Congress must use this opportunity to fulfill its oversight objective and understand the strengths and shortfalls of the TSA system to make improvements. It is not appropriate for Congress to summarily dismiss all the work TSA has invested in its workforce just because a large Government employees union doesn't like it.

The main consideration we should have as Members of the Senate is the security of the people in the United States of America. Yes, we want to protect the rights of the people who work in the Federal Government. But if we have a system that is really working and making some real improvement and making sure we are not going to have another 9/11 from an airborne attack, we ought to let them continue to do the job they are doing and should not just snap our fingers and say: These people are unhappy about what is going on there. They think we ought to get rid of that system. I don't think we should do that. I think every Member of this Senate should think about it. This is real serious business.

I know people on the other side of the aisle are under a lot of pressure. So am I. I know the president of both of the major unions here, and I have worked with them and tried in all these changes we have made in the human capital laws of the United States of America to take their concerns into consideration. But on this one, I am really begging my friends on the other side of the aisle to really look at where we are today and what this is all about and not throw the baby out with the bath water.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Pennsylvania.

Mr. LIEBERMAN. Mr. President, if I may first ask unanimous consent that the Senate stand in recess at 10:40 subject to the call; and that at 1:30 p.m. today, there be 15 minutes of debate equally divided and controlled prior to a vote in relation to the McCaskill amendment No. 316, as modified, followed by a vote in relation to the Collins amendment No. 342; that there be 2 minutes of debate equally divided between the votes and that no amendments be in order to either amendment prior to the vote; that at 1:45 p.m., without further intervening action or debate, the Senate proceed to vote in the order specified.

The PRESIDING OFFICER. There is objection?

Mr. SPECTER. Mr. President, reserving the right to object, I would like to clarify the status of amendment No. 286, which I laid down yesterday, the habeas corpus amendment. I just discussed with the Senator from Connecticut a unanimous consent request that I would make to get recognition when we resume after King Abdullah's speech. Might I inquire of the Senator from Connecticut what the sequence would be as to a continuation of the debate on the habeas corpus amendment?

Mr. LIEBERMAN. Mr. President, if I may through the Chair, there are a number of Senators who said they wanted to come and discuss amendments after the Senate reconvenes. How much time did the Senator from Pennsylvania desire to discuss the habeas amendment?

Mr. SPECTER. It is hard to say because there are a number of Senators who want to debate the issue. I am advised that there is not a willingness to give a time agreement, so it is not possible to really answer that question.

Mr. LIEBERMAN. Understood. Maybe I misled the Senator unintentionally. I am not looking for a time agreement on debate on the amendment; I would just like to know how long he would like to speak when we reconvene so we set it down for a time limit because I know there are other Senators from both parties who want to come over.

Mr. SPECTER. I would like 1 hour.

Mr. LIEBERMAN. I would accept that amendment to my request, with the understanding that not interfere with the fact that by 1:30, we will go back to the Collins and McCaskill amendments. I don't think it would.

Mr. SPECTER. Mr. President, if I might be recognized at noon when we return after the Abdullah speech?

Mr. LIEBERMAN. I have no objection.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I just want to be clear that the Senator from Pennsylvania will not be changing the agreement the Senator from Connecticut just announced that will allow the 15 minutes of debate prior to the 1:45 votes.

Mr. LIEBERMAN. Not at all. Mr. President, I again ask unanimous consent on the unanimous consent agreement that I proposed with regard to the votes on the Collins and McCaskill amendments, and then we will come directly to Senator SPECTER.

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

Mr. SPECTER. I ask unanimous consent that I be recognized when the Senate reconvenes at 12:00 to speak for 1 hour.

Mr. LIEBERMAN. Mr. President, I just would say, or whenever. If we come back before 12, you will be recognized to speak for an hour.

Mr. SPECTER. That is fine.

Mr. LIEBERMAN. Or after 12, if that is the case. We have no objection.

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

RECESS

The PRESIDING OFFICER. The Senate will stand in recess subject to the call of the Chair.

Thereupon, the Senate, at 10:43 a.m., recessed until 12:04 p.m. and reassembled when called to order by the Presiding Officer (Ms. KLOBUCHAR).

JOINT SESSION OF THE TWO HOUSES—ADDRESS BY THE KING OF JORDAN

The PRESIDING OFFICER. The Senate will proceed to the Hall of the House of Representatives to hear the address by the King of Jordan.

Thereupon, the Senate, preceded by the Deputy Sergeant at Arms, Drew Willison, and the Secretary of the Senate, Nancy Erickson, proceeded to the Hall of the House of Representatives to hear the address by His Majesty King Abdullah II Ibn Al Hussein, King of the Hashemite Kingdom of Jordan.

(The address delivered by the King of Jordan to the joint session of the two Houses of Congress is printed in the proceedings of the House of Representatives in today's RECORD.)

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is recognized for up to 1 hour.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

IMPROVING AMERICA'S SECURITY ACT—Continued

AMENDMENT NO. 286

Mr. SPECTER. Madam President, I have sought recognition to debate amendment No. 286, which would reverse the provision in the Military Tribunal Act which has limited the jurisdiction of the Federal courts in habeas corpus proceedings.

The essential question at issue is whether the combatant status review tribunals are adequate and effective to test the legality of a person's detention.

What we are dealing with here is an examination of the issue as to whether the procedures are fundamentally fair. Congress should repeal the provisions of the Military Commissions Act which limit Federal court jurisdiction on habeas corpus.

The decision by the court of appeals, I submit, will be overturned by the Supreme Court of the United States because of Circuit Court's ruling that the Rasul case dealt only with the statutory provisions on habeas corpus. The Circuit Court ignored the binding language of Rasul, which said that the habeas corpus rights were grounded in common law in effect in 1789 and were, in fact, part of the Constitution. Where habeas corpus is a right in the Constitution, and it is such a right because the Constitution expressly states that habeas corpus shall not be suspended except in cases of invasion or rebellion—and no one contends that there is either invasion or rebellion at issue—

Congress cannot legislate a derogation of that constitutional right. Any act of Congress is obviously trumped by a constitutional provision. Where you have habeas corpus in effect in 1789 and the constitutional provision prohibiting its suspension, the legislation passed in the Military Commission Act I think ultimately will be determined by the Supreme Court to be unconstitutional, pretty clearly on the face of the opinion of the Court articulated by Justice Stevens.

The Congress ought to reverse the provision of the Military Commission Act which strikes or limits Federal court jurisdiction on habeas corpus because the provisions—the way the detainees are being dealt with, simply stated, is not fundamentally fair. It does not comport with due process of law, and due process is a right even without specific enumeration in the Constitution.

The order establishing the Combat Status Review Tribunal provides as follows:

For purposes of this order, the term ''enemy combatant'' shall mean an individual who was a part of or supported Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or who has directly supported hostilities in aid of enemy forces.

The fact is that people are detained as enemy combatants without any showing of those basic requirements.

The next section of the order establishing the Combatant Status Review Tribunal provides:

All detainees shall be notified—

Skipping some language—

of the right to seek a writ of habeas corpus in the courts of the United States.

I have not seen any reference to this provision in any of the adjudications, and I found this on the very extensive research which my staff and I have undertaken to prepare for this debate. But there you have it. The order itself setting up the Combat Status Review Tribunal says that the detainees have the right to seek a writ of habeas corpus. The Secretary of Defense has the authority to establish the rules, and he has established the rule which gives the detainee the right to seek a writ of habeas corpus. That ought to end the argument right there.

Let's proceed further to see, in fact, what happens when these matters are taken before the Combat Status Review Tribunal. We have the opinion of U.S. District Judge Green in a case captioned, ''In Re: Guantanamo Detainee Cases,'' in which Judge Green writes as follows:

The inherent lack of fairness of the CSRT's consideration of classified information not disclosed to the detainee is perhaps most vividly illustrated in the following unclassified colloquy which was taken from a case not presently before this judge which exemplifies the practical and severe disadvantages faced by all Guantanamo prisoners. [I read] a list of allegations forming the basis for the detention of Mustafa Ait Idir, a petitioner in Boumediene v. Bush case—

And that parenthetically is the case decided by the Court of Appeals for the third circuit.

This is what Judge Green goes on to point out in her opinion in the Federal Reporter:

While living in Bosnia, the detainee associated with a known al-Qaida operative.

In response, the following exchange occurred:

Detainee: Give me his name.

Tribunal President: I do not know.

Detainee: How can I respond to this?

Skipping some irrelevant language, the detainee goes on to say:

I asked the interrogators to tell me who this person was. Then I could tell you if I might have known this person, but not if this person is a terrorist. Maybe I knew this person as a friend. Maybe it was a person that worked with me. Maybe it was a person that was on my team, but I do not know if this person is Bosnian, Indian, or whatever. If you can tell me the name, then I can respond and defend myself against this accusation.

Tribunal President: We are asking you the questions and we need you to respond to what is in the unclassified summary.

Skipping some irrelevant materials, the detainee then goes on to say:

But I was hoping you had evidence that you could give me. If I was in your place—and I apologize in advance for these words—but if a supervisor came to me and showed me accusations like these, I would take these accusations and I would hit him in the face with them. Sorry about that.

Then, parenthetically, Judge Green's opinion notes that ''Everyone in the tribunal laughs.''

Tribunal President: Well, we had to laugh, but that is OK.

A little later in the opinion—

The detainee says: What should be done is you should give me evidence regarding these accusations, because I am not able to give you any evidence. I can just tell you no, and that is it.

Then Judge Green goes on to say:

The laughter reflected in the transcript is understandable. And this exchange might have been truly humorous had the consequences of the detainee's enemy combatant status not been so terribly serious, and the detainee's criticism of the process had not been so piercingly accurate.

Well, this case illustrates the fact that the provisions in Guantanamo on the detainee status review tribunal is a laughing stock. It hardly comports with what the Secretary of Defense said was required: that there has to be evidence that the individual supported Taliban or al-Qaida forces or committed a belligerent act.

The Judiciary Committee held a hearing and one of our witnesses was a distinguished attorney, Thomas Sullivan, who made available a series of cases before the Combat Status Review Tribunal. This is one illustrative case involving a man named ''Abdul-Hadi al Siba.'' I take this from the extract of what the witness provided:

The Combat Status Review Tribunal stated that al Siba was charged with being captured in crossing the border into Pakistan with having volunteered for a charity that was funded by al-Qaida. That is all that is in the summary.

Again, this hardly comports with the standard by the Department of Defense itself that there is supposed to be evidence which would show the detainee was engaged in hostilities against the United States or committed belligerent acts.

The provisions of the Department of Defense establishing the Combat Status Review Tribunals is fundamentally unfair under the most basic principle of Anglo-Saxon American jurisprudence. The rules are:

Preponderance of evidence shall be the standard used in reaching the determination, but there shall be a rebuttable presumption in favor of the government's evidence.

That is the most extraordinary standard which I have ever seen, and it is bedrock Americana that people are presumed innocent. But instead, when a detainee faces a Combat Status Review Tribunal, the presumption is that he is guilty. That hardly comports with a standard of fundamental fairness or due process.

The rules promulgated by the Department of Defense call for a preponderance of evidence, so even if there is a presumption of guilt, the standards do require some evidence. But that was not present in the case cited by Judge Green, not present in the cases cited by Thomas Sullivan at our Judiciary Committee hearing.

Madam President, I ask unanimous consent that the summary of other cases provided by Mr. SULLIVAN be included in the RECORD at the conclusion of my presentation.

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

(See Exhibit 1.)

Mr. SPECTER. The standards which have been established, which would, under some circumstances, permit a substitute procedure for habeas corpus were articulated by the Supreme Court of the United States in the case of Swain v. Pressley. In that case, the Supreme Court said there could be a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's contention.

But the collateral remedy which was present in Swain v. Pressley is a far cry from the provisions of the Combat Status Review Tribunal.

What the Supreme Court was dealing with in the Swain case was habeas corpus before a State court as opposed to habeas corpus before a Federal court. In Swain, the Supreme Court said that the ''relief available in the Superior Court is neither ineffective nor inadequate simply because the judges of that court do not have life tenure.''

So here we have a State court functioning under the rules of habeas corpus and the Supreme Court says that is an equivalent of Federal court habeas corpus because State court judges can make that determination and the only difference is that the State court judges do not have wide tenure.

In Swain, the Supreme Court went on to say:

It is a settled view that elected judges of our State courts are fully competent to decide Federal constitutional issues.

So there you have the constitutional issue decided. But the only difference is that it is a State court. Well, that has absolutely no resemblance to the combat status review tribune. It hardly qualifies as an adequate substitute.

I want to proceed now to the issues that were articulated by the Supreme Court of the United States in Rasul, where I believe it is very clear cut that there is the ignoring of the language of the Supreme Court, and a constitutional right and a right that was in effect in common law in 1789 will certainly be utilized by the Supreme Court in dealing with the circuit court opinion, which is directly inconsistent with the language of Justice Stevens. This is what Justice Stevens said in the Rasul case, speaking for the Court:

Application of the habeas corpus statute to persons detained at the base [referring to the Guantanamo base] is consistent with the historical reach of the writ of habeas corpus. At common law courts exercise habeas corpus over the claims of aliens detained within the sovereign territory of the realm, as well as the claims of persons detained in the so-called ''exempt jurisdictions'' where ordinary writs did not run, and all other dominions under the sovereign's control. As Lord Mansfield wrote in 1759, even if a territory was ''no part of the realm'', there was ''no doubt'' as to the Court's power to issue writs of habeas corpus if a territory was under the subjection of the crown.

The Supreme Court had already held in the trilogy of cases in 2004 that the United States Government controlled Guantanamo Bay, so it was within the jurisdiction of the United States.

Justice Stevens goes on to point out that:

Later cases confirmed the reach of the writ depended not on formal notions of territorial sovereignty, but rather on the practical question of ''the extent and nature of the jurisdiction or dominion exercised in fact by the crown.''

There again is the reference to the undeniable fact that the United States controls Guantanamo and it is under United States dominion. The court of appeals concluded that the language about the existence of the writ when the Constitution was adopted and the constitutional right of habeas corpus was not resolved by Rasul, because the specific holding in Rasul was on the statutory provisions of section 2241.

The Stevens opinion says:

We therefore hold that section 2241 confers on the district court jurisdiction to hear petitioner's habeas corpus challenges to the legality of their detention at Guantanamo naval base.

Now, the circuit court said that, well, is a holding based upon the statute, but its limitation does not apply to a constitutional right or the reach of the writ in effect in common law in 1789. How can it be that the Supreme Court would say Guantanamo Bay is under United States jurisdiction for the statutory right but outside of the jurisdiction for the constitutional right? It stands the English language on its head.

There have been a number of situations where—especially in the fifth circuit—on death penalty cases the circuit has, in effect, ignored what the Supreme Court has had to say. It has been a highly critical Supreme Court which has then come to review those decisions. I suggest that that would be the response when the Supreme Court comes to review the circuit court opinion which ignores the plain language of the Supreme Court of the United States.

In dissent, Justice Scalia recognized the fact that the case of Johnson v. Eisentrager had been overruled. The court of appeals relies upon Johnson v. Eisentrager to hold that there is no jurisdiction over Guantanamo Bay. But this is what Justice Scalia, in dissent, had to say about the overruling of Johnson v. Eisentrager. He called it ''overturning of settled law.''

But the court of appeals did not view it as such. So when this case comes before the Supreme Court, I think it is patently obvious that the language of the Court will require reversal of the circuit court decision.

I have been asked if I will yield for a unanimous consent request by Senator LIEBERMAN, and I will do so.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that when the time allocated to the Senator from Pennsylvania expires at 1, the Senator from Minnesota be recognized for 10 minutes and, after that, the Senator from Delaware be recognized for whatever amount of time he needs until 1:30, when Senators COLLINS and MCCASKILL have 15 minutes equally divided.

The PRESIDING OFFICER (Mr. MENENDEZ). Is there objection?

Without objection, it is so ordered.

Mr. SPECTER. Mr. President, the failure of the Court of Appeals for the District of Columbia to recognize the settled principles was the subject of an analysis by the distinguished constitutional scholar Adam Liptak in the New York Times yesterday. It is worth notice. The analysis said that:

what the Supreme Court says goes. Usually. But in a defiant decision 2 weeks ago, a Federal Court of Appeals in Washington conceded that it was ignoring parts of the 2004 Supreme Court decision on the rights of a man held at Guantanamo Bay, Cuba. That can make the Supreme Court testy and it may help the detainees.

The analysis goes on to paraphrase the powerful dissent of Judge Judith Rogers, who said her colleagues were thumbing their noses at the Supreme Court. Liptak notes that:

[Rogers stated that her colleagues] ''were ignoring the Supreme Court's well-considered and binding dictum'' concerning the historical roots and geographical scope of the prisoner's basic rights and she cited the case from her own court that said that such statements ''generally must be treated as authoritative.''

The analysis goes on to say that:

almost 3 years ago, the Supreme Court ruled in Rasul that the detainees possessed an ancient and fundamental right, the right to challenge the justice of their confinement in court by filing petitions for writs of habeas corpus.

In a crucial aside, in Rasul, Justice John Paul Stevens, writing for the majority, said this right was not just a result of a law passed by Congress but was grounded in the Constitution. ''Application of the habeas statute to persons detained in the base,'' he wrote, ''is consistent with the historical reach of habeas corpus.''

Well, that lays it out in a pretty conclusive way that when the Court rules on a statute but says that the same right is embodied in the Constitution, Congress cannot pass a law which trumps the constitutional provision, as articulated by the Supreme Court of the United States.

The Liptak analysis goes on to note this:

If that is a right, a new law pushed by the Bush administration's Military Commissions Act could not have cut off detainees' rights to habeas corpus. In a footnote, the appeals court basically acknowledges that. But it ruled that the Supreme Court's historical analysis was wrong and that Justice Stevens' dictum could be ignored.

In the analysis commenting on the Johnson v. Eisentrager case, Liptak noted as follows:

All of the points which were relied upon by the circuit court, as Justice Stevens wrote in Rasul, counted in favor of the Guantanamo detainees. ''They were not nationals of countries at war with the United States''—

Which was the case in Eisentrager—

They have not been engaged in plotted acts of aggression against the United States. They have never been afforded access to any tribunal, much less charged with and convicted of wrongdoing, and for more than 2 years they have been in prison in territory over which the United States exercises exclusive jurisdiction and control.

Well, this is a fairly brief analysis in the time which I have. But the essence of it boils down to this: The Supreme Court—Justice Stevens speaking for a majority—has ruled that the Federal habeas corpus statute covers Guantanamo, that the rights were violated, and that the statute carries out the constitutional law and the scope of the writ in 1789, when the Constitution was adopted. And the Court of Appeals for the Third Circuit, in order to uphold the act, says the holding by Justice Stevens was only to a statute—and it is true Congress can change the statute—but ignores the plain language of Justice Stevens speaking for a majority of the Court that it is a constitutional right.

That cannot be changed by an act of Congress, and the Supreme Court will tell the court of appeals that when they get the case. Aside from the issue of constitutionality, which will be decided by the Court, as to the procedures that are in effect in these combat status review tribunals, they do not measure up to the requirements of fundamental fairness. They do not honor what the Department of Defense laid down as the basic rule that detainees are entitled to ''the right to seek a writ of habeas corpus in the courts of the United States.''

That ought to be the end of it because the Secretary of Defense was given the responsibility to decide what

the rules were, and he said one of the rules is that these detainees can go to court. That is what an act of Congress has taken away, and that is what ought to be reversed.

Then if we take a look at what has to happen in these proceedings before the Combat Status Review Tribunal, the term ''enemy combatant,'' which would qualify for detention, means an individual who was part of or supporting the Taliban or al-Qaida forces or has committed a belligerent act or has directly supported hostilities in aid of enemy forces.

The individual in the court of appeals case cited by Judge Green, which I read at length, was only supposed to have talked to somebody from al-Qaida, and they couldn't even produce the identity of the individual, which hardly measures up to the Department of Defense's standard. It is just absolutely ludicrous. Then for the Department of Defense provisions to say that there is a presumption of guilt just turns American justice on its head. Even with a presumption of guilt, the requirements are that there be evidence, and there is none in the case cited by Judge Green and by Mr. Sullivan.

This is just the beginning of the argument. We will have other Senators come to oppose.

Let me advise my colleagues that there will be a portion of the debate conducted in Room S–407, which is the room where we can discuss classified information, because Senator LEAHY and I have been reviewing the rendition in the Arar case, and we have found that there was a determination that Arar had a status—which I cannot discuss in this Chamber but can discuss only in S–407—which would warrant sending him to Syria. Arar was a Canadian citizen who came to the United States and was detained for questioning at an airport in New York City when he wanted simply to transit and go to Canada. He was questioned by the FBI.

It has been well noted that the FBI does not agree with the other interrogation practices which have been undertaken by the Government.

After that questioning, which was reportedly extensive, Arar was then sent to Syria. He came back and has filed suit alleging that he was tortured and subjected to brutal treatment.

The Canadian officials have considered the issue at length and have published a three-volume set. It is a good visual for people to see, if anybody is watching on C–SPAN2.

This is volume 1 of the report relating to Maher Arar, this is volume 2 on the report relating to Maher Arar, and this is the analysis and recommendation. After undertaking this kind of an analysis, the Canadian Government apologized to Arar and paid him about $10 million, but the U.S. Government continues to say that it was justified in sending Arar to Syria, where he was beaten.

These matters relating to rendition, I submit, are directly relevant to our consideration of whether the Federal courts need to be involved in determining the legality of Guantanamo detainees because this Government, in the war on terrorism—and there is no doubt about the importance of our war on terrorism and the necessity for effective law enforcement. I led the Judiciary Committee to the reauthorization of the PATRIOT Act, which gives law enforcement extensive authority. But there are laws against torture. There are international covenants against torture. The submission of rendition is something that is going to have to come under some judicial supervision.

I am considering now legislation which would require Federal authorities to go to court to establish probable cause and a basis for rendition before any American citizen or before anyone ought to be sent to a foreign country.

We have the allegations of the plaintiff in a case decided last week by the Fourth Circuit who was sent to Egypt and alleged that he was tortured there. The Fourth Circuit has held that the case cannot be pursued because of a state secrets doctrine. That is a matter which is going to be reviewed on oversight by the Judiciary Committee.

We have 25 CIA agents under indictment now in Italy, and we have 13 CIA agents now under indictment in Germany. The international response is that the United States is undertaking a rendition in a way which is unsatisfactory to basic standards of decency and fairness.

The Judiciary Committee has held hearings on Guantanamo. I visited Guantanamo. Not to have those detainees have the right of habeas corpus and Federal court review is totally at variance with the very basic tenets of Anglo-Saxon and American jurisprudence.

I cannot say anything more about Arar, but it can be discussed in S–407, which is the room we go to when we have matters to discuss which are classified. I believe it is a very compelling case that there needs to be judicial intervention or needs to be a lot more oversight than there has been on these matters.

I might say, it is like pulling teeth to get the Department of Justice to make any information available. It takes a long time to have access to the classified material, and then the material is insufficient to come to a conclusion. In the Arar case, we have a request pending and don't know what the result will be. But we do know Canada made an exhaustive analysis of Arar and what he had done, and I think I can say this: The materials in the classified documents relate to information substantially obtained from Canadian authorities, and Canada has made the inquiry and has apologized and paid some $10 million.

I yield the floor.

EXHIBIT 1

SUMMARIES OF CSRT EXAMPLES CITED BY TOM SULLIVAN AT SEPTEMBER 25, 2006 SJC HEARING

ABDUL-HADI AL SIBA'A

Al Siba'a is 34 year old Saudi Arabian who was taken into custody in Pakistan in December 2001. He had no weapon or ammunition when he was captured. The Combatant Status Review Tribunal stated that Al Siba'a was charged with being captured in crossing the border into Pakistan and with having volunteered for a charity that was funded by Al-Qaida.

Al Siba'i repeatedly contended that he is a police officer in the Riyadh police department who was on a leave of absence in August 2001 to assist in building schools and a mosque in Afghanistan. He has presented his passport and his airline ticket. He has offered to have the Riyadh Police Department verify his employment and the nature of his leave of absence. Those requests were refused by the tribunal ''because an employer has no knowledge of what their employees do when they are on leave.''

After five years of detention, the government released Al Sibai'i from Guantanamo Bay, and he returned to his home in Saudi Arabia.

UNNAMED DETAINEE

One detainee, who is not named in the declassified documents from the CSRT, is a Muslim man from Germany. This detainee is charged with having a close association with an individual who later engaged in a suicide bombing.

The detainee had no memory of any association with a person who was a suicide bomber. In order to understand the nature of the charges against him, the detainee asked what evidence the tribunal had to show that he was involved with a suicide bomber.

The tribunal responded that they could not answer that question and that ''anything remaining concerning [the suicide bomber who the detainee was allegedly associated with] is in the classified session.'' While the detainee continued to be cooperative and answer the questions posed to him by the CSRT, the Tribunal never provided him with an explanation of the questions that it asked regarding his associations with other individuals and organizations.

''MUSTAFA''

Arrested in Sarajevo, Bosnia, but originally of Algerian descent. Accused of being a member of the Islamic Armed Group, which was plotting to bomb the American Embassy in Sarajevo. Asked about his relationship to Abu Zubayda, whom he denied knowing.

Mustafa was arrested and searched by ''international police from the United Nations.'' Was told that if the Bosnians no longer wanted him in their country, he would be welcome to return to Algeria.

Asked his interrogator at GTMO, ''why, and if there were any accusations or evidence against me. The interrogator said to me that they would find something, meaning I could not be released from Cuba without them finding some accusation against me. I could not have been held in Cuba in prison for three years, then all of a sudden be found innocent and released.''

ABDUR SAYED RAHMAN

Born in Pishin, Pakistan. Charged with being a member of the Taliban, which he denied.

Although there were two exhibits read into evidence against him, he was unable to view the evidence. Additionally, the detainee denied having been at the place of his capture in Pakistan at the alleged time of his capture. The government could not verify with him the time of his capture.

Mr. SPECTER. In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, I have a couple supplemental comments I would like to make.

The requirement established by the Department of Defense that a detainee shall be notified ''of their right to seek a writ of habeas corpus in the courts of the United States'' was given to all the detainees. So they have had it and relied upon it. I suggest that while not legally the same, that any change in that policy is really in the nature of ex post facto, which is changing a rule and establishing criminal liability after the fact, which is prohibited by the Constitution. It isn't quite that, but it has the same flavor, and it is the nature, also, of a bill of attainder, which is legislation that establishes guilt as opposed to a judicial proceeding. What we have had here, in effect, is legislation which has changed what the Department of Defense said the rights of the individuals would be.

I wish to cite, in addition, a quotation from Justice O'Connor in the Hamdi v. Rumsfeld case, talking about combat status review boards, in which she said:

Any process in which the executive's factual assertions go wholly unchallenged or simply presumed correct without any opportunity for the alleged combatant to demonstrate otherwise falls constitutionally short.

Justice O'Connor restates in shorthand the traditional presumption of innocence which is turned on its head by the DOD regulations and says as a matter of Supreme Court ruling that without any opportunity to defend, those presumed conclusions can't stand.

We saw the case of Judge Green, we saw the case cited by the witness before the Judiciary Committee, all of which shows the basic unfairness of what is going on in Guantanamo. The only way to correct it is through the traditional habeas corpus rights in Federal court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

VETERANS HEALTH CARE

Ms. KLOBUCHAR. Mr. President, I rise today to pay tribute to our brave soldiers fighting overseas and in particular the nearly 3,000 Minnesota National Guard members who recently had their stays extended in Iraq. I wish to speak about our duty to these soldiers for their sacrifices on behalf of our Nation. It is an issue that must transcend partisanship.

Whether one supports the President's escalation or opposes it, as I do, there is one point on which we can agree: We must support the soldiers on the battlefield, and when they return home, we must give them the support they need.

In the past 4 years, American military service personnel and their families have endured challenges and stressful conditions that are unprecedented in recent history, including unrelenting operational demands and recurring deployments in combat zones.

Mr. President, 1.5 million American service men and women have served in Iraq and Afghanistan. These wars are creating new generations of veterans who need their country to stand with them. Many of the soldiers fighting in Iraq and Afghanistan are doing it not only to serve their country but also to provide for their families.

One of these soldiers was Army SGT William ''B.J.'' Beardsley, who lived in Minnesota. Sergeant Beardsley joined the Army just after high school and completed one term of service. But when his wife Stacy encountered medical ailments, Sergeant Beardsley decided to reenlist, in part so that his health insurance would cover the medical treatment his wife required.

His personal sacrifice to family and country allowed his wife to successfully undergo surgery. Tragically, the day Stacy left the hospital, Sergeant Beardsley was killed by a roadside bomb in Iraq.

I have always believed that when we ask our young men and women to fight and die for this Nation, we make a promise that we will give them all the resources they need to do their job and when they return home, we will take care of them and their families. Sergeant Beardsley will not be coming home, but for too many of his fellow soldiers in Iraq and Afghanistan who do return, our promise to take care of them has repeatedly been broken.

As a nation, we have an obligation to wrap our arms around the people who serve us and who have sacrificed for us. Today, our veterans need us more than ever. While the President pushes ahead with his surge of additional troops into Iraq's civil war, at home we are already experiencing a vastly larger surge of returning soldiers, many of them citizen soldiers from the National Guard and Reserves.

More than 3,000 have returned having made the ultimate sacrifice, leaving behind grieving families and communities. Tens of thousands have come home physically wounded. Tens of thousands more return suffering from post-traumatic stress, depression, and substance abuse as a result of their service. These are men and women who have served our country on the front lines, but on returning home too many have found themselves shunted to the end of the line, left waiting to get the health care they need, left waiting to receive the benefits they have earned and, as the shocking revelations from Walter Reed show us, some have been left waiting in the most squalid of conditions. We are now learning this is not an isolated incident.

In Minnesota, one of those left waiting was Jonathan Schulze. Jonathan, from Stewart, MN, was a 25-year-old marine who had fought in Iraq and earned two Purple Hearts. He told his parents that 16 men in his unit had died in 2 days of battle. When he returned home in 2005, the war did not leave him. He suffered flashbacks and panic attacks. He started drinking heavily to stave off nightmares. According to VA Secretary Jim Nicholson, Jonathan was seen by the VA 46 times in Minneapolis and St. Cloud, MN, but this was not enough. In January, this young war veteran hanged himself.

We now learn that the VA Medical Center in St. Cloud has 15 acute inpatient psychiatric beds, while a decade ago there were 198 beds. That means the number of acute psychiatric beds available for veterans there has declined by more than 90 percent in the past decade. It is as if nobody even realized that we have been at war for the past 4 years and that tens of thousands of Minnesotans have returned from combat, with many more to come.

Our veterans didn't stand in long waiting lines when they were called up or volunteered to serve our Nation. So why are we asking them to stand in line now for medical care?

