street, funded prevention programs and more prison beds to lock up violent offenders. It worked; violent crime went down every year for 8 years from the historic highs to the lowest levels in a generation.

Our Nation is at its best when we all pull together and sacrifice. Our Nation's most fortunate citizens are just as patriotic as those in the middle class, and I am confident that they will be willing to forgo 1 year of their tax cut for the greater good of securing the homeland. The bottom line is that with this legislation, we make clear what our national priorities should be, we set out how we will pay for them, and we ensure those who are asked to sacrifice, that money the government raises for security actually gets spent on security.

This legislation is about re-ordering our homeland security priorities. I realize that it will not be enacted this year, but I will introduce this legislation again in the next Congress and I will push for its prompt passage and I hope to gain the support of my colleagues in this effort.

By Mr. BUNNING:

S. 3992. A bill to amend the Exchange Rates and International Economic Policy Coordination Act of 1998 to clarify the definition of manipulation with respect to currency, and for other purposes; read the first time.

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

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

S. 3992

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 ''United States Fair Currency Practices Act of 2006''.

SEC. 2. FINDINGS.

(a) Congress makes the following findings:

(1) Since the Exchange Rates and International Economic Policy Coordination Act of 1988 (22 U.S.C. 5302(3)) was enacted the global economy has changed dramatically, with increased capital account openness, a sharp increase in the flow of funds internationally, and an ever growing number of emerging market economies becoming systemically important to the global flow of goods, services, and capital. In addition, practices such as the maintenance of multiple currency regimes have become rare.

(2) Exchange rates among major trading nations are occasionally manipulated or fundamentally misaligned due to direct or indirect governmental intervention in the exchange market.

(3) A major focus of national economic policy should be a market-driven exchange rate for the United States dollar at a level consistent with a sustainable balance in the United States current account.

(4) While some degree of surpluses and deficits in payments balances may be expected, particularly in response to increasing economic globalization, large and growing imbalances raise concerns of possible disruption to financial markets. In part, such imbalances often reflect exchange rate policies that foster fundamental misalignment of currencies.

(5) Currencies in fundamental misalignment can seriously impair the ability of international markets to adjust appropriately to global capital and trade flows, threatening trade flows and causing economic harm to the United States.

(6) The effects of a fundamentally misaligned currency may be so harmful that it is essential to correct the fundamental misalignment without regard to the purpose of any policy that contributed to the misalignment.

(7) In the interests of facilitating the exchange of goods, services, and capital among countries, sustaining sound economic growth, and fostering financial and economic stability, Article IV of the International Monetary Fund's Articles of Agreement obligates each member of the International Monetary Fund to avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.

(8) The failure of a government to acknowledge a fundamental misalignment of its currency or to take steps to correct such a fundamental misalignment, either through inaction or mere token action, is a form of exchange rate manipulation and is inconsistent with that government's obligations under Article IV of the International Monetary Fund's Articles of Agreement.

TITLE I—INTERNATIONAL MONETARY AND FINANCIAL POLICY

SEC. 101. AMENDMENTS TO DEFINITIONS.

Section 3006 of the Exchange Rates and International Economic Policy Coordination Act of 1988 (22 U.S.C. 5306) is amended by adding at the end the following:

''(3) FUNDAMENTAL MISALIGNMENT.—The term 'fundamental misalignment' means a material sustained disparity between the observed levels of an effective exchange rate for a currency and the corresponding levels of an effective exchange rate for that currency that would be consistent with fundamental macroeconomic conditions based on a generally accepted economic rationale.

''(4) EFFECTIVE EXCHANGE RATE.—The term 'effective exchange rate' means a weighted average of bilateral exchange rates, expressed in either nominal or real terms.

''(5) GENERALLY ACCEPTED ECONOMIC RATIONALE.—The term 'generally accepted economic rationale' means an explanation drawn on widely recognized macroeconomic

theory for which there is a significant degree of empirical support.''.

SEC. 102. BILATERAL NEGOTIATIONS.

(a) IN GENERAL.—Section 3004(b) of the Exchange Rates and International Economic Policy Coordination Act of 1988 (22 U.S.C. 5304(b)) is amended to read as follows:

''(b) BILATERAL NEGOTIATIONS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries—

''(A) manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade; or

''(B) have a currency that is in fundamental misalignment.

''(2) AFFIRMATIVE DETERMINATION.—If the Secretary considers that such manipulation or fundamental misalignment is occurring with respect to countries that—

''(A) have material global current account surpluses; or

''(B) have significant bilateral trade surpluses with the United States,

the Secretary of the Treasury shall take action to initiate negotiations with such foreign countries on an expedited basis, in the International Monetary Fund or bilaterally, for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of payments adjustments and to eliminate the unfair advantage.

''(3) EXCEPTION.—The Secretary shall not be required to initiate negotiations if the Secretary determines that such negotiations would have a serious detrimental impact on vital national economic and security interests. The Secretary shall inform the chairman and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Financial Services of the House of Representatives of the Secretary's determination.''.

SEC. 103. REPORTING REQUIREMENTS.

Section 3005 of the Exchange Rates and International Economic Policy Coordination Act of 1988 (22 U.S.C. 5305) is amended to read as follows:

''SEC. 3005. REPORTING REQUIREMENTS.

''(a) REPORTS REQUIRED.—

''(1) IN GENERAL.—The Secretary, after consulting with the Chairman of the Board, shall submit to Congress, on or before October 15 of each year, a written report on international economic policy and currency exchange rates.

''(2) INTERIM REPORT.—The Secretary, after consulting with the Chairman of the Board, shall submit to Congress, on or before April 15 of each year, a written report on interim developments with respect to international economic policy and currency exchange rates.

''(b) CONTENTS OF REPORTS.—Each report submitted under subsection (a) shall contain—

''(1) an analysis of currency market developments and the relationship between the United States dollar and the currencies of major economies and United States trading partners;

''(2) a review of the economic and financial policies of major economies and United States trading partners and an evaluation of the impact that such policies have on currency exchange rates;

''(3) a description of any currency intervention by the United States or other major economies or United States trading partners, or other actions undertaken to adjust the actual exchange rate of the dollar;

''(4) an evaluation of the factors that underlie conditions in the currency markets, including—

''(A) monetary and financial conditions;

''(B) foreign exchange reserve accumulation;

''(C) macroeconomic trends;

''(D) trends in current and financial account balances;

''(E) the size and composition of, and changes in, international capital flows;

''(F) the impact of the external sector on economic changes;

''(G) the size and growth of external indebtedness;

''(H) trends in the net level of international investment; and

''(I) capital controls, trade, and exchange restrictions;

''(5) a list of currencies of the major economies or economic areas that are manipulated or in fundamental misalignment and a description of any economic models or methodologies used to establish the list;

''(6) a description of any reason or circumstance that accounts for why each currency identified under paragraph (5) is manipulated or in fundamental misalignment based on a generally accepted economic rationale;

''(7) a list of each currency identified under paragraph (5) for which the manipulation or fundamental misalignment causes, or contributes to, a material adverse impact on the economy of the United States, including a description of any reason or circumstance that explains why the manipulation or fundamental misalignment is not accounted for under paragraph (6);

''(8) the results of any prior consultations conducted or other steps taken; and

''(9)(A) a list of each occasion during the reporting period when the issue of exchange-rate misalignment was raised in a countervailing duty proceeding under subtitle A of title VII of the Tariff Act of 1930 or in an investigation under section 421 of the Trade Act of 1974;

''(B) a summary in each such instance of whether or not exchange-rate misalignment was found and the reasoning and data underlying that finding; and

''(C) a discussion regarding each affirmative finding of exchange-rate misalignment to consider the circumstances underlying that exchange-rate misalignment and what action appropriately has been or might be taken by the Secretary apart from and in addition to import relief to correct the exchange-rate misalignment.

