CONCLUSION OF MORNING BUSINESS

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

USA PATRIOT ACT OF 2001

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

The bill clerk read as follows:

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

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

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

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

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

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

Mr. REID. Will the Senator yield?

Mr. LEAHY. Of course.

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

The PRESIDENT pro tempore. Is there objection?

The Chair hears no objection. That the Senate will proceed to consideration of H.R. 3162.

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

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

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

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

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

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

We improved security on the Northern Border:

We added money laundering;

We added programs to enhance information sharing and coordination with State and local law enforcement, grants to State and local governments to respond to bioterrorism, and to increase payments to families of fallen firefighters, police officers and other public safety workers;

We added humanitarian relief to immigrants who were victims of the September 11 terrorist attacks;

We added help to the FBI to hire translators;

We added more comprehensive victims assistance;

We added measures to fight cybercrime;

We added measures to fight terrorism against mass transportation;

We added important measures to use technology to make our borders more secure;

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

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

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

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

I do believe that some of the provisions contained both in this bill and the original USA Act will face difficult tests in the courts, and that we in Congress may have to revisit these issues as well as our decisions on the recommendations of the Senate Intelligence Committee. As the present crisis has passed, the sunset has expired or the courts find an infirmity in these provisions. I also intend
as Chairman of the Judiciary Committee to exercise careful oversight of how the Department of Justice, the FBI and other executive branch agencies are using the newly-expanded powers that this bill will give them. I know that the senators of the Judiciary Committee—including Senator SPECTER, Senator GRASSLEY, and Senator DURBIN—appreciate the importance of such oversight.

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

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

I have also heard claims that if certain powers had been previously authorized by the Congress, we could somehow have prevented the September 11 attacks. Given this rhetoric it may be instructive to review efforts that were made a few years ago in the Senate to provide law enforcement with greater tools to conduct surveillance of terrorists and terrorist organizations. In May 1995, Senator LIEBERMAN offered an amendment to the bill that became the Antiterrorism and Effective Death Penalty Act of 1996 that would have expanded the government’s authority to conduct emergency wiretaps in cases of domestic or international terrorism and added a definition of domestic terrorism to include violent or illegal acts apparently intended to “intimidate, or coerce the civilian population.” The consensus, bipartisan bill that we consider today contains a very similar definition of domestic terrorism.

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

Following the exchange on September 19 of our legislative proposals, we have worked over the last month around the clock with the Administration to put together the best legislative package we could. I share the Administration’s goal of providing promptly the legal tools necessary to deal with the current terrorist threat. While some have complained publicly that the negotiations have gone on for too long, the issues involved are of great importance, and we will have to live with the laws we enact for a long time to come. Delay has two meanings: it is irresponsible when the roadmap is pointed in the wrong direction. As Ben Franklin once noted, “if we surrender our liberty in the name of security, we shall have neither.” Moreover, our ability to make rapid progress was impeded because the negotiations with the Administration did not progress in a straight line. On several key issues that are of particular concern to me, we had reached an agreement with the Administration on Sunday, September 30. Unfortunately, over the next two days, the Administration announced that it was reneging on the deal. I appreciate the complex task of considering the concerns and mission of multiple Federal agencies, and that the laws must often be modified as their implications are scrutinized by affected agencies. When agreements made by the Administration must be withdrawn and negotiations on resolved issues reopened, those who have been promised an answer by the Congress for delay with what the New York Times described as “scurrilous remarks,” do not help the process move forward.

We expedited the legislative process in the Judiciary Committee to consider the Administration’s proposals. In daily news conferences prior to the original passage of the USA Act, the Attorney General referred to the need for such prompt consideration. He appeared before the Judiciary Committee at a hearing September 25 to respond to questions that Members from both parties had about the Administration’s initial legislative proposals. I thank the Attorney General for extending the hour and a half he was able to make in his schedule for the hearing for another 15 minutes so that Senator FEINSTEIN and Senator SPECTER were able to ask questions before his departure. I regret that the Administration appeared before the Judiciary Committee in order to deal with the legislation more promptly on the floor.