As a former prosecutor, there is a saying that ''justice delayed is justice denied.'' I would add that, for our veterans, ''health care delayed is health care denied,'' and that, too, is an injustice. We need to do better, much better, and we can.

In fact, we know what needs to be done. First, we need to stop short-changing our veterans during the budget process. Just as this administration sent our soldiers into battle without a plan for victory, it also failed to develop a plan to address their needs once they got home. The administration shockingly underestimated the number of veterans who would require medical care.

In its fiscal year 2005 budget request, the Department of Defense estimated

that they would have to provide care for 23,500 veterans from Iraq and Afghanistan. In reality, more than four times that number required assistance. Last year, the Pentagon underestimated the number of veterans seeking care by 87,000.

The Department of Veterans Affairs operates the largest medical system in the Nation. It has a reputation for high-quality care, with many talented, dedicated doctors, nurses, and other staff. The VA's resources, however, are now severely strained. The waiting list and delays get longer. The shortages are especially severe in mental health care. Last year, the VA underestimated the number of new post-traumatic cases by five times.

For the past several years, this administration has submitted a budget request for the VA that significantly underfunded the needs of America's 25 million veterans. This is from the same administration that each year asks Congress to authorize tens of billions of dollars for projects in Iraq. I was pleased that the continuing resolution, passed a few weeks ago, increased funding for the VA by $3.5 billion over fiscal year 2006 levels. However, this should only be the beginning of a renewed commitment to our service men and women, both on the front lines and on the home front.

When the President's budget comes to the Senate floor later this month, I will join my like-minded colleagues in pressing for a substantial increase in VA funding.

Second, we need to start treating our National Guard and Reserves like the soldiers they are. Up to 40 percent of the troops fighting in Iraq have been National Guard members and reservists. Minnesotans know all too well the burden being placed on our Guard forces. The National Guard was not built to serve as an Active-Duty force for prolonged periods of time. Yet that is exactly what we are requiring them to do. Guard funding and benefits have not gone up correspondingly to match its increased duties.

Meanwhile, the Pentagon is stripping Guard units of their equipment in order to make up for shortages in supply. States rely on the presence of a strong and well-equipped Guard in order to respond to domestic emergencies. Department of Defense policies have weakened the Guard to the point that a recent commission found that 88 percent of Guard units in the United States cannot meet preparedness levels.

It is time we recognize the elevated position and importance of the National Guard to our national security. As a member of the National Guard Caucus, I support the National Guard Empowerment Act, which will promote the commander of the National Guard to a four-star general and make him a member of the Joint Chiefs of Staff. It will also grant the Guard more responsibility over coordinating Federal and local agencies during emergencies.

We must also upgrade Guard members from their perceived status as second class veterans in other areas, including health care, pension plans, education, and reintegration programs. We need to do a better job of integrating our returning veterans back into our communities when they return. This is particularly hard for National Guard members when they do not have a base to go home to and have to go to literally thousands of communities and small towns across this country.

In Minnesota, we are proud to have created the Beyond the Yellow Ribbon Program, which provides counseling and support to National Guard members and their families. Across my State right now, the National Guard is sponsoring a unique series of Family Reintegration Academies. Several weeks ago, I had the honor of attending one of these academies in Alexandria, MN. This pilot reintegration program has helped ease the transition for soldiers and their families, and it has gotten fabulous reviews from the participating families.

What works in Minnesota can work in every State across the Nation. As we enter this appropriations process, I will be working with my colleagues to insist that the Federal budget include funding for reintegration programs for Guard members and reservists.

Third, we need to improve health care for all of our soldiers. The problems found at Walter Reed are all too common at veterans hospitals and centers nationwide. I have joined my colleagues in legislation that will begin to solve the personnel and building shortages at Walter Reed Hospital and similar centers across the Nation. I also will join the Democratic leadership in the Senate in their HEROES plan to provide more oversight to veterans affairs and develop legislation to address these problems.

One of the most glaring needs in veterans health care today is funding for research and treatment of polytraumatic injuries. As Bob Woodruff of ABC News showed us so vividly last week, with his own example and that of many other wounded soldiers, brain trauma has become a signature injury of this war in Iraq.

Minnesota is home to one of the VA's systems four polytrauma rehabilitation centers. The others are in Palo Alto, Richmond, and Tampa. These centers were created in recognition of the large number of service members sustaining multiple severe injuries as a result of explosions and blasts. These centers provide a full array of inpatient and outpatient services, with specialized programs for traumatic brain injuries, spinal cord injury, blind rehabilitation, and post-traumatic stress disorder.

I have visited the VA polytrauma brain center in Minneapolis. We need more of these centers and more research into the permanent effects of brain trauma caused by explosions on the battlefield. Our current VA infrastructure is not equipped to deal with these injuries and to care for brain-injured vets once they leave these specialized centers and return home. This must be a priority.

Another issue that is only beginning to receive sufficient attention is the proliferation of mental health disorders among veterans. According to a Veterans' Health Administration report, roughly one-third of Iraq and Afghanistan veterans who sought care through the VA were diagnosed with potential symptoms of post-traumatic stress, drug abuse, or other mental disorders.

The Joshua Omvig Suicide Prevention Act, introduced by my colleagues from Iowa, will help ensure 24-hour access to mental health care for veterans deemed at risk for suicide. It will create VA programs to help veterans cope with post-traumatic stress disorder and other mental illnesses that too often lead them to take their own lives. Nearly 1,000 veterans who receive care from the VA commit suicide each year. It is too late for Jonathan Schulze, but it is not too late for the many other suffering soldiers who are at risk for suicide.

In the coming weeks and months, I hope to engage my colleagues to cooperate on new legislation that will increase the funding and commitment to veterans mental health services. In past years, veterans, such as my father, could count on the fact that their Government would stand by them. After World War II, our Government did just that, adopting the GI bill to provide health, housing, and educational benefits that gave returning veterans the help they needed to heal, to raise families, and to prosper.

At a time when we are spending billions on the reconstruction of Iraq, funding for health care for veterans is far below what is needed. Those are the wrong priorities for our country. We cannot abandon the brave soldiers who fought for us once they return.

In his Second Inaugural, President Lincoln reminded the American people that in war we must strive to ''bind up the Nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan.'' Today, Americans are again called to bind up our Nation's wounds and to care for those who have borne the battle, as well as their families who have shouldered their own sacrifice.

Let us live up to this solemn obligation to bring our troops home safely and to honor our returning soldiers and their families by giving them the care and the benefits they have earned.

Mr. President, I yield the floor.

AMENDMENTS NOS. 383 AND 384, EN BLOC, TO AMENDMENT NO. 275

Mr. BIDEN. Mr. President, I send to the desk two amendments. I am only going to speak to one, but I would like to send both to the desk so I have them offered. One is an amendment relating to funding of the homeland security effort, and the other is one relating to

the ability for cities and States to reroute hazardous waste around their major metropolitan areas.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes amendments numbered 383 and 384, en bloc, to Amendment No. 275.

Mr. BIDEN. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments (Nos. 383 and 384) are as follows:

AMENDMENT NO. 383

(Purpose: To require the Secretary of Homeland Security to develop regulations regarding the transportation of high hazard materials, and for other purposes)

On page 361, after line 20, add the following:

Subtitle D—Transport of High Hazard Materials

SEC. 1391. REGULATIONS FOR TRANSPORT OF HIGH HAZARD MATERIALS.

(a) DEFINITION OF HIGH THREAT CORRIDOR.—In this section, the term ''high threat corridor'' means a geographic area that has been designated by the Secretary as particularly vulnerable to damage from the release of high hazard materials, including—

(1) areas important to national security;

(2) areas that terrorists may be particularly likely to attack; or

(3) any other area designated by the Secretary.

(b) PURPOSES OF REGULATIONS.—The regulations issued under this section shall establish a national, risk-based policy for high hazard materials being transported or stored. To the extent the Secretary determines appropriate, the regulations issued under this section shall be consistent with other Federal, State, and local regulations and international agreements relating to shipping or storing high hazard materials.

(c) ISSUANCE OF REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue interim regulations and, after notice and opportunity for public comment final resolutions, concerning the shipment and storage of high hazard materials.

(d) REQUIREMENTS.—The regulations issued under this section shall—

(1) except as provided in subsection (e), provide that any rail shipment containing high hazard materials be rerouted around any high threat corridor;

(2) establish standards for the Secretary to grant exceptions to the rerouting requirement under paragraph (1).

(e) TRANSPORTATION AND STORAGE OF HIGH HAZARD MATERIALS THROUGH HIGH THREAT CORRIDOR.—

(1) IN GENERAL.—The standards for the Secretary to grant exceptions under subsection (d)(4) shall require a finding by the Secretary that—

(A) the shipment originates or the point of destination is in the high threat corridor;

(B) there is no practicable alternative route;

(C) there is an unanticipated, temporary emergency that threatens the lives of persons or property in the high threat corridor;

(D) there would be no harm to persons or property beyond the owners or operator of the railroad in the event of a successful terrorist attack on the shipment; or

(E) rerouting would increase the likelihood of a terrorist attack on the shipment.

(2) PRACTICAL ALTERNATE ROUTES.—Ownership of the tracks or facilities shall not be considered by the Secretary in determining whether there is a practical alternate route under paragraph (1).

(3) GRANT OF EXCEPTION.—If the Secretary grants an exception under subsection (d)(4)—

(B) the Secretary shall notify Federal, State, and local law enforcement and first responder agencies (including, if applicable, transit, railroad, or port authority agencies) within the high threat corridor.

AMENDMENT NO. 384

(Purpose: To establish a Homeland Security and Neighborhood Safety Trust Fund and refocus Federal priorities toward securing the Homeland, and for other purposes)

At the end, add the following:

SEC. 1505. HOMELAND SECURITY TRUST FUND.

(a) DEFINITIONS.—In this section:

(1) TRUST FUND.—The term ''Trust Fund'' means the Homeland Security and Neighborhood Safety Trust Fund established under subsection (b).

(2) COMMISSION.—The term ''Commission'' means the National Commission on Terrorist Attacks upon the United States, established under title VI of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 6 U.S.C. 101 note).

(b) HOMELAND SECURITY AND NEIGHBORHOOD SAFETY TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the ''Homeland Security and Neighborhood Safety Trust Fund'', consisting of such amounts as may be appropriated or credited to the Trust Fund.

(2) RULES REGARDING TRANSFERS TO AND MANAGEMENT OF TRUST FUND.—For purposes of this section, rules similar to the rules of sections 9601 and 9602 of the Internal Revenue Code of 1986 shall apply.

(3) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, for making expenditures for fiscal years 2008 through 2012 to meet those obligations of the United States incurred which are authorized under subsection (d) for such fiscal years.

(4) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Finance of the Senate should report to the Senate not later than 30 days after the date of the enactment of this Act legislation which—

(A) increases revenues to the Treasury in the amount of $53,300,000,000 during taxable years 2008 through 2012 by reducing scheduled and existing income tax reductions enacted since taxable year 2001 with respect to the taxable incomes of taxpayers in excess of $1,000,000, and

(B) appropriates an amount equal to such revenues to the Homeland Security and Neighborhood Safety Trust Fund.

(c) PREVENTING TERROR ATTACKS ON THE HOMELAND.—

(1) AUTHORIZATION OF APPROPRIATIONS FOR SUPPORTING LAW ENFORCEMENT.—There are authorized to be appropriated from the Trust Fund—

(A) $1,150,000,000 for each of the fiscal years 2008 through 2012 for the Office of Community Oriented Policing Services for grants to State, local, and tribal law enforcement to hire officers, purchase technology, conduct training, and to develop local counterterrorism units;

(B) $900,000,000 for each of the fiscal years 2008 through 2012 for the Justice Assistance Grant; and

(C) $500,000,000 for each of the fiscal years 2008 through 2012 for the Law Enforcement Terrorism Prevention Grant Program.

(2) AUTHORIZATION OF APPROPRIATIONS FOR RESPONDING TO TERRORIST ATTACKS AND NATURAL DISASTERS.—There are authorized to be appropriated from the Trust Fund—

(A) $500,000,000 for each of fiscal years 2008 through 2012 for the Federal Emergency Management Agency for Fire Act Grants; and

(B) $500,000,000 for each of fiscal years 2008 through 2012 for the Federal Emergency Management Agency for SAFER Grants.

(d) AUTHORIZATION OF APPROPRIATIONS FOR ADDITIONAL ACTIVITIES FOR HOMELAND SECURITY.—There are authorized to be appropriated from the Trust Fund such sums as necessary for—

(1) the implementation of all the recommendations of the Commission, including the provisions of this section;

(2) fully funding the grant programs authorized under this bill, including the State Homeland Security Grant Program, the Urban Area Security Initiative, the Emergency Management Performance Grant Program, the Emergency Communications and Interoperability Grant Programs, rail and transit security grants and any other grant program administered by the Department;

(3) improving airline passenger screening and cargo scanning;

(4) improving information sharing and communications interoperability;

(5) supporting State and local government law enforcement and first responders, including enhancing communications interoperability and information sharing;

(6) enhancing the inspection and promoting 100 percent scanning of cargo containers destined for ports in the United States and to ensure screening of domestic air cargo;

(7) protecting critical infrastructure and other high threat targets such as passenger rail, freight rail, and transit systems, chemical and nuclear plants;

(8) enhancing the preparedness of the public health sector to prevent and respond to acts of biological and nuclear terrorism;

(9) the development of scanning technologies to detect dangerous substances at United States ports of entry; and

(10) other high risk targets of interest, including nonprofit organizations and in the private sector.

Mr. BIDEN. Mr. President, with regard to the first amendment, No. 383, which I am not going to take time to speak to today, is an amendment that allows cities and States to reroute hazardous material around their cities. In a nutshell, and I know no one knows this better than the Chair, and I mean that sincerely, these are 90-ton chlorine gas tank cars that go rolling through Newark on their way down through the corridor into my State and across my State.

I once asked, not too long ago, the Naval Research Institute to give me an analysis of what would happen if one of those were to blow up in a metropolitan area. They said that 100,000 people would die—100,000 people would die. Yet this administration has opposed and we have not committed to allowing cities to reroute this hazardous material around their major metropolitan areas.

That is one amendment which I will come back to at another time.

At this moment I want to now speak to an amendment that is much broader, Amendment No. 384.

We often say that September 11 changed everything. Well, it changed everything except it didn't change our behavior. It changed everything except

when we look at the budget of this administration in the last 6 years, or 4 years since then, and if we look at our tax policy since then, we look at what hasn't changed.

My dad used to have an expression, Mr. President. You probably heard me say it before: Show me your budget, I will tell you what you value.

Tax cut after tax cut, overwhelmingly tilted to those who were at the highest end of the tax bracket, is what this outfit has valued. The truth is, we seem not to value protecting our cities, our homeland. The truth is, as the Presiding Officer knows better than anyone, living on the east coast in a State such as mine, only much larger, you know what the costs of the 9/11 Commission recommendations are. You know how few dollars we have spent implementing the recommendations. Literally from your home county, you could see the buildings collapse, the World Trade Center towers collapse. Thousands of people from your State were significantly affected, many were killed.

We all ripped out our hair about how this was so terrible; we were going to not let this happen again. We went out there and took a real good look at what needed to be done when the 9/11 Commission came along. Precious little was done. Yet during the same period of time we made sure to help people earning more than a million dollars a year. I am not picking on them. I am happy. I hope my grandkids make over a million dollars a year. I hope everybody in America can. I have no problem with anybody making hundreds of millions of dollars.

One of the things we forget on the Senate floor is that those folks are just as patriotic as poor folks. Those folks are just as patriotic as middle-class folks. They didn't ask for these massive tax cuts. They are prepared to give some of them back in order to make the country more safe, but we don't ask anything of them. So what happens? Just for this year, for households making more than $1 million a year, to put this in perspective, they are going to get a tax cut of $45 million. If you look at it from 2008 to 2017, that aggregate tax cut, if you are at an income where you make more than a million dollars a year, is going to be $739 billion. Households with incomes of that magnitude obviously take a big chunk of what are the fiscal priorities of this Nation.

We just had a long discussion here about the grant programs and how we allocate funding to the various States. We debated that. But it is like rearranging the deck chairs on the Titanic unless there is actual money dedicated to provide for these needs. What we have not done is we have not ensured a funding source. We have not provided the money needed to implement the 9/11 Commission recommendations.

I say to my colleagues that we have money to fund these programs. When I raised this last year and I talked about how much money was needed, as my friend from New Jersey has, they said: Oh, we can't afford it.

Give me have a break. We can't afford it? We can afford over $700 billion in tax cuts for people making over $1 million a year, and we can't afford it? I will point out that it comes to about a $50 billion price tag over 5 years to implement all the 9/11 Commission Report. Can't afford it?

Let me point out that the Congressional Budget Office recently released a study indicating H.R. 1, the House counterpart to this bill, will cost $21 billion, but the Senate bill we have here only costs $17 billion. There are a few comprehensive estimates of what all the 9/11 recommendations would cost, but I did what you did, I say to the Presiding Officer, and what others did—I went to a bunch of very smart people. I have been involved in this, as you have, from day one. We went in and costed it out, what it would cost for the main recommendations of the 9/11 Commission. The truth is, we are easily able to fund it. It is a lot more than that; it is $50 billion over 5 years, roughly.

In addition we are not prepared in terms of homeland security relating to local cops, sheriffs—local police. If there is going to be somebody who is trying to put sarin gas into a complex in your State or mine, it is not going to be some brave special forces soldier in fatigues wearing night-vision goggles who is going to figure this thing out; it is going to be a local cop riding behind the arena and seeing someone getting out of a dumpster. If we are going to break up these rings, it is going to be intelligence, but also it will be a local cop walking a beat in Newark, NJ, or Wilmington, DE—or Newark, DE. ''By the way, those three apartments that have been vacant for the last 7 years, there are lights on in the window.''

What have we done? We slashed spending for local law enforcement. We slashed it $2.1 billion a year since this President has become President.

Show me your budget, I will tell you what you value. It is a little bit like taking care of veterans. Show me your budget, I will tell you what you value.

In addition, the study by the U.S. Conference of Mayors found that 75 percent of the cities in America do not have interoperable communications—75 percent. This is a disgrace. What do we need? We had Hurricane Katrina, we had 9/11—what else do we need to demonstrate that it is useful to have a local cop be able to speak to the National Guard that is called in, to be able to have somebody in the command center who can talk to everybody? Yet 75 percent of the cities do not have interoperable communications capability—one of the strongest recommendations made by the 9/11 Commission.

As I said, while there is not a comprehensive assessment, I have spent a lot of time talking to experts and found that roughly for an additional $10.3 billion a year, we can implement all of the 9/11 recommendations—all of them, including provisions in this title—and do other commonsense things we know will make us more safe, such as reinvesting in local police.

The bottom line is this: If we simply commit to taking back a small fraction of the cuts for those making over $1 million a year, we can pay for all the security upgrades we need. Here is how it would work. My amendment simply puts the Senate on record calling for the Finance Committee to report legislation to provide $53 billion in funding for homeland security to be placed in the homeland security trust fund. It is called a Homeland Security and Neighborhood Safety Trust Fund. From this trust fund, we require that spending be dedicated toward initiatives and grant programs authorized in this legislation, including the Urban Area Security Initiative, the State Homeland Security Grant Program, emergency management performance grants, and rail and transit security grants. It would reinstate the COPS Program, the FIRE Act grants, SAFER grants, and the Justice Assistance grants, which provide essential support to State and local police, allowing them to coordinate with the Federal Government. It would be funding enhancements in interoperable communications, improve port security, including working toward 100 percent scanning of cargo containers, and upgrade and better prepare the Nation's public health sector to respond to acts of bioterrorism and nuclear terrorism.

I ask all my colleagues in earshot of my voice, go to the largest cities in your States and go to the emergency rooms in your hospitals. Ask how many times they have to close down their hospitals. They send out to all the ambulance drivers in the entire region that would be serviced by them a statement saying: We can't take any more today. What in God's name are we doing to prepare these hospitals and infrastructure for a terrorist attack?

We also have to upgrade and develop new scanning technology to detect dangerous substances. That is what this money would be allowed to be used for.

When I introduced this legislation last year and got a vote, I explained how I would allocate the $10.3 billion. I put $1 billion in here for interoperability, I put in $1 billion to promote 100 percent cargo container scanning, $500 million to bolster the public health infrastructure, and $100 million to improve government-wide information sharing. In order to leave what should be left—I took out these specific allocations in order to give to my colleagues on the Appropriations Committee and the Homeland Security Committee more discretion on how to spend the additional money in the outyears. I withheld the specifics. It is just an order to the relevant committees to come up with how to spend that money.

Any way you slice it, this will leave the most fortunate among us still very fortunate but will take, from over $736 billion, $52 billion. No one in this Chamber can tell me that there is anyone out there who is going to say that is not fair. No one can tell me that will have a scintilla of a negative impact on the economy. No one can argue, I respectfully suggest—and I invite them to do it—that, in fact, these things are not needed, what I am talking about here. These were all talked about by various Senators.

The numbers are clear. Those who need the least help are getting the most from the current tax cuts, and those fortunate Americans are twice blessed. They are blessed by our efforts in this bill, and they are blessed by the fact that they are doing very well through their own hard work.

I have said before, of the many opportunities squandered since 9/11, the most tragic opportunity squandered by this administration is the failure to call our country together, to give all of us a part to play in response to the new threats we face, not just middle-class folks who are sending their husbands, wives, sons, and daughters to Iraq and Afghanistan to try to protect us.

But despite the rhetoric that calls upon the proud recollections of our national purpose in conflicts such as World War II and the Cold War, on this floor there has been an incredible vacuum of leadership. Those Presidents asked something of the American people. What has been asked except forfeit commitments to health care, education, and energy security? And where does that burden fall? It falls on working women and men.

Let me just say as my time begins to expire that I know those who are very well off. I know they are willing to do this. I had an opportunity to speak to a group of 50 people advertised to me as among the most wealthy people in the nation. It was a group of investors. I spoke before them, and I said to them that this is what I wanted to do. I said: Does anybody in here disagree with that? It was advertised to me that a significant portion of these people were actually billionaires. When I raised that question, there was silence in the room, and finally one guy honestly put his hand up.

He said: I am not too sure I am. I am not too sure you won't go out and waste the money.

I said: Will you support it if I come forward and do what I did in the crime bill I wrote years ago, I drafted years ago—set up a trust fund, and the money we take from this tax cut to get this $50 billion-plus will be put into a trust fund, and it can only be used for homeland security and neighborhood safety? Would you support it then?

I got an ovation, literally an ovation, mostly a standing ovation, I say to you, Mr. President, from these extremely wealthy people. The wealthy are ready to commit just as the middle class and poor are.

Mr. President, I end where I began. As my dad used to say, don't tell me what you value, show me your budget. Don't anyone on this floor presume to tell me, in the years I have spent here, that this country cannot afford to spend, over the next 5 years, $10.2 billion a year to make this Nation safer. Please don't anyone suggest that it is not possible to pay for this when, in fact, you have a tax policy that is so out of whack that even the people who are benefiting the most from it are willing to contribute to our national security. If we ask the sons and daughters, husbands and wives, mothers and fathers in each of our towns and cities to send their children, their husbands and wives to protect us abroad, we sure in the devil can ask the people making over $1 million a year—a total tax break of over $736 billion over the next several years—to contribute $10.2 billion a year out of that tax cut. I am confident they are ready. They just need to be asked.

I hope, when the appropriate time comes, my colleagues will favorably consider my amendment.

I yield the floor.

AMENDMENTS NOS. 316 AND 342

The PRESIDING OFFICER. Under the previous order, there will be 15 minutes of debate equally divided on amendments Nos. 316 and 342 offered by Senators MCCASKILL and COLLINS.

Who yields time?

The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, if the Chair would inform me when I have used 3 minutes because I want to yield my remaining time.

There have been so many things said about this amendment that are not true. I want to make sure my colleagues understand how many things are being said that are not true.

There is one truth everyone needs to embrace. That is, we are only trying to give to the screening officers at airports the same worker protections that we give so many of our men and women in uniform who are helping with our national security and safety. As I drove up this morning to the Capitol, I was greeted by Capitol police officers. Does anyone doubt those Capitol police officers would do whatever is necessary to try to protect us? Of course not. But yet those same arguments are being used to try to discourage people from supporting this amendment, that somehow if these workers are part of some collective bargaining agreement, they will no longer be there at a moment's notice to do whatever they are asked to secure our safety and security.

As I said previously, how many Americans bought the NYPD shirts and hats and the New York fire department shirts and hats after 9/11? Those firefighters in New York who went into that burning building losing their lives in the process, running into danger rather than away from it, all were working under a collective bargaining agreement. Does anyone doubt that they hesitated responding to an emergency because they have basic worker protections? The notion is very un-American and, frankly, it is mildly insulting to the men and women serving as officers in our airports today.

The Border Patrol, same protections; Customs officials, same protections; most of the employees in Homeland Security, the civilian employees of the Department of Defense, FEMA employees, all of whom have to respond to emergencies, all have these same basic worker protections.

My amendment says they cannot collectively bargain for higher pay. My amendment spells out clearly that the Secretary of Homeland Security and the Director of TSA have complete authority to mandate what these workers do in times of an emergency. At the same time it is going to allow us to professionalize this workforce. This part of the Federal Government suffers from incredible turnover, as high as 50 percent. That is a turnover rate that would be unacceptable in the private sector. It is inefficient. It is expensive. We are not getting the kind of experienced screeners who know what to look for and when to look for it based on their experience, not because of some job training program.

This amendment will provide those basic protections. It will professionalize the workforce. In the long run, it will make us all safer.

I urge colleagues to support the McCaskill amendment. I yield the remainder of my time to Senator KENNEDY.

Mr. KENNEDY. Mr. President, how much time remains for both sides?

The PRESIDING OFFICER. Senator MCCASKILL has 4 minutes remaining, and Senator COLLINS has 7½ minutes remaining.

Mr. KENNEDY. Mr. President, I ask the Chair to remind me when there is 1 minute remaining.

First, I commend the good Senator for offering this amendment. It is important to understand what it does not do. It does not provide a right to strike, a right to bargain over pay. It does not prevent TSA from responding to emergencies, and it does not prevent TSA from responding to new threats. This amendment does none of that, even though it has been distorted and misrepresented.

As the good Senator has pointed out, what are the existing attrition rates today? Look at the different security agencies, Immigration and Customs correctional officers, Secret Service and Border Patrol, and Transportation Security. This is the national security threat, the idea that the TSA has this kind of turnover. That is the nature of the threat, having to get new people after new people after new people, because workers don't have a right to speak and don't have the right to bring their grievances.

What is the result? Even in this agency we find out in terms of lost time and the injury rate, this agency leads the pack. What does it show? It shows it is

poorly administered and the workers are not being treated fairly or are not treated with respect.

The McCaskill amendment is simple in what it does. The Border Patrol agents have these kinds of protections. FEMA has these protections. Immigration and Customs have these protections. Unless we have the McCaskill amendment, we will not have the range of these protections for Transportation Security Administration workers. The others have it but not TSA.

What does the other side have against working men and women? How insulting, that these men and women will not put the security of the United States first. At the time of 9/11, under the Defense Department, they moved hundreds and thousands of civilians all around the country. They were all under collective bargaining agreements. Not one grievance was filed, not a single one. These men and women understood their duty. They understood the threat. They were patriotic Americans. What is it about the other side that questions that these are men and women of dignity who will do their job when this Nation is threatened? What is it about? It certainly wasn't there at 9/11 when their brothers and sisters who work for the Department of Defense agency were moved all around. They were prepared to do everything they were asked to do.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. KENNEDY. Finally, as the good Senator has pointed out, as the smoke was coming out of the buildings in New York, when we saw the collapse of the first buildings and men and women under collective bargaining agreements were asked to go into those fiery infernos, no one was talking about collective bargaining agreements. They were talking about doing their duty to the United States. Let us permit these workers to do their duty. Let's give them these protections. Let's give them the kind of respect and dignity the McCaskill amendment gives them.

I reserve whatever time remains.

The PRESIDING OFFICER. Who yields time?

The Senator from Maine.

Ms. COLLINS. Mr. President, it is very clear to me that we can take significant steps today to give TSA employees more protections, and that is what the amendment I and several others have proposed would do. It would bring TSA employees under the Whistleblowers Protection Act, and it would allow them to appeal any adverse employment action such as a firing or demotion to an independent agency, the Merit Systems Protection Board. These are rights I believe TSA employees should have. They are rights that are similar to those enjoyed by other Federal employees. But what we are trying to do is strike a balance between giving the employees all of the standard collective bargaining rights and the security needs of the TSA.

The TSA security needs are not hypothetical. TSA has shared with us, in a highly classified briefing, details of when they have had to change the employee work conditions or assignments or duties. This isn't just a hypothetical need. It is one we saw last summer be put in place in the wake of a bombing plot that, fortunately, was thwarted. These are needs that came into play in the response to Hurricane Katrina. What I have suggested in my amendment is that we take major steps to afford more employee rights and protections to the TSA personnel, but we do so in a way that maintains the flexibility TSA has told us, both in classified session and in public hearings, they need to help safeguard our country.

The amendment I have proposed also includes other protections for the employees. It makes very clear that they can join a union. There are several TSOs who have joined a union in order for representation, if there is an adverse employment action.

Another provision of the bill recognizes this is not the final word on the issue but asks for TSA and the GAO to take a look at the personnel system for TSA and report back to us in a year's time about whether there should be other changes made to improve the system.

The amendment also provides for a pay-for-performance system which has been successfully implemented at TSA. We want to codify that.

I don't think this is an all-or-nothing debate. We can take some significant steps today. Secretary Chertoff has sent a letter on behalf of the administration that comments on the alternative proposal put forth by my friend from Missouri, Senator MCCASKILL. I do have a lot of admiration for my friend and colleague, but I think my other colleagues should be aware that the Department says that ''this amendment regrettably does not provide a workable solution. Indeed, in some respects it would make it even more difficult for the . . . (TSA) to manage its workforce than would section 803 [in the underlying bill.]''

I want to make sure my colleagues are aware that the Department of Homeland Security believes the underlying bill, the language authored by the Senator from Connecticut, is preferable to the language offered by the Senator from Missouri.

I ask unanimous consent that the entire letter from Secretary Chertoff be printed in the RECORD.

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

DEPARTMENT OF HOMELAND SECURITY,
Washington, DC, March 6, 2007.

Hon. SUSAN M. COLLINS,
Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR COLLINS: On behalf of the Administration, I would like to comment on the amendment proposed by Senator McCaskill (SA 316 to SA 315). We appreciate Senator McCaskill's effort to resolve the problems created by section 803 of S. 4, but this amendment regrettably does not provide a workable solution. Indeed, in some respects it would make it even more difficult for the Transportation Security Administration (TSA) to manage its workforce than would section 803—particularly managing its Transportation Security Officers (TSO), who serve on the front lines to secure our nation's civil aviation system.