''(c) DEVELOPMENT OF REPORTS.—The Secretary shall consult with the Chairman of the Board with respect to the preparation of each report required under subsection (a). Any comments provided by the Chairman of the Board shall be submitted to the Secretary not later than the date that is 15 days before the date each report is due under subsection (a). The Secretary shall submit the report after taking into account all comments received.''.

SEC. 104. INTERNATIONAL FINANCIAL INSTITUTION GOVERNANCE ARRANGEMENTS.

(a) INITIAL REVIEW.—Notwithstanding any other provision of law, before the United States approves a proposed change in the governance arrangement of any international financial institution, as defined in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)), the Secretary of the Treasury shall determine whether any member of the international financial institution that would benefit from the proposed change, in the form of increased voting shares or representation, has a currency that is manipulated or in fundamental misalignment, and if so, whether the manipulation or fundamental misalignment causes or contributes to a material adverse impact on the economy of the United States. The determination shall be reported to Congress.

(b) SUBSEQUENT ACTION.—The United States shall oppose any proposed change in the governance arrangement of any international financial institution (as defined in subsection (a)), if the Secretary renders an affirmative determination pursuant to subsection (a).

(c) FURTHER ACTION.—The United States shall continue to oppose any proposed change in the governance arrangement of an international financial institution, pursuant to subsection (b), until the Secretary determines and reports to Congress that the currency of each member of the international financial institution that would benefit from the proposed change, in the form of increased voting shares or representation, is neither manipulated nor in fundamental misalignment.

SEC. 105. NONMARKET ECONOMY STATUS.

(a) IN GENERAL.—Paragraph (18)(B)(vi) of section 771 of the Tariff Act of 1930 (19 U.S.C. 1677(18)(B)(vi)) is amended by inserting before the end period the following: '', including whether the currency of the foreign country has been identified pursuant to section 3005(b)(7) of the Exchange Rates and International Economic Policy Coordination Act of 1988 (22 U.S.C. 5305(b)(7)) in any written report required by such section 3005(b)(7) during the 24-month period immediately preceding the month during which the administering authority seeks to revoke a determination that such foreign country is a nonmarket economy country''.

(b) TERMINATION.—The amendment made by this section shall apply during the 10-year period beginning on the date of the enactment of this Act.

TITLE II—SUBSIDIES AND PRODUCT-SPECIFIC SAFEGUARD MECHANISM

SEC. 201. FINDINGS.

Congress makes the following findings:

(1) The economy and national security of the United States are critically dependent upon a vibrant manufacturing and agricultural base.

(2) The good health of United States manufacturing and agriculture requires, among other things, unfettered access to open markets abroad and fairly traded raw materials and products in accord with the international legal principles and agreements of the World Trade Organization and the International Monetary Fund.

(3) The International Monetary Fund, the G–8, and other international organizations have repeatedly noted that exchange-rate misalignment can cause imbalances in the international trading system that could ultimately undercut the stability of the system, but have taken no action to address such misalignments and imbalances.

(4) Since 1994, the People's Republic of China and other countries have aggressively intervened in currency markets and taken measures that have significantly misaligned the values of their currencies against the United States dollar and other currencies.

(5) This policy by the People's Republic of China, for example, has resulted in substantial undervaluation of the renminbi, by up to 40 percent or more.

(6) Evidence of this undervaluation can be found in the large and growing annual trade surpluses of the People's Republic of China; substantially expanding foreign direct investment in China; and the rapidly increasing aggregate amount of foreign currency reserves that are held by the People's Republic of China.

(7) Undervaluation by the People's Republic of China and by other countries acts as both a subsidy for their exports and as a nontariff barrier against imports into their territories, to the serious detriment of United States manufacturing and agriculture.

(8)(A) As members of both the World Trade Organization and the International Monetary Fund, the People's Republic of China and other countries have assumed a series of international legal obligations to eliminate all subsidies for exports and to facilitate international trade by fostering a monetary system that does not tend to produce erratic disruptions, that does not prevent effective balance-of-payments adjustment, and that does not gain unfair competitive advantage.

(B) These obligations are most prominently set forth in Articles VI, XV, and XVI of the GATT 1994 (as defined in section 2(1)(B) of the Uruguay Round Agreements Act (19 U.S.C. 3501(1)(B)), in the Agreement on Subsidies and Countervailing Measures (as defined in section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)), and in Articles IV and VIII of the International Monetary Fund's Articles of Agreement.

(9) Under the foregoing circumstances, it is consistent with the international legal obligations of the People's Republic of China and similarly situated countries and with the corresponding international legal rights of the United States to amend relevant United States trade laws to make explicit that exchange-rate misalignment is actionable as a countervailable export subsidy.

SEC. 202. CLARIFICATION TO INCLUDE EXCHANGE-RATE MISALIGNMENT AS A COUNTERVAILABLE SUBSIDY UNDER TITLE VII OF THE TARIFF ACT OF 1930.

(a) AMENDMENTS TO DEFINITION OF COUNTERVAILABLE SUBSIDY.—

(1) FINANCIAL CONTRIBUTION.—Section 771(5)(D) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is amended—

(A) by redesignating clauses (i) through (iv) as subclauses (I) through (IV), respectively;

(B) by striking ''The term'' and inserting ''(i) The term''; and

(C) by adding at the end the following:

''(ii) Exchange-rate misalignment (as defined in paragraph (5C)) constitutes a financial contribution within the meaning of subclauses I and III of clause (i).''.

(2) BENEFIT CONFERRED.—Section 771(5)(E) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amended—

(A) in clause (iii), by striking '', and'' and inserting a comma;

(B) in clause (iv), by striking the period at the end and inserting '', and''; and

(C) by adding at the end the following new clause:

''(v) in the case of exchange-rate misalignment (as defined in paragraph (5C)), if the price of exported goods in United States dollars is less than what the price of such goods would be without the exchange-rate misalignment.''.

(3) SPECIFICITY.—Section 771(5A)(B) of the Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended by adding at the end before the period the following: '', such as exchange-rate misalignment (as defined in paragraph (5C))''.