After Senate consideration and passage on the one-month anniversary of the terrorist attack, the House Republican leadership decided to proceed with a version of the Senate-passed bill rather than the bill reported by the House Judiciary Committee. H.R. 2975 passed the House with opposition on October 12. Unfortunately, the House did not take the traditional step of requesting a conference with the Senate. In an apparent effort by the Administration and House Republican leadership to try to pressure the Senate to accept that version of the bill, without strong money laundering or bioweapons provisions, with a 5-year sunset, the House failed to take the procedural steps necessary to convene a conference. Had a conference been requested and begun, a final bill would have been passed last week. Instead, the process turned into a conference where discussions were less concentrated and it was only after a leadership meeting late last week that the major outline of the measure was agreed upon.

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

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

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

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

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

This bill will authorize the expanded surveillance and intelligence gathering authorities to be used in the course of an investigation, criminal and foreign intelligence jurisdictions clearly overlap and agencies must coordinate their efforts accordingly. This bill enters new and uncharted territory by breaking down traditional barriers between law enforcement and foreign intelligence. This is not done just to combat international terrorism, but for any criminal investigation that overlaps a broad definition of “foreign intelligence.”

Yet, before final passage of this bill, the Senate should recall our nation’s unfortunate experience with domestic surveillance and intelligence abuses that came to light in the mid-1970s. Until Watergate and the Vietnam war, Congress allowed the Executive branch virtually unchecked access to foreign intelligence information. This is not done just to combat international terrorism, but for any criminal investigation that overlaps a broad definition of “foreign intelligence.”

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The provisions on the disclosure of “foreign intelligence” from Federal criminal investigations make fundamental changes in the rules for the handling of highly sensitive personal, political and business information acquired in the course of an investigation. Such information may now be disclosed to intelligence, defense, and national security agencies. The law is changed not only to permit the wider sharing of information from grand juries, domestic and international law enforcement and criminal investigations generally (in section 203), but also to require Federal law enforcement agencies to share this information with intelligence agencies through the Director of Central Intelligence, unless the Attorney General makes exceptions (in section 905). There would be far less controversy if these provisions were limited to information about domestic or international terrorism or espionage. Instead, they potentially authorize the disclosure throughout intelligence, military, and national security organizations of a far broader range information about United States persons, including citizens, permanent resident aliens, domestic political groups, and organizations of a far broader range activities of foreign governments or elements of “foreign intelligence” or “foreign intelligence information.” The term “foreign intelligence” is defined to mean “information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.” The term “foreign intelligence information” is defined to include information about a United States person that concerns a foreign power or foreign territory and “that relates to the national defense or the security of the United States” or “the conduct of the foreign relations of the United States.” Therefore, potentially, whenever a criminal investigation acquires information about an American citizen’s relationship with a foreign country or its government, that information is eligible to be disseminated widely as “foreign intelligence information”—even if the information is about entirely lawful activities, business transactions, political relationships, or personal opinions.

The term “criminal investigation” usually refers to investigations related to crimes, but the provisions in this bill would allow the FBI to conduct criminal investigations that are not related to crimes. In fact, the bill would authorize the FBI to engage in investigative activities that are not related to crimes.

The risks of misusing this information were documented 25 years ago, when the Congress made public the record of Cold War abuses of investigative powers by Federal agencies acting in the name of national security. The Select Committee to Study Governmental Affairs With Respect to Intelligence Communities, chaired by Senator Frank Church, to conduct a year-long investigation with extensive public hearings and detailed reports on the investigations of lawful dissidents. The Church Committee found that the FBI’s internal security and domestic intelligence programs compiled massive files on activities protected by the First Amendment and the political opinions of Americans.

During the height of antiwar protest and urban unrest in the late 1960's, Army intelligence joined the FBI in monitoring domestic political activity. National intelligence agencies such as CIA and NSA received extensive reporting from the FBI and the military, as well as from their own intelligence gathering on critics of government policy. Other law enforcement agencies such as the Internal Revenue Service shared information of critics of Administration policy—all under the rubric of protecting the national security. The scope of intelligence gathering swept up environmental groups, women’s liberation activists, and virtually any organization that engaged in unorthodox protest demonstrations.