Most notably, SA 316 could actually expand the opportunities to bargain collectively beyond what is contemplated by section 803 of the underlying bill. The amendment casts doubt on whether bargaining over employee compensation and benefits is prohibited, as it is under current law and section 803. The amendment also does not differentiate between mandatory and permissive subjects of bargaining, or set terms for bargaining over procedures and appropriate arrangements related to changes in conditions of employment. Given the scope of section 111(d) of the Aviation and Transportation Security Act (P.L. 107–7), these issues will likely become the subject of litigation. Therefore, the amendment could require TSA management to bargain to impasse over matters that no other federal agency engaged in security is required to address. Furthermore, the very definition of ''pay'' could become the subject of time-consuming litigation.

The amendment also promises to impede the quick and fair resolution of grievances and other workplace disputes for the thousands of TSOs. Although the Administrator of TSA purportedly would not be required to bargain over responses to emergencies or imminent threats, it is inevitable that protracted litigation will ensue over the meaning of these terms. Moreover, the very definition of ''emergencies, newly imminent threats, or intelligence indicating a newly imminent emergency risk'' could be subject to collective bargaining and subsequent litigation. The resolution of these issues might rest with an arbitrator with no direct knowledge of intelligence, risk and threat assessment, and transportation security. This would place the performance of TSA's security mission in the hands of someone who neither has the expertise needed to make these decisions nor is accountable for them.

The amendment also fails to alleviate the adverse impact that collective bargaining would have on TSA's day-to-day security operations. TSA is responsible for providing and managing complex, on-site security systems at more than 450 commercial airports, which collectively screen approximately two million passengers a day for thousands of commercial flights. Collective bargaining would limit TSA's management flexibility, which is an indispensable element of this system. TSA must be able to react nimbly, not only to the ever-evolving security threats that confront our Nation, but also to changing air carrier schedules, weather disruptions, and special events that draw large numbers of passengers to particular airports. TSA also needs flexibility to screen not only passengers and their checked baggage, but also air cargo, airport employees, and contractors working at airports. Simply put, collective bargaining remains incompatible with the successful performance of TSA's vital security mission.

In addition, the amendment would prevent TSA from effectively disciplining employees who break the law. The amendment would trigger Title 5's procedural requirements for taking adverse actions against employees, including the 30-day notice provision set forth in Chapter 75. This would eliminate all accelerated adverse action proceedings, even those based on clear and convincing evidence of theft, drug possession or usage, and workplace violence. TSA currently responds to

such conduct by ensuring that the employees who commit these violations are removed from the payroll in as few as three days. The amendment also would call into question TSA's ability to remove poor performers. Curtailing any of these procedures would severely compromise TSA's ability to guarantee a safe workplace and assure the traveling public of the uniformly high caliber of its TSO workforce. Ironically, it would also create a situation in which non-TSO employees could be removed from the payroll much more rapidly than TSO employees who directly affect security and customer service and interact daily with the American public on a large scale.

Nor do the amendment's proposed restrictions on TSO activities provide much comfort. The amendment states explicitly that TSOs could not bargain over pay, but that is no different from current law or section 803 of S. 4. Moreover, the amendment specifically prohibits the right of screeners to strike, but federal law already proscribes such actions by each and every member of the federal workforce. These provisions offer no more protection to the traveling public than is found in existing law.

Ultimately, the amendment is unnecessary in light of the significant innovative programs that TSA has implemented to provide for a high performing workforce. These steps include: (1) a comprehensive Model Workplace program; (2) an Office of Occupational Safety, Health, and Environment; (3) a Nurse Care Management program to eliminate or reduce workplace injuries; (4) National Advisory Councils that provide the TSO workforce with direct access to the Administrator and senior management on all issues concerning security and workforce conditions; (5) procedures for Alternative Dispute Resolution; (6) whistleblower protection through a formal agreement with the Office of Special Counsel; (7) a Disputes Resolution Board to provide additional review of workplace grievances; and (8) an extensive on-line training program to provide not only refresher training for TSOs and other TSA employees, but also the bases for career advancement. The recognition of these programs in a modified amendment would provide an appropriate framework to resolve the ongoing issues with section 803 and SA 316. I look forward to working with the Members on this most critical matter.

In the final analysis, the changes that SA 316 would make to section 803 of S. 4 do not resolve the concerns expressed in the Statement of Administration Policy dated February 28, 2007. As such, if section 803 is enacted in its current format, or as amended by SA 316, the President's senior advisors would continue to recommend that he veto the bill.

An identical letter was sent to Chairman Lieberman.

Sincerely,

MICHAEL CHERTOFF,
Secretary.

Ms. COLLINS. I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, there is no question that unions have these rights for TSO agents. This is a commonsense approach. What is not common sense is to put in jeopardy every traveling American for the sake of paying back a raw political debt. That is what this debate is about. Do we jeopardize safety, do we jeopardize the flexibility, do we jeopardize the fine work that has come from an incentivized system that has very low turnover now compared to the rest of the industry, that has a bonus system for great performance, a performance-based system, to give them what they need and not jeopardize the traveling American public? The McCaskill amendment actually hurts our flexibility and our security.

As a matter of fact, we had a hearing after this bill was on the floor, wherein Mr. Hawley and Mr. Gage came before us and talked about union representation of the TSO officers. Very revealing statements were said, especially by Mr. Gage. When we raised concerns about flexibility during emergencies and complicated issues that required absolute flexibility to move people around at all times, it was the testimony of Mr. Hawley who said they have to plan, that they are in an emergency all the time, which means they have to have the flexibility all the time. Mr. Gage's response to that was: These are sometimes bogus emergency situations.

Well, the reason we have had such an effective airline screening program is because we call everything an emergency and plan for it as an emergency, so we never have an emergency.

This amendment will gut the flexibility of the TSA in doing the very thing we have asked them to do; that is, protect us and have an institution that is viable, responsive, and nimble to protect us, without having to have a shop steward ask them what we can do and when we can do it.

Now, the McCaskill amendment says we will let you do that in an emergency, but the fact is, we are in an emergency mode all the time. So whatever contract we might have signed is not going to have any bearing anyway. So the contrast for the American public on this vote—and we know this is going to be a party-line vote. Even those Members who want to vote the other way have been told not to vote the other way. We know this is a party-line vote about paying back, so Mr. Gage and his associates can have 40,000 people a month pay $30 a month to put $12 million to $17 million in the coffers of the employees union. That is what this is about.

This is not about security for this country and flexibility with the TSA. I urge a vote against the McCaskill amendment and a vote for the Collins amendment.

I yield the floor.

The PRESIDING OFFICER. All time on this amendment has expired.

The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 316, as modified.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) is necessarily absent.

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

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

[Rollcall Vote No. 64 Leg.]

YEAS—51

Akaka	Feingold	Murray
Baucus	Feinstein	Nelson (FL)
Bayh	Harkin	Nelson (NE)
Biden	Inouye	Obama
Bingaman	Kennedy	Pryor
Boxer	Kerry	Reed
Brown	Klobuchar	Reid
Byrd	Kohl	Rockefeller
Cantwell	Landrieu	Salazar
Cardin	Lautenberg	Sanders
Carper	Leahy	Schumer
Casey	Levin	Specter
Clinton	Lieberman	Stabenow
Conrad	Lincoln	Tester
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Mikulski	Wyden

NAYS—48

Alexander	DeMint	Martinez
Allard	Dole	McCain
Bennett	Domenici	McConnell
Bond	Ensign	Murkowski
Brownback	Enzi	Roberts
Bunning	Graham	Sessions
Burr	Grassley	Shelby
Chambliss	Gregg	Smith
Coburn	Hagel	Snowe
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Thomas
Corker	Isakson	Thune
Cornyn	Kyl	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	Warner

NOT VOTING—1

Johnson

The amendment (No. 316), as modified, was agreed to.

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

Mr. NELSON of Nebraska. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 342

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on amendment No. 342.

Who yields time? The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, this is an attempt to find middle ground on a very difficult issue. The amendment that I and my colleagues offer the Senate would provide TSA employees with the right to appeal to the Merit Systems Protection Board any adverse action taken against them. Those rights would be identical to the rights that other Federal employees have. It would give them the protections of the Whistleblowers Protection Act. It recognizes that TSA employees have the right to join a union, and it calls for us to revisit this issue in a year by having a report from TSA and the GAO.

I think this helps give more rights and employment protections to TSA employees without impeding the necessary flexibility that TSA needs to have for our security.

I urge support of the amendment.

The ACTING PRESIDENT pro tempore. The Senate will be in order. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, this is one of those rare occasions when the

Senator from Maine and I disagree. I appreciate the fact that Senator COLLINS is trying to find a middle ground in this contentious debate. She gives the Transportation Screening Officers at TSA some employee rights but not the right to collectively bargain, which most employees in the Department of Homeland Security, and throughout our Government has. Presumably, the contention is that the right to collective bargaining would interfere with the security responsibility of the agencies, but TSA in the underlying bill and under Senator MCCASKILL's amendment would have absolute authority to take whatever actions are needed to carry out its mission in an emergency without bargaining with any units, without even considering any collective bargaining agreement.

The fact is that Federal security forces generally have the right to collectively bargain: Border Patrol agents, immigration officers, Customs, Federal Protective Services, and the U.S. Capitol Police. Those collective bargaining rights do not interfere with their protection of our security, nor would those rights for TSOs at TSA.

Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to amendment No. 342. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) is necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 52, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—47

Alexander	Dole	McCain
Allard	Domenici	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Roberts
Brownback	Graham	Sessions
Burr	Grassley	Shelby
Chambliss	Gregg	Smith
Coburn	Hagel	Snowe
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Thomas
Corker	Isakson	Thune
Cornyn	Kyl	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	

NAYS—52

Akaka	Dorgan	McCaskill
Baucus	Durbin	Menendez
Bayh	Feingold	Mikulski
Biden	Feinstein	Murray
Bingaman	Harkin	Nelson (FL)
Boxer	Inouye	Nelson (NE)
Brown	Kennedy	Obama
Bunning	Kerry	Pryor
Byrd	Klobuchar	Reed
Cantwell	Kohl	Reid
Cardin	Landrieu	Rockefeller
Carper	Lautenberg	Salazar
Casey	Leahy	Sanders
Clinton	Levin	Schumer
Conrad	Lieberman	
Dodd	Lincoln	
Specter	Tester	Whitehouse
Stabenow	Webb	Wyden

NOT VOTING—1

Johnson

The amendment (No. 342) was rejected.

Mr. LIEBERMAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

CHANGE OF VOTE

Mr. CORNYN. Mr. President, on rollcall vote 65, I voted ''nay,'' but it was my intention to vote ''yea.'' Therefore, I ask unanimous consent that I be permitted to change my vote, since it will not affect the outcome.

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

Mr. CORNYN. I thank the Chair.

(The foregoing tally has been changed to reflect the above order.)

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to offer a unanimous consent request for the order of the speakers to follow. It would be, Senator BUNNING of Kentucky be recognized for 5 minutes to call up an amendment and then set it aside; that Senator SCHUMER of New York then be recognized for up to 5 minutes to call up three amendments and set them aside; that Senator KERRY of Massachusetts be recognized for up to 10 minutes to offer a tribute to former Senator Tom Eagleton; that Senator GRAHAM of South Carolina be recognized for up to 15 minutes to speak on an amendment; that Senator WYDEN and Senator BOND be recognized for up to 10 minutes to call up an amendment; that Senator KYL be recognized for up to 5 minutes; and, finally, that Senator LANDRIEU be recognized for up to 10 minutes to do a tribute.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. LIEBERMAN. Excuse me. Is Senator KYL for 5 minutes or 15 minutes? I said 5 minutes only because it is on my piece of paper as 5, but it is 15 minutes we want to give to Senator KYL.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, I do object at this time because we have not seen this agreement. It has not been discussed with the manager or the staff on this side. I do object, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Objection is heard. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Ms. COLLINS. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will continue with the call of the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I am just going to make a brief statement before the Senator from Connecticut propounds the unanimous consent request. Now that I have seen the unanimous consent request, I am not going to object to it, but I do want to comment briefly on the two votes that we have just taken on the issue of the TSA employees.

I think those votes were extremely unfortunate because everyone in this Chamber knows that the President is going to veto this important bill if the provisions remain in the bill as the Senate just voted.

If that happens, it means the TSA employees will not receive the additional protections and rights that I advocated for in the amendment that I presented to the Senate. They will be back to a situation where they cannot appeal adverse employment actions to an independent agency, the Merit Systems Protection Board. They will be back in the situation where they cannot be protected by the Whistleblower Protection Act.

It is unfortunate that the votes we have just taken will actually set back the cause of providing employee protections that the TSA screeners should have.

I want to make sure that my colleagues are aware of what the practical implications and what the results will be of the votes just taken because there are clearly sufficient votes in this Chamber to sustain the President's veto, and I think it is very unfortunate that we are not going to be able to proceed to give these employees rights they deserve, rights they should have, and rights that would not impair our security.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I express my regrets to Senator COLLINS that she had not seen this list. I thought she had. We don't like to do it that way. It is a bipartisan list, as it turns out. I am going to propound a unanimous consent request again and do it in summary fashion without mentioning the topics again.

I ask unanimous consent that the order of speakers be as follows: Senator BUNNING for 5 minutes; Senator SCHUMER for 5 minutes; Senator KERRY for 10 minutes; Senator GRAHAM for 15 minutes; Senator WYDEN and Senator BOND to share 10 minutes; Senator KYL for 15 minutes; and Senator LANDRIEU for 10 minutes. In each case, it is up to that amount. I know the Senate would be grateful if the Senators choose not to use the full amount of time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ALLARD. Mr. President, I would like to have permission to alternate between Republicans and Democrats. If I could be lined up to speak after—who was the first Democrat after Senator BUNNING? Senator SCHUMER. If I may be allowed to speak next, I would appreciate it. I was lined up to speak at 2 o'clock originally, but we had the vote at 2 o'clock and, obviously, that has been slid out now. If the Senator from Connecticut can move me in there, I would appreciate it. We have always alternated between Republicans and Democrats.

Mr. LIEBERMAN. We have Republicans and Democrats running together. It is a totally nonpartisan list.

Mr. ALLARD. All right. I was set up to speak at 2 o'clock, and then we had the vote at 2 o'clock.

Mr. LIEBERMAN. There was no order for the Senator from Colorado to speak. How much time would the Senator like?

Mr. ALLARD. Mr. President, 10 minutes. Senator CORNYN and I want to engage in a colloquy, and then I have a few comments. We just need 10 minutes.

Mr. LIEBERMANN. Mr. President, I amend the request for the Senator from Colorado, Mr. ALLARD, to have 10 minutes after Senator SCHUMER's 10 minutes.

Mr. ALLARD. I thank the Senator.

The ACTING PRESIDENT pro tempore. Is there objection to the request, as modified? Without objection, it is so ordered.

Under the unanimous consent agreement, the Senator from Kentucky is recognized.

AMENDMENT NO. 334 TO AMENDMENT NO. 275

Mr. BUNNING. Mr. President, I call up amendment No. 334 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. Is there objection to setting aside the pending amendment? Without objection, it is so ordered. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. BUNNING] proposes an amendment numbered 334 to amendment No. 275.

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

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

The amendment is as follows:

(Purpose: To amend title 49, United States Code, to modify the authorities relating to Federal flight deck officers)

At the appropriate place, insert the following:

SEC. _____. FEDERAL FLIGHT DECK OFFICERS.

(a) IN GENERAL.—Section 44921(a) of title 49, United States Code, is amended to read as follows:

''(a) ESTABLISHMENT.—The Secretary of Homeland Security shall establish the Federal flight deck officer program to deputize eligible pilots as Federal law enforcement officers to defend against acts of criminal violence or air piracy. Such an officer shall be known as a 'Federal flight deck officer'.''.

(b) AUTHORITY TO CARRY FIREARMS.—Section 44921(f) of title 49, United States Code, is amended to read as follows:

''(f) AUTHORITY TO CARRY FIREARMS.—

''(1) IN GENERAL.—The Secretary shall authorize a Federal flight deck officer to carry a firearm on the officer's person. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm in accordance with this section if the firearm is of a type that may be used under the program.

''(2) PREEMPTION.—Notwithstanding any other provision of Federal, State, or local law, a Federal flight deck officer may carry a firearm in any State and from one State to another State.

''(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—

''(A) IN GENERAL.—When operating to, from, or within the jurisdiction of a foreign government where an agreement allowing a Federal flight deck officer to carry or possess a firearm is not in effect, a Federal flight deck officer shall be designated as a Federal air marshal for the purposes of complying with international weapons carriage regulations and existing agreements with foreign governments. Nothing in this paragraph shall be construed to allow Federal flight deck officers to receive any other benefit of being so designated.

''(B) REQUIREMENT TO NEGOTIATE AGREEMENTS.—The Secretary of State shall negotiate agreements with foreign governments as necessary to allow Federal flight deck officers to carry and possess firearms within the jurisdictions of such foreign governments for protection of international flights against hijackings or other terrorist acts. Any such agreements shall provide Federal flight deck officers the same rights and privileges accorded Federal air marshals by such foreign governments.

''(4) DESCRIPTION OF AUTHORITY AND PROCEDURES.—The authority of a Federal flight deck officer to carry a firearm shall be identical to such authority granted to any other Federal law enforcement officer under Federal law. The operating procedures applicable to a Federal flight deck officer relating to carrying such firearm shall be no more restrictive than the restrictions for carrying a firearm that are generally imposed on any other Federal law enforcement officer who has statutory authority to carry a firearm.

''(5) LOCKED DEVICES.—

''(A) NO REQUIREMENT TO USE.—A Federal flight deck officer may not be required to carry or transport a firearm in a locked bag, box, or container.

''(B) REQUIREMENT TO PROVIDE.—Upon request of a Federal flight deck officer, the Secretary shall provide a secure locking device or other appropriate container for storage of a firearm by the Federal flight deck officer.''.

(c) DUE PROCESS.—Section 44921 of title 49, United States Code, is amended by adding at the end the follow new subsection:

''(l) DUE PROCESS.—Not later than 90 days after the date of enactment of the Improving America's Security Act of 2007, the Secretary shall establish procedures for the appeal of adverse decisions or actions. Such procedures shall provide timely notice of the action or decision, including specific reasons for the action or decision.''.

(d) IDENTIFICATION AND SCREENING.—Section 44921 of title 49, United States Code, as amended by subsection (c), is further amended by adding at the end the following new subsections:

''(m) CREDENTIALS.—The Secretary shall issue to each Federal flight deck officer standard Federal law enforcement credentials, including a distinctive metal badge, that are similar to the credentials issued to other Federal law enforcement officers.

''(n) SECURITY INSPECTIONS.—A Federal flight deck officer may not be subject to greater routine security inspection or screening protocols at or in the vicinity of an airport than the protocols that apply to other Federal law enforcement officers.''.

(e) REPORTS TO CONGRESS.—Section 44921 of title 49, United States Code, as amended by subsections (c) and (d), is further amended by adding at the end the following new subsection:

''(o) REPORTS TO CONGRESS.—

''(1) REPORTS ON PROGRAM.—Not less often than once every 6 months, the Secretary, in consultation with the Secretary of State, shall report to Congress on the progress that the Secretary of State has made in implementing international agreements to permit Federal flight deck officers to carry firearms on board an aircraft operating within the jurisdiction of a foreign country.

''(2) REPORT ON TRAINING.—Not later than 90 days after the date of enactment of the Improving America's Security Act of 2007, the Secretary shall report to Congress on the issues raised with respect to training in Department of Homeland Security Office of Inspector General report OIG-07-14 that includes proposals to address the issues raised in such report.''.

(f) CONFORMING AND OTHER AMENDMENTS.—Section 44921 of title 49, United States Code, as amended by sections (c), (d), and (e), is further amended—

(1) by striking ''Under Secretary'' each place it appears and inserting ''Secretary''; and

(2) by striking subparagraph (G) of subsection (b)(3).

Mr. BUNNING. Mr. President, this amendment makes changes in the implementation of the Federal Flight Deck Officer Program, commonly referred to as the Armed Pilot Program, to require the Department of Homeland Security to implement the package and program as Congress originally intended.

Four years after Congress created this program, the Department of Homeland Security continues to drag its heels on providing flight deck officers, commonly known as FFDOs, or armed pilots, with the necessary tools to prevent another September 11-type attack.

My amendment will ensure that all armed pilots can truly act as a real defense against hijacking on commercial flights.

This amendment would end the ridiculous practice of forcing armed pilots to carry their guns in lockboxes and would allow them to carry the guns on their body where the gun is easily reachable and more discrete to carry.

No other Federal law enforcement officer is forced to carry a firearm in a lockbox, and Federal law enforcement officials agree that carriage on the body of an officer is the best way for law enforcement officials to carry a firearm to ensure that the threat can be stopped in the safest way possible.

In addition to putting more armed pilots in the skies, this amendment would also put armed pilots on international flights.

The current law for the Armed Pilot Program allows pilots on these flights, but so far the State Department has been slow on entering into negotiations

with other countries to allow this to occur.

My amendment requires the State Department to negotiate agreements with other governments to get armed pilots on international flights. Over the last few years, many international flights have been canceled because of terrorist threats.

This amendment will also allow armed pilots to protect the flights of U.S. airlines and free up air marshals so they can be put on targeted foreign flights that we know terrorists are targeting.

This amendment also provides for the issuance of a metal badge for armed pilots so they can easily be identified in a crisis situation.

It is important to make sure that these pilots have a means to identify themselves so that air marshals and other passengers know who they are and that they are lawfully carrying a firearm.

It also requires TSA to give armed pilots the same screening protocols other Federal law enforcement officers have so that the terrorists cannot easily identify them at security checkpoints.

Under current TSA requirements, all armed pilots must be screened publicly in plain view of everyone at the security checkpoint, as opposed to Federal law enforcement officers who are screened behind closed doors.

Finally, this amendment would give pilots basic due process. It requires the Department of Homeland Security to establish procedures to give notice and appeal rights when making any decision against the pilots. Currently, the pilots have no recourse.

I believe these changes that update the law governing the Federal Flight Deck Officer Program are vital and are needed to ensure that this voluntary program runs as it was intended to run and would encourage more pilots to enter into it.

I have spoken many times in the past on the merits of this program and the need for it. It has saddened me that I must once again be forced to ask TSA to start implementing this program as it was originally intended. Once again, we must be forcing TSA's hand to get enough pilots armed to actually create a strong defense against terrorists in the air. We currently have the opportunity to speed this program up and force TSA to do what Congress intended by adopting my amendment.

I urge my colleagues to join me in passing this amendment.

I thank the Chair.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New York is recognized for up to 5 minutes.

AMENDMENTS NOS. 367, AS MODIFIED, AND 366 EN BLOC, TO AMENDMENT NO. 275

Mr. SCHUMER. Mr. President, I wish to congratulate the managers of the bill. We have made good progress on this bill, something that has taken far too long to accomplish since the Commission's report.

Next, I would like to offer two amendments to this bill, which I filed in an attempt to strengthen certain provisions. The committee versions of the bill make significant strides in several areas of security, including improving truck security, and I offer a modified version of No. 367 and the original, No. 366. Two amendments.

The ACTING PRESIDENT pro tempore. Without objection, the clerk will report the amendments.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes amendment number 367, as modified, and amendment number 366, en bloc, to amendment No. 275.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments (Nos. 367, as modified, and 366) are as follows:

AMENDMENT NO. 367, AS MODIFIED

On page 303, strike line 12 and all that follows through page 305, line 18, and insert the following:

of Transportation, shall develop a program to facilitate the tracking of motor carrier shipments of high hazard materials, as defined in this title, and to equip vehicles used in such shipments with technology that provides—

(A) frequent or continuous communications;

(B) vehicle position location and tracking capabilities; and

(C) a feature that allows a driver of such vehicles to broadcast an emergency message.

(2) CONSIDERATIONS.—In developing the program required by paragraph (1), the Secretary shall—

(A) consult with the Secretary of Transportation to coordinate the program with any ongoing or planned efforts for motor carrier or high hazardous materials tracking at the Department of Transportation;

(B) take into consideration the recommendations and findings of the report on the Hazardous Material Safety and Security Operation Field Test released by the Federal Motor Carrier Safety Administration on November 11, 2004; and

(C) evaluate—

(i) any new information related to the cost and benefits of deploying and utilizing tracking technology for motor carriers transporting high hazard materials not included in the Hazardous Material Safety and Security Operation Field Test Report released by the Federal Motor Carrier Safety Administration on November 11, 2004;

(ii) the ability of tracking technology to resist tampering and disabling;

(iii) the capability of tracking technology to collect, display, and store information regarding the movement of shipments of high hazard materials by commercial motor vehicles;

(iv) the appropriate range of contact intervals between the tracking technology and a commercial motor vehicle transporting high hazard materials;

(v) technology that allows the installation by a motor carrier of concealed electronic devices on commercial motor vehicles that can be activated by law enforcement authorities to disable the vehicle and alert emergency response resources to locate and recover high hazard materials in the event of loss or theft of such materials; and

(vi) whether installation of the technology described in clause (v) should be incorporated into the program required by paragraph (1).

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Secretary, through the Transportation Security Administration, shall promulgate regulations to carry out the provisions of subsection (a).

(c) FUNDING.—There are authorized to be appropriated to the Secretary to carry out this section, $7,000,000 for each of fiscal years 2008, 2009, and 2010, of which—

(1) $3,000,000 per year may be used for equipment; and

(2) $1,000,000 per year may be used for operations.

AMENDMENT NO. 366

(Purpose: To restrict the authority of the Nuclear Regulatory Commission to issue a license authoring the export to a recipient country of highly enriched uranium for medical isotope production)

At the appropriate place, insert the following:

SEC. ___. MEDICAL ISOTOPE PRODUCTION.

Section 134 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2160d(b)) is amended—

(1) in paragraph (1), by striking subparagraph (D);

(2) by striking paragraph (2);

(3) in paragraph (3), by striking ''paragraph (2)'' and inserting ''this section'';

(4) in paragraph (4)—

(A) in subparagraph (A)(iv), by striking ''cost differential in medical isotope production in the reactors and target processing facilities if the products'' and inserting ''cost differential of radiopharmaceuticals to patients if the radiopharmaceuticals''; and

(B) by striking subparagraph (B) and inserting the following:

''(B) FEASIBILITY.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if it could be accomplished without a large percentage increase in the cost of radiopharmaceuticals to patients.'';

(5) in paragraph (5), by striking ''(4)(B)(iii)'' and inserting ''(4)(B)'';

(6) in paragraph (6), by striking ''(4)(B)(iii)'' and inserting ''(4)(B)''; and

(7) in paragraph (7), by striking ''subsection'' and inserting ''section for highly enriched uranium for medical isotope production''.

Mr. SCHUMER. Mr. President, I offer the first amendment, No. 367, to make the provision in the underlying committee bill even stronger with a new program to address trucks carrying high-hazard materials. Every day there are trucks that carry high-HAZMAT materials. If a truck is hijacked by a terrorist, it could spell disaster. We need to take action to prevent this from happening, and that is why my amendment will create a system not only to track these high-hazard trucks but to take action to stop a truck in its tracks by shutting down its engine if it strays off course.

This has worked in other countries. My amendment will require the Department of Transportation and TSA to work together to create a system to track these trucks, as well as respond accordingly if there is a problem. Every one of these trucks must submit a predetermined route to the TSA. If a truck strays from its plan, and we will know this by tracking its movements,

which GSA allows, TSA is automatically alerted and the system quickly responds.

As I said, we know a system such as this can work. It has been implemented in other countries. Hazardous material in trucks is one of the issues we have not dealt with sufficiently since 9/11. I look forward to the committee's receptiveness to this amendment and to working with the chair and ranking member to see if we can adopt this amendment. This is an important step.

The second amendment I offer, No. 366, along with my colleague, Senator KYL, will restore export restrictions on highly enriched uranium to reduce risks of terrorists obtaining this material to make nuclear weapons. Highly enriched uranium, HEU, can be used to make actual nuclear weapons, such as that dropped on Hiroshima, not just dirty bombs.

Until 2005, U.S. law restricted exports of bomb-grade uranium. However, this antiterrorism policy was undercut by an ill-considered amendment to the Energy Policy Act that eliminated these restrictions. By increasing the amount of HEU in circulation around the world, the Energy bill created an unacceptable risk by heightening the possibility that weapons-grade uranium could be lost or stolen and fall into the hands of terrorists with known nuclear ambitions. What made this language so astonishing is that it created much more risk without absolutely any reward by claiming to fix a problem that didn't exist.

The reality of this situation is that terrorists don't care if the weapons-grade uranium they try to get their hands on was meant for medical or military use. We know all they care about is how they can use it to attack our Nation and our way of life. If we have learned anything since September 11, it is we must take every step to ensure terrorists can never lay their hands on the materials they would need to launch an attack of mass destruction against the United States.

I urge my colleagues to support both these amendments. I hope we can work with the committee to get them accepted.

Mr. President, with that, in deference to my colleagues, I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Colorado is recognized for up to 10 minutes.

AMENDMENT NO. 272

Mr. ALLARD. Mr. President, I rise today to speak in support of my amendment No. 272 to the Improving America's Security Act, and I believe it will do that, improve America's security.

We have a rampant problem of identity theft in this country. Identity theft not only affects innocent victims, it poses a security threat to our country. As the 9/11 Commission put it: ''Fraud in identification documents is no longer just a problem of theft.''

We have long been aware that failure to protect the integrity of the SSN has enormous financial consequences for the Government, the people, and the business community. We now know that shortcomings in the SSN issuance process can have far graver consequences than previously imagined. The difficult lessons of September 11, 2001 have taught us that SSA can no longer afford to operate from a ''business as usual'' perspective. Whatever the cost, whatever the sacrifice, we must protect the number that has become our national identifier; the number that is the key to social, legal, and financial assimilation in this country.

We recognize SSA alone cannot resolve the monumental issues surrounding homeland security. Efforts to make our Nation safer will involve new or expanded initiatives by almost every segment of our population, including State and local governments, private industry, nongovernmental organizations, and citizens. However, we also recognize that, in endeavoring to protect our homeland, no Government system or policy should be ignored. As such, SSA, as a Federal agency and public servant, must resolve to review its systems and processes for opportunities to prevent the possibility that anyone might commit or camouflage criminal activities against the United States. We believe SSN integrity is a link in our homeland security goal that must be strengthened.

The 9/11 Commission went on to note: '' . . . all but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud.''

I have here an inspector general's report, inspector general for the Social Security Administration, and he is talking about the integrity of the Social Security number. He says an important link in homeland security is the Social Security number. To specifically quote him, he says:

> The difficult lessons of September 11, 2001, has taught us that the Social Security Administration can no longer afford to operate from a business-as-usual perspective. Whatever the cost, whatever the sacrifice, we must protect the number that has become our national identifier, the number that is the key to social, legal, and financial assimilation in this country.

He went on to say in his report:

> We believe the Social Security number integrity is a link in our homeland security goal that must be strengthened.