(b) DEFINITION OF EXCHANGE-RATE MISALIGNMENT.—Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by inserting after paragraph (5B) the following new paragraph:

''(5C) EXCHANGE-RATE MISALIGNMENT.—

''(A) IN GENERAL.—For purposes of paragraphs (5) and (5A), the term 'exchange-rate misalignment' means a significant undervaluation of a foreign currency as a result of protracted large-scale intervention by or at the direction of a governmental authority in exchange markets. Such undervaluation shall be found when the observed exchange rate for a foreign currency is significantly below the exchange rate that could reasonably be expected for that foreign currency absent the intervention.

''(B) FACTORS.—In determining whether exchange-rate misalignment is occurring and a benefit thereby is conferred, the administering authority in each case—

''(i) shall consider the exporting country's—

''(I) bilateral balance-of-trade surplus or deficit with the United States;

''(II) balance-of-trade surplus or deficit with its other trading partners individually and in the aggregate;

''(III) foreign direct investment in its territory;

''(IV) currency-specific and aggregate amounts of foreign currency reserves; and

''(V) mechanisms employed to maintain its currency at an undervalued exchange rate relative to another currency and, particularly, the nature, duration, and monetary expenditures of those mechanisms;

''(ii) may consider such other economic factors as are relevant; and

''(iii) shall measure the trade surpluses or deficits described in subclauses (I) and (II) of clause (i) with reference to the trade data reported by the United States and the other trading partners of the exporting country, unless such trade data are not available or are demonstrably inaccurate, in which case the exporting country's trade data may be relied upon if shown to be sufficiently accurate and trustworthy.

''(C) COMPUTATION.—In calculating the extent of exchange-rate misalignment, the administering authority shall, in consultation with the Treasury Department and the Federal Reserve, develop and apply an objective methodology that is consistent with widely recognized macroeconomic theory and shall rely upon governmentally published and other publicly available data.

''(D) TYPE OF ECONOMY.—An authority found to be engaged in exchange-rate misalignment may have either a market economy or a nonmarket economy or a combination thereof.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply with respect to a countervailing duty proceeding initiated under subtitle A of title VII of the Tariff Act of 1930 before, on, or after the date of enactment of this Act.

SEC. 203. CLARIFICATION TO INCLUDE EXCHANGE-RATE MISALIGNMENT BY THE PEOPLE'S REPUBLIC OF CHINA AS A CONDITION TO BE CONSIDERED WITH RESPECT TO MARKET DISRUPTION UNDER CHAPTER 2 OF TITLE IV OF THE TRADE ACT OF 1974.

(a) MARKET DISRUPTION.—

(1) IN GENERAL.—Section 421(c) of the Trade Act of 1974 (19 U.S.C. 2451(c)) is amended by adding at the end the following new paragraphs:

''(3) For purposes of this section, the term 'under such conditions' includes exchange-rate misalignment (as defined in paragraph (4)).''.

''(4)(A) For purposes of this section, the term 'exchange-rate misalignment' means a significant undervaluation of the renminbi as a result of protracted large-scale intervention by or at the direction of the Government of the People's Republic of China in exchange markets. Such undervaluation shall be found when the observed exchange rate for the renminbi is significantly below the exchange rate that could reasonably be expected for the renminbi absent the intervention.

''(B) In determining whether exchange-rate misalignment is occurring, the Commission in each case—

''(i) shall consider the People's Republic of China's—

''(I) bilateral balance-of-trade surplus or deficit with the United States;

''(II) balance-of-trade surplus or deficit with its other trading partners individually and in the aggregate;

''(III) foreign-direct investment in its territory;

''(IV) currency-specific and aggregate amounts of foreign currency reserves; and

''(V) mechanisms employed to maintain its currency at an undervalued exchange rate relative to another currency and, particularly, the nature, duration, and monetary expenditures of those mechanisms;

''(ii) may consider such other economic factors as are relevant; and

''(iii) shall measure the trade surpluses or deficits described in subclauses (I) and (II) of clause (i) with reference to the trade data reported by the United States and the other trading partners of the People's Republic of China, unless such trade data are not available or are demonstrably inaccurate, in which case the trade data of the People's Republic of China may be relied upon if shown to be sufficiently accurate and trustworthy.

''(C) In calculating the extent of exchange-rate misalignment, the Commission shall, in consultation with the Treasury Department and the Federal Reserve, develop and apply an objective methodology that is consistent with widely recognized macroeconomic theory and shall rely upon governmentally published and other publicly available data.''.

(b) CRITICAL CIRCUMSTANCES.—Section 421(i)(1) of the Trade Act of 1974 (19 U.S.C. 2451(i)(1)) is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(3) by inserting after subparagraph (B) the following new subparagraph:

''(C) if the petition alleges and reasonably documents that exchange-rate misalignment is occurring, such exchange-rate misalignment shall be considered as a factor weighing in favor of affirmative findings in subparagraphs (A) and (B).''.

(c) STANDARD FOR PRESIDENTIAL ACTION.—Section 421(k)(2) of the Trade Act of 1974 (19 U.S.C. 2451(k)(2)) is amended by adding at the end the following new sentence: ''If the Commission makes an affirmative determination that exchange-rate misalignment is occurring, the President shall consider such exchange-rate misalignment as a factor weighing in favor of providing import relief in accordance with subsection (a).''.

(d) MODIFICATIONS OF RELIEF.—Section 421(n)(2) of the Trade Act of 1974 (19 U.S.C. 2451(n)(2)) is amended by adding at the end the following new sentence: ''If the Commission affirmatively determines that exchange-rate misalignment is occurring, the Commission and the President shall consider such exchange-rate misalignment as a factor weighing in favor of finding that continuation of relief is necessary to prevent or remedy the market disruption at issue.''.

(e) EXTENSION OF ACTION.—Section 421(o) of the Trade Act of 1974 (19 U.S.C. 2451(o)) is amended—

(1) in paragraph (1), by adding at the end the following new sentence: ''If the Commission makes an affirmative determination that exchange-rate misalignment is occurring, the Commission shall consider such exchange-rate misalignment as a factor weighing in favor of finding that an extension of the period of relief is necessary to prevent or remedy the market disruption at issue.''; and

(2) in paragraph (4), by adding at the end the following new sentence: ''If the Commission makes an affirmative determination that exchange-rate misalignment is occurring, the President shall consider such exchange-rate misalignment as a factor weighing in favor of finding that an extension of the period of relief is necessary to prevent or remedy the market disruption at issue.''.

(f) EFFECTIVE DATE.—The amendments made by this section apply with respect to an investigation initiated under chapter 2 of title IV of the Trade Act of 1974 before, on, or after the date of the enactment of this Act.

SEC. 204. PROHIBITION ON PROCUREMENT BY THE DEPARTMENT OF DEFENSE OF CERTAIN DEFENSE ARTICLES IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA.