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

The most notorious case was J. Edgar Hoover's vendetta against Dr. Martin Luther King, Jr. The Church Committee documented the FBI's effort to discredit Dr. King by disclosing confidential information that was obtained from wiretaps and microphones targeted against him. The wiretaps were justified to the Kennedy and Johnson Administrations on the grounds that some of Dr. King's advisors were Communists, but this excuse allowed the FBI to mount continuous political surveillance to undermine Dr. King's effectiveness. The FBI disseminated allegedly derogatory information not only within the government, but to media and other private organizations including efforts to deny Dr. King the Nobel Peace Prize. Most vicious of all was the FBI's preparation of a composite tape recording that was sent to him anonymously with an apparent invitation to commit suicide. During the 1964 Democratic National Convention in Atlantic City where the greatest controversy involved getting the presidential nomination, the FBI provided the Johnstown White House a continuous flow of political intelligence from the wiretaps on Dr. King's telephones in Atlantic City.

These methods of domestic political surveillance and covert manipulation and disruption have no place in a free society. They are lawful for the CIA to use against terrorists abroad, under Presidential authorization and oversight by the Intelligence Committees. In the United States, however, such surveillance activities by our government offend our fundamental First Amendment rights of speech and association, and undermines our democratic values. Since the Church Committee investigation, one of the main reasons for maintaining barriers between domestic criminal investigations and foreign intelligence operations has been a concern that the no-hold-barred methods of the FBI could not be brought back into this country.

The Church Committee recommended a series of safeguards to restrict the collection of information about Americans by the CIA, the National Security Agency, and other U.S. intelligence agencies. The Attorney General issued guidelines for FBI investigations and Presidents issued Executive Orders requiring procedures approved by the Attorney General for the collection and retention of information about Americans by federal agencies. These guidelines and procedures have served for the past 25 years as a stable framework that, with rare exceptions, has not allowed previous abuses to recur.

The most significant legislative result of the Church Committee investigation was the Foreign Intelligence Surveillance Act of 1978 which required court orders for national security electronic surveillance in the United States. No longer did the Executive branch have exclusive control over the vast powers of U.S. intelligence to conduct wiretappping, bugging, and other communications monitoring in this country. Surveillance was limited to foreign powers and agents of foreign powers, and the statutory probable cause standard for targeting an American as an "agent of a foreign power" required a showing of clandestine intelligence activities, sabotage, or international terrorist activities on behalf of a foreign power. Americans could not be targeted solely on the basis of activities protected by the First Amendment. Surveillance of Americans under FISA was limited to counterintelligence purposes to defend the nation against foreign spying and terrorism. Americans could not be considered "agents of a foreign power" on the basis of their lawful business or political activities or their relationship to foreign governments or organizations.

The Congress has been cautious in the decades following the revelations of the Church Committee about allowing use of criminal justice information for other purposes and, specifically, on sharing such information with intelligence agencies. In 1979 Attorney General Benjamin Civiletti testified before the House Judiciary Subcommittee on Constitutional Rights that the guidelines that the information was kept outside the Bureau . . . will have to be very specific. We will have to be very certain the dissemination is lawful, meets the same standards of certainty, of intent, which is the basic reason for the Court, the Congress, and the investigation. . . ." On the issue of FBI sharing with the CIA, Attorney General Civiletti said "you have to be extremely careful in working out, pursuant to the law, the information which is being exchanged, what its purpose is, how it was obtained and collected, so that you are not inadvertently, out of a sense of cooperation or efficiency, perpetuating or corrupting the fact that the CIA's main duty is for foreign intelligence purposes, no charter, no responsibility, and not duty performance, no mission to investigate criminal acts in the United States." The bill we are passing today makes potentially sweeping changes in the relationships between the law enforcement and intelligence agencies. In the current crisis, there is justification for expanding authority specifically for counterintelligence to detect and prevent international terrorism. I support the FBI request for broader authority to "pick up" FISA wiretaps to access information to records without having to meet the statutory "agent of a foreign power" standard, because the Fourth Amendment does not normally apply to such techniques and the FBI has comparable authority in its criminal investigations. However, I have insisted that this authority to investigate U.S. persons be limited to counterintelligence investigations conducted to protect against international and spying activities and that such investigations may not be based solely on activities protected by the First Amendment. None of the changes in FISA would authorize investigations of Americans for the broadened and ambiguous purpose of collecting "foreign intelligence" generally. In that respect, the bill adheres to the basic principles recommended by the Church Committee.