For every case of identity theft, there is a thief. We have to ask ourselves: Why would someone want to steal somebody else's identity? After all, every person has an identity of their own. Why would somebody be so dissatisfied with their own identity that they deem it necessary to steal from another? The answer to that question is simple: They have something to hide. For many, the fact they are trying to hide is that they are in this country illegally. Whether someone is here illegally in pursuit of work or to carry out the work of an international terrorist organization remains anyone's guess.

What we do know, however, is that there are clear signs of when an identity has been stolen. One obvious sign is when multiple people are using the same Social Security number. By law, every Social Security number has only one true owner. It follows, if 10 people are using the same Social Security number, 9 of them are thieves: 9 of them have something to hide.

One common use of Social Security numbers is for reporting earnings. And where are earnings reported? Earnings are reported to the Social Security Administration. That means that when multiple people are reporting to the Social Security Administration using the same Social Security number, the Social Security Administration has information in its possession relating to the crime of identity theft.

What does the Social Security Administration do? Absolutely nothing. It is prohibited from sharing their information with others in our own Federal Government, such as the Secretary of Homeland Security.

I believe it is an example of what the 9/11 Commission described as, and I quote from the Commission:

> The pervasive problem of managing and sharing information across a large and unwieldy government that had been built in a different era to confront different dangers.

In January of this year, a bipartisan group of Senators and I met with Secretary Chertoff on this very issue. Secretary Chertoff explained that, under current law, Government agencies are prevented from sharing information with one another that, if shared, could expose cases of identity theft.

My amendment tears down the wall that prevents the sharing of existing information among Government agencies and permits the Commissioner of Social Security to share information with the Secretary of Homeland Security where such information is likely to assist in discovering identity theft, Social Security number misuse or violations of immigration law.

Specifically, it requires the Commissioner to inform the Secretary of Homeland Security upon discovery of a Social Security account number being used with multiple names or where an individual has more than one person reporting earnings for him or her during a single tax year.

It seems logical that we would already be doing this, but we are not. In the meantime, we are effectively enabling thieves to continue to perpetrate the crime of identity theft.

In addition to the national security implications, for every case of identity theft there is an innocent victim.

Innocent victims like Connecticut resident John Harrison who had his active duty military ID and Social Security number stolen. The thief ran up an over $260,000 debt and opened 61 credit or bank accounts in the victim's name. Meanwhile the victim lost his job and the military decreased his retirement

pay because Phillips had run up a debt owed to the U.S. Government.

Connecticut resident John Harrison is not alone, In fact, for the seventh year in a row, with nearly 250,000 complaints, identity theft is the No. 1 complaint received by the FTC from Connecticut residents. Likewise, for the State of Maine, 2006 marked the seventh year in a row that identity theft complaints topped the Federal Trade Commission's Annual ''List of Top Consumer Complaints.''

Even my home State of Colorado is no stranger to identity theft. With 4,535 victims in 2005, we are ranked 5th in identity theft—behind only Arizona, Nevada, California, and Texas.

For instance, an 84-year-old Grand Junction woman was deemed ineligible for Federal housing assistance because her Social Security number was being used at a variety of jobs in Denver, making her income too high to qualify.

Unfortunately, for the victims of identity theft, by the time the identity theft is discovered, the damage has already been done. Yet when the Social Security Administration has reason to believe that a Social Security number is being used fraudulently, they are prevented from sharing it with the Department of Homeland Security. Withholding this information effectively enables thieves to continue to perpetrate the crime of identity theft against innocent victims.

By simply sharing information related to the fraudulent use of Social Security numbers among Government agencies, cases of identity theft could be discovered much sooner. Victims of identity theft deserve to have this existing information acted on, and my amendment allows this.

Senator CORNYN, who is on the floor with me, was at the meeting where Secretary Chertoff explained the problems with the Social Security numbers and DHS not being notified so that they could take law enforcement actions against such acts as a terrorist threat.

I wonder if Senator CORNYN would give me his impression.

Mr. CORNYN. Mr. President, will the Senator yield for a question?

Mr. ALLARD. I will be glad to yield.

Mr. CORNYN. Would the Senator from Colorado tell us what portion of the population is sort of disproportionately affected by this identity theft, particularly when it involves Social Security numbers?

Mr. ALLARD. A large portion of the population that is affected by the Social Security theft identification is the older population, those individuals on Social Security. The impact it is going to have on them is immediate in some cases because they are qualifying for a certain amount of Social Security based on the income that may be coming. If somebody else is using their Social Security number, that exceeds, perhaps, what allowances they may have to qualify for the Social Security benefits. If an individual has a job, then the effect is felt much later on.

The retired individuals of this country are most dramatically affected in this regard.

Mr. CORNYN. Mr. President, I ask the Senator from Colorado whether he is aware that the Federal Trade Commission has identified the top 10 States where identity theft is the biggest problem and that they have ranked Arizona as No. 1; and Nevada, the State represented by the majority leader; California; and Texas, No.4; and then Colorado at No. 5.

Is the Senator aware that the Federal Trade Commission has ranked those States as the top five States where identity theft is the biggest problem.

Mr. ALLARD. I thank the Senator from Texas for his question, and, yes, I am very much aware of that. Those States are disproportionately affected because of the overpopulation they have within their boundaries.

Mr. CORNYN. Is the Senator from Colorado aware there are those who will purchase bogus documents on the black market—basically for purposes of evading and breaking our immigration laws so they can purport to be someone whom they are not—and whether this, in his opinion, represents a security risk to the United States.

Mr. ALLARD. That is one of the problems we are facing today and one of the problems that Secretary Chertoff of Homeland Security pointed out. It is vital that we be able to identify duplicate uses of Social Security numbers because a number of the terrorists that were here on 9/11, attacking this country, were here under fraudulent IDs. It is an important aspect of law enforcement, and particularly homeland security, to be able to carry on their responsibilities.

Mr. CORNYN. Finally, Mr. President, I would like to ask the Senator whether this isn't exactly the kind of stovepipe or wall that the 9/11 Commission talked about when it comes to information sharing between law enforcement and intelligence agencies. Isn't this exactly the same kind of information sharing they found so important to protecting the security of our Nation?

Mr. ALLARD. Well, it is the very thing the 9/11 Commission was pointing out that is a problem with protecting the citizens of this country, the stovepiping of information among the various agencies and where there is no passing of information back and forth.

This is a classic example where one agency, in this case the Social Security Administration, has a number, and they know it is being used more than once throughout the country, yet nobody gets notified; it stays within the Social Security Administration. Even those law enforcement agencies within Homeland Security cannot get that information to act on it.

Secretary Chertoff said an important part of being able to carry out our function to ensure the security of this country is to get that information. Yet right now, the law explicitly prohibits the Social Security Administration from sharing that information with Homeland Security.

I think it is a problem that needs to be corrected, and the sooner we can correct that, the better.

Mr. CORNYN. I thank the Senator, and I support his amendment.

Mr. ALLARD. Mr. President, let me summarize my comments by saying I think it is important, in ensuring the security of this country, that we pass this amendment. Without the sharing of that information between the various agencies, it is going to be possible for anybody who comes into this country illegally, terrorists especially, to stay within this country and operate in a way where they are not discovered. We want to have law enforcement become aware of the presence of somebody here illegally, particularly if they are a terrorist. If their intention is to either destroy a building or to lay a bomb out somewhere, they are a real threat to this country.

I urge my colleagues to join me in supporting this amendment.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from Massachusetts is recognized for 10 minutes.

(The remarks of Mr. KERRY are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to set aside the earlier unanimous consent request so I can offer the Wyden-Bond amendment at this time.

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

AMENDMENT NO. 348 TO AMENDMENT NO. 275

Mr. WYDEN. Mr. President, I offer this amendment with the distinguished vice chairman of the Senate Select Committee on Intelligence. I thank him for the many hours he and his staff have put in, working with me on this amendment.

The purpose of the legislation before the Senate today is straightforward: to apply what has been learned from one of the greatest tragedies in American life in order to better protect the American people in the days ahead. One of the tragic lessons of 9/11 is what we do not know can hurt us, and hurt us badly.

Because of the outstanding work of the 9/11 Commission, extensive information about what went wrong has been made public. The national security community has learned from a number of its mistakes, and today is taking concrete steps to make sure what happened on September 11, 2001, does not happen again. There has been a variety of reports that have been issued, critical to our understanding of what happened that tragic day. The bipartisan 2002 Joint Congressional Inquiry, on which I was privileged to serve, is one example, as well as the Department of Justice's report on FBI accountability.

There is one essential report that has remained classified. Nearly 2 years ago,

the CIA inspector general submitted a report detailing CIA accountability in the runup to the 9/11 attacks. I am sure that some may and will consider a number of the inspector general's findings unsettling, perhaps embarrassing, but the report is of high quality and it is comprehensive. The CIA inspector general has provided this country with an important perspective on one of the defining moments in American history, and I believe the public has a right to know what went wrong at the CIA, so we can make sure those mistakes are not repeated.

I have spent more than a year working on a bipartisan basis with our friend from Missouri, the previous chairman of the Senate Intelligence Committee, Senator ROBERTS, to make an unclassified version of this report available to the public. I have repeatedly asked the intelligence community to redact any sensitive national security information in the report's executive summary so that it could be declassified. I have been joined in these efforts, in addition to the assistance Senator BOND has provided, by the current chairman, Senator ROCKEFELLER. I have already mentioned the help of Chairman ROBERTS for some substantial length of time.

Multiple CIA Directors, as well as the former Director of National Intelligence, regrettably have not been willing to cooperate. Why the leaders of the CIA have been so reluctant to cooperate is not clear to me. Neither former Director Goss nor Director Hayden nor Ambassador Negroponte have ever provided a valid reason for keeping the report, the entire report, classified. In fact, there is no good reason why the CIA cannot declassify this report. The executive summary is concise, and it contains little information about CIA sources and methods. It could be redacted and released quickly. That information is in the interests of the American people.

The amendment, the bipartisan amendment we offer today, would require the Director of the CIA to declassify the executive summary of the inspector general's report on 9/11, removing only that information which must be redacted to protect this country's national security. The amendment requires the Director do this within 30 days. I think anyone who has read the report would agree that this is more than enough time.

I am pleased that the bipartisan leadership of the Senate Intelligence Committee, Senator ROCKEFELLER and Senator BOND, join me as cosponsors of the legislation.

The American people have a right to know what is in this report. Some of the findings may be unpleasant, others may be a source of pride, but at the end of the day the American people have a right to know about how the Central Intelligence Agency performed at a critical moment in this country's history. We need that information made public so as to ensure that there is true accountability. September 11, 2001, is part of this country's history. To hide the truth from the American people is unacceptable.

I urge the adoption of this amendment.

I see my friend from Missouri and thank him again for his patience during the many hours our staffs have been working on a bipartisan basis.

Mr. President, I ask unanimous consent to call up the amendment at this time.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Oregon Mr. [WYDEN], for himself, Mr. BOND, and Mr. ROCKEFELLER, proposes an amendment numbered 348 to amendment No. 275.

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

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

The amendment is as follows:

(Purpose: To require that a redacted version of the Executive Summary of the Office of Inspector General Report on Central Intelligence Agency Accountability Regarding Findings and Conclusions of the Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001 is made available to the public)

At the appropriate place, insert the following:

SEC. _____. AVAILABILITY OF THE EXECUTIVE SUMMARY OF THE REPORT ON CENTRAL INTELLIGENCE AGENCY ACCOUNTABILITY REGARDING THE TERRORIST ATTACKS OF SEPTEMBER 11, 2001.

(a) PUBLIC AVAILABILITY.—Not later than 30 days after the date of the enactment of this Act, the Director of the Central Intelligence Agency shall prepare and make available to the public a version of the Executive Summary of the report entitled the ''Office of Inspector General Report on Central Intelligence Agency Accountability Regarding Findings and Conclusions of the Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001'' issued in June 2005 that is declassified to the maximum extent possible, consistent with national security.

(b) REPORT TO CONGRESS.—The Director of the Central Intelligence Agency shall submit to Congress a classified annex to the redacted Executive Summary made available under subsection (a) that explains the reason that any redacted material in the Executive Summary was withheld from the public.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my good friend from Oregon for his persistence in pursuing something we both agree should and must be disclosed and made public, to the extent it can consistent with national security. Accountability for one's actions is something most of us are taught from childhood. It is rooted not only in religious teachings but also in the tenets of government at the Federal, State, and local levels.

For those of us in public service, whether we be in an elected capacity or appointed position or some form of service directly related to the security of our Nation, we should know we must expect to be held accountable for our actions. When we serve the people and if we expect the rewards of doing good deeds, just as surely we should face the negative consequences of actions which do not turn out well.

In addition, the public, to the maximum extent possible consistent with national security, should have made available to it the findings and the conclusions of the Government's own agencies with regard to accountability.

As my colleague from Oregon has stated, in June of 2005 the Office of Inspector General of the Central Intelligence Agency published a report concerning the conduct of intelligence activities prior to September 11, 2001, and afterward. To this date, that report remains classified. The amendment Senator WYDEN and I propose requires the CIA to make as much of that report public as is possible, consistent with protecting the sensitive sources and methods relating to our national security.

The Senator from Oregon has referred to the 9/11 Commission, the joint congressional inquiry. Our Senate Select Committee on Intelligence spent 2 very intense years, 2003 and 2004, doing an extensive investigation of what the intelligence was, how it was formulated, what the problems were, and we found that there were tremendous holes in it. So much of what would be found in the inspector general's report has already been stated. But I think to make the record clear and complete, so that we may ensure that all of the agencies working on national intelligence have the ability to learn from the mistakes—and we in our role as the oversight committee will use the information in this report and on this floor, if need be—to point out how we can make our intelligence better.

In an age where the war on terrorism has been brought to us by radical Islamic groups who continue to threaten us, good intelligence is the only defense we have adequate to the threat we face. It is important that we get it right.

Now, it is not pleasant to air some of these mistakes. We all make mistakes, but we better learn from them or we are destined to commit them again.

I thank my colleague from Oregon.

Mr. President, I ask unanimous consent to temporarily set aside this amendment so that I may offer a Rockefeller-Bond amendment.

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

AMENDMENT NO. 389 TO AMENDMENT NO. 275

Mr. BOND. I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself and Mr. ROCKEFELLER, proposes an amendment numbered 389 to amendment No. 275.

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

The amendment is as follows:

(Purpose: To provide the sense of the Senate that the Committee on Homeland Security and Governmental Affairs and the Select Committee on Intelligence of the Senate should submit a report on the recommendations of the 9/11 Commission with respect to intelligence reform and congressional intelligence oversight reform)

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE REGARDING A REPORT ON THE 9/11 COMMISSION RECOMMENDATIONS WITH RESPECT TO INTELLIGENCE REFORM AND CONGRESSIONAL INTELLIGENCE OVERSIGHT REFORM.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Commission on Terrorist Attacks Upon the United States (referred to in this section as the ''9/11 Commission'') conducted a lengthy review of the facts and circumstances relating to the terrorist attacks of September 11, 2001, including those relating to the intelligence community, law enforcement agencies, and the role of congressional oversight and resource allocation.

(2) In its final report, the 9/11 Commission found that—

(A) congressional oversight of the intelligence activities of the United States is dysfunctional;

(B) under the rules of the Senate and the House of Representatives in effect at the time the report was completed, the committees of Congress charged with oversight of the intelligence activities lacked the power, influence, and sustained capability to meet the daunting challenges faced by the intelligence community of the United States;

(C) as long as such oversight is governed by such rules of the Senate and the House of Representatives, the people of the United States will not get the security they want and need;

(D) a strong, stable, and capable congressional committee structure is needed to give the intelligence community of the United States appropriate oversight, support, and leadership; and

(E) the reforms recommended by the 9/11 Commission in its final report will not succeed if congressional oversight of the intelligence community in the United States is not changed.

(3) The 9/11 Commission recommended structural changes to Congress to improve the oversight of intelligence activities.

(4) Congress has enacted some of the recommendations made by the 9/11 Commission and is considering implementing additional recommendations of the 9/11 Commission.

(5) The Senate adopted Senate Resolution 445 in the 108th Congress to address some of the oversight recommendations of the 9/11 Commission by abolishing term limits for the members of the Select Committee on Intelligence, clarifying jurisdiction for intelligence-related nominations, and streamlining procedures for the referral of intelligence-related legislation, but other aspects of the 9/11 Commission recommendations regarding oversight have not been implemented.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Homeland Security and Governmental Affairs and the Select Committee on Intelligence of the Senate each, or jointly, should—

(1) undertake a review of the recommendations made in the final report of the 9/11 Commission with respect to intelligence reform and congressional intelligence oversight reform;

(2) review and consider any other suggestions, options, or recommendations for improving intelligence oversight; and

(3) not later than December 21, 2007, submit to the Senate a report that includes the recommendations of the Committee, if any, for carrying out such reforms.

Mr. BOND. Mr. President, I thank the Chair, and I ask that the postponed recognition of the distinguished Senator from South Carolina now be instituted. I express my gratitude to him for allowing us to go forward with the intervening amendment.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 286

Mr. GRAHAM. Mr. President, I would like to thank Senator LIEBERMAN for working me into the line here. What I am rising to talk about is a very important issue for how we conduct this war, for how the law works in a time of war, for the values Americans would like to embrace when we are under siege as a nation, and try to give my explanation to what Senator SPECTER's amendment would do and why I oppose it so vehemently.

To give a little background and history of this issue, at least from my perspective—and I would ask every Senator to look at this very closely because this is a very important concept we are talking about—the Guantanamo military installation to house enemy combatants, people determined by our military to be enemy prisoners of war out of uniform, meeting the Geneva Convention's definition of an enemy combatant—the administration chose Guantanamo as the jailing site. There were prisoners there who brought actions in our Federal court, arguing that their confinement needed to be reviewed by Federal courts. The administration took the position that Guantanamo was outside the United States. They lost. I think the administration should have lost. To me, Guantanamo, because of the lease and the relationship the U.S. military has to that installation, is clearly part of the infrastructure of the United States.

The reason they made the argument is it is a long-held concept in law that habeas rights do not apply to people overseas, that our constitutional provisions granting to American citizens the right to bring a habeas petition when they are confined does not apply extraterritorially. The administration lost on the argument that Guantanamo was outside the United States, and the Federal court said: Okay, it is within the United States.

What habeas rights would attach to someone at Guantanamo Bay? Here is where Senator SPECTER and I dramatically differ. Senator SPECTER reads the Rasul case to say that someone confined at Guantanamo who is a noncitizen enemy combatant has a constitutional right under our Constitution to petition Federal courts, to have a district court judge review their confinement. I think that is completely wrong.

The D.C. Court of Appeals recently held in a 2–1 decision that people detained at Guantanamo Bay do not have constitutional rights under our Constitution to petition for habeas.

Rasul was about 2241, section 2241 of the U.S. Code, a congressional enactment that creates statutory habeas rights. That statute has been amended in many different forms—restricting habeas, granting habeas, allowing States appellate procedures postconviction relief to be substitutes for habeas.

The Supreme Court said: Since Congress has not spoken as to whether detainees at Guantanamo will be covered by 2241, we are going to allow a case to go forward under that statute until Congress tells us otherwise.

It was Justice O'Connor who was suggesting to the Congress we need to speak. The administration at the time of the Rasul case had no infrastructure in place to give due process to someone who is accused of being an enemy combatant. Justice O'Connor, in another case—I don't remember the name now—said: What you need to look at is Army Regulation 190–1, which is a procedure to guide military members how to determine who an enemy prisoner may be from a civilian who is an innocent person involved in war. So what the military did, after the second Supreme Court case, was come up with a Combat Status Review Tribunal. Now the Combat Status Review Tribunal is the due process right given to suspected enemy combatants.

To me, 9/11 was an act of war. It was also a crime, but it was an act of war. I believe the people housed at Guantanamo Bay are warriors, not common criminals. They will be afforded the due process rights of wartime law of armed conflict, not domestic criminal law.

What is the law of armed conflict when it comes to status? Article V of the Geneva Convention says that if there is a question of status, the country which houses the person, is in charge of the person, will conduct a competent tribunal. A ''competent tribunal'' all over the world is a military proceeding where the military of that country will determine if the person in front of them is a civilian, uniformed person, or enemy combatant.

The Combat Status Review Tribunal is well beyond the due process requirement of the Geneva Conventions. What happens at the Combat Status Review Tribunal, first of all, is that the enemy suspect prisoner will go before a panel of three military officers trained in who presents a military threat—an intelligence officer, a combat officer, and a legal officer. I think tomorrow or Friday, the 14 high-value detainees who have been in CIA custody will go through this process.

The question for this Congress is, Do we want the military to make the initial decision on who an enemy prisoner is based on what a military threat is to our country and the expertise the military has in determining if this person

is an enemy prisoner, enemy combatant, or do we want to give that to a district court judge who has absolutely no training?

Enemy prisoners during World War II were not allowed to file habeas petitions and come into our Federal courts and sue the military during a time of war to be released. Chief Justice Jackson said: Wait a minute. This is not our job. We are not trained for this. If we allow enemy prisoners detained by our military during a time of war to have access to our Federal courts, Federal judges are taking over a job the military is trained for and we are not trained for.

Here is what Justice Jackson said in the Eisentrager case:

> We are cited to no instance where a court, in this or any other country where the writ is known, has issued it on behalf of an alien enemy who, at no relevant time and in no stage of his captivity, has been within its territorial jurisdiction.

Nothing in the text of this Constitution extends such a right nor does anything in our statute.

So the Eisentrager case in 1950 clearly said habeas does not apply to enemy prisoners. I cannot find the language—it talks about why it is a bad idea—but it is forthcoming. So as early as 1950, the courts rejected enemy prisoner petitions in the Federal court.

Now, the question for Congress is, after 9/11—5 years later—do we as a Congress want to confer onto people classified by our military to be enemy combatants a Federal court right never known in the law of armed conflict at any other time in our history? Do we want to be the first Congress in the history of the United States to take away from our military the ability to determine who a military threat is and make literally a Federal court trial out of that decision?

There had been 160 habeas petitions filed before we acted last year. Let me tell you, they have sued our own military for everything imaginable: the quality of the food, DVD access, not enough exercise, judge-supervised interrogation. Some of the people who have brought these cases are accused of killing Americans in the most brutal way.

One of the lawyers, Mr. Michael Ratner, who filed habeas petitions on behalf of enemy combatants held at Guantanamo Bay, publicly stated:

> The litigation [for the United States]. . . . It's huge. We have over one hundred lawyers now from big and small firms working to represent these 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?

It is clear that it does—according to one of the lawyers representing detainees—make it very difficult for the military to do their job when it comes to intelligence gathering. I will have an unclassified summary to put into the RECORD at the end of my time that talks about the information gained at Guantanamo Bay.

But here is what Justice Jackson said would be the real big mistake for the Federal courts if you start granting habeas petitions and give enemy prisoners a right to sue our own people about their status in a time of war:

> The writ, since it is held to be a matter of right, would be equally available to enemies during active hostilities as in the present twilight between war and peace. Such trials would hamper the war effort and bring aid and comfort to the enemy. They would diminish the prestige of our commanders, not only with enemies but with wavering neutrals. It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be a conflict between judicial and military opinion highly comforting to enemies of the United States.

Was he prophetic? These 160 cases have created a nightmare for the military at Guantanamo Bay. Medical malpractice suits have been filed, $100 million money-damage lawsuits have been filed. It has been a legal nightmare.

So what I am trying to persuade the Congress to do is not grant in statute a right never given to any other enemy prisoner during any other war, because it is dangerous to do so.

What did we do to accommodate the unique needs of this war, a war potentially without end? For the first time in the history of our country, we are allowing Federal courts to review whether a person has been properly classified as an enemy prisoner. Once the military decides Shaikh Mohammed's status Friday, the mastermind allegedly of 9/11, can you imagine 5 years after 9/11 the Congress would open up any Federal courtroom that a lawyer could shop to find—whatever judge the lawyer could find in the country—and allow Shaikh Mohammed to sue our own military about his status, creating a nightmare zoo courtroom trial, bringing people from all over the world to determine his status, where the judge would have a say, not the military? That would be a mistake of monumental proportions.

What will happen is Shaikh Mohammed, in a classified setting, will have evidence presented by the Government to show he is an enemy combatant. He will have a chance to rebut that. When his case has been decided, he will have an automatic right of appeal to the DC Circuit Court of Appeals, where the DC Circuit Court of Appeals will look at the military decision in question and find out whether two things occurred. Were the due process rights given Shaikh Mohammed and other enemy combatant suspects consistent with our own Constitution? Secondly, was the evidence introduced sufficient to support the finding he is an enemy combatant?

That is the proper role for a judge. That is what judges are trained to do. It would be a monumental mistake to allow a habeas petition to be filed, where literally you could go to any court in the land and have a full-blown trial, calling people off the battlefield to make the case that this person was an enemy prisoner and give that decisionmaking ability to a judge not trained in who is a military threat to our country and take it away from the military.

That is why I am so passionate about this issue. I do believe in due process at a time of war. I have been a military lawyer for well over 20 years. I believe our country should adhere to the Geneva Conventions, that we should be a standard-bearer for what is right. But we should not cripple our military's ability to defend us in a way that makes absolutely no sense.

We should not put Federal judges on the frontlines in deciding who is a threat to this country, when the military is trained to do that. Let the judges look over the military's shoulder and in a proper way, consistent with their training.

Now, what is going to happen? The case is going to go to the Supreme Court soon. If I am wrong, I will take the floor and say so. Senator SPECTER has a belief there is a constitutional right to habeas. I do not believe that. But if the Court holds so, then I would be wrong. I would argue that the DC Circuit Court of Appeals is an adequate substitute for habeas, but that will be up to the Court.

All I am asking is to allow the work product of last year that has gone before the DC Circuit Court of Appeals that has been upheld to go through the system. I will gladly sit down with Senators SPECTER and LEVIN to see if we can work on better due process rights for people accused of being an enemy combatant. I think we can do that as a Congress without turning that decision over to Federal judges. It is a very dangerous thing we are proposing to do, to take away from the military to determine who a threat is and to give it to a Federal judge.

Finally, I would like to say: I know this is a war without end. Two hundred-and-something people have been released from Guantanamo Bay because they get an annual review board to look at their status anew. We do not want to keep people who have been misidentified who are not a threat. But we do not have the choice of ''try them or let them go.'' This is a war, and we can keep warriors off the battlefield as long as they are a threat. When it comes time to determine who should bear that risk, who should bear the risk of letting someone go at Guantanamo Bay—the innocent civilian populations of the world who have been a victim of people out of uniform wreaking havoc or the people who started this whole mess to begin with—if you are going to proportion risk, I think it should fall on the people who created the problem to begin with.

Twelve people have been released from Guantanamo Bay under the annual review process of the 200-and-something. Twelve have gone back to the battle. Three have been killed. So you make mistakes both ways. I don't want to hold one person down there who should not be held, but I don't want to let anybody go who is a threat to our country because we are at war.

Due process rights attach to people in war, but we cannot criminalize what has been an act of war beginning on September 11, 2001. The people down there will have their day in court. They will have a chance to have a say about who they are and what the facts are. But I do believe there are people down at Guantanamo Bay who are warriors. If they ever got out, they would try to kill us again.

Mr. LIEBERMAN. Mr. President, will my friend from South Carolina yield for a question?

Mr. GRAHAM. Yes, sir.

Mr. LIEBERMAN. I appreciate the Senator's remarks. I know the Senator from South Carolina has a background in military law, so he speaks with some authority on these questions.

What interests me in this discussion is the rights of citizens as opposed to noncitizens. I wanted to ask my friend, first, am I right that you are not arguing against the principle that an American citizen, even one alleged to be an enemy combatant, does have habeas corpus rights?

Mr. GRAHAM. The Senator is absolutely right; any American citizen. The Padilla case is the best example you could give. Padilla was charged as an enemy combatant, a U.S. citizen. It is true American citizens in the past have been held indefinitely as enemy combatants. But I do believe they should have access to our courts as a member of citizenship. And they would have a constitutional right to seek relief from a Federal judge to determine whether the military or law enforcement officers make that decision. We are talking about people in the same status as the Germans and the Japanese. There was a reason the thousands of enemy prisoners housed in the United States never had access to our Federal courts. It is what Justice Jackson was saying. The Federal judiciary would make a mockery of the military's ability to run the war if you turned every military decision into a Federal court trial as to who an enemy prisoner is. Justice Jackson, in the most eloquent fashion, told us what could come if you conferred these rights on enemy prisoners.

Here is what is odd. If I am a lawful combatant, if I am captured tomorrow as a member of the uniformed services of the United States, I do not have any rights under the Geneva Conventions to go to the host country's judiciary. We are creating, for unlawful combatants, enemy combatants, a right greater than someone who is captured as a lawful combatant.

Under the Geneva Conventions, there is no right to go to a court in any land to ask to be released. But in America, if you are an unlawful combatant, we are giving you your day in Federal court, after the military acts, which I think is an accommodation for the fact that this war is different. It is not lost upon this Senator this war is different. There will be no signing on the ''Missouri.'' I do not know when this war is going to end. I do not want an enemy combatant decision to be a de facto life sentence without robust due process. But I do believe, if the choice is between letting them go or having them die in jail, if they are still a threat, let them die in jail.

I do believe every enemy prisoner is not a war criminal, and the choice for the country is not ''let them go or try them.'' Because that is a false choice in the law of armed conflict. It would not serve us well to say that every American captured in the next war is a war criminal because they are performing their duties. You only confer war criminal status on someone who goes outside the law of armed conflict. So we are making some decisions for the ages.

I am all for due process. I am all for scrutiny and transparency because I want my country to win the war not changing whom we are. But I do not want us to fundamentally change the relationship between the military and military threats. Our judges have a role to play. The Congress has a role to play. The military has a role to play. Keep everybody in their lanes, and this will work.

Mr. LIEBERMAN. I thank my friend.

So I take his answer to say also—correct me if I am wrong—that the existing statute, including the MCA—which is the subject of the lawsuits we have been describing that are pending—the existing statute does not alter the right of American citizens who are alleged to be enemy combatants to use habeas corpus rights?

Mr. GRAHAM. The Senator is correct in two fashions. It says no military commission can try an American citizen. A military commission at Guantanamo Bay cannot, as a matter of law, try an American citizen, even if they are an enemy combatant. Someone from America could join al-Qaida, but they are going to be tried in our Federal courts if they are caught.

What we are trying to do is have a military commission consistent with the Uniformed Code of Military Justice to try people. The difference between now and Nuremberg, I say to the Senator, is the war is still ongoing. The reason we are not going to release all the information as to why Shaikh Mohammed is an enemy combatant is because that is very sensitive information. We will give a summary to the public. And the courts will get to review that decision in full in a classified setting. But I cannot stress to you enough we are at war.