(a) COPY OF PETITION, REQUEST, OR RESOLUTION TO BE TRANSMITTED TO THE SECRETARY OF DEFENSE.—Section 421(b)(4) of the Trade Act of 1974 (19 U.S.C. 2451(b)(4)) is amended by inserting '', the Secretary of Defense'' after '', the Trade Representative''.

(b) DETERMINATION OF SECRETARY OF DEFENSE.—Section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) is amended by adding at the end the following new paragraph:

''(6) Not later than 15 days after the date on which an investigation is initiated under this subsection, the Secretary of Defense shall submit to the Commission a report in writing which contains the determination of the Secretary as to whether or not the articles of the People's Republic of China that are the subject of the investigation are like or directly competitive with articles produced by a domestic industry that are critical to the defense industrial base of the United States.''.

(c) PROHIBITION ON PROCUREMENT BY THE DEPARTMENT OF DEFENSE OF CERTAIN DEFENSE ARTICLES.—

(1) PROHIBITION.—If the United States International Trade Commission makes an affirmative determination under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)), or a determination which the President or the United States Trade Representative may consider as affirmative under section 421(e) of such Act (19 U.S.C. 2451(e)), with respect to articles of the People's Republic of China that the Secretary of Defense has determined are like or directly competitive with articles produced by a domestic industry that are critical to the defense industrial base of the United States, the Secretary of Defense may not procure, directly or indirectly, such articles of the People's Republic of China.

(2) WAIVER.—The President may waive the application of the prohibition contained in paragraph (1) on a case-by-case basis if the President determines and certifies to Congress that it is in the national security interests of the United States to do so.

SEC. 205. APPLICATION TO GOODS FROM CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3438), the amendments made by sections 105 and 202 of this Act shall apply to goods from Canada and Mexico.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 589—COMMENDING NEW YORK STATE SENATOR JOHN J. MARCHI ON HIS 50 YEARS IN THE NEW YORK STATE SENATE AND ON BECOMING THE LONGEST SERVING STATE LEGISLATOR IN THE UNITED STATES

Mr. SCHUMER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 589

Whereas New York State Senator John J. Marchi has been recognized by the National Conference of State Legislatures as the longest serving state legislator in the United States;

Whereas State Senator Marchi was born on May 20, 1921, in Staten Island and attended local primary and secondary schools in New York, then Manhattan College, from which he graduated with first honors in 1942, St. John's University School of Law, from which he received a law degree, and Brooklyn Law School, from which he received an advanced degree in law;

Whereas, during World War II, State Senator Marchi served in the United States Coast Guard and saw combat in the Atlantic and Pacific theaters and in the China Sea, and subsequently served in the United States Naval Reserve until 1982;

Whereas, in 1956, State Senator Marchi was elected to the New York State Senate and has served the citizens of Senate District 24 for 50 years, making him the longest serving state legislator in the United States;

Whereas State Senator Marchi served as a delegate to the New York Constitutional Convention in 1967;

Whereas State Senator Marchi is a recognized leader of the New York State Senate and was named Assistant Majority Leader on Conference Operations in January 2005, Assistant Majority Whip in 2003, Chairman of the Senate Committee on Corporations, Authorities and Commissions in 1995, and Vice President Pro Tempore in 1989;

Whereas, prior to holding these offices, State Senator Marchi served as Chairman of the Finance Committee for 15 years;

Whereas State Senator Marchi is a tireless leader and advocate for New York City, has served on the City of New York Committee in the New York State Senate, and was named Chairman of the Temporary State Commission on New York City School Governance in 1989, a panel of civic, governmental, business, and educational leaders that conducted a 2-year examination of the control of the city schools and, in 1991, gave the State legislature a package of proposals intended to improve the administration of, and public participation in, the New York City school system;

Whereas State Senator Marchi is widely recognized as one of the city and State leaders who helped write the laws that saved New York City from financial collapse in the mid-1970s;

Whereas State Senator Marchi sponsored the bill, now law, that modernized New York State's financial reporting and bookkeeping practices so that the legislature and the public could see more clearly the State government's actual fiscal condition;

Whereas, in 1997, State Senator Marchi successfully advanced—and saw passed and signed into law—a bill to require the closing by January 1, 2002 of the Fresh Kills Landfill, Staten Island's worst environmental problem for more than half a century, which the legislature had not previously scheduled for closure;

Whereas State Senator Marchi has also been a leader in the development of legislation to strengthen public education from kindergarten through graduate school;

Whereas State Senator Marchi has been a member of the Executive Committee and Board of Governors of the Council of State Governments since 1965, is a former Chairman of the Committee, and was designated the first permanent member of the Committee in 1982;

Whereas, in 1969 and 1973, State Senator Marchi was the candidate of the Republican Party for the Office of Mayor of the City of New York;

Whereas, in October 1972, State Senator Marchi was appointed by President Nixon to serve as the only legislator on the National Advisory Committee on Drug Abuse Prevention;

Whereas, following the September 11, 2001 attacks, the New York Senate Majority Leader appointed State Senator Marchi to head the New York Senate Task Force on World Trade Center Recovery, which was to help oversee the reconstruction of Ground Zero;

Whereas, on June 2, 1968, State Senator Marchi received from the President and Prime Minister of Italy the highest award that country bestows on a nonresident, the award of Commander of the Order of Merit of the Republic of Italy, and in 1992, the Senator received another of Italy's most prestigious honors, the Filippo Mazzei Award, in recognition of his public service and for helping to strengthen relations between the United States and Italy;

Whereas State Senator Marchi is the recipient of the Mills G. Skinner Award of the National Urban League, an organization devoted to empowering African Americans to enter the economic and social mainstream;

Whereas, in 1976, the New York State Veterans of Foreign Wars conferred upon the Senator the Silver Commendation Medal for ''legislative service to veterans and all New Yorkers''; and

Whereas, in 1971, State Senator Marchi was awarded the degree of Doctor of Laws, honoris causa, from St. John's University and, in 1973, received the same degree from Manhattan College, and in 1974, was awarded the degree of Doctor of Laws from Wagner College: Now, therefore, be it

Resolved, That the Senate commends New York State Senator John J. Marchi for his 50-year tenure in the New York State Senate, on becoming the longest serving state legislator in the United States, and on his lifelong commitment to the citizens of Staten Island and New York.