The gravest departure from that framework, and the one with most potential for abuses, is the new and unprecedented statutory authority for sharing of "foreign intelligence" from criminal investigations with "any other Federal law enforcement, intelligence, protective, national defense, or national security official." The Church Committee warned of the political abuse of the dissemination of intelligence from domestic investigations. Intelligence was disseminated to the White House to track the contacts of members of Congress with particular foreign embassies. Information was volunteered to the White House about Administration critics and other political figures. The Church Committee found "excessive dissemination of large amounts of relatively useless or totally irrelevant information" to the White House that was not evaluated and "thus exaggerated the dangers.

The Church Committee recommended permitting FBI dissemination of personally identifiable information about Americans to intelligence, military and other national security agencies in two areas—"preventive intelligence investigations of terrorist activities" and "preventive intelligence investigations of hostile foreign intelligence activities." This has been substantially the practice under the Attorney General's guidelines and Executive order procedures since then.

The new authority to disseminate "foreign intelligence" from criminal investigations, including grand jury information, has been substantially about inviting to abuse without special safeguards. Fortunately, the final bill includes a provision, which was not in the Administration's original proposal, to maintain some degree of judicial oversight of the dissemination of grand jury information. Within a "reasonable time" after the disclosure of grand jury information, a government attorney shall file under seal a notice with the court stating the fact that such information was disclosed and the department of FISA agencies to which the disclosure was made. No such judicial role is provided for the disclosure of information from wiretaps and
other criminal investigative techniques including the infiltration of organizations with informants. However, that authority to disclose without judicial review is subject to the sunset in four years. Other safeguards can, if used properly, minimize the unnecessary disclosure of “foreign intelligence” that identifies an American. When the information comes from grand juries or wiretaps, the Attorney General is required under the bill to establish procedures for the disclosure of information that identifies a United States person. The Senate Judiciary Committee will want to take a very close look at these procedures. Although not required under the bill, such procedures would also be desirable for disclosure of information from criminal investigations generally, as permitted under section 203(d). In section 905, where the bill requires disclosure to intelligence agencies from criminal investigations, the Attorney General is authorized to make exceptions and must issue implementing procedures. Again, these procedures will be closely examined by the Senate Judiciary Committee.

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

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

The final bill includes a long overdue remedy for authorized disclosure of information obtained from electronic surveillance under FISA and under criminal procedures. If the government monitors the conversations of a person under a warrant with wiretap procedures of title 18 or FISA and that information is disclosed without proper authority, the aggrieved person may recover money damages from the Federal Government. Such improper disclosure is what happened in the past when the FBI passed information from the electronic surveillance of Dr. Martin Luther King to selected private individuals and organizations in an effort to discredit Dr. King. The government itself would be liable, in addition to individuals and organizations, for protecting related criminal investigations or prosecutions and classified operations under the Foreign Intelligence Surveillance Act.

As a deterrent against malicious leaks, this provision wisely includes procedures for administrative discipline as well as the civil remedy. When a court finds that the Attorney General or the appropriate agency determines that there is serious question about whether or not an employee willfully disclosed information without proper authority, disciplinary proceedings will be initiated. If the agency head decides that discipline is not warranted, he or she must notify the Inspector General with jurisdiction over the agency and provide the reasons for the decision not to impose discipline. The Inspector General also has credit for developing this proposal, and the Department of Justice has worked with Representative Frank to ensure that the procedures for civil discovery take into account the needs for protecting related criminal investigations or prosecutions and classified operations under the Foreign Intelligence Surveillance Act.

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

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

Congress acted swiftly to help the victims of September 11. Within 10 days, we passed legislation to establish a Victims Compensation Program, which will provide immediate assistance to those most affected by this national tragedy. I am proud of our work on that legislation, which will expedite payments to thousands of Americans whose lives were so suddenly shattered.

But, now more than ever, we should remember the tens of thousands of Americans whose needs are not being met—the victims of crimes that have not made the national headlines. Just one day before the events that have so disrupted our lives, I had the privilege to express my concern that we were not doing more for crime victims. I noted that the pace of victims legislation had slowed, and that many opportunities for progress had been squandered. I suggested that this year, when we had a golden opportunity to make significant progress in this area by passing S. 783, the Leahy-Kennedy Crime Victims Assistance Act of 2001, we should not be imposing artificial caps on VOCA spending while substantial unmet needs continue to exist. Section 621 of the USA Act replaces the cap with a self-regulating system that will ensure stability and protection of Fund assets, while allowing more money to be distributed to the States for victim compensation and assistance.

Other provisions included from S. 783 will also make an immediate difference in the lives of