The last time we had a Federal trial where somebody tried to blow up the World Trade Center in the early 1990s, some of the information in that courtroom setting that had to be released wound up in a cave in Afghanistan. I will talk about that later. We are trying to balance the need to be safe and the obligations we have under the law of armed conflict. I think we have struck a good balance. If I am wrong, the Supreme Court will tell me. Please, just to my fellow Senators, let this case go to the Supreme Court, see what they say, and we can fix it if we need to. That is all I am asking.

Mr. LIEBERMAN. Again, I thank my friend. So in furthering what this discussion is about, it is whether non-American citizens seized in the war on terrorism and alleged to be enemy combatants should have habeas corpus rights under our Constitution?

Mr. GRAHAM. I am the biggest advocate that an American citizen such as Mr. Padilla should be tried in Federal court. The man who was caught working with the Taliban in Afghanistan was in Federal court. Moussaoui was in Federal court because we didn't have the Military Commissions Act. An American citizen will be tried in Federal court with all the rights of an American citizen available to them.

Mr. LIEBERMAN. Let me ask this final question. This is the part of this discussion that I struggle with, which is what is the appropriate status in the context in which we are talking about permanent lawful residents of the United States.

In other words, if I understand what the Military Commissions Act—again, correct me if I am wrong—says, is that a permanent, lawful resident of the United States who is apprehended as part of the war on terrorism and alleged to be an enemy combatant does not have a right of habeas, or a right to have a case heard in Federal court. That concerns me. This is what I want to ask my friend from South Carolina who has had experience with this to clarify, as to whether that may be—if I can use the term a ''denial'' of equal protection—to say a permanent, lawful resident of the United States cannot have the same rights in these cases that a citizen of the United States has.

Mr. GRAHAM. Well, that is a very good question, and I think that is something we actually need to sit down and look at, that situation where you are not a citizen, but you are here on a legal status. I would be, quite frankly, very comfortable to clarify that, if anyone ever finds themselves in that category, to say, no, you are going to have all the rights of an American citizen.

What I am trying to do is make sure that we don't change 200 years of history. The people who assassinated President Lincoln, within 30 days they were caught, tried, and executed in a military commission format. We have had American civilians tried in military commissions in times of war, but they were reviewed by our Federal courts. Some of the German saboteurs who landed during World War II, I

think one or two of them actually were American citizens who left to go back to Germany to aid the enemy. They got tried by military commissions, and the Supreme Court reviewed their case.

What I am saying is that an enemy prisoner, a noncitizen, since time began in our country and in every other country, has been treated under the law of armed conflict, not domestic statutes. That is a distinction of great significance, and we don't need—the due process rights these enemy combatants, noncitizens, have are greater than the Geneva Conventions require, and every enemy combatant had their day in Federal court but in a way consistent with what judges are trained to do.

I don't believe it is in our national interests during ongoing hostilities to take away from the military the ability to classify who they believe to be a threat, what status that person has acquired based on their activities. I do believe the courts can look at every case and see: Was due process afforded? Did the evidence support the finding? That, to me, is the magic combination, and habeas destroys that combination.

Mr. LIEBERMAN. I thank the Senator from South Carolina. This, to me, has been a very helpful exchange. I would like to continue the discussion on the distinct question of what the habeas rights of permanent lawful residents of the United States should be.

Mr. GRAHAM. It is a great area to discuss. I thank the Senator. I yield the floor.

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

Mr. SPECTER. Mr. President, I ask my colleague from South Carolina if he would be willing to respond to a few questions.

Mr. GRAHAM. I would be honored to respond to my friend from Pennsylvania.

Mr. SPECTER. I will begin with the subject matter brought up by the Senator from Connecticut about the status of aliens. I would note that in the Rasul case, the Supreme Court, Justice Stevens speaking for a majority, answered this categorically:

> Aliens held at the base, like American citizens, are entitled to invoke the Federal courts' section 2241 authority—

Which is the habeas corpus statute.

So the court has dealt with that conclusively in Rasul much the same way that Justice O'Connor did speaking for plurality in an earlier case.

Addressing the question to the Senator from South Carolina, earlier today I noted the order establishing Combat Status Review Tribunals, and it provided that:

> All detainees shall be notified—

Leaving out some irrelevant material—

> of the right to seek a writ of habeas corpus in the courts of the United States.

Is the Senator familiar with that provision?

Mr. GRAHAM. No, sir, I am not.

Mr. SPECTER. Well, I hadn't been until a few days ago. But this is the Deputy Secretary of Defense, Paul Wolfowitz, in a memorandum dated July 7, 2004, to the Secretary of the Navy.

The Senator from South Carolina made the argument that the judges were not appropriate to make determinations of reviewing the orders or the conclusions of the Combat Status Review Tribunal. How would the Senator from South Carolina account for the acquiescence by the—

Mr. GRAHAM. I have been told that the order the Senator is talking about was implemented in the Rasul decision, and it would be a correct statement of Mr. Wolfowitz to make.

> Rasul said that habeas rights attached to Guantanamo Bay detainees until Congress says otherwise, and that is the difference we have. I read Rasul to say, since Congress hasn't spoken under 2241, Guantanamo Bay is within U.S. jurisdiction and the statute would apply to anybody held at Guantanamo Bay. It is not an overseas location. Until Congress speaks, under 2241 you will have the right.

Congress has spoken. We spoke last year. We took 2241 and changed it. We excluded noncitizens and any prisoners from the habeas rights under 2241 and, quite honestly, that issue has gone to the D.C. Circuit Court of Appeals, and we won last week.

Mr. SPECTER. Well, the question about the Department of Defense agreeing to allow habeas corpus rights was not taken up by the Circuit Court for the District of Columbia and the Detainee Treatment Act. Congress gave the Department of Defense the right to establish the rules, and that is one of the rules. Wait a minute. The question hasn't come yet.

Mr. GRAHAM. OK.

Mr. SPECTER. Is it fair to change the rules in the middle of the process after the Department of Defense has stated that they think it is appropriate for a Federal court—they specifically talk about courts of the United States—to make a determination under habeas corpus to see if the definition which they set for enemy combatants has been followed. They have specified that there has to be evidence. To the definition of what or who is an enemy combatant:

> An individual who was part of or supporting the Taliban or al-Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.

Now, the Department of Defense who promulgated this order concluded that it was within the purview of the Federal courts, and that is really a judicial function to determine whether the definition for enemy combatant has been achieved, isn't it?

Mr. GRAHAM. If I may respond, I think it is not remotely fair to say that the Department of Defense has conceded that habeas corpus rights should be given to detainees at Guantanamo Bay. Once Rasul was decided and the Government lost, that it was outside the jurisdiction of the United States, the Rasul case said: Until Congress acts, you will have a habeas right. The administration has come to me and other Members of this body since that decision and has been begging us to address 2241. The Supreme Court, in three separate decisions, has said Congress needs to get involved. The administration's theory was, there is no room for Congress in the courts.

Here is where the Senator and I have been partners. I have always believed the executive branch has to collaborate with the Congress, and they have been hard-headed about this and they wound up losing in court. They lost on whether it was outside the United States. Once the court ruled 2241 applied, the DOD had no other choice but to tell people: This is a statutory right. They were telling people at Guantanamo Bay: This is your statutory right. They were coming to me and other Senators saying: Please change 2241 because it is hampering the war effort.

That is exactly where we find ourselves. We took the input of the administration, we voted last year, we stripped habeas from 2241 where district court judges could make military decisions, and we are replaced in the appeals process where Federal courts do look at what the military does after they have decided. I think not only did the D.C. Circuit Court of Appeals uphold that as a proper thing to do but the Supreme Court will also.

So my belief is that it was our decision as Congress as to whether to give these enemy prisoners habeas rights, unlike any other war. We decided with Rasul we didn't want to do that. I think it is the best decision we have ever made. If you had asked this Congress on September 30, 2001: Would you want to create a Federal court action for any al-Qaida member caught to go into Federal court and bring lawsuits against our own troops alleging not enough exercise, bad DVD access, you name it, we would have said no. That would have been crazy. Why would we want to give this group of people who are trying to kill us all rights that we didn't give the Japanese and the Nazis who were trying to kill us all?

So now we find ourselves in Congress filling in the gap that the court found. The Congress has spoken. We told the courts, D.C. Circuit Court of Appeals: No habeas rights under 2241. We substituted another procedure that I think makes sense, and the court found out that we did it in a constitutional manner, and I think we are going to win at the Supreme Court.

But having said that, if there are other ways to improve due process where the Congress can make this CSRT process better, count me in. But I am not going to sit on the sidelines and watch the Federal courts do something they are not trained to do before Congress blesses it. If the Senator is

right that the Supreme Court says apart from 2241 an enemy prisoner, noncitizen, has a constitutional right to habeas, then I would be wrong. I would argue that our procedures under the D.C. Circuit Court of Appeals method of going to challenge the military is an adequate substitute. But I am firmly convinced that our courts are going to say there is no constitutional right for these prisoners, like there was none for Japanese and German prisoners, and that Congress has made a good decision to take the Federal courts and put them behind the military, not in front of the military.

Mr. SPECTER. Well, if I may respond, when the Supreme Court said Congress should act, they were saying that Congress should legislate on how a military commission should be tried. But moving to your argument about the issue of constitutional right, how could it be that if the Constitution says that the right of habeas corpus can be suspended only in the event of invasion or insurrection? How can it be argued that there is no constitutional right?

That is the argument that the Attorney General made in the Judiciary Committee hearing. Where the Constitution explicitly says the constitutional right of habeas corpus can be suspended only in invasion or insurrection, and no one says that either of those factors is present here, isn't that a flat-out statement that there is a constitutional right?

Mr. GRAHAM. All I can tell my colleague is that issue went up to the D.C. Circuit Court of Appeals 2 weeks ago and they said just as clearly as you can say it that there is no constitutional right for a noncitizen enemy prisoner classified as such by our military during hostilities to come into our Federal courts. Just like Justice Jackson said in 1950, that would be a disaster. I just can't believe any Federal court is going to say that Sheikh Mohammed, the mastermind of 9/11, who is an al-Qaida member, gets more rights than the Nazis. I just don't believe they are going to do that. If I am wrong, I will come to the floor of the Senate and say I am wrong. But I think I am right. The D.C. Circuit Court of Appeals agrees with me, and I believe we are going to win at the Supreme Court, if we can let these judges look at something without changing it every 30 days.

Let's give this a shot and see what happens. We will know soon. I apologize, but I have to go.

Mr. SPECTER. Wait just a minute. Make your answers a little more responsive and brief, and I won't keep you too long. I will keep you just a few more minutes.

The Court of Appeals for the District of Columbia said that the Supreme Court, speaking explicitly through Justice Stevens, only dealt with a holding on the statute.

They classified it as dictum when they said there was a constitutional right. Let me move on quickly to a couple of other points.

As to the adequacy of proceedings in the combat status review tribunals, you have the case involving In re: Guantanamo, which I cited this morning, where Judge Green dealt with the precise case in the District of Columbia Circuit Court, the Boumediene case, which had a procedure where the detainee was charged with talking to somebody who was from al-Qaida, and he asked who it was and they could not identify the person. There was laughter in the courtroom, and Judge Green said it is understandable that there was laughter in the courtroom because nothing had been established.

I ask a very simple, direct question, and maybe you can even answer it yes or no. Was that a fair proceeding?

Mr. GRAHAM. I can tell you that the Court will soon tell us. If I can give you what I think is the right answer, the combat status review tribunal, as to whether they provided adequate due process is on appeal now to the Supreme Court. The Supreme Court will soon tell us not just about war crimes legislation but about the CSRT provisions and whether they are constitutional.

I argue we are going to win on that one because 190–1 of the Army manual was the model that set up the combat status review tribunal. What right does a person have under the Geneva Conventions, in a time of war, when it comes to the question of status? Article 5 says competent tribunals—and all over the world that competent tribunal is not a Federal judge or the equivalent in another country, it is a military tribunal. If the Court rules the combat status review tribunal doesn't afford due process, I will sit down with you and others to make it comply to the Court's decision. I have no desire to take somebody from any part of the world and put them at Guantanamo Bay if they should not be there. That doesn't make America better or stronger. I do believe, contrary to the laughter in the courtroom, that the people best able to determine whether an enemy prisoner is a threat to our country or, in fact, an enemy prisoner is not some circuit judge or district court judge anywhere in America who was never trained in this, but military officers who are trained in making those decisions. They are the ones I trust. They have done it in every other war; they should do it in this war. I am willing to have their work product looked at by the Federal courts, and that is going on right now. We will soon know the answer to that question. Are CSRTs constitutional? If not, we will fix them.

I hate to leave. I have enjoyed this debate.

Mr. SPECTER. I have one more thing. I take your last extended statement to be a ''no,'' am I right?

Mr. GRAHAM. I believe they will be constitutional. If you think there has been a miscarriage of justice in any case, that will go to court. If you think something happened in the CSRT that is laughable, then the Federal court is going to get to look at every case. I can assure you and every other American that every decision made by the military on Guantanamo Bay will work its way to the Federal court, and our judges will look at the record and the process, and they will tell us in individual cases and as a group whether this works. Give them a chance to do it.

With that, I have to leave.

Mr. SPECTER. One last question. I still take that to be a ''no.'' It was not a complex question. Do you think it is fair where the Department of Defense sets the rules, contrary to your assertion, that they think Federal judges can decide whether the evidence establishes the standard for an enemy combatant, do you think it is as fair under American justice to have a presumption of guilt?

Mr. GRAHAM. No. This is an administrative hearing. The enemy combatant status determination is not a criminal decision. It is, in an armed conflict, an administrative decision where the procedure is set up. I will get you the regulation and we will introduce it, but it is article 5 on steroids. It has presumptions, rebuttable presumptions, and you have an annual review board on what should be determined to be a enemy combatant. You have a new hearing every year on whether new evidence came in, whether you are still a threat to the country, and whether you have intelligence value. Two hundred people have been released at Guantanamo Bay because they have gone through the process and the military determined they are no longer a threat. Twelve of the two hundred have gone back to killing Americans.

There is no perfect system. We are trying to be fair. God knows we want to be fair, but I tell you what, in close calls between letting someone go who the military thinks is a member of al-Qaida and killing other Americans and innocent people, I am going to make sure they stay in jail and let the judges determine if we have done it fairly. I will not sit on the sidelines and open the gates to people who have been caught in the process of aiding the enemy or becoming the enemy just because we are trying to create new rules for this war that we have never had in any other war because some people don't like Bush. Bush made a lot of mistakes, but this war is going to go on long after Bush is gone.

If you let these people out of jail, at least 12 of them are going to come back and kill you.

With that, I must leave. We will continue the debate.

Mr. SPECTER. Let me say, in conclusion, that bombast and oratory and repetition cannot undercut a few very basic facts. One is that the Department of Defense established a rule to give Guantanamo detainees the right of habeas corpus. They set out a standard as

to what would constitute being an enemy combatant. These are rules, when they call for evidence, that judges are equipped to decide. When there is a rebuttable presumption of guilt, undercutting the basic principle of America, the presumption of innocence, that is basically unfair.

When you talk about the decision by the Court of Appeals for the District of Columbia, where they limited the Supreme Court opinion to a narrow holding on the statute, although the court then went on to say there was a constitutional right, that will not pass muster when it comes back to the Supreme Court. It is fallacious to the utmost to argue that there is no constitutional right to habeas corpus, when the Constitution explicitly says the right of habeas corpus may be suspended only in time of invasion or rebellion. It simply cannot be contended rationally that there is no constitutional right to habeas corpus.

I am as concerned as the Senator from South Carolina about protecting America. I led the fight to reauthorize the PATRIOT Act. But the question is, is there some reason to hold the detainees? In the case that went to the District of Columbia Circuit Court of Appeals, you had the District Court looking at the information—it wasn't evidence—which was that the detainee had a conversation with an al-Qaida member, but they could not identify him. The proceeding was a laughingstock. That is the detainee in the District of Columbia Circuit Court case which is going to the Supreme Court.

I don't think this Congress ought to wait or punt to the Supreme Court. We passed a statute which takes away Federal court jurisdiction to make the simple determination: Is there a reason to hold them? We ought not to let that stand.

I ask unanimous consent that a letter dated today, received by Senator LEAHY and myself, be printed in the RECORD. It sets forth eloquently the reasons why habeas corpus for detainees should be reinstated by the Congress. It is signed by RADM Don Guter, who was the Navy's Judge Advocate General; RADM John Hutson, the Navy's Judge Advocate General at an earlier period; BG David Brahms, who was the Marine Corps senior legal adviser from 1983 until 1988; and BG James Cullen, who was the chief judge of the U.S. Army Court of Criminal Appeals.

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

March 7, 2007

Hon. PATRICK LEAHY, Chairman,
Hon. ARLEN SPECTER, Ranking Member,
Senate Committee on the Judiciary, United States Senate Washington, DC.

DEAR CHAIRMAN LEAHY AND SENATOR SPECTER: We strongly support your legislation to restore habeas corpus for detainees in US custody. We hope that it quickly becomes law.

Known as the ''Great Writ,'' habeas corpus is the legal proceeding that allows individuals a chance to contest the legality of their detention. It has a long pedigree in Anglo Saxon jurisprudence, dating back to 13th Century England when it established the principle that even Kings are bound by the rule of law. Our Founding Fathers enshrined the writ in the Constitution, describing it as one of the essential components of a free nation.

In discarding habeas corpus, we are jettisoning one of the core principles of our nation precisely when we should be showcasing to the world our respect for the rule of law and basic rights. These are the characteristics that make our nation great. These are the values our men and women in uniform are fighting to preserve.

Abiding by these principles is critical to defeating terrorist enemies. The U.S. Army's Counterinsurgency Manual, which outlines our strategy against non-traditional foes like al Qaeda, makes clear that victory depends on building the support of local populations where our enemies operate through the legitimate exercise of our power. The Manual states: ''Respect for preexisting and impersonal legal rules can provide the key to gaining widespread and enduring societal support. . . . Illegitimate actions,'' including ''unlawful detention, torture, and punishment without trial . . . are self-defeating, even against insurgents who conceal themselves amid non-combatants and flout the law.'' Our enemies have used our detention of prisoners without trial or access to courts to undermine the legitimacy of our actions and to build support for their despicable cause.

It is certainly true that prisoners of war have never been given access to courts to challenge their detention. But the United States does have a history of providing access to courts to those who have not been granted POW status and are instead being held as unlawful combatants, as are the detainees in this conflict. See., e.g., Ex Parte Quirin, 317 U.S. 1 (1942) (rejecting the claim that the Court could not review the habeas claim of enemy aliens held for law of war violations).

POWs are combatants held according to internationally prescribed rules, and are released at the end of the war in which they fought. In a traditional war, it is generally easy to determine who is a combatant and governed by these special rules. But the war we are fighting today is different. Detainees held at Guantanamo Bay were captured in 14 countries around the world, including places as far away from any traditional battlefield as Thailand, Gambia, and Russia. Some were sold to the United States by bounty hunters. Our enemies blend into the civilian population, making the practice of identifying them more difficult. For all these reasons, the possibility of making mistakes is much higher than in a traditional conflict. In such a situation, it is incumbent on our nation to ensure that there is an independent review of the decision to detain.

The denial of habeas corpus also threatens to harm our national interests by placing American civilians at risk. Imagine if an enemy of the United States arrested an American citizen—a nurse or interpreter or employee of a military contractor—because they once provided assistance to our armed forces, and held that American without charge or opportunity to challenge their detention in court. We would be outraged, and rightly so. Yet, this is the precedent we are setting by holding without charge those deemed to have aided the enemy and denying them access to a court that could review the basis of their detention.

A judicial check on the decision to detain is in the best tradition of the United States—a tradition that ensures accountability, accuracy, and credibility. Restoring habeas corpus will help ensure that we are detaining the right people and showcase to the world our respect for the rule of law and the values that distinguish America from our enemies.

We hope that Congress will act quickly to pass this legislation.

Sincerely,

REAR ADMIRAL DON GUTER, USN (RET.)
REAR ADMIRAL JOHN D. HUTSON, USN (RET.)
BRIGADIER GENERAL DAVID M. BRAHMS, USMC (RET.)
BRIGADIER GENERAL JAMES P. CULLEN, USA (RET.).

Mr. SPECTER. I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from New Hampshire.

Mr. SUNUNU. Madam President, I rise to speak for a few minutes on the topic that was being covered by Senators SPECTER, GRAHAM, LIEBERMAN, and others, and that is the right of detainees—in particular, detainees at Guantanamo Bay—to petition the court system through what we refer to as habeas corpus and question the specific details that have led to their confinement, to their definition or status as an enemy combatant.

This is an important issue. Naturally people get excited when they are debating this issue. Senator GRAHAM is no exception. But one thing that he mentioned I think must be addressed, and that is this is about letting people out of jail, letting people go free who might attack the United States at a later date. I feel very strongly that this isn't about letting people out of jail, and it isn't even necessarily about letting people object to the conditions of their confinement, because I believe Congress can and should address the habeas issue without necessarily allowing any frivolous petition regarding conditions to go forward. But it is about the rights of these individuals to question the determination that they are an enemy combatant.

The U.S. military or other forces operating on behalf of our coalitions overseas have captured and detained individuals and determined that they are enemy combatants and, therefore, they can be detained indefinitely on the basis of that determination.

The situations that arose in previous conflicts were also brought up. What about similar situations in the Second World War, the First World War, or other engagements of the U.S. military in our past? I rise today, most importantly, to emphasize that there is a significant difference between this war and those conflicts. There are differences in some very important ways that make this right or this ability to petition against your definition as an enemy combatant very important.

First, this is not a war where we have troops lined up or engaged on a battlefield in uniform. These are very different combatants, very different enemies we face, by that definition, not always easily recognized and sometimes incredibly difficult to recognize

those who are planning to kill U.S. citizens or our allies around the world. They are not on a specific battlefield and certainly not in uniform.

Second, these enemy combatants—and there are many thousands of enemy combatants the United States faces around the world—could be almost anywhere in the world. It makes this very different than past conflicts. They could be here in the United States, they could be in Pakistan, they could be in Somalia, they could be in Kenya, they could be in Germany, they could be in Spain, or they could be in the United Kingdom. As a result, we could have an individual in any one of these countries captured, detained, and placed into our incarceration in Guantanamo Bay or another facility and designate them as an enemy combatant.

That is highly unusual when compared to past conflicts or past battles and, I think, as a result could naturally cause significant problems in relations with other military organizations that are supporting our efforts, other countries' diplomatic affairs, all of which are important to our success in this effort.

So because these are individuals who could be captured and detained from anywhere around the world, we have to take extra consideration to make sure they are dealt with in a straightforward way that respects principles of due process.

Third, a third important distinction in this conflict is because of the nature of the conflict, these individuals could be held indefinitely without any clear prospect of being released through the processes that would often bring a conclusion to hostilities, negotiation, a cease-fire, or surrender.

We all recognize this conflict is very different in that regard. When constituents back home in New Hampshire ask me, When is this struggle against terrorism going to end? You certainly can't give a definitive answer in terms of time, but you also are very hard pressed to give a definitive answer in terms of specific objectives—when we capture this individual, when we destroy this organization, when we bring stability to this part of the world that is traditionally encouraged or fermented jihadists. So we have for these individuals—many of whom are evil individuals who have plotted and planned against the United States and our allies around the world—indeterminate, unlimited detention at the hands of the United States.

Given those differences that set this conflict apart from past military conflicts in our history, I think it is in keeping with our standards of due process to ensure that when someone finds themselves indefinitely held by the United States in this conflict, they can at a minimum petition, object to their status or the determination of their status as an enemy combatant, and at least argue on appeal the facts of the case, make an argument as to why they should not be classified as an enemy combatant.

Senator SPECTER and others made the argument when we were considering the Detainee Treatment Act that this ought to be done in the D.C. Circuit Court of Appeals. I think the exact time, place, and manner of this appeal can and should be determined by an act of Congress. But I think what is most important is that we not simply say because commanders on the battlefield decided—when I use the word ''battlefield,'' I mean in this modern sense—commanders somewhere in the field, somewhere around the world, after you were arrested or detained or captured, decided you were an enemy combatant, that we are going to let that determination stand without appeal, without objection, without petition.

At the very least, again, it is consistent with the principles of due process that are so important to this country that we give that detainee at least one opportunity to object in a court to the specifics that led to him being determined an enemy combatant.

This is an important issue, but I think it is not just important because it affects our security, which we all want to protect to the greatest extent possible, but because it speaks to our own citizens and it speaks to people around the world as to what kind of a society we are and what principles we hold to be dearest.

This is an issue that deserves thorough debate in the Senate. I look forward to hearing more from both sides and working with Senator SPECTER to try to move forward a process that addresses these concerns, that doesn't necessarily have to grant all rights and all privileges accorded to every U.S. citizen to those who are determined to be enemy combatants, but at least gives them the fundamental right to challenge that determination which could and, in many cases, should lead to their indefinite incarceration at Guantanamo Bay.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, while the Senator from New Hampshire is still on the floor, I thank him and commend him for his statement directly to the issues. He has articulated them very well. It is a different circumstance and what we are looking at is the issue of indefinite detention and some process where there has to be some reason given for the detention. It doesn't haven't to comply with the technical Rules of Evidence, although the Department of Defense regulation calls for evidence, and evidence is a work of art comprehending competency of items to establish a fact. But without moving into the full range of evidence for some reason to hold them—and I agree with the Senator from New Hampshire that we are not looking for a remedy to test living conditions or to test food or test a wide variety of items that may be comprehended in other habeas corpus situations, but just detention—that is all—just detention.

I am agreeable to modifying the amendment to specifying just detention. The Senator from New Hampshire raises a valid point that there may be other Senators—he estimates as many as 10—who are inclined to support an amendment which directed itself only at detention.

There is the right of modification. I am going to talk to more of my colleagues to see if that would produce a significantly different result.

I thank the Senator from New Hampshire.

I yield the floor, and in the absence of any Senator seeking recognition suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold his request?

Mr. SPECTER. Yes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I come to the floor this afternoon to rise in support of the Specter-Leahy amendment, No. 286, which I hope we will have an opportunity to consider very shortly.

This amendment, which Senator SPECTER has addressed on the floor during the course of the day, is long overdue.

Last fall, Congress enacted a deeply flawed law called the Military Commissions Act. The law gives any President the power to imprison people indefinitely without charging them with any crime. It takes away fundamental due process as protected by the Constitutionally-protected right of habeas corpus. It allows our Government to continue to hold hundreds of prisoners for years without ever charging them with any wrongdoing.

I was one of 34 Senators who voted against the creation of this Military Commissions Act. I hope this year that Congress will begin to undo the damage to fundamental American values that was done by this legislation.

The amendment offered by the Senator from Pennsylvania and the Senator from Vermont, the Specter-Leahy amendment, is an excellent place to start. This amendment would repeal the provision of the Military Commissions Act that eliminated habeas corpus for detainees.

Habeas corpus is the legal name for a procedure that allows a prisoner to challenge their detention in court. It is a basic protection against unlawful imprisonment. It is one of the bedrock principles that separates America from many other countries around the world.

Over 700 lawyers from the Chicago area sent me a letter last year strongly opposing the elimination of habeas corpus for detainees. Here is how they explained the importance of this basic fundamental right, and I quote:

The right of habeas corpus was enshrined in the Constitution by our Founding Fathers as the means by which anyone who is detained by the Executive may challenge the

lawfulness of his detention. It is a vital part of our system of checks and balances and an important safeguard against mistakes which can be made even by the best intentioned government officials.

Why is this administration so interested in protecting itself from the judicial review of our courts? Because the courts have repeatedly ruled that the administration's policies have violated the law and our constitution.

After the September 11 terrorist attacks, the administration unilaterally created a new detention policy for America. They claimed the right to seize anyone, including an American citizen in the United States, and to hold them until the end of the war on terrorism, whenever that might be.

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

Using their new detention policy, the administration has detained thousands of individuals in secret detention centers around the world. Only time will lead to the complete disclosure of what they have done. The most well-known, Guantanamo Bay, is only one of those centers. Many have been captured in Afghanistan and Iraq, and people who never raised arms against us have been taken prisoner far from the battlefield, in places such as Bosnia and Thailand.

Who are the detainees in Guantanamo Bay? Well, back in 2002 then Defense Secretary Rumsfeld described them, and I use his words, ''the hardest of the hard core.'' He went on to call them, ''among the most dangerous, best trained, vicious killers on the face of the earth.'' Those are the words of Secretary Rumsfeld.

Well, I went to Guantanamo last July. There were some 400 detainees being held. There have been many others who have gone through that camp. Hundreds of people have been detained at Guantanamo, many for years, without ever being charged, and then were released.

Imagine, if you will, that you were scooped up by some government official, transported a thousand miles away to this rock in the middle of the Caribbean, this high-temperature, high-pressure location, and then held literally for years without ever being charged with any wrongdoing.

Every American would agree with what I am about to say. Every dangerous person should be arrested and detained to protect America from terrorism. When we have good cause to believe that a person threatens our country, I believe it is our right, when it comes to our basic security, to detain that person and to hold that person as long as they are a threat to our country. In this case, however, hundreds of individuals were taken from their homes, their businesses, their families, their countries, and transported to Guantanamo, and held without charges, sometimes for years, before they were released.

According to media reports, military sources indicate that many of the detainees had no connection to al-Qaida or the Taliban and were sent to Guantanamo over the objections of intelligence personnel who ultimately recommended they be released. It was a mistake. They never should have been held. They should not have been detained. Years were taken off their lives, while the image of Guantanamo has been created across the world.

One military officer said:

> We are basically condemning these guys to long-term imprisonment. If they weren't terrorists before, they certainly could be now.

That quote comes from one of our military officials.

Based on a review of the Defense Department's own documents, Seton Hall University Law School reported that only 5 percent, 1 out of 20, of the detainees at Guantanamo were captured by U.S. forces, while 86 percent were taken into custody by Pakistani or Northern Alliance forces at a time when the United States was paying huge amounts of money for the capture of any suspected Arab terrorist.

The Defense Department's own documents revealed that the large majority of detainees never participated in any combat against the United States on a battlefield, and only 8 percent, that is fewer than 1 out of 10, of those being detained were even classified as al-Qaida fighters.

In 2004, in the landmark decision of Rasul v. Bush, the Supreme Court rejected this administration's indefinite detention policy. The Court held that detainees at Guantanamo have the right to habeas corpus to challenge their detentions in Federal court. The Court held that the detainees' claims that they were detained for over 2 years without any charge against them and without any access to counsel, and I quote the Court, ''unquestionably described custody in violation of the Constitution, or laws or treaties of the United States.''

That is why the amendment being offered by the Senator from Pennsylvania and the Senator from Vermont is so critically important. What we have enshrined in the Military Commissions Act is a violation of the fundamental values of our country.

As I have said before, and will repeat, anyone who is a danger to this country should be stopped, detained, arrested, and imprisoned, if necessary, before they harm anyone in our country. Those who are detained should be detained for cause. There should be a reason. There should be a charge against them. They should have the most fundamental access to justice, which we preach around the world; that they can defend themselves, know what they are being charged with, see the evidence being used against them, and have the right to counsel so that they can express their innocence in the most effective way.