SENATE RESOLUTION 590—DESIGNATING THE SECOND SUNDAY IN DECEMBER 2006, AS ''NATIONAL CHILDREN'S MEMORIAL DAY'' IN CONJUNCTION WITH THE COMPASSIONATE FRIENDS WORLDWIDE CANDLE LIGHTING

Mr. VITTER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 590

Whereas approximately 200,000 infants, children, teenagers, and young adults of families living throughout the United States die each year from a myriad of causes;

Whereas stillbirth, miscarriage, and the death of an infant, child, teenager, or young adult are considered some of the greatest tragedies that a parent or family could ever endure;

Whereas a supportive environment, empathy, and understanding are considered critical factors in the healing process of a family that is coping with and recovering from the loss of a loved one;

Whereas the mission of The Compassionate Friends is to assist families working towards the positive resolution of grief following the death of a child of any age and to provide information to help others be supportive; and

Whereas the work of local chapters of The Compassionate Friends provides a caring environment in which bereaved parents, grandparents, and siblings can work through their grief with the help of others: Now, therefore, be it

Resolved, That the Senate—

(1) designates the second Sunday in December 2006, as ''National Children's Memorial Day'' in conjunction with The Compassionate Friends Worldwide Candle Lighting;

(2) supports the efforts of The Compassionate Friends to assist and comfort families grieving the loss of a child; and

(3) calls upon the people of the United States to observe National Children's Memorial Day with appropriate ceremonies and activities in remembrance of the many infants, children, teenagers, and young adults of families in the United States who have died.

AMENDMENTS SUBMITTED AND PROPOSED

SA 5092. Mr. FRIST submitted an amendment intended to be proposed by him 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; which was ordered to lie on the table.

SA 5093. Mr. FRIST submitted an amendment intended to be proposed to amendment SA 5092 submitted by Mr. FRIST and intended to be proposed to the bill S. 403, supra; which was ordered to lie on the table.

SA 5094. Mr. FRIST submitted an amendment intended to be proposed to amendment SA 5090 proposed by Mr. BENNETT (for Mr. FRIST) to the bill S. 403, supra; which was ordered to lie on the table.

SA 5095. Mr. ROCKEFELLER (for himself, Mrs. CLINTON, Mr. WYDEN, Ms. MIKULSKI, Mr. FEINGOLD, Mr. LEVIN, and Mrs. FEINSTEIN) 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 5096. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table.

SA 5097. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 403, supra; which was ordered to lie on the table.

SA 5098. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 403, supra; which was ordered to lie on the table.

SA 5099. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 403, supra; which was ordered to lie on the table.

SA 5100. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 403, supra; which was ordered to lie on the table.

SA 5101. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 403, supra; which was ordered to lie on the table.

SA 5102. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 403, supra; which was ordered to lie on the table.

SA 5103. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 403, supra; which was ordered to lie on the table.

SA 5104. Mr. BYRD (for himself, Mr. OBAMA, Mrs. CLINTON, and Mr. LEVIN) 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 5105. Mr. BINGAMAN submitted an amendment intended to be proposed by him 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 5106. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 6061, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 5092. Mr. FRIST submitted an amendment intended to be proposed by him 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; which was ordered to lie on the table; as follows:

On page 12, line 2, strike ''45 days'' and insert ''47 days''.

SA 5093. Mr. FRIST submitted an amendment intended to be proposed to amendment SA 5092 submitted by Mr. Frist and intended to be proposed 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; which was ordered to lie on the table; as follows:

Strike ''47 days'' and insert ''46 days''.

SA 5094. Mr. FRIST submitted an amendment intended to be proposed 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; which was ordered to lie on the table; as follows:

Strike ''46 days'' and insert ''43 days''.

SA 5095. Mr. ROCKEFELLER (for himself, Mrs. CLINTON, Mr. WYDEN, Ms. MIKULSKI, Mr. FEINGOLD, Mr. LEVIN, and Mrs. FEINSTEIN) 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:

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.

SA 5096. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

On page 2, lines 24 and 25, strike ''save the life of the minor because her life'' and insert ''save the life or health of the minor because her life or health''.

SA 5097. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

On page 7, line 22, strike '', and, before'' and all that follows through page 8, line 2, and insert a semicolon.

SA 5098. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

On page 8, line 15, '', but an exception'' and all that follows through line 21 and insert the following ''; or''.

SA 5099. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

On page 6, strike line 11 and all that follows through page 11, line 15, and insert the following:

SEC. 3. CLERICAL AMENDMENT.

The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new item:

''117A. Transportation of minors in circumvention of certain laws relating to abortion ..... 2431''.

SEC. 4. SEVERABILITY AND EFFECTIVE DATE.

SA 5100. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

On page 11, strike line 15 and all that follows through page 12, line 3, and insert the following:

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 45 days after the date of enactment of this Act.

SA 5101. Mrs. BOXER submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

Strike sections 3, 4, and 5 of the amendment.

SA 5102. Mrs. BOXER submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

In the amendment, on page 8, line 3, strike beginning with ''of'' through line 21 and insert ''or health of the minor;''.

SA 5103. Mrs. BOXER submitted an amendment intended to be proposed by her 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; which was ordered to lie on the table; as follows:

In the amendment, on page 7, line 22, strike beginning with '', and,'' through page 8, line 2, and insert a semicolon.

SA 5104. Mr. BYRD (for himself, Mr. OBAMA, Mrs. CLINTON, and Mr. LEVIN) 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:

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.''.

SA 5105. Mr. BINGAMAN submitted an amendment intended to be proposed by him 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 appropriate place, insert the following:

''(D) LIMITATION ON REQUIREMENTS.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary to provide fencing and install additional physical barriers, roads, lighting, cameras, and sensors in a location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.''.

SA 5106. Mr. KENNEDY submitted an amendment intended to be proposed by him 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 of the amendment add the following: ''operational control shall also include the implementation of those measures described in the Comprehensive Immigration Reform Act of 2006, as passed by the Senate on May 25, 2006, that the Secretary determines to be necessary and appropriate to achieve or maintain operational control over the international land and maritime borders of the United States.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on September 28, 2006, at 9:30 a.m., in open session to receive testimony on military voting and the Federal Voting Assistance Program.

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

COMMITTEE ON FINANCE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Thursday, September 28, 2006, at 2:30 p.m., in 215 Dirksen Senate Office Building, to hear testimony on ''America's Public Debt: How Do We Keep It From Rising?''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on September 28, 2006 at 2:30 p.m. to hold a closed hearing.

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

SUBCOMMITTEE ON AVIATION

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Subcommittee on Aviation be authorized to meet on Thursday, September 28, 2006 at 10 a.m. on ''New Aircraft in the National Airspace System.''

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia be authorized to meet on Thursday, September 28, 2006 at 10 a.m. for a hearing entitled, ''Securing the National Capital Region: An Examination of the NCR's Strategic Plan.''

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

SUBCOMMITTEE ON SUPERFUND AND WASTE MANAGEMENT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that on Thursday, September 28, at 9:30 a.m. the Subcommittee on Superfund and Waste Management be authorized to hold a legislative hearing to consider S. 3871, a bill directing the EPA to establish a hazardous waste electronic manifest system.

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

FOREIGN POLICY

Mr. FRIST. Mr. President, we have had a long and full day today. I have some remarks to make on a couple of bills, and then we will close down, with a brief statement on what I see unfolding over the next couple days.

Mr. President, the Senate has before it two very important bills dealing with critical foreign policy issues facing our Nation.