How did the administration react to the Supreme Court decision in 2004? Instead of changing its policies to comply with the Constitution, the law, they came to the Republican-controlled Congress at that time and demanded that habeas corpus for detainees be eliminated.

This isn't about the rights of suspected terrorists. It is about who we are as Americans. Eliminating habeas corpus is not true to our values. Sadly, it creates an image of America that causes problems even for our troops in the field.

Recently, I went on a trip to South America with Senator HARRY REID, our majority leader in the Senate, and we talked to leaders in countries in South America. I can recall one leader saying that he wanted the United States to remove a base from his country. He said: We don't want to have another Guantanamo here in our sovereign country.

Guantanamo has become an image which needs to change. Even the President has called for the closing of Guantanamo. Yet what the Congress has done is to not only keep Guantanamo in business but to keep it in business with rules that are inconsistent with our Constitution and our fundamental values.

Tom Sullivan is a friend of mine and a prominent attorney in Chicago. He was a former U.S. attorney, a lead prosecutor for our Government in that area. He served in the Army during the Korean war.

For nothing, on a pro bono basis, Tom Sullivan has taken on cases of several Guantanamo detainees. He has practiced law for more than 50 years. He believes, even as a former professional prosecutor, that habeas corpus is a fundamental bedrock of America's legal system because it represents the only recourse available when the Government has made a mistake, detained a person and charged them with something of which they are not guilty.

ADM John Hutson, another man I have come to know and respect, was a Navy Judge Advocate for 28 years. Last year, he testified in the Senate Judiciary Committee hearing on the Military Commissions Act. Here is what Admiral Hutson, former Navy Judge Advocate, had to say about eliminating habeas corpus, and I quote:

> It is inconsistent with our own history and tradition to take this action. If we diminish or tarnish our values, those values that the Founders fought for and memorialized in the Constitution and have been carefully preserved in the blood and honor of succeeding generations, then we will have lost a major battle in the war on terror.

Admiral Hutson concluded:

> We don't need to do this. America is too strong. Our system of justice is too sacred to tinker with in this way.

He also testified that eliminating habeas corpus really puts our own soldiers at risk. Remember, John Hutson

has given his life to our country's military, and here is what he said:

If we fail to provide a reasonable judicial avenue to consider detention, other countries will feel justified in doing exactly the same thing. It is our troops who are in harm's way and deserve judicial protections. In future wars, we will want to ensure that our troops or those of our allies are treated in a manner similar to how we treat our enemies. We are now setting the standard for that treatment.

I have heard arguments on the Senate floor: Oh, it is going to glut the courts of America if the 400 detainees at Guantanamo have some rights, if they have an opportunity to question the charges that have been brought against them, if they can use habeas corpus. I do not believe that is true and even if it was it is a small price to pay, a small price for America to pay to respect the most fundamental right that we believe to be part of our system of justice.

Will there be abuses? Well, I am sure there will be. There have been in virtually all the laws we have enacted. But we will be able to say at the end of the day that even in the midst of a war on terror, even as we feared what might happen tomorrow in the wake of 9/11, that America never lost its way in terms of its fundamental values and principles.

The Military Commissions Act, which passed this Senate, unfortunately is a step in the wrong direction. I fully support the Specter-Leahy amendment. We should honor American values and protect our brave men and women in uniform by restoring the right of habeas corpus, and I urge my colleagues to support this amendment.

Madam President, I ask unanimous consent that my name be added as a cosponsor to that amendment.

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

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

Mr. SPECTER. Madam President, while the Senator from Illinois is still on the Senate floor, I want to thank him for those eloquent remarks going right to the core of the issue, the importance of protecting America from terrorists and at the same time a balance in protecting Americans' constitutional rights.

When he refers to Tom Sullivan, the very distinguished Chicago attorney, I might note that Mr. Sullivan testified at a Judiciary Committee hearing and brought forth a number of examples, which I put into the RECORD earlier today, where it is recited in some detail people who were detained at Guantanamo for very long periods of time. One specifically commented about crossed the border, was supposed to have been associated with someone from al-Qaida, no reason for keeping him was given, no evidence to that effect, but was kept for 5 years and then released.

Let me express a concern I have, which I discussed earlier with the Senator from Illinois, and that is I am concerned that this amendment will not receive a vote. Last year, the Senate voted on a 51-to-48 vote, to include language in the Military Commissions Act that limited Federal court habeas jurisdiction. I have suggested that there be a cloture petition filed on this bill, if we are going to vote on cloture later this week on the underlying bill, and that would be a case where we might vote on cloture on this amendment. I would structure it in that fashion only as a way to get a vote so that people will have to take a position, and I simply wanted to make reference to that.

Madam President, I yield the floor.

AMENDMENT NO. 312

Mr. MCCONNELL. Madam President, I offered an amendment on behalf of Senator CORNYN on Friday, and I now ask for the regular order with respect to amendment No. 312.

The PRESIDING OFFICER. The amendment is now pending.

AMENDMENT NO. 312, AS MODIFIED

Mr. MCCONNELL. I send a modification to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 389, after line 13, add the following:

SEC. 15___. TERRORISM OFFENSES; VISA REVOCATIONS; DETENTION OF ALIENS.

(a) RECRUITMENT OF PERSONS TO PARTICIPATE IN TERRORISM.—

(1) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by inserting after section 2332b the following:

''§ 2332c. Recruitment of persons to participate in terrorism.

''(a) OFFENSES.—

''(1) IN GENERAL.—It shall be unlawful to employ, solicit, induce, command, or cause another person to commit an act of domestic terrorism or international terrorism or a Federal crime of terrorism, with the intent that the person commit such act or crime of terrorism

''(2) ATTEMPT AND CONSPIRACY.—It shall be unlawful to attempt or conspire to commit an offense under paragraph (1).

''(b) PENALTIES.—Any person who violates subsection (a)—

''(1) in the case of an attempt or conspiracy, shall be fined under this title, imprisoned not more than 10 years, or both;

''(2) if death of an individual results, shall be fined under this title, punished by death or imprisoned for any term of years or for life, or both;

''(3) if serious bodily injury to any individual results, shall be fined under this title, imprisoned not less than 10 years nor more than 25 years, or both; and

''(4) in any other case, shall be fined under this title, imprisoned not more than 10 years, or both.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

''(d) LACK OF CONSUMMATED TERRORIST ACT NOT A DEFENSE.—It is not a defense under this section that the act of domestic terrorism or international terrorism or Federal crime of terrorism that is the object of the employment, solicitation, inducement, commanding, or causing has not been done.

''(e) DEFINITIONS.—In this section—

''(1) the term 'Federal crime of terrorism' has the meaning given that term in section 2332b of this title; and

''(2) the term 'serious bodily injury' has the meaning given that term in section 1365 of this title.''.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by inserting after section 2332b the following:

''2332c. Recruitment of persons to participate in terrorism.''.

(b) JUDICIAL REVIEW OF VISA REVOCATION.—

(1) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by striking ''There shall be no means of judicial review'' and all that follows and inserting the following: ''Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply to visas issued before, on, or after such date.

(c) DETENTION OF ALIENS.—

(1) DETENTION OF DEPORTABLE ALIENS TO PROTECT PUBLIC SAFETY.—

(A) IN GENERAL.—Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended—

(i) by striking ''Attorney General'' each place it appears, except for the first reference in paragraph (4)(B)(i), and inserting ''Secretary of Homeland Security'';

(ii) in paragraph (1)—

(I) by amending clause (ii) of subparagraph (B) to read as follows:

''(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the date the stay of removal is no longer in effect.'';

(II) by adding at the end of subparagraph (B), the following flush text:

''If, at that time, the alien is not in the custody of the Secretary of Homeland Security (under the authority of this Act), the Secretary shall take the alien into custody for removal, and the removal period shall not begin until the alien is taken into such custody. If the Secretary transfers custody of the alien during the removal period pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall begin anew on the date of the alien's return to the custody of the Secretary subject to clause (ii).''; and

(III) by amending subparagraph (C) to read as follows:

''(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent the alien's removal subject to an order of removal.'';

(iii) in paragraph (2), by adding at the end the following new sentence: ''If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal, the Secretary of Homeland Security in the exercise of discretion may detain the alien during the pendency of such stay of removal.'';

(iv) in paragraph (3), by amending subparagraph (D) to read as follows:

''(D) to obey reasonable restrictions on the alien's conduct or activities, or to perform affirmative acts, that the Secretary of Homeland Security prescribes for the alien, in order to prevent the alien from absconding, for the protection of the community, or for other purposes related to the enforcement of the immigration laws.'';

(v) in paragraph (6), by striking ''removal period and, if released,'' and inserting ''removal period, in the discretion of the Secretary of Homeland Security, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien''; and

(vi) by redesignating paragraph (7) as paragraph (10) and inserting after paragraph (6) the following new paragraphs:

''(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary's discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of his parole or his removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

''(8) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—The following procedures apply only with respect to an alien who has effected an entry into the United States. These procedures do not apply to any other alien detained pursuant to paragraph (6).

''(A) ESTABLISHMENT OF A DETENTION REVIEW PROCESS FOR ALIENS WHO FULLY COOPERATE WITH REMOVAL.—For an alien who has made all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary of Homeland Security's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, and has not conspired or acted to prevent removal, the Secretary of Homeland Security shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make a determination whether to release an alien after the removal period in accordance with paragraph (1)(B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Department of State or other Federal agency and any other information available to the Secretary pertaining to the ability to remove the alien.

''(B) AUTHORITY TO DETAIN BEYOND THE REMOVAL PERIOD.—

''(i) IN GENERAL.—The Secretary of Homeland Security, in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

''(ii) LENGTH OF DETENTION.—The Secretary, in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien beyond the 90 days, as authorized in clause (i)—

''(I) until the alien is removed, if the Secretary determines that there is a significant likelihood that the alien—

''(aa) will be removed in the reasonably foreseeable future; or

''(bb) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to cooperate fully with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspiracies or acts to prevent removal;

''(II) until the alien is removed, if the Secretary certifies in writing—

''(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

''(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;

''(cc) based on information available to the Secretary of Homeland Security (including classified, sensitive, or national security information, and without regard to the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States; or

''(dd) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and either—

''(AA) the alien has been convicted of one or more aggravated felonies as defined in section 101(a)(43)(A), one or more crimes identified by the Secretary of Homeland Security by regulation, or one or more attempts or conspiracies to commit any such aggravated felonies or such identified crimes, provided that the aggregate term of imprisonment for such attempts or conspiracies is at least 5 years; or

''(BB) the alien has committed one or more crimes of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

''(ee) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and the alien has been convicted of at least one aggravated felony as defined in section 101(a)(43); and

''(III) pending a determination under subclause (II), so long as the Secretary has initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

''(C) RENEWAL AND DELEGATION OF CERTIFICATION.—

''(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months without limitation, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).

''(ii) DELEGATION.—Notwithstanding section 103 of this Act, the Secretary of Homeland Security may not delegate the authority to make or renew a certification described in item (bb), (cc), or (ee) of subparagraph (B)(ii)(II) to an official below the level of the Assistant Secretary for Immigration and Customs Enforcement.

''(iii) HEARING.—The Secretary of Homeland Security may request that the Attorney General or his designee provide for a hearing to make the determination described in clause (dd)(BB) of subparagraph (B)(ii)(II).

''(D) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary of Homeland Security, in the exercise of discretion, may impose conditions on release as provided in paragraph (3).

''(E) REDETENTION.—The Secretary of Homeland Security, in the exercise of discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to continue to satisfy the conditions described in subparagraph (A), or if, upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (B). Paragraphs (6) through (8) shall apply to any alien returned to custody pursuant to this subparagraph, as if the removal period terminated on the day of the redetention.

''(F) CERTAIN ALIENS WHO EFFECTED ENTRY.—If an alien has effected an entry but has neither been lawfully admitted nor physically present in the United States continuously for the 2-year period immediately prior to the commencement of removal proceedings under this Act or deportation proceedings against the alien, the Secretary of Homeland Security in the exercise of discretion may decide not to apply paragraph (8) and detain the alien without any limitations except those which the Secretary shall adopt by regulation.

''(9) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision pursuant to paragraph (6), (7), or (8) shall be available exclusively in habeas corpus proceedings instituted in the United States District Court for the District of Columbia, and only if the alien has exhausted all administrative remedies (statutory and regulatory) available to the alien as of right.''.

(B) DETENTION OF ALIENS DURING REMOVAL PROCEEDINGS.—

(i) IN GENERAL.—Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended by adding at the end the following new subsections:

''(e) LENGTH OF DETENTION.—

''(1) IN GENERAL.—With regard to the length of detention, an alien may be detained under this section, without limitation, until the alien is subject to an administratively final order of removal.

''(2) EFFECT ON DETENTION UNDER SECTION 241.—The length of detention under this section shall not affect the validity of any detention under section 241 of this Act.

''(f) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision made pursuant to subsection (e) shall be available exclusively in a habeas corpus proceeding instituted in the United States District Court for the District of Columbia and only if the alien has exhausted all administrative remedies (statutory and nonstatutory) available to the alien as of right.''.

(ii) CONFORMING AMENDMENTS.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(I) by inserting at the end of subsection (e) the following: ''Without regard to the place of confinement, judicial review of any action or decision made pursuant to section 235(f) shall be available exclusively in a habeas corpus proceeding instituted in the United States District Court for the District of Columbia, and only if the alien has exhausted all administrative remedies (statutory and

nonstatutory) available to the alien as of right.''; and

(II) by adding at the end the following new subsection:

''(f) LENGTH OF DETENTION.—

''(1) IN GENERAL.—With regard to the length of detention, an alien may be detained under this section, without limitation, until the alien is subject to an administratively final order of removal.

''(2) EFFECT ON DETENTION UNDER SECTION 241.—The length of detention under this section shall not affect the validity of any detention under section 241 of this Act.''.

(C) SEVERABILITY.—If any of the provisions of this paragraph or any amendment by this paragraph, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this paragraph and of amendments made by this paragraph, and the application of the provisions and of the amendments made by this paragraph to any other person or circumstance shall not be affected by such holding.

(D) EFFECTIVE DATES.—

(i) AMENDMENTS MADE BY SUBPARAGRAPH (A).—The amendments made by subparagraph (A) shall take effect on the date of enactment of this Act, and section 241 of the Immigration and Nationality Act, as amended, shall apply to—

(I) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of enactment of this Act; and

(II) acts and conditions occurring or existing before, on, or after the date of enactment of this Act.

(ii) AMENDMENTS MADE BY SUBPARAGRAPH (B).—The amendments made by subparagraph (B) shall take effect on the date of enactment of this Act, and sections 235 and 236 of the Immigration and Nationality Act, as amended, shall apply to any alien in detention under provisions of such sections on or after the date of enactment of this Act.

(2) CRIMINAL DETENTION OF ALIENS TO PROTECT PUBLIC SAFETY.—

(A) IN GENERAL.—Section 3142(e) of title 18, United States Code, is amended to read as follows:

''(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f), the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

''(1) PRESUMPTION ARISING FROM OFFENSES DESCRIBED IN SUBSECTION (F)(1).—In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

''(A) the person has been convicted of a Federal offense that is described in subsection (f)(1), or of a State or local offense that would have been an offense described in subsection (f)(1) if a circumstance giving rise to Federal jurisdiction had existed;

''(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

''(C) a period of not more than 5 years has elapsed since the date of conviction or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

''(2) PRESUMPTION ARISING FROM OTHER OFFENSES INVOLVING ILLEGAL SUBSTANCES, FIREARMS, VIOLENCE, OR MINORS.—Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, an offense under section 924(c), 956(a), or 2332b of this title, or an offense listed in section 2332b(g)(5)(B) of this title for which a maximum term of imprisonment of 10 years or more is prescribed, or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

''(3) PRESUMPTION ARISING FROM OFFENSES RELATING TO IMMIGRATION LAW.—Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required if the judicial officer finds that there is probable cause to believe that the person is an alien and that the person—

''(A) has no lawful immigration status in the United States;

''(B) is the subject of a final order of removal; or

''(C) has committed a felony offense under section 842(i)(5), 911, 922(g)(5), 1015, 1028, 1028A, 1425, or 1426 of this title, or any section of chapters 75 and 77 of this title, or section 243, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1324, 1325, 1326, 1327, and 1328).''.

(B) IMMIGRATION STATUS AS FACTOR IN DETERMINING CONDITIONS OF RELEASE.—Section 3142(g)(3) of title 18, United States Code, is amended—

(i) in subparagraph (A), by striking ''and'' at the end; and

(ii) by adding at the end the following new subparagraph:

''(C) the person's immigration status; and''.

(d) PREVENTION AND DETERRENCE OF TERRORIST SUICIDE BOMBINGS AND TERRORIST MURDERS, KIDNAPPING, AND SEXUAL ASSAULTS.—

(1) OFFENSE OF REWARDING OR FACILITATING INTERNATIONAL TERRORIST ACTS.—

(A) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''§ 2339E. Providing material support to international terrorism

''(a) DEFINITIONS.—In this section:

''(1) The term 'facility of interstate or foreign commerce' has the same meaning as in section 1958(b)(2).

''(2) The term 'international terrorism' has the same meaning as in section 2331.

''(3) The term 'material support or resources' has the same meaning as in section 2339A(b).

''(4) The term 'perpetrator of an act' includes any person who—

''(A) commits the act;

''(B) aids, abets, counsels, commands, induces, or procures its commission; or

''(C) attempts, plots, or conspires to commit the act.

''(5) The term 'serious bodily injury' has the same meaning as in section 1365.

''(b) PROHIBITION.—Whoever, in a circumstance described in subsection (c), provides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism, shall be fined under this title, imprisoned not more than 25 years, or both, and, if death results, shall be imprisoned for any term of years or for life.

''(c) JURISDICTIONAL BASES.—A circumstance referred to in subsection (b) is that—

''(1) the offense occurs in or affects interstate or foreign commerce;

''(2) the offense involves the use of the mails or a facility of interstate or foreign commerce;

''(3) an offender intends to facilitate, reward, or encourage an act of international terrorism that affects interstate or foreign commerce or would have affected interstate or foreign commerce had it been consummated;

''(4) an offender intends to facilitate, reward, or encourage an act of international terrorism that violates the criminal laws of the United States;

''(5) an offender intends to facilitate, reward, or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of the United States Government;

''(6) an offender intends to facilitate, reward, or encourage an act of international terrorism that occurs in part within the United States and is designed to influence the policy or affect the conduct of a foreign government;

''(7) an offender intends to facilitate, reward, or encourage an act of international terrorism that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

''(8) the offense occurs in whole or in part within the United States, and an offender intends to facilitate, reward or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of a foreign government; or

''(9) the offense occurs in whole or in part outside of the United States, and an offender is a national of the United States, a stateless person whose habitual residence is in the United States, or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions).''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''2339D. Receiving military-type training from a foreign terrorist organization.

''2339E. Providing material support to international terrorism.''.

(ii) OTHER AMENDMENT.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by inserting ''2339E (relating to providing material support to international terrorism),'' before ''or 2340A (relating to torture)''.

(2) INCREASED PENALTIES FOR PROVIDING MATERIAL SUPPORT TO TERRORISTS.—

(A) PROVIDING MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a) of title 18, United States Code, is amended by striking ''15 years'' and inserting ''25 years''.

(B) PROVIDING MATERIAL SUPPORT OR RESOURCES IN AID OF A TERRORIST CRIME.—Section 2339A(a) of title 18, United States Code,

is amended by striking ''15 years'' and inserting ''40 years''.

(C) RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.—Section 2339D(a) of title 18, United States Code, is amended by striking ''ten years'' and inserting ''15 years''.

(D) ADDITION OF ATTEMPTS AND CONSPIRACIES TO AN OFFENSE RELATING TO MILITARY TRAINING.—Section 2339D(a) of title 18, United States Code, is amended by inserting '', or attempts or conspires to receive,'' after ''receives''.

(3) DENIAL OF FEDERAL BENEFITS TO CONVICTED TERRORISTS.—

(A) IN GENERAL.—Chapter 113B of title 18, United States Code, as amended by this subsection, is amended by adding at the end the following:

''§ 2339F. Denial of Federal benefits to terrorists

''(a) IN GENERAL.—Any individual who is convicted of a Federal crime of terrorism (as defined in section 2332b(g)) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

''(b) FEDERAL BENEFIT DEFINED.—In this section, 'Federal benefit' has the meaning given that term in section 421(d) of the Controlled Substances Act (21 U.S.C. 862(d)).''.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, as amended by this subsection, is amended by adding at the end the following:

''2339F. Denial of Federal benefits to terrorists.''.

(4) ADDITION OF ATTEMPTS OR CONSPIRACIES TO OFFENSE OF TERRORIST MURDER.—Section 2332(a) of title 18, United States Code, is amended—

(A) by inserting '', or attempts or conspires to kill,'' after ''Whoever kills''; and

(B) in paragraph (2), by striking ''ten years'' and inserting ''30 years''.

(5) ADDITION OF OFFENSE OF TERRORIST KIDNAPPING.—Section 2332(b) of title 18, United States Code, is amended to read as follows:

''(b) KIDNAPPING.—Whoever outside the United States unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away, or attempts or conspires to seize, confine, inveigle, decoy, kidnap, abduct or carry away, a national of the United States, shall be fined under this title, imprisoned for any term of years or for life, or both.''.

(6) ADDITION OF SEXUAL ASSAULT TO DEFINITION OF OFFENSE OF TERRORIST ASSAULT.—Section 2332(c) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting ''(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)'' after ''injury'';

(B) in paragraph (2), by inserting ''(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)'' after ''injury''; and

(C) in the matter following paragraph (2), by striking ''ten years'' and inserting ''40 years''.

(e) IMPROVEMENTS TO THE TERRORIST HOAX STATUTE.—

(1) HOAX STATUTE.—Section 1038 of title 18, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1), after ''title 49,'' by inserting ''or any other offense listed under section 2332b(g)(5)(B) of this title,''; and

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking ''5 years'' and inserting ''10 years''; and

(II) in subparagraph (B), by striking ''20 years'' and inserting ''25 years''; and

(B) by amending subsection (b) to read as follows:

''(b) CIVIL ACTION.—

''(1) IN GENERAL.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute an offense listed under subsection (a)(1) is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

''(2) EFFECT OF CONDUCT.—

''(A) IN GENERAL.—A person described in subparagraph (B) is liable in a civil action to any party described in subparagraph (B)(ii) for any expenses that are incurred by that party—

''(i) incident to any emergency or investigative response to any conduct described in subparagraph (B)(i); and

''(ii) after the person that engaged in that conduct should have informed that party of the actual nature of the activity.

''(B) APPLICABILITY.—A person described in this subparagraph is any person that—

''(i) engages in any conduct that has the effect of conveying false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute an offense listed under subsection (a)(1);

''(ii) receives notice that another party believes that the information indicates that such an activity has taken, is taking, or will take place; and

''(iii) after receiving such notice, fails to promptly and reasonably inform any party described in subparagraph (B) of the actual nature of the activity.''.

(2) THREATENING COMMUNICATIONS.—

(A) MAILED WITHIN THE UNITED STATES.—Section 876 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

''(e) For purposes of this section, the term 'addressed to any other person' includes an individual (other than the sender), a corporation or other legal person, and a government or agency or component thereof.''.

(B) MAILED TO A FOREIGN COUNTRY.—Section 877 of title 18, United States Code, is amended by adding at the end thereof the following new paragraph:

''For purposes of this section, the term 'addressed to any person' includes an individual, a corporation or other legal person, and a government or agency or component thereof.''.

CLOTURE MOTION

Mr. MCCONNELL. Madam President, this modification is a series of revisions relating to terrorism, and in a moment I will describe those provisions. The majority leader has indicated that he will file a cloture motion tonight in order to bring the bill to a close because we have been unable to get an agreement to vote on several of these terrorist-related amendments. I am prepared to file a cloture motion on this amendment and, therefore, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on pending amendment No. 312, as modified, to amendment No. 275 to Calendar No. 57, S. 4, a bill to make the United States more secure by implementing unfinished recommendations of the 9/11 Commission to fight the war on terror more effectively, to improve homeland security, and for other purposes.

John Cornyn, Jon Kyl, Mike Crapo, John Ensign, Saxby Chambliss, Judd Gregg, Richard Burr, Jim Bunning, Sam Brownback, Mitch McConnell, Craig Thomas, Tom Coburn, Wayne Allard, Jim DeMint, John Thune, Pat Roberts, Lindsey Graham.

Mr. MCCONNELL. Madam President, just by way of explanation, this modified amendment aims to improve our national security in five areas. For the first time, it will make it a crime to recruit people to commit terrorist acts on American soil. For the first time, it would allow for the immediate deportation of suspected terrorists whose visas have been revoked for terrorism-related activities. For the first time, it would prevent the release of dangerous illegal immigrants whose home countries actually don't want them back. For the first time, it would make it a crime to reward the families of suicide bombers, and it would increase the penalty for those who torment the families of our service men and women by calling their families and falsely claiming that their loved ones have been killed in the field of battle. It contains five provisions that would make our homeland more secure by penalizing recruiters, deporting terrorist suspects, keeping dangerous criminals behind bars, and protecting the families of our troops.

Voting on this amendment will not slow down the bill. We are not interested in doing that. We will gladly agree to vitiate cloture in exchange for a unanimous consent vote on this amendment or, if cloture is invoked, we will agree to yield back the 30 hours of postcloture time in order to move ahead.

The war against terrorism requires that we adapt our methods to emerging threats, and that is precisely what these new and vital provisions would allow us to do.

Let me conclude by saying we believe these amendments are definitely related to the bill. We had hoped to be able to get an agreement to have this amendment considered. So far, that has not occurred, but we want to reiterate we have no desire to slow down the passage of the bill. That is why I felt compelled to file cloture at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I am very sympathetic to the concerns of the Republican leader about trying to move forward with some votes. I do wish he had discussed his approach with the managers of this bill since he

has taken us completely by surprise on the Senate floor, but I think he has raised an important issue, that our Members deserve to have votes on the important issues that are before us. If we are going to complete action on this bill by the end of the week, we need to start voting. We need to start disposing of these amendments, whether they are adopted or rejected or withdrawn. So I am sympathetic to the frustration of the Republican leader over this matter. We do need to move forward and have votes.

I do wish he had discussed his intentions with the managers of the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I appreciate the comments of the Senator from Maine, the distinguished ranking member of the Homeland Security and Governmental Affairs Committee. In response, I would point out that these amendments, which are now consolidated in this modification, actually have been pending now for some time but we have been unsuccessful in persuading the majority to give us an opportunity for an up-or-down vote on them.

The bill we are debating is entitled ''A Bill to Make the United States More Secure By Implementing Unfinished Recommendations of the 9/11 Commission to Fight the War on Terror More Effectively, to Improve Homeland Security, and for other purposes.'' I can't think of any amendment that would be more appropriate to accomplishing the stated goal of this particular legislation than the one I have pending now.

The distinguished Republican leader has summarized, I think very well, what is contained in this modification. But just so none of my colleagues are confused, these are not new matters. This modification simply represents a consolidation of several amendments that are pending on the floor and have been pending for some time, but which have been refused an opportunity to have a full and fair debate followed by an up-or-down vote by the majority.

We all know it has been more than 5 years since September 11. And, there remains some unfinished business that needs to be addressed by this legislation, and my amendment will do just that.

One of the things left to do is to target terrorist recruiting. The FBI and other agencies have made it clear that al-Qaida and other terrorist organizations are intent on attacking our country again and are busy recruiting those who wish to join them. We know al-Qaida is a patient enemy, waiting years to attack—sometimes embedding into society and appearing to be a part of the regular population until, but at a time of their choosing, rising out of their sleeper cells to attack innocent civilians to accomplish their goals.

According to congressional testimony, terrorists and terrorist sympathizers are actively in the process of recruiting terrorists within the United States. So we are not just talking about a wholly foreign enemy that would attack us from abroad; we are talking about people being recruited to carry out terrorist attacks here in the United States. Of course their goal is to find individuals who do not fit the traditional terrorist model, who can operate freely in our country, and who are willing to engage in these heinous acts. Recruiting these type of individuals, those who blend easily into our society, provides al-Qaida an operational advantage.

This is not an academic discussion. Let me just use one example to demonstrate this reality. Intelligence materials related to Khalid Shaikh Mohammed, the so-called mastermind of the 9/11 plot, show that he was running terrorist cells within the United States. These documents show that al-Qaida's goal was to recruit U.S. citizens and other westerners so they could move freely within our country, so they would be unlikely to be identified and stopped at our border's edge or in our airports or land-based ports before they carry out their attacks. These terrorist recruiters have targeted mosques, prisons, and universities throughout the United States where they could identify and recruit people who might be sympathetic to their jihadist message and then persuade these individuals to join their organization.

Unbelievably, we currently have no statute in place that is designed to punish those who recruit people to commit terrorist acts. This amendment includes a provision that would remedy this serious gap in our law. It simply provides that it is against the law to recruit or, in the words of the amendment, ''to employ, solicit, induce, command or cause'' any person to commit an act of domestic terrorism, international terrorism, or a Federal crime of terrorism, and any person convicted of this would face serious punishment.

This amendment also provides that anyone committing this crime should be punished for up to 10 years in the Federal penitentiary. If a death results in connection with this crime, he or she can be punished by death or a term of years or for life; if serious bodily injury to any individual results, then a punishment of no less than 10 years or more than 25 years is available to the judge.

This is a commonsense measure, designed to fill a serious gap in our Criminal Code that, frankly, should not continue to exist more than 5 years after September 11. This fits exactly with the stated purpose of this legislation, and I hope our colleagues will vote in favor of this amendment.

Two other provisions in this amendment that again represent amendments that have been previously filed and are pending but which I have now included in this consolidated amendment. One includes a remedy to a problem created by a Supreme Court decision in 2001, the Zadvydas case, which held that dangerous criminal aliens must be released after an expiration of 6 months if there is no likelihood that their home country would take them back in the near future, even if their home country will not take them. This means that they have to be released into the general population of the United States, free to re-commit serious crimes.

In other words, what the Supreme Court said is that Congress had not specifically authorized the Department of Homeland Security to hold dangerous criminal aliens whose home country will not take them back for longer than 6 months pending their deportation or repatriation to their home country. This amendment remedies that decision. In fact, the Supreme Court invited the Congress to revisit this decision, since it is purely a statutory holding.

Specifically, this amendment would allow DHS to protect the American people from dangerous criminal aliens until their removal proceedings are completed. It allows the Department of Homeland Security to detain criminal aliens after a final order of removal and beyond the 90-day removal period if removal is likely to occur in the foreseeable future or for national security and public safety grounds. It preserves the right of the alien to seek review of continued detention through habeas proceedings after exhaustion of administrative remedies. And to be clear, my amendment does preserve the right of the affected alien to seek administrative and judicial review of these decisions. But, the amendment makes clear that it is intended to fill an important gap by authorizing DHS to protect the American people from the willy-nilly release of dangerous criminal aliens after 6 months. This situation has occurred and will continue to occur and it is important for Congress to step up and to fix this problem created by the interpretation of this statute in 2001 by the U.S. Supreme Court.

The last element of this consolidated amendment that I want to mention has to do with material support for suicide bombers and other terrorists. We hear too often the difficulty in identifying and stopping suicide bombers before they can carry out their deadly attacks. One incentive to those who decide to carry out these attacks is financial rewards promised to the families of suicide bombers who are assured that their families will be paid and cared for after they commit their heinous acts. This provision would ban the payment of financial rewards or other material support to the families of suicide bombers such as Assad, a known terrorist who has enticed people to engage in these attacks, with a promise to pay their families up to $25,000, if my memory serves me correctly, as a reward. This provision would ban the

payment of these types of financial rewards and dry up a real incentive used to induce or facilitate carrying out of a terrorist attack and send to prison those who do so.

I would add that this amendment also increases the punishments for those convicted of providing material support. The Department of Justice has told us that the material support statute is one of the most important anti-terror tools in their tool box, and it is only right and appropriate that we use this opportunity to strengthen the 9/11 bill with this important improvement to such an effective statute.

In conclusion, this amendment provides real anti-terror and anti-crime tools to the 9/11 bill and will ensure, as the preface of this bill states, that it will finish the unfinished business of the 9/11 Commission and of the Nation, making us more secure, 5 years-plus since the dastardly attacks of 9/11.

I yield the floor.

CHANGE OF VOTE

Mr. COBURN. Mr. President, on rollcall vote 62, I voted ''yea'', it was my intention to vote ''nay''. I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

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

AMENDMENT NO. 345

Mr. INOUYE. Mr. President, I rise in opposition to amendment No. 345, which was submitted by Senator COBURN of Oklahoma. This amendment diverts funds that Congress has designated to be obligated before October 1 of this year through the Department of Commerce Interoperability Grant Program into a yet-to-be created Homeland Security grant program.

This amendment is offered at the same time the President is proposing to decrease funding for State and local preparedness grants and firefighter assistance grants from the enacted fiscal year 2007 levels by $1.2 billion.

To make matters worse, the amendment delays the obligation of $1 billion in interoperability grants by up to 3 years. In the President's 2008 budget proposal, the administration reduces State and local programs by $840 million and assistance to firefighter grants by $362 million.

The transfer of the $1 billion the Federal Communications Commission will raise as part of the digital television spectrum auction to the Department of Homeland Security will mask the technical decrease in the budget request. In the end, it means less money for the first responders, which I believe is bad for national security.

It is important to remember that as part of the Deficit Reduction Act of 2005, Congress created the $1 billion fund in the Department of Commerce to support State and local first responders in their efforts to talk with one another in times of emergency. The interoperability subtitle in this act expands upon prior action taken in the Deficit Reduction Act of 2005 and provides additional guidance to the Commerce Department.

The provision which I introduced with Senators STEVENS, KERRY, SMITH, and SNOWE was reported out of the committee with unanimous support of the Members. The Commerce Department grant program is intended to jump-start the efforts of the administration to address a key 9/11 Commission concern—interoperability.

The Department of Homeland Security has been and continues to be too slow to act, and the Coburn amendment would only exacerbate the problem. If the Coburn amendment were to pass, it would first decrease grants to first responders this fiscal year by $700 million; eliminate the $100 million fund for strategic reserves of communications equipment, designed to be rapidly deployed in the event of a major disaster; and, third, eliminate the all-hazards approach that considers the likelihood of natural disasters as well as terrorist attacks that the Commerce Department would use making interoperability grants. Contrary to the Senator's assertion, the Commerce Department Interoperability Grant Program is complementary to and not duplicative of the DHS grant program.

First, the Department of Commerce will award all $1 billion in grants by September 30 of this year, while the DHS program as currently constructed is not authorized until fiscal year 2008, and is still subject to appropriations.

This money is needed now and should be in addition to the regular appropriation process, not awarded over the next 3 years as a substitute for appropriations funding. Second, the program allows the Administrator of the National Telecommunications and Information Administration to direct up to $100 million of these funds for the creation of State and Federal strategic technology reserves of communications equipment that can be readily deployed in the event that terrestrial networks fail in times of disaster.

Should this occur—it did occur in Katrina—there is no comparable program created in the DHS grant program. The strategic reserve program is a necessary initiative that has not been prioritized by the DHS to date.

Recently, an independent panel created by Federal Communications Commission Chairman Kevin Martin to review the impact of Hurricane Katrina on communications networks noted the impact that limited pre-positioning of communications equipment had in slowing the recovery process. As a result, the program will help to ensure that our focus on interoperability also considers the importance of communications redundancy and resiliency as well.

Third, in addition to minimum funding allocations, the Department of Commerce Interoperability Grant Program would further require that prioritization of those funds be based upon an all-hazards approach that recognizes the critical need for effective emergency communication and response to natural disasters such as tsunamis, earthquakes, hurricanes, and tornados, in addition to terrorist attacks.

While the DHS program being created would consider natural disasters as one of the many factors in awarding of grants, the Department of Commerce Interoperability Grant Program's all-hazards approach places a high priority on funding States based on the threats they face from natural catastrophes as well as terrorist attacks.

We have heard two contradicting arguments to support the elimination of the Department of Commerce grant program. The author claims both that the DHS is doing all of the administrative work for the Department of Commerce grant program, and that there is a risk of double-dipping because the DHS will not know who is receiving the Department of Commerce grants. Both claims cannot be right and, in fact, neither is true. The NTIA and the DHS have been working together for months to craft an agreement under which the two agencies will disburse the $1 billion raised from the DTV spectrum auction.

On February 16, 2007, the DHS and the NTIA entered into a memorandum of understanding covering the administration of the grant program. While the DHS will play a large role in administering the grants, the NTIA will work with the DHS to establish the grant procedures, which will ensure that an all-hazards approach is followed and that a strategic reserve equipment program is developed.

The interoperability subtitle further ensures that the grants funded are consistent with the Federal grant guidance established by the SAFECOM Program within the DHS. As a result, the DHS will be fully aware of who is getting grants and for what purposes. At the same time, the NTIA will maintain a leadership role in guiding the interoperability grant program. The NTIA has a long history of addressing interoperable communications issues, and it is vital that the administration help guide the DHS's work.

Since its creation, the NTIA has served as the principal telecommunications policy adviser to the Secretary of Commerce and the President and manages the Federal Government's use of the radio spectrum. According to Assistant Secretary Kneuer, the Administrator of the NTIA, the ''intersection of telecommunications policy and spectrum management has been the key focus of the NTIA, including public safety communications and interoperability issues.''

In this capacity, the NTIA has historically played an important role in assisting public safety personnel and improving communications interoperability and recognizing that effective solutions involve attention to issues of spectrum and government coordination as well as funding. Its work more than

a decade ago in creating the Public Safety Wireless Advisory Committee, formed by the FCC and the NTIA pursuant to Congress's direction, framed this issue in this way:

> At the most basic level, radio-based voice communications allow dispatchers to direct mobile units to the scene of a crime and allow firefighters to coordinate and to warn each other of impending danger at fires. Radio systems are also vital for providing logistics and command support during major emergencies and disasters such as earthquakes, riots, or plane crashes. . . .
>
> In an era where technology can bring news, current events, and entertainment such as the Olympics to the farthest reaches of the world, many police officers, firefighters, and emergency medical service personnel working in the same city cannot communicate with each other. Congested and fragmented spectral resources, inadequate funding for technology upgrades, and a wide variety of governmental and institutional obstacles result in a critical situation which, if not addressed expeditiously, will ultimately compromise the ability of Public Safety officials to protect life and property.

The Coburn amendment would disrupt the MOU, upset the work the NTIA and the DHS have undertaken, and delay the awarding of interoperability grants.

Finally, the NTIA's administration of the grant program will not only help to integrate the disparate elements that must be part of effective interoperability solutions but will also ensure greater program transparency and oversight. Given the myriad of different grant programs administered by the Department of Homeland Security, it is critical that these funds—specifically allocated by Congress to speed up our efforts to improve communications interoperability for first responders—not get lost in the shuffle of other disaster and nondisaster grants. As a result, the provisions not only devote the NTIA's attention to the success of this program but also require the inspector general of the Department of Commerce to annually review the administration of this program.

In sum, the Department of Commerce interoperability grant program improves the Nation's security. Senator COBURN's amendment would delay the awarding of needed interoperability grants and disrupts months of work by the NTIA and the DHS. Therefore, I urge my colleagues to vote against the Coburn amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, since 2001, we have heard a growing cry from public safety officials that police, firefighters, and emergency medical response personnel throughout the country need help to achieve interoperability in today's communications world.

Sadly, this problem actually predated September 11. More than a decade ago, the FCC and the National Telecommunications and Information Administration formed the Public Safety Wireless Advisory Committee to examine the communications needs of first responders and public safety officials. That report called for more spectrum, technological solutions, and more funding, and was filed 5 years to the day before the tragedy of 9/11. It called for those improvements to save lives on a daily basis. These solutions are not geared just for the huge disasters but are also geared for the everyday tragedies that can be avoided with better communications and better interoperability.

Thanks to the work of the last Congress, public safety stands ready to finally receive the help that the FCC and NTIA called for more than 10 years ago.

Last year, the Congress set a hard date for broadcasters to turn over 24 megahertz of spectrum to public safety for communications and interoperability. Right now, the FCC is examining proposals to maximize the broadband potential of that spectrum, which will bring great new services and capabilities to policemen, firefighters, and other emergency personnel. In addition, Congress created a $1 billion interoperability grant program with the funds that will be received from the auctioning off of the rest of the spectrum recovered from broadcasters. That program originated out of our Senate Commerce Committee. The Department of Commerce and Department of Homeland Security have signed a memorandum of understanding to work together in this regard.

Additionally, at the very end of the Congress last year, we accelerated the granting of the awards as part of what was called the Call Home Act. Therefore, by law, the interoperability grants which are available must be awarded by September 30, 2007. Public safety has been waiting for a very long time for these funds, and they finally have a date-certain when the interoperability grants will be awarded.

Having worked with the FCC and the NTIA over the last decade, our Senate Commerce Committee has watched as the public safety communications market has evolved, and we have heard about a number of technological solutions that may address both near-term and long-term interoperability needs. Internet protocol systems can be used as bridges between otherwise incompatible communications systems now. Strategic technological reserves can be created to quickly replace infrastructure that is destroyed in large-scale disasters. Hurricanes Katrina and Rita demonstrated the need for portable wireless systems that are readily deployed when a disaster destroys the existing communications infrastructure. Standards development and dedicated interoperability channels facilitate planning and incident management between agencies.

All of these solutions can be achieved now and are provided for by the provisions of the Commerce Committee's interoperability provisions. Unfortunately, the amendment of my friend, the Senator from Oklahoma, would delay all of these solutions. That would be unfortunate for public safety and very harmful to the public.

The Homeland Security Committee has created its own interoperability program that is separate from the Commerce $1 billion program. However, that program is a separate one. It is focused on the long term, after additional planning is done, and would still be several years away from even awarding grants, let alone implementing them.

It is time we finally deliver on our promises to the police, firefighters, and emergency medical personnel. Those around the country really believe us, and we believe we can deliver the technological reserves and interoperability communications that will help first responders now by moving forward with the $1 billion public safety grant program, administered by NTIA. We really should not wait any longer. We cannot plan indefinitely. It has been over 10 years, as I have said. These solutions take time to implement. We should move forward on these programs now. With the Commerce program, public safety will be able to move forward with real solutions and begin addressing the problems that have plagued our Nation's first responders for too long.

We are able to come across some really interesting innovations, too. Through the NTIA's program, it is possible to use communications concepts and bring about interoperability without a large expenditure for new equipment. This first $1 billion will stretch real far if it is used on the plans of the NTIA. If it is delayed—unfortunately, I think that is what the amendment of the Senator from Oklahoma would do. It will really put us in the position where we cannot implement what has been done now.

These people—first responders—have been planning now for 3 years to get this money, and it is going to be paid out this year under the program we have already enacted into law.

I urge my friend from Oklahoma: Don't delay that $1 billion. I understand there may be some concerns about the $3 billion in this bill. Even that, though, is money that will be planned—it will be several years before it will be made available. The money we have, the $1 billion that is already provided by law, is available as soon as it comes in. I think it will go a long way to meeting the immediate needs of first responders.

So I hope the Senator will not really persevere with his amendment. I understand his concerns, and we share the concerns of the use of money. I do believe, if you study the technology now, it is possible to put together—we have one program where the National Guard has a mobile unit that is equipped with interoperability concepts that came about through software. Using the software on that vehicle, they can bring about interoperability with any system anyone uses in the first-responder era today.

If we move forward on those things we can do now, immediately, with interoperability—brought about through the use of technology—it will save us a lot of money in the long run. I believe this $1 billion will demonstrate we can do this, make this interoperability capability available to our first responders at a lot less money than other people believe. I think this $1 billion is needed, and it will go a long way.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, first of all, let me compliment the chairman and ranking member for their foresight in making sure we have the capability to have interoperability, with the wisdom of taking spectrum and putting it specifically for that.

I want to answer several of the questions that have been raised because they are somewhat peculiar to me.

But before I do that, Mr. President, I ask unanimous consent that Senator KYL be added as a cosponsor to this amendment.

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

Mr. COBURN. Mr. President, I say to the Senator, I would also like to note that one of the members of your committee, who was instrumental in bringing this interoperability grant program to the floor, is also a cosponsor of my amendment, realizing we do not need both programs and that they need to be combined.

Now, what does DHS tell us about the present grant program? Here is what they tell us. And I say to the American public, you ask yourself if you want your Government to run this way. What they say is: We can meet the September 30 deadline, and we may be able to tell you who is going to get grants, but we are not going to be able to tell you, anywhere close, how much money they are going to get. So they can tell them who will get the grants because that is what the law says, but they will never have the capability, for several months thereafter, to know how much money they are going to get. So nobody is going to buy anything until the actual grants are going to be awarded.

Let's clear up the difference between the Departments of Commerce and Homeland Security. No. 1, Homeland Security has the authority for interoperable communications. I do not care where this grant program is, quite frankly. I do not care if it is at Homeland Security or at Commerce. I do not care. But what I do know is, out of that $1 billion, the only thing the Department of Commerce is going to keep is $12 million with which to use to announce the grants. That is what they have told us. So $988 million out of that—the rest of that money—is going to go for grants, administered by, controlled by, run by Homeland Security.

So if the problem with my amendment is that the money isn't going to get out there to do it, Homeland Security has already said the money isn't going to get out there to do it. Commerce has already said the money isn't going to get out there to do it. We know who will get money, but the money won't get out there regardless of what they have said, because they just came to an understanding of the agreement 3 weeks ago on administering this money.

I think it is very wise what the chairman and ranking member have done in terms of allocating resources. As a matter of fact, I applaud them for that. I think it is wise to dedicate resources to certain things when we sell spectrum. I would tell my colleagues most Americans would say: You are going to give grant money, but you don't know how much you are going to give and you are not going to give it on the basis of competition in allocation of those resources because you have a date to meet that doesn't fit with fiscal responsibility. It doesn't fit with the best outcome or the ability to follow up to see what happened with the money. So we do have a date in the law by which they have to do it. But how are they going to do it, because the date in there is wrong. They are liable to give the wrong people too much money and the right people not enough, because we are telling them what they have to do.

The second thing—let me put up a chart. These programs are identical, even though you claim they are not. Let me show my colleagues how they are identical. Under the PSIC grant programs, they are State and regional planning; under the DHS program, they are State and regional planning. Under the system design and engineering, PSIC; same thing under DHS. System procurement and installation; same thing under DHS. Technical assistance, the same. Implementing a strategic technology reserve is the only difference, but guess where it is made up. ''Other appropriate uses as determined by the administrator of FEMA.'' Do you think they are not going to put in that reserve there? They certainly are. They are going to do it.

So there is no difference in the grant programs whatsoever, other than the deadline, which isn't going to be followed anyway. Like I say, I don't care if this is at Homeland Security or Commerce, I would as soon it be at Commerce in terms of the spectrum.

But the fact is the American people shouldn't have to pay for the administration of two separate programs running parallel with two separate sets of requirements to Congress. We ought to get them together. We ought to figure out how we do it so we have one grant, and if, in fact, we need $4.3 billion. The problem is, we don't know how much money we need. We are throwing money at it.

The second question I would ask is if this program belongs at Commerce, why Commerce agreed to give 99.9 percent of it to FEMA and to the Department of Homeland Security. They don't think it belongs there.

The other point I would make in rebuttal to the Senator from Hawaii is this amendment doesn't decrease funding at all. This takes $3.3 billion and an amount greater than $1 billion and combines it so the same amount of money is there, except it is going to make the money be spent better. It is going to allow us the time to do it.

I agree we need to get money out to our primary responders. This isn't about trying to hold that up. I am not trying to do that. But the Department of Homeland Security has already said the money isn't going to go out by your day. There isn't one application right now at the Department of Homeland Security for this money. We all know how Washington works. They haven't even written the requirements for the grant applications yet, which will take another 90 to 120 days. So we have a laudable goal that is not going to be accomplished, and if it is going to be accomplished, it will be accomplished in a very inefficient and wasteful way, which the American people don't deserve.

I think this is a very good chance for us to talk about what is wrong with us in the Congress. We are working at cross purposes. We have one committee working here and one committee working here, rather than solving those problems for the best interests of our country. I want Hawaii to have everything it needs in terms of tsunami prevention, in terms of interoperability. I know there are special requirements in the State of Alaska because line of sight can't be used and much of our emergency frequencies require some of that. I believe we can take care of those problems and combine these grant programs in a way that the American taxpayer gets value, in a way where we can measure the accountability of what we do, in a way in which we can have transparency for the dollars we get in reauctioning the spectrum, and plus the other $3.4 billion that is going to come out in terms of appropriated funds for these other grant programs. The American people want that. They deserve that.

To me, this isn't about a turf battle of control. To me, this amendment is about common sense for the American public to combine two programs into one so we spend less money, and we don't duplicate things and we don't duplicate efforts.

I understand and appreciate very much the long service of Senator INOUYE and Senator STEVENS and their commitment to making sure these things are coming through. I am not trying to be a fly in the ointment to mess up what are very good-intended results, but I am a realist. The very things my colleagues have asked to happen in the Budget Act that was passed are not going to happen. Homeland Security has said that. So if those things aren't going to happen, and if the fears of what isn't going to happen can be allayed, can we not figure out a way to put these programs together where the American people get the best value, and also as a part of my amendment which says: Can we look to the private sector to not just give us interoperability in Hawaii among National Guard and first responders, but how about between California and Arizona, or Texas and Oklahoma, or Maryland and New York, if they need Maryland first responders there, which has not been addressed in any of the legislation that has been put forward. There is great technology out there. There are great companies out there that could do that.

Again, without desiring to interfere or upset, I believe the application of some pretty commonsense principles ought to be applied to these two grant programs. I am willing to discuss with the chairman and the ranking member how to do this a different way. I am raising it on the floor because I think the taxpayer is not getting good value, and I think we ought to talk about that.

The National Taxpayer Union endorses this amendment. The Citizens Against Government Waste endorses this amendment. Your very own committee member, who was one of the first people to say we should have auctioned spectrum for first responders, is a cosponsor of this amendment. So I am willing to defer to what the ranking member and the chairman of this committee want to do, but I think we ought to stick it out here until we can work a way for the American people to get better value, better clarity, better transparency, and better accountability for these funds.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I think the Senate should be sure of what the Coburn amendment does. In the first place, it repeals the section of the Call Home Act that was enacted in the last Congress that makes this $1 billion available to NTIA immediately upon receipt. Secondly, it says the payments that are made under that $1 billion allocation must be made under the terms of section 1809 of the Homeland Security Act of 2002. Then it has this section, subsection (c) on page 2 of the amendment, which limits the awards under that section to $300,000 in 2007, $350,000 in 2008, and $350,000 in 2009. Existing law makes that $1 billion available as of September 30 of this year.

So the Senator is not only changing the manner in which the money can be used as opposed to what we enacted in the last Congress, but he is putting limitations on the grants that can be made out of the $1 billion so that only $300 million is available this year—$300 million for the whole Nation to meet the immediate needs for interoperability.

We had before our committee the so-called siren call proposal to take over the whole of the spectrum and turn it over to a trust and let that trust sell some of this so they could make even more money available in the first year. We have spoken about that, and it is a no-brainer to do that. That would create a trust that is equivalent to compete with the FCC on the sale of the first spectrum and it would reduce the money that is coming in on the first sale, so we could get enough money to pay the $1 billion. But the $1 billion has been promised to these first responders as of September 30 under the memorandum of agreement between Homeland Security and the NTIA. It can be administered and it will be administered. It will be used for a whole series of things. But again, I emphasize, it can be used for software, for systems to make current systems interoperable without buying a whole bunch of new equipment, wherever it is made, whether it is made in Oklahoma or California. It is not going to be made in Hawaii or Alaska, I can tell you that.

But as a practical matter, what we are interested in is making every entity in the country that is involved with interoperability problems to be able to make an application for these grants immediately after September 30. The Senator from Oklahoma would limit that in this fiscal year to $300,000. By the way, none of it is even going to be available until September 30. So it is one of those things that is sort of difficult to understand. We can't have much available in fiscal year 2007. We can have money available this year, in the calendar year 2007, under the existing law.

I urge the Senate not to repeal existing law, to make this money available. It is in a memorandum of understanding between these two agencies. We are not trying to usurp the functions of Homeland Security. We are trying to meet the needs of communications. That is our job. We have done our job. The existing law will make $1 billion available as of September 30. I do not think it should be repealed.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, listening very carefully to the statement of the Senator from Oklahoma, one might get the impression that this measure was submitted by the Senators from Alaska and Hawaii to benefit our two States. Hawaii and Alaska are not even mentioned in this amendment. What we want is a National Interoperability Grant Program. It may be of interest that the State of Hawaii is almost completely interoperable, but we want all other States to have that benefit. So this is not one of these earmarked measures, I can assure my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. First, let me sincerely apologize to the Senator from Hawaii if he took my words to mean that. I did not mean that. I referred to his words in terms of tsunami. I have no inference whatsoever that this has any parochial interest of either the Senator from Hawaii or the Senator from Alaska. But it is interesting that the debate doesn't ever come back to the fact of whether we have two programs; it is all about the money. The fact is the money will not get out there. Homeland Security has already said that.

Now, the reason the $350 million—not thousand—was chosen is because at the same time this happened, you are going to have another $1 billion come through in—the fiscal year is going to be over this year on September 30 of 2007. The worst problem that happens in our Federal Government today is the indiscriminate, rushed issuing of grants, of throwing money at something, rather than a measured response of grants.

These aren't competitive grants, I would remind the people who are listening to this debate. There is no competition for this money. You don't have to compete by saying you have a greater need than somebody else or you have a greater risk than somebody else. This is money that is going to go out, period. It is not based on competition for the greatest need or the greatest risk.

The last thing we need to be doing is having a grant program that is rushed so we are not making sure the money is well spent. In the last 2 years we have discovered $200 billion of waste, fraud, abuse, or duplication in the discretionary budget of the Federal Government—$200 billion. We would have enough money to pay for the war, pay for expanding the military in this country, and cutting our deficit in half if we would do our job in terms of eliminating duplication, fraud, abuse, and waste.

What this amendment is about is let's don't waste any of this $1 billion these two gentlemen have so wisely put for one great purpose.

So that is my intention today, I assure the Senators from Alaska and Hawaii. We all know how homeland security works. We have seen all too well some of the failings and lack of efficiency and lack of responsiveness in that agency. To now assume the other side of that, that that is going to happen overnight because we have mandated by law—if it does, it will be a very poor choice of the use of this money.

I thank the Senator from Hawaii and the Senator from Alaska for their debate on this issue. My goal was to have a debate about whether we should have two programs and whether we should waste money. It is not about the debate of whether we need to have 911 interoperability and the functionality that needs to be there in all the States. But we should look at the whole as well as the individual. I compliment them on finding a funding stream that doesn't add to our children's debt. Unfortunately, we have not done that in this bill with the other grants, which I think is a mistake.

My hope is we will be able to have a vote on this amendment before we go to cloture—or even after cloture—because it is germane, and we can defend the germaneness of this amendment.

With that, I yield the floor.

Mr. STEVENS. Mr. President, I intend to make a motion to table. I have discussed it with the leader. I think he would like to have that vote take place at 6:15. Would the majority floor staff confirm that.

Mr. INOUYE. I think that would be appropriate.

Mr. STEVENS. Mr. President, temporarily, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. LANDRIEU. I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. LANDRIEU. While the Senator from Alaska is checking on the other amendment, I ask unanimous consent to speak on another amendment.

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

The Senator from Louisiana is recognized.

AMENDMENT NO. 295

Ms. LANDRIEU. Mr. President, I understand the Senator from Alaska is working out a vote on the amendment that was just discussed. I wished to come to the floor to talk about the Landrieu amendment that is pending on this bill and to also say I have been joined in this amendment by Senators STEVENS, LIEBERMAN, KENNEDY, OBAMA, MARTINEZ, and VITTER, and others may join as we push forward on this amendment to the underlying bill.

This amendment has to do with a waiver provision, to waive the 10-percent match that is normally required when a disaster strikes a community—and for good reason. We have required in the past for the local governments, based on their capacity to pay for part of the recovery, to put up anywhere from 25 percent to 10 percent. But on occasion, we have waived the 10-percent or the 25-percent requirement when it becomes apparent that the disaster is so overwhelming, the ability for these communities to repay is virtually impossible. That has been done over 38 times in the past. Most recently, it was done with Hurricane Andrew. That was a terrible storm. It doesn't look like it on this graph, but Hurricane Andrew, believe me, for the people in Homestead, FL, was the end of the world. Literally, their town was crushed.

Prior to Katrina and Rita, that storm was the costliest storm, causing $40 billion in damage to parts of Florida. Unfortunately for Florida, they have been hard hit ever since. But for discussion purposes, this is $139 per capita—a terrible storm but not a lot of money per capita. The World Trade Tower attack was a terrible tragedy in our Nation, which is why this bill is being discussed; the damage was $390 per capita. Mr. President, look and see what the Katrina and Rita double whammy and subsequent breaking of the levees cost per capita in Louisiana—$6,700. It is literally off the chart.

This has been part of the problem in Washington—not you, Mr. President, because you came down and Senator LIEBERMAN came down and the Senator from Alaska came down and walked the neighborhoods, so you understand it. But this is literally off the chart—what is happening in terms of the amount of disaster recovery going on in Louisiana and Mississippi, along the gulf coast.

The Landrieu amendment seeks to waive the 10-percent match so that the billion dollars would then be available to go to infrastructure projects. But almost as important as the extra money that could be applied to the disaster recovery itself, 95 percent of the red tape would be eliminated because, under the current program, there are three or four different reviews, different regulations between HUD and FEMA. All of the administrative efforts we have made to date have been for naught because nothing has been waived. So the solution is this amendment.

I am going to ask this body to vote on this amendment, on this waiver. The amazing thing about this is that because the President has the option to do this now, there is no cost to this amendment; it scores at a zero. I know it is counterintuitive, but the score on this amendment is zero. There can be no point of order raised against it. It doesn't technically cost anything. Because of that and the obvious merits of the waiver, which were done in this case and done 38 other times, we are asking for it to be done for Hurricanes Katrina and Rita, for Mississippi and Louisiana, and also for Hurricane Wilma, which is caught up in this general disaster as well.

I thank those who have cosponsored this amendment with me. I thank Senator STEVENS for being able to let me speak as he decides on votes for the pending amendment. I am going to ask the leadership to schedule a vote because it is most certainly justified and could be done administratively but has not been. Congress has a responsibility to act, to do what is right, fair and helpful and to eliminate the red tape in our communities, in my case, from St. Bernard Parish to Cameron Parish, from Biloxi and Pascagoula, all the way over to places in south Texas that are still hurting and deserve to have this waiver so they can spend money not on red tape but on roads, bridges, houses, and schools that need to be rebuilt so America's energy coast can get back to work.

Katrina and Rita were the first and third costliest disasters in American history, but Louisiana and other states impacted by these storms have not received a similar waiver.

Unfortunately for State and local governments in Louisiana, 10 percent translates into more than $1 billion dollars that must be sent back to Washington.

Louisiana has over 23,000 Project Worksheets pending, and Mississippi has over 10,000.

Some people have suggested that the States provide this matching funding on behalf of the local governments.

Let me explain why that will not work.

All of the State's money for assistance to local governments exists in the form of Community Development Block Grants.

FEMA's Public Assistance Program and HUD's CDBG Program have separate accounting requirements and separate environmental assessment requirements.

For the State to apply funding from this source for every single project would require approximately $20,000 per project. That translates into nearly half-a-billion dollars wasted on administrative paperwork.

The State has asked for a single set of standards, but FEMA would not agree to this.

The State has asked permission to provide a single payment to cover the 10 percent match, after adding its share of all the pending projects, but FEMA would not allow this either.

This Global Match would save thousands of man-hours and hundreds of millions of dollars.

Louisiana has not been able to cut through the red tape though, and has been told it must waste this money on duplicative bureaucratic procedures.

This money could be reinvested into housing, infrastructure, and economic development, in order to bring families, communities, and businesses back to life in the Gulf region.

Gulf coast States lost their tax base after properties were destroyed all over the region. The hurricanes claimed over 275,000 homes and 20,000 businesses.

Progress is being made but many challenges remain.

In communities where the damage was most severe, the struggle continues to rebuild economic infrastructure and restore vitality. Local governments have had to lay off thousands of employees, and pay those who remain with money they receive from Federal loans.

I would like to briefly talk about the situation in several of these communities.

Cameron Parish in Southwest Louisiana is home to 9,681 people.

It was the site of landfall for Hurricane Rita on September 24, 2005, and the eye of the storm passed directly over it.

Winds exceeding 110 miles per hour pounded the parish for more than 24 hours, and storm surges 15 to 20 feet high submerged it completely.

The Cameron Parish School Board has reported that 100 percent of its facilities need repairs, and 62 percent were totally destroyed.

Only two public buildings, the Parish courthouse and the District Attorney's office were left standing. Both are in need of extensive repairs.

Other buildings destroyed include: 5 fire stations, 4 community recreation centers, 4 public libraries, 3 parish maintenance barns, 2 parish multi-purpose buildings, ''Courthouse Circle,'' Cameron Parish Police Jury Annex Building, Cameron Parish Sheriff's Department Investigative Office, The Cameron Parish Health Unit, Cameron Parish School Board Office, Cameron Parish Mosquito Control Barn, and the Waterworks district 10 office.