One of them is the Iran Freedom Support Act, H.R. 6198. This is a bipartisan bill which passed the House earlier today by voice vote. In other words, it was a noncontroversial bill in the House. It was cosponsored there by Congressman TOM LANTOS, the ranking Democrat on the Committee on International Relations, as well as by Congressman GARY ACKERMAN, the ranking Democrat on the Subcommittee on Middle East and Central Asia. The Iran Freedom Support Act is also strongly supported by the Bush administration.

Enactment of this bill is time-sensitive because it will extend for another 5 years the provisions of the Iran and Libya Sanctions Act, or better known here on the floor as ILSA. ILSA has been an important element of the U.S. sanctions regime against Iran for the past 10 years, and ILSA will expire tomorrow unless Congress acts to extend it.

Iran is continuing to defy the will of the international community by persisting with its efforts to produce nuclear weapons in violation of international nonproliferation norms. I could not think of a worse time than now to allow ILSA to lapse; the signal this would send to Iran of U.S. irresolution and weakness would be terrible.

Just today, President Ahmadi-Nejad publicly declared that Iran will not suspend its nuclear enrichment program, despite being called to do so by the United Nations Security Council. The U.N. is now poised to impose multilateral sanctions on Iran if it continues to defy Security Council mandates. But if we allow ILSA to lapse, the Congress will be relaxing U.S. sanctions on Iran at the very same time the rest of the world is thinking about tightening sanctions.

This is not the kind of leadership I was elected to the Senate to provide, and I think every Senator will have to lower their head in shame if the Senate fails to act tomorrow to extend ILSA.

H.R. 6198 has been cleared on our side of the aisle. We are ready to pass it. We are ready to pass it tonight. I will not ask unanimous consent to pass it tonight, however, because I understand it has not been cleared on the Democratic side of the aisle. I hope that does change overnight, but whether it changes or not, I wish to serve notice to all Senators that tomorrow I will ask unanimous consent to pass H.R. 6198, and I hope there will be no Member of this body who steps forward at that time to reward Iran's intransigence by blocking passage of this bipartisan legislation.

The second very important bill affecting our foreign policy that is today pending before the Senate is the United States-India Peaceful Atomic Energy Cooperation Act, S. 3709. This bill was reported by the Committee on Foreign Relations on July 20 and has been pending before us since that time. It is strongly supported by Chairman LUGAR and the ranking Democrat of that committee, Senator BIDEN. Together they have developed a managers' amendment that they both support and that they would like the Senate to approve. The House companion measure has already passed that body by a wide margin.

Enactment of this legislation is essential in order to begin a new era in relations between our Nation and India, the world's largest democracy. This legislation will enable us to commence cooperation with India in the area of civil nuclear energy, something that is today contrary to U.S. law. We need to be able to do this to fulfill commitments President Bush made to Prime Minister Singh of India on July 18 of last year. If we are unable to fulfill those commitments, the disappointment in India will be such that United States-India relations could be set back by many years, and the promise of a new era in relations that was born on July 18 of last year will be lost.

Like the Iran bill, the India legislation has been cleared on our side of the aisle. Republican Members of the Senate are ready to approve the managers' amendment to S. 3709 tonight, in its current form, with no further debate or amendment.

Regrettably, the same is not true on the other side of the aisle. Senate Democrats are not ready tonight to pass the managers' amendment to this legislation in its current form.

This is regrettable because if the Democrats would permit us to pass the

bill tonight, we could send it to conference over the recess, where the differences between the House bill could be resolved, and we could be assured of sending this bill to the President before we adjourn.

I understand that the reason they are not prepared to pass the legislation is because they have a large number of amendments they wish to offer. Some of these Democrat amendments are so-called killer amendments which, if adopted, would simply make this legislation unacceptable to the Indian government. Others of the Democrat amendments are not necessarily designed to kill the legislation, but their sheer volume will slow down this whole process considerably and could, as a practical matter, make it impossible for the Senate to consider this legislation this year.

I have worked with my colleague, Senator REID, to come up with some sort of unanimous-consent agreement that would enable us to consider this legislation in a reasonable period of time. We have not yet succeeded, but I will keep trying. We need to bring this matter to a resolution before we recess.

MEASURE PLACED ON CALENDAR—H.R. 5132

Mr. FRIST. Mr. President, I understand there is a bill at the desk that is due for its second reading?

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

The 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. FRIST. Mr. President, in order to place the bill on the calendar under rule XIV, I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

MEASURES READ FIRST TIME—S. 3982, S. 3983, S. 3992, S. 3993

Mr. FRIST. Mr. President, I understand there are four bills at the desk, and I ask for their first reading en bloc.

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

The legislative clerk read as follows:

A bill (S. 3982) to amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs.

A bill (S. 3983) to amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs and to indemnify manufacturers and health care professionals for the administration of medical products needed for biodefense.

A bill (S. 3992) to amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, and for other purposes.

A bill (S. 3993) to amend title 18, United States Code, to provide penalties for aiming laser pointers at airplanes, and for other purposes.

Mr. FRIST. Mr. President, I now ask for a second reading and, in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will be placed on the calendar, en bloc.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENTS 109–13 AND 109–14

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following agreements transmitted to the Senate on September 28, 2006, by the President of the United States:

Mutual legal assistance agreement with the European Union, Treaty Document 109–13.

Extradition agreement with the European Union, Treaty Document 109–14.

I further ask that the agreements be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

MUTUAL LEGAL ASSISTANCE AGREEMENT WITH THE EUROPEAN UNION (TREATY DOC. NO. 109–13)

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Agreement on Mutual Legal Assistance between the United States of America and the European Union (EU), signed on June 25, 2003, at Washington, together with 25 bilateral instruments that subsequently were signed between the United States and each European Union Member State in order to implement the Agreement with the EU, and an explanatory note that is an integral part of the Agreement. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Agreement and bilateral instruments.

A parallel agreement with the European Union on extradition, together with bilateral instruments, will be transmitted to the Senate separately. These two agreements are the first law enforcement agreements concluded between the United States and the European Union. Together they serve to modernize and expand in important respects the law enforcement relationships between the United States and the 25 EU Member States, as well as formalize and strengthen the institutional framework for law enforcement relations between the United States and the European Union itself.

The U.S.-EU Mutual Legal Assistance Agreement contains several innovations that should prove of value to U.S. prosecutors and investigators, including in counterterrorism cases. The Agreement creates an improved mechanism for obtaining bank information from an EU Member State, elaborates legal frameworks for the use of new techniques such as joint investigative teams, and establishes a comprehensive and uniform framework for limitations on the use of personal and other data. The Agreement includes a non-derogation provision making clear that it is without prejudice to the ability of the United States or an EU Member State to refuse assistance where doing so would prejudice its sovereignty, security, public, or other essential interests.

I recommend that the Senate give early and favorable consideration to the Agreement and bilateral instruments.

GEORGE W. BUSH.

THE WHITE HOUSE, *September 28, 2006*.