Katrina produced a category 5 surge and winds in excess of 125 miles per hour when it made landfall in St. Bernard Parish.

As the storm surge traveled across Lake Borgne and up the Mississippi River Gulf Outlet, MRGO, it overtopped the levee along the northern edge of the urbanized area of St. Bernard Parish, and broke through the levee on the Industrial Canal in New Orleans' Lower 9th Ward.

Water from both levee breaks flooded most of the parish inside to depths of up to 14 feet. Flood waters remained for approximately 3 weeks.

Most structures outside the hurricane levee protection systems have been entirely destroyed and removed by the storm surge, estimated to be between 20 and 30 feet.

A flood-related breach of a nearby refinery's oil tank released about 1 million gallons of crude oil, further damaging approximately 1,800 homes and polluting area canals.

Fishing communities in the eastern areas of the parish were destroyed.

Less than a month after Katrina, an 8-foot storm surge from Hurricane Rita breached recently repaired levees, and again caused widespread flooding in the parish.

In all, 127 St. Bernard citizens died, about 68,000 people were displaced, and 100 percent of the parish housing stock, over 25,000 units, was either destroyed or damaged so severely that it became uninhabitable.

All parish businesses and government buildings, and most utility systems, were also destroyed. Damaged levees, decimated wetlands, and the still-open MRGO have left the parish vulnerable to future storms.

Prior to Katrina, there were approximately 25,123 occupied housing units in St. Bernard Parish, consisting mostly of single family homes and apartments.

After the storms, the entire housing stock of the parish was submerged under storm water, for nearly 3 weeks in many areas. Many homes in the parish are damaged beyond repair and may need to be demolished.

By the time the waters receded, more than 80 percent of the housing stock had been damaged.

It makes very little sense to require communities to put up this match in their current financial condition. Doing so will only serve to delay rebuilding across the region.

If we fail to act, we abandon Federal precedent, and we allow FEMA to continue wasting hundreds of millions of taxpayer dollars on duplication and waste.

I remind my colleagues that these hurricanes caused the greatest natural disaster in the history of this country. I ask only that we offer the same treatment to victims along the Gulf coast that we have offered victims on 32 other occasion.

Unfortunately for the State and local governments in Louisiana, 10 percent translates into more than $1 billion that must be sent back to Washington. Louisiana has over 23,000 project worksheets pending, and Mississippi has over 10,000. Some people have suggested that the States provide this matching funding on behalf of the local governments. There are several reasons why that will not work.

All of the State's money for assistance to local governments exists in the form of Community Development Block Grants.

FEMA's Public Assistance Program and HUD's CDBG Program have separate accounting requirements, separate non-discrimination requirements, and separate environmental assessment requirements.

For the State to apply funding from CDBG for every single project, would require approximately $20,000 per project. That translates into nearly half-a-billion dollars wasted on administrative paperwork.

The State has asked for a single set of standards, but FEMA would not agree to this. The State has asked permission to provide a single payment to cover 10 percent match, after adding its share of all the pending projects, but FEMA would not allow this either. This Global Match would have saved thousands of man-hours and hundreds of millions of dollars, Louisiana has not been able to cut through the red tape though, and has been told it must waste this money on duplicative bureaucratic procedures.

This money could be reinvested into housing, infrastructure, and economic development, in order to bring families, communities, and businesses back to life in the Gulf region. It makes very little sense to require communities to put up this match in their current financial condition. Doing so will only serve to delay rebuilding across the region. These hurricanes caused the greatest natural disaster in the history of this country.

This amendment offers the same treatment to victims along the Gulf coast, that we have offered disaster victims on 32 other occasions. If we fail to act, we will have abandoned federal precedent in the midst of our county's worst disaster, and we will allow FEMA to continue wasting hundreds of millions of taxpayer dollars on unnecessary duplication and waste.

I ask unanimous consent that a letter to the President be 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, February 9, 2007.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As you are aware, FEMA regulations call for a ten percent match for every dollar made available through FEMA's public assistance program in connection with the effort to recover from Hurricanes Katrina and Rita. We understand that requiring states to match federal expenditure helps to encourage states to spend program funds more wisely. However, given the magnitude of this disaster and the extremely difficult circumstances that Louisiana and many Gulf Coast communities now face, we believe that the most appropriate step for the Federal government is to waive the match requirement in this case.

While the people of Louisiana are grateful to the nation for the help that they have received, the State still confronts a massive shortfall between the dollars that have come in from all sources and the real costs of recovery, a shortfall that the state estimates to be $40 billion. The $1 billion in matching funds that Louisiana could be required to send to the Federal government could be better spent on rental assistance, mental health, school infrastructure and a variety of other needs that have fallen through the cracks of the Stafford Act.

Although FEMA regulations encourage the President to require a 10 percent match for the PA program, the Stafford Act clearly gives the President the discretion to waive this matching requirement. To be certain, this is not a request without precedent or beyond the scope of the Federal government's earlier decisions. Since 1985, FEMA has granted waivers on the state match for public assistance in 32 different disasters. Yet having been battered by the first and third worst hurricanes in United States history, Louisiana must still meet the match requirement.

Per capita cost is the usual determinant regarding the need for a match. Louisiana's cost per capita was approximately $6,700. This is contrasted with two earlier cases where the state match was waived. In New York, after September 11th, the cost per capita was $390.00. In Florida, after Hurricane Andrew, the cost per capita was $139.00. These numbers, taken alone, illustrate the unprecedented level of damage that Louisiana has suffered and the massive scale of the challenge before us. However, taken with the realities that are evident when you visit the Gulf Coast and speak to state and local officials, it is clear that your decision to waive this requirement is not only prudent, but vital to the recovery effort.

In short, basic equity and previous precedent argues that Louisiana's state match be waived. We appreciate your attention to this matter, and look forward to your assistance.

With sincere regards,

Sincerely,

HARRY REID,
U.S. Senator.
MARY L. LANDRIEU,
U.S. Senator.
JOSEPH I. LIEBERMAN,
U.S. Senator.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I make a motion to table the Coburn amendment No. 345 and ask unanimous consent that the vote commence at 6:15 this evening.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 299 TO AMENDMENT NO. 275

Mr. STEVENS. Mr. President, I ask unanimous consent that the pending amendment be set aside so I may call up amendment No. 299.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself, and Mrs. CLINTON, and Mr. INOUYE proposes an amendment numbered 299 to amendment No. 275.

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

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

The amendment is as follows:

(Purpose: To authorize NTIA to borrow against anticipated receipts of the Digital Television Transition and Public Safety Fund to initiate migration to a national IP-enabled emergency network capable of receiving and responding to all citizen activated emergency communications)

At the end of the amendment, insert the following:

TITLE XIV—911 MODERNIZATION

SEC. 1401. SHORT TITLE.

This title may be cited as the ''911 Modernization Act''.

SEC. 1402. FUNDING FOR PROGRAM.

Section 3011 of Public Law 109–171 (47 U.S.C. 309 note) is amended—

(1) by striking ''The'' and inserting:

''(a) IN GENERAL.—The''; and

(2) by adding at the end the following:

''(b) CREDIT.—The Assistant Secretary may borrow from the Treasury, upon enactment of this provision, such sums as necessary, but not to exceed $43,500,000 to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.''.

SEC. 1403. NTIA COORDINATION OF E–911 IMPLEMENTATION.

Section 158(b)(4) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942(b)(4)) is amended by adding at the end thereof the following: ''Within 180 days after the date of enactment of the 911 Modernization Act, the Assistant Secretary and the Administrator shall jointly issue regulations updating the criteria to provide priority for public safety answering points not capable, as of the date of enactment of that Act, of receiving 911 calls.''.

Mr. STEVENS. This amendment has been cosponsored by Senators CLINTON, INOUYE, SMITH, SNOWE, and HUTCHISON.

Mr. President, 911 calls provide the first line of defense in the safety of our citizens and is critical to public safety personnel.

Technological advances now allow 911 calls to provide more information, such as the caller's location and telephone number. In too many parts of the country, the public safety community doesn't have the technology needed to receive location or other information. They need funding help to upgrade their equipment so this is possible.

Congress previously allocated $43.5 million as part of the Deficit Reduction Act of 2005 for E–911 grants, so the 911 system can be upgraded. However, as it currently stands, the grants cannot be awarded until after the digital television proceedings are completed.

Our amendment would add the 911 Modernization Act, S. 93, to this bill, which passed unanimously out of the Commerce Committee several weeks ago.

This would allow the National Telecommunications and Information Administration to borrow $43.5 million from the Treasury to fund the Enhance 911 Act Grant Program in advance of the spectrum auction. Because these funds are only advanced, the CBO has informed us that this amendment does not score.

The National Emergency Number Association that focuses on 911 recently announced that more than 20 percent of the country doesn't have enhanced 911 capability. That 20 percent is in rural America and covers 50 percent of the counties of our country.

There is a matching fund requirement in the underlying law to ensure that this money is spent wisely by public safety entities that are committed to improve the 911 calling capability of the citizens. This means that local governments must match under the law, and this enables us to know there is local support for the activities that would be financed by this money.

The amendment has the support of the Association of Public Safety Communications Officers International and the National Emergency Numbering Association. I will submit a letter from these two premier 911 public safety organizations for the RECORD. With this borrowing authority, the NTIA could get the money out to the public safety community now. The funds will be replaced, and enhanced 911 calls can begin saving lives in more of rural America. This is absolutely essential. Again, 50 percent of our counties do not have the ability to move forward unless this money is made available. Borrowing the money now, so it will be repaid out of the spectrum auction, is the best way to proceed.

I ask unanimous consent that the letter I mentioned be printed in the RECORD.

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

FEBRUARY 5, 2007.

Hon. DANIEL INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Hon. TED STEVENS,
Vice-Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INOUYE AND VICE-CHAIRMAN STEVENS: As you know, the 9–1–1 system is the connection to the public for daily emergencies and also plays a vital role in more significant homeland security events, from reporting on a potential outbreak to hazardous materials spills. In fact, as the connection to the general public, 9–1–1 centers are likely to be the first to know of a developing homeland security event. Thus, it is imperative that our 9–1–1 system be adequately funded to ensure that all Americans have access to a 9–1–1 system that is fully prepared to respond to requests for help in every situation.

Congress took steps to address the funding needs of 9–1–1 by passing the ENHANCE 911 Act of 2004. Unfortunately, no appropriations were provided for grants in the 109th Congress. However, thanks to your leadership, the Deficit Reduction Act of 2005 (P.L. 109–171) did include a provision that requires $43.5 million in spectrum auction proceeds to be allocated for grants to Public Safety Answering Points (PSAPs) authorized by the ENHANCE 911 Act. Currently, those grant funds will not be available until sometime in late 2008 or 2009 after auction revenues are deposited into the Treasury.

Obtaining funding for this grant program as soon as possible is critical to allow underfunded PSAPs to obtain the resources they need to upgrade their wireless E9–1–1 capabilities and for necessary staffing and training needs. Currently, nearly half of the counties in the United States do not contain a PSAP with the ability to precisely locate wireless 9–1–1 calls. Therefore, we were pleased with the introduction of the 911 Modernization Act (S. 93) by Vice-Chairman Stevens which would provide NTIA with advanced borrowing authority for the $43.5 million provided in the Deficit Reduction Act and make those funds immediately available for grants. We strongly support ensuring that immediate funding is provided for 9–1–1 and hope your offices will work together to make this legislation, and 9–1–1 funding in general, a priority.

In addition to the 911 Modernization Act, it is also imperative that Congress provide sufficient funding to NHTSA and NTIA in the FY 2008 budget for ENHANCE 911 Act grants and for the administration of the 9–1–1 Implementation and Coordination Office (ICO). Providing this funding will ensure that the potential of the ENHANCE 911 Act to greatly improve 9–1–1 service is fully realized. Thank you for your continued leadership on 9–1–1 and emergency communications issues and we look forward to continue working with you and your staff on these and other important issues.

Sincerely,

JASON BARBOUR,
President, NENA.
WANDA MCCARLEY,
President, APCO International.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

(The remarks of Ms. LANDRIEU are printed in today's RECORD under ''Morning Business.'')

Ms. LANDRIEU. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 295, AS MODIFIED

Ms. LANDRIEU. Madam President, I send to the desk a modification to my amendment.

Ms. COLLINS. Madam President, I have no objection to the modification.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

At the end of title XV, add the following:

SEC. _____. FEDERAL SHARE FOR ASSISTANCE RELATING TO HURRICANE KATRINA OF 2005 OR HURRICANE RITA OF 2005.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Federal share of

any assistance provided under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) because of Hurricane Katrina of 2005 or Hurricane Rita of 2005 or Hurricane Wilma of 2005 shall be 100 percent.

(b) EFFECTIVE DATE.—This section shall apply to any assistance provided under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) on or after August 28, 2005.

Ms. COLLINS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. COLLINS. Madam President, what is the pending business?

The PRESIDING OFFICER. Under the previous order, a vote now occurs on the motion to table the Coburn amendment, No. 345.

Ms. COLLINS. Madam President, 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 motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Idaho (Mr. CRAPO) and the Senator from Arizona (Mr. KYL).

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

The result was announced—yeas 71, nays 25, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—71

Akaka	Gregg	Obama
Baucus	Hagel	Pryor
Bayh	Harkin	Reed
Bennett	Hatch	Reid
Bingaman	Hutchison	Roberts
Bond	Inouye	Rockefeller
Boxer	Kennedy	Salazar
Brown	Kerry	Sanders
Bunning	Klobuchar	Schumer
Byrd	Kohl	Shelby
Cantwell	Landrieu	Smith
Cardin	Lautenberg	Snowe
Carper	Leahy	Specter
Casey	Levin	Stabenow
Clinton	Lieberman	Stevens
Cochran	Lincoln	Sununu
Conrad	Lott	Tester
Craig	McCaskill	Vitter
Dodd	Menendez	Voinovich
Domenici	Mikulski	Warner
Dorgan	Murkowski	Webb
Durbin	Murray	Whitehouse
Feingold	Nelson (FL)	Wyden
Feinstein	Nelson (NE)	

NAYS—25

Alexander	Coleman	Ensign
Allard	Collins	Enzi
Brownback	Corker	Graham
Burr	Cornyn	Grassley
Chambliss	DeMint	Inhofe
Coburn	Dole	Isakson
Lugar	McConnell	Thune
Martinez	Sessions	
McCain	Thomas	

NOT VOTING—4

Biden	Johnson
Crapo	Kyl

The motion was agreed to.

Mr. DURBIN. Madam 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.

The PRESIDING OFFICER. The Senator from Iowa is recognized. Mr. GRASSLEY. Madam President, I rise to offer amendment No. 386.

Mr. LIEBERMAN. Madam President, I object. If I may explain with respect to the Senator from Iowa?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Madam President, the Senator from Iowa has, in the normal course of Senate proceedings, asked unanimous consent to set aside the pending amendment to offer an amendment of his own. I am objecting to that. I want to explain why.

We now have 50 amendments pending. We have a group of amendments Senators Collins and I have agreed on and are willing to offer by consent, but at least two Senators are objecting to us doing that until there is an agreement to vote on amendments that they want a vote on.

We have a very important bill that has a sense of urgency to it, the 9/11 legislation. Therefore, as the manager of the bill on this side—and, incidentally, I will add that cloture was filed, surprisingly, on four of the amendments. We have come to a point where the bill as reported out of our committee on a nonpartisan vote is ready to go. But these 50 amendments are stopping it from getting to a conference with the House.

Until we have an agreement across party lines as to how we are going to proceed, I am going to, respectfully, with no prejudice to my friend from Iowa, object to setting aside the pending amendment, which is the Stevens amendment, No. 299. That would be for anyone else who would want to offer an amendment at this time, until there is an agreement on how we are going to proceed to get this urgent bill passed, hopefully, by the end of the week.

The PRESIDING OFFICER. Objection is heard.

The Senator from Iowa.

AMENDMENT NO. 386

Mr. GRASSLEY. Madam President, I would like to offer another amendment to S. 4 that seeks to strengthen our Nation's homeland security by closing a loophole in our securities laws. My amendment would amend section 203(b)(3) of the Investment Advisers Act of 1940 and would narrow an exemption from registration for certain investment advisers. There is a homeland security element to this fix because it can sometimes be important to know who is managing large sums of money for wealthy foreign investors. For example, it was recently reported that a Boston-based private equity firm, Overland Capital Group, Inc, is under investigation by the IRS and DOJ counterterrorism division. Such firms, which manage hundreds of millions of dollars for wealthy investors in total secrecy, ought to have to at least register with the SEC.

Currently, section 203(b)(3) of the Investment Advisers Act provides a statutory exemption from registration for any investment adviser who had fewer than 15 clients in the preceding 12-month period and who does not hold himself out to the public as an investment adviser. This amendment would narrow this exemption, which is currently used by large, private pooled investment vehicles, commonly referred to as hedge funds. These hedge funds use this section of the securities laws to avoid registering with the Securities and Exchange Commission—SEC.

Much has been reported during the last few years regarding hedge funds and the market power they yield because of the large amounts of capital they invest. In fact, some estimates are that these pooled investment vehicles are trading nearly 30 percent of the daily trades in U.S. financial markets. The power this amount of volume has is not some passing fad, but instead represents a new element in our financial markets. Congress needs to ensure that we know who is running these large vehicles to ensure the security of those markets.

The failure of Amaranth and the increasing interest in hedge funds as investment vehicles for public pension money means that this is not just a high stakes game for the super rich. It affects regular investors. Indeed, it affects the markets as a whole. My recent oversight of the SEC has convinced me that the Commission and the Self-Regulatory Organizations—SROs—need much more information about the activities of hedge funds in order to protect the markets from institutional insider trading and other potential abuses. This is one small and simple step toward greater transparency—to require that hedge funds register and tell the regulators who they are. This is not a burden, but rather a simple, common sense requirement for organizations that wield hundreds of billions of dollars in market power every day. The SEC has already attempted to do this by regulation.

Congress needs to act because of a decision made last year by a Federal appeals court, the D.C. Circuit Court of Appeals. In 2006, the D.C. Circuit Court of Appeals overturned a SEC administrative rule that required registration of hedge funds. This decision effectively ended all registration of hedge funds with the SEC.

My amendment would narrow the statutory exemption from registration and bring much needed transparency to hedge funds. The amendment would authorize the SEC to require investment

advisers to register unless the adviser: No. 1, had $50 million or less in assets under management, No. 2, had fewer than 15 clients, No. 3, did not hold himself out to the public as an investment adviser, and No. 4, managed the assets of fewer than 15 investors, regardless of whether the investors participate directly or through a pooled investment vehicle, such as a hedge fund.

This amendment is a first step in ensuring that the SEC has the needed statutory authority to do what it attempted to do for the last 2 years. I urge my colleagues to support this amendment as we work to protect investors large and small.

I am not surprised by the objection today. For the record, I want everyone to know that this morning when I said I intended to offer this amendment, my phones started ringing off the hook. Lots of powerful people don't want to see an amendment like this, but Americans want their Government to know who is running these funds.

The PRESIDING OFFICER. The Senator from Maine.

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

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

Mr. INHOFE. Mr. President, today, I wish to speak to my amendment No. 381 that seeks to improve the U.S.'s national security through increasing our ability to fuel our country from domestic resources.

Americans are familiar with the violence, terrorism, and instability in the Middle East. But forms of that instability are spreading around the world, including to our own backyard.

This chart by the Energy Information Agency summarizes some of the energy security hot spots around the world. Since September 2005 when this chart was made, U.S. security interests have gotten even worse in some regions. On February 26, Venezuelan President Hugo Chavez nationalized U.S. oil interests—the motivation for the Soviet-style move was to improve Venezuelan strategic interests.

Adding insult to injury, while signing an agreement allowing Chinese companies to explore in Venezuela, Mr. Chavez stated that, ''We have been producing and exporting oil for more than 100 years but they have been years of dependence on the United States. Now we are free and we make our resources available to the great country of China.''

China has recognized that energy is a true security interest and has inked deals with Russia and OPEC, along with Castro's Cuba.

The fact is that our national security is linked with our energy security. Yet even if we were to stop importing oil from the Middle East tomorrow our national security interests would still be at risk.

And we are not alone.

European Union countries as a whole import 50 percent of their energy needs, a figure expected to rise to 70 percent by 2030. A significant and increasing volume of those imports come from Russia.

In December 2005, Russia decided to turn off the gas to Ukraine, affecting imports into Italy, Austria, Germany, Poland, and Slovakia. A similar dispute between Russia and Belarus affected Germany's oil imports.

According to the Congressional Research Service, global energy demand is expected to rise by nearly 60 percent over the next 20 years.

In order to meet motorists' demands today and tomorrow and the global struggle for energy security, I am introducing the Domestic Fuels Security Act.

The Domestic Fuels Security Act lays out a coordinated plan to increase the production of critical clean transportation fuels for today and tomorrow in four significant ways.

First, the amendment provides a coordinated process whereby the Federal Government—at the option of a Governor and in consultation with local governments—would be required to assist the State in the permitting process for domestic fuels facilities. These would include coal-to-liquids plants, modern refineries, and biorefineries. And this voluntary, coordinated, from-the-grassroots-up process would do so without waiving any environmental law.

Second, the amendment would look to the future and conduct a full environmental review of fuel derived from coal.

The U.S. has 27 percent of the world's coal supply—the largest in the world—nearly 250 billion tons of recoverable reserves. It is critical that we learn to use what we have and do so in an environmentally responsible way.

Third, the amendment seeks to spur a viable coal-to-liquids industry in a comprehensive way. In order for a new fuels industry—to develop three components are required—upfront costs to design and build, a site to do it, and a market to sell the product.

The amendment provides loan guarantees and loans for the startup costs. It provides incentives to some of the most economically distressed communities—Indian tribes and those affected by BRAC—to consider locating a facility in their backyard through Economic Development Administration grants. Last, the amendment requires the Department of Defense to study the national security benefits of having a domestic coal-to-liquids, CTL, fuels industry to comprehensively assess a new market.

I have to give credit to my colleagues, Senators BUNNING, OBAMA, LUGAR, PRYOR, MURKOWSKI, BOND, THOMAS, CRAIG, MARTINEZ, ENZI, and LANDRIEU, who together had introduced a bill with similar language. I am hopeful that they will join me in moving this amendment.

We can all agree that increasing domestic energy security is a vital objective. Yet it also provides good jobs.

According to the Illinois Department of Commerce and Economic Opportunity, a CTL plant, with an output of 10,000 barrels per day, can support 200 direct jobs onsite, at least 150 jobs at the supporting coal mine, and 2,800 indirect jobs throughout the region. During construction, another 1,500 temporary jobs will be created.

Fourth, cellulosic biomass ethanol—renewable fuel from energy crops like switchgrass—is a popular concept but faces financial barriers. Recently, the Federal Government has released some initial money to help develop the industry, but more could be done.

In order to entice private sector investment, it is important for the collective fuels industry and motorists to know what our renewable resource base is, as well as traditional fuels. This amendment requires the Securities and Exchange Commission to convene a task force to assess how we should modernize our reserves—both traditional and renewable for cellulosic biomass ethanol feedstocks.

Energy security, job security, American security—please join me in passing the Domestic Fuels Security Act.

Mr. President, I ask unanimous consent to have printed in the RECORD the chart to which I referred.

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

OIL AND NATURAL GAS HOTSPOTS FACTSHEET

Country/Region	Petroleum Prod'n (2004) ('000 bbl/d)	Petroleum Prod'n (2010) ('000 bbl/d)	U.S. Imports (Jan–Mar '05)('000 bbl/d) [1]	Strategic Importance/Threats
Iran	4,100	4,000	0	Even though no direct imports to US, still exports 2.5 million bbl/d to world markets.
Iraq	2,025	3,700	516	April 2003–May 2005—236 attacks on Iraqi Infrastructure.
Libya	1,600	2,000	32	Newly restored diplomatic relations, Western IOCs not awarded contracts in 2nd EPSA round.
Nigeria	2,500	2,600	1,071	High rate of violent crime, large income disparity, tribal/ethnic conflict and protests have repeatedly suspended oil exports.
Russia	9,300	11,100	419	2nd only to S.A. in oil production, Yukos affair has bred uncertain investment climate.
Saudi Arabia	10,400	13,200	1,614	Long Term stability of Al-Saud family, Western oil workers subject to attacks.
Sudan	344	530*	0	Darfur crisis & N–S conflict threatens government stability, security of oil transport.

OIL AND NATURAL GAS HOTSPOTS FACTSHEET—Continued

Country/Region	Petroleum Prod'n (2004) ('000 bbl/d)	Petroleum Prod'n (2010) ('000 bbl/d)	U.S. Imports (Jan–Mar '05)('000 bbl/d) [1]	Strategic Importance/Threats
Venezuela	2,900	3,700	1,579	Large exporter to U.S., President Chavez frequently threatens to divert those exports, nationalize resource base.
Algeria	1,900	2,000	414	Armed militants have confronted gov't forces.
Bolivia	40	45*	0	Large reserves of NG (24 (Tcf)), exports may be delayed due to controversial new laws unfriendly to foreigners.
Caspian Sea	1,800	2,400–5,900	0	BTC opened, many ethnic conflicts, high expectations or future oil production, no maritime border Agt.
Caucasus Region 2	negligible	negligible	0	Strategic transit area for NG and oil pipelines.
Colombia	551	450*	110	Destabilizing force in S. America, oil exports subject to attack by protesters, armed militants.
Ecuador	535	850*	315	Unstable politically, protests threaten oil export.
Indonesia	900	1,500	0	No longer a net exporter, separatist movements, Peacekeeping forces in place, Violence threat to Strait of Malacca.

9/11 HEALTH ISSUES

Mrs. CLINTON. Mr. President, more than 5 years after the 9/11 attacks, the number of victims continues to rise because of the lasting health impacts experienced by far too many of those who selflessly responded to this disaster in 2001. On that day, and in the following months, thousands worked and lived by the Ground Zero site, amidst the dust, smog, and toxic mix of debris. And now we are seeing those workers, responders, and residents become sick from what they were exposed to on 9/11 and the following months. I believe we have a moral obligation to take care of those suffering from 9/11-related illnesses.

The work of Senator HARKIN, Senator BYRD, Senator SPECTER, and all of their colleagues on the Senate Appropriations Committee has been invaluable in securing funding to address many of the health issues that have appeared following 9/11. In December 2001, we learned that hundreds of firefighters were on medical leave because of injuries related to 9/11 issues, and the Appropriations Committee responded by allocating $12 million for medical monitoring activities so that we could track and study the health impacts associated with the rescue and response efforts at the World Trade Center. Thousands of individuals signed up for this program, and in Congress, we worked to meet the demand by appropriating an additional $90 million to monitor other workers and volunteers who were at Ground Zero and Fresh Kills.

Through this work, we learned that many of those who were exposed are now experiencing significant health problems from this exposure—people who were in the prime of their life before 9/11 now suffering from asthma, sinusitis, reactive airway disease, and mental health issues. So in December 2005, I worked with Senator HARKIN and other appropriators, as well as my colleagues in the New York Congressional Delegation, to secure an additional $75 million in funding that would for the first time provide Federal funding for treatment to help those who were disabled by these attacks get the care that they needed.

Sadly, we are once again running out of funding to take care of the heroes who never questioned their responsibility on 9/11 and are now paying a terrible price. While the President has proposed providing additional funding for treatment in the fiscal year 2008 budget, we must act sooner to provide sufficient funds to ensure treatments through the rest of the current fiscal year.

That is why I introduced an amendment to the 9/11 bill we are considering today to divert $3.6 million in funding—originally part of that $20 billion secured for New York in the wake of 9/11 that the administration proposed to cut in its fiscal year 2008 budget. At a time when treatment needs are so urgent, I believe that we need to ensure that dollars that were intended for 9/11 needs can be used to address the mounting health crisis that we are facing as a direct result of these attacks. I believe it is important to raise awareness of the fact that these programs—programs that are helping tens of thousands of first responders in New York and around the Nation—are in danger of having to turn patients away.

I am extremely grateful for what we have been able to accomplish with the support of Senator HARKIN and other appropriators. They have shown that they consider it our national responsibility to care for those who did our country proud in the hours, days, weeks, and months following that horrific attack. I am also proud that I will be working with my colleagues on the Senate Health, Education, Labor and Pensions Committee, including Senators KENNEDY, ENZI, and HARKIN, to develop a lasting solution to address these health care needs. But while we are working on those solutions, we must ensure that these programs continue to operate.

Mr. HARKIN. I thank my good friend and colleague, Senator CLINTON, for her kind remarks. The terrorist attacks of 9/11 took place nearly 1,000 miles from Iowa. But the attacks on the World Trade Center and the Pentagon were really an attack on the heart of America. Iowans answered the call of service and came to the aid of those affected by these attacks. The Musco Lighting Company from Muscatine donated lighting equipment to assist the World Trade Center recovery efforts. Quad-Cities fire departments collected more than $75,000 for the Uniformed Fighter Association's 9/11 Disaster Relief Fund.

And just as Iowans and other Americans responded to the calls for help, I am proud that the Appropriations Committee has worked step by step with the New York delegation to address the many desperate needs that arose from 9/11. I was proud to work with Senator CLINTON, Senator BYRD, and my colleagues on the Appropriations Committee to secure $20 billion immediately after 9/11 to help both short and longer term recovery efforts at Ground Zero, the Pentagon, and Shanksville, PA. The funding for tracking health outcomes is a particular concern to myself and Senator SPECTER. This funding has been used to monitor not only the brave responders and recovery workers who live in New York, but also all who responded from around the country, including more than 35 from Iowa.

I thank you for your leadership on this issue and I look forward to working with you on the upcoming emergency supplemental appropriations bill to maintain the current monitoring and treatment program for 9/11 responders and recovery workers.

Mrs. CLINTON. I thank the Senator. On behalf of the thousands of firefighters, police officers, rescue workers, residents, students, and others who are suffering from 9/11-related illnesses, I look forward to working with you on the upcoming emergency supplemental appropriations legislation to ensure that those who are sick can receive the care they need. With this commitment, I will withdraw my amendment to this legislation.

MORNING BUSINESS

Mr. LIEBERMAN. Mr. President, I wish we could pass the bill tonight, but until disputes about the pending amendments are resolved—and I hope we can do that quickly overnight and tomorrow morning—there is nothing more we can do on the bill.

With the agreement of my ranking member, I ask unanimous consent that the Senate now be in a period of morning business for Senators to speak for up to 10 minutes each.

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

TRIBUTE TO THE LATE SENATOR TOM EAGLETON

Mr. KERRY. Mr. President, Missouri's own Harry Truman once said:

> A politician is a man who understands government. A statesman is a politician who has been dead for 10 years.

Somehow, another son of Missouri, Senator Tom Eagleton, managed to be both a keen master of government and a statesman in his own lifetime, as well as a dear friend of many in this Chamber. On this past Sunday, Tom passed away at age 77.

Tom Eagleton was a man who radiated wit, warmth, and a brand of intellectual and moral seriousness that