EXTRADITION AGREEMENT WITH THE EUROPEAN UNION (TREATY DOC. NO. 109–14)

To the Senate of the United States:

With a view to receiving the advice and consent of Senate to ratification, I transmit herewith the Agreement on Extradition between the United States of America and the European Union (EU), signed on June 25, 2003, at Washington, together with 22 bilateral instruments that subsequently were signed between the United States and European Union Member States in order to implement the Agreement with the EU, and an explanatory note that is an integral part of the Agreement. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Agreement and bilateral instruments. The bilateral instruments with three EU Member States, Estonia, Latvia, and Malta, take the form of comprehensive new extradition treaties, and therefore will be submitted individually.

A parallel agreement with the European Union on mutual legal assistance, together with bilateral instruments, will be transmitted to the Senate separately. These two agreements are the first law enforcement agreements concluded between the United States and the European Union. Together they serve to modernize and expand in important respects the law enforcement relationships between the United States and the 25 EU Member States, as well as formalize and strengthen the institutional framework for law enforcement relations between the United States and the European Union itself.

The U.S.-EU Extradition Agreement contains several provisions that should

improve the scope and operation of bilateral extradition treaties in force between the United States and each EU Member State. For example, it requires replacing outdated lists of extraditable offenses included in 10 older bilateral treaties with the modern ''dual criminality'' approach, thereby enabling coverage of such newer offenses as money laundering. Another important provision ensures that a U.S. extradition request is not disfavored by an EU Member State that receives a competing request for the person from another Member State pursuant to the newly created European Arrest Warrant. Finally, the Extradition Agreement simplifies procedural requirements for preparing and transmitting extradition documents, easing and speeding the current process.

I recommend that the Senate give early and favorable consideration to the Agreement and bilateral instruments.

GEORGE W. BUSH.

THE WHITE HOUSE, *September 28, 2006*.

ORDERS FOR FRIDAY, SEPTEMBER 29, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Friday, September 29. I further ask 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 for the transaction of morning business, with the time equally divided between the two leaders or their designees until 10 a.m.; further, that at 10 a.m., the Senate proceed to a vote on the adoption of the conference report to accompany H.R. 5631, the Department of Defense appropriations bill.

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

PROGRAM

Mr. FRIST. Mr. President, today we had a very busy day. We passed the Military Commissions Act, the Terrorist Tribunal Act, and also invoked cloture on the border fence bill, another very important piece of legislation. This evening, we reached agreement to consider the Department of Defense appropriations bill conference report, and tomorrow morning at 10 o'clock the Senate will vote on that conference report, and then we will resume the postcloture debate on the border fence bill.

I remind my colleagues to be prepared for a busy day tomorrow, with votes throughout the day. Given the cloture vote this evening of 71 to 28, I hope we can expedite the border fence bill and finish it at an early hour tomorrow.

This is a very important bill that focuses on border security and border security first, recognizing we have a lot more to do in the future, but it does give us that opportunity to address the fact that we have millions of people coming across the U.S. border every year illegally, and we need to start the enforcement of that border and that border security by a physical structure, UAVs, with cameras and sensors, specifically 700 miles of fence along that border.

Following that, we will have the cloture vote on the message on the Child Custody Act, a very important bill that addresses one of our major initiatives here; that is, to secure America's values and look at the issue of a young girl being taken for an abortion across State lines without parental permission. It is common sense. We passed it on the floor of the Senate not too long ago, and this is an amended version that came over from the House, and now is the time for us to pass it once again.

Beyond that, we have a number of other outstanding items that will need to be addressed before the recess. As we speak, issues surrounding our ports, again another part of that major thematic for this month of securing our homeland as we work on border security and funding the war on terror and giving our Government, our military, and our CIA the tools that we need to carry out this war on terror for our ports.

Our port security has to be addressed. It is being addressed in conference. Conferees were appointed by the House earlier tonight and that conference met tonight, so I am very hopeful that we will be able to address port security over the next 24, 36 hours.

In addition, we have nominations of the various judges that we need to consider before we leave. We have a treaty, U.S.–U.K. extradition that we need to address before we leave. There are other cleared items, including a large energy package. All of these are being held up tonight by the other side of the aisle, but I am very hopeful that we will be able to address these issues over the course of the next day or so.

If we are unable to complete all of our work tomorrow, Senators can expect a Saturday session. It is clear, as I set out really 2 weeks ago, that we have a large agenda. We are moving along very, very well, making real progress, as shown by the six votes that we had over the course of the day. But we have a lot more to do, and we will stay until we finish that work either late tomorrow or into Saturday.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. 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.

There being no objection, the Senate, at 9:42 p.m., adjourned until Friday, September 29, 2006, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 28, 2006:

DEPARTMENT OF THE TREASURY

MICHELE A. DAVIS, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE ANTONIO FRATTO.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

ERIC D. EBERHARD, OF WASHINGTON, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2012, VICE MALCOLM B. BOWEKATY, TERM EXPIRING.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

DANA GIOIA, OF CALIFORNIA, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE ARTS FOR A TERM OF FOUR YEARS. (REAPPOINTMENT)

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASSES INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER:

WILLIAM R. BROWNFIELD, OF TEXAS
KATHERINE H. CANAVAN, OF CALIFORNIA
CHRISTOPHER ROBERT HILL, OF RHODE ISLAND
CAMERON R. HUME, OF CONNECTICUT
GEORGE MCDADE STAPLES, OF KENTUCKY

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

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EDWARD M. ALFORD, OF VIRGINIA
PETER K. AUGUSTINE, OF TEXAS
CLYDE BISHOP, OF PENNSYLVANIA
MICHELE THOREN BOND, OF NEW JERSEY
GAYLEATHA BEATRICE BROWN, OF THE DISTRICT OF COLUMBIA
DAVID M. BUSS, OF TEXAS
MARTHA LARZELERE CAMPBELL, OF NEW HAMPSHIRE
JUDITH ANN CHAMMAS, OF VIRGINIA
THOMAS MORE COUNTRYMAN, OF WASHINGTON
BARBARA CECELIA CUMMINGS, OF ILLINOIS
ELIZABETH LINK DIBBLE, OF VIRGINIA
ROSEMARY ANNE DICARLO, OF THE DISTRICT OF COLUMBIA
LARRY MILES DINGER, OF VIRGINIA
JANICE J. FEDAK, OF PENNSYLVANIA
GERALD MICHAEL FEIERSTEIN, OF VIRGINIA
JEFFREY DAVID FELTMAN, OF CALIFORNIA
ALBERTO M. FERNANDEZ, OF VIRGINIA
JUDITH G. GARBER, OF CALIFORNIA
ROBERT F. GODEC, JR., OF VIRGINIA
LLEWELLYN H. HEDGBETH, OF CALIFORNIA
JAMES THOMAS HEG, OF WASHINGTON
PAUL WAYNE JONES, OF NEW YORK
SANDRA LYNN KAISER, OF WASHINGTON
HANS GEORGE KLEMM, OF INDIANA
THOMAS CHARLES KRAJESKI, OF VIRGINIA
CHARLENE RAE LAMB, OF FLORIDA
AN THANH LE, OF THE DISTRICT OF COLUMBIA
JEFFREY DAVID LEVINE, OF CALIFORNIA
PATRICK JOSEPH LINEHAN, OF CONNECTICUT
MARY BLAND MARSHALL, OF VIRGINIA
TERENCE PATRICK MCCULLEY, OF OREGON
KEVIN CORT MILAS, OF CALIFORNIA
PATRICK S. MOON, OF MARYLAND
JAMES ROBERT MOORE, OF FLORIDA
DAN W. MOZENA, OF MARYLAND
ADRIENNE S. O'NEAL, OF MARYLAND
PHYLLIS MARIE POWERS, OF TEXAS
CHRISTOPHER R. RICHE, OF VIRGINIA
THOMAS BOLLING ROBERTSON, OF VIRGINIA
JOSIE SHUMAKE, OF MISSISSIPPI
MADELYN ELIZABETH SPIRNAK, OF THE DISTRICT OF COLUMBIA
STEVEN C. TAYLOR, OF ALASKA
LINDA THOMAS-GREENFIELD, OF LOUISIANA
THOMAS JOSEPH TIERNAN, OF ILLINOIS
MARK A. TOKOLA, OF WASHINGTON
PAUL A. TRIVELLI, OF CONNECTICUT

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE, AND FOR APPOINTMENT AS CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE, AS INDICATED: CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

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CHRISTOPHER J. BEEDE, OF VIRGINIA
JENNIFER V. BONNER, OF VIRGINIA
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ANN KATHLEEN BREITER, OF CALIFORNIA
PETER MEIER BRENNAN, OF OREGON
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KIMBERLY J. DEBLAUW, OF MISSOURI
D. PURNELL DELLY, OF VIRGINIA
MARC LANGLEY DESJARDINS, OF VIRGINIA
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ZANDRA I. FLEMISTER, OF MARYLAND
PAUL A. FOLMSBEE, OF TEXAS
ALFRED F. FONTENEAU, OF TEXAS
THOMAS R. GENTON, OF NEW JERSEY
TATIANA CATHERINE GFOELLER-VOLKOFF, OF THE DISTRICT OF COLUMBIA
DAVID R. GILMOUR, OF TEXAS
BRIAN L. GOLDBECK, OF NEVADA
DOUGLAS C. GREENE, OF VIRGINIA
DOUGLAS M. GRIFFITHS, OF TEXAS
KENNETH E. GROSS, JR., OF VIRGINIA
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CHRISTOPHER J. HOH, OF PENNSYLVANIA
MARTIN P. HOHE, OF FLORIDA
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SYLVIA DOLORES JOHNSON, OF SOUTH CAROLINA
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JAMES ALCORN KNIGHT, OF NEW YORK
LEONARD JAMES KORYCKI, OF WASHINGTON
BARBARA ANNE LEAF, OF VIRGINIA
MICHELLE RABAYDA LOGSDON, OF FLORIDA
SHARON E. LUDAN, OF VIRGINIA
ROBERT SANFORD LUKE, OF FLORIDA
DEBORAH RUTH MALAC, OF VIRGINIA
THEODORE ALBERT MANN, OF NEW YORK
DUNDAS C. MCCULLOUGH, OF VIRGINIA
RAYMOND GERARD MCGRATH, OF VIRGINIA
KENNETH ALAN MESSNER, OF OREGON
ANTHONY C. NEWTON, OF VIRGINIA
HARRY JOHN O'HARA, OF TEXAS
JOHN OLSON, OF CALIFORNIA
ANDREW W. OLTYAN, OF TEXAS
ANDREW A. PASSEN, OF PENNSYLVANIA
MARK A. PEKALA, OF THE DISTRICT OF COLUMBIA
MICHAEL P. PELLETIER, OF MAINE
MARJORIE R. PHILLIPS, OF VIRGINIA
GEOFFREY R. PYATT, OF CALIFORNIA
PAMELA G. QUANRUD, OF VIRGINIA
ERIC SETH RUBIN, OF NEW YORK
DANIEL H. RUBINSTEIN, OF CALIFORNIA
ROBERT JOEL SILVERMAN, OF CALIFORNIA
ROBIN ANGELA SMITH, OF THE DISTRICT OF COLUMBIA
MICHAEL A. SPANGLER, OF MARYLAND
ANDREW WALTER STEINFELD, OF NEW JERSEY
KARL STOLTZ, OF VIRGINIA
MARK CHARLES STORELLA, OF NEW HAMPSHIRE
PAUL RANDALL SUTPHIN, OF VIRGINIA
MARY THOMPSON-JONES, OF VIRGINIA
MICHAEL EMBACH THURSTON, OF WASHINGTON
WILLIAM WEINSTEIN, OF CALIFORNIA
ROBERT EARL WHITEHEAD, OF CALIFORNIA
REBECCA RUTH WINCHESTER, OF VIRGINIA
DEAN B. WOODEN, OF THE DISTRICT OF COLUMBIA
STEVEN EDWARD ZATE, OF FLORIDA

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, AND CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

WAYNE B. ASHBERRY, OF VIRGINIA
CYNTHIA ANNE BORYS, OF MARYLAND
DAN BLANE CHRISTENSON, OF WASHINGTON
EDUARDO R. GAARDER, OF VIRGINIA
JERRY DUANE HELMICK, OF FLORIDA
KENNETH J. HOEFT, OF MICHIGAN
RAYMOND W. HORNING, OF MISSOURI
TODD M. KEIL, OF WISCONSIN
STEPHEN J. KLEIN, OF VIRGINIA
BRIAN R. MAJEWSKI, OF VIRGINIA
GEORGES F. MCCORMICK, OF CALIFORNIA
EARL R. MILLER, OF VIRGINIA
PETER J. MOLBERG, OF MISSOURI
EDGAR P. MORENO, OF FLORIDA
JAMES C. NORTON, OF MICHIGAN
THOMAS J. QUINZIO, OF VIRGINIA
DOUGLAS P. QUIRAM, OF CALIFORNIA
NANCY C. ROLPH-O'DONNELL, OF VIRGINIA
LARRY DEAN SALMON, OF MISSOURI
ANNE M. SALOOM, OF VIRGINIA
GENTRY O. SMITH, OF VIRGINIA
STEPHEN F. SMITH, OF VIRGINIA
WILLIAM J. SWIFT, OF WISCONSIN
JOHN L. WHITNEY, OF TENNESSEE
DAVID M. YEUTTER, OF CALIFORNIA

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS THE DIRECTOR OF THE COAST GUARD RESERVE PURSUANT TO TITLE 14, U.S.C., SECTION 53 IN THE GRADE INDICATED:

To be rear admiral

REAR ADM. (SELECT) CYNTHIA A. COOGAN, 0000

IN THE AIR FORCE

THE FOLLOWING NAMED INDIVIDUAL IN THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

THOMAS C. HANKINS, 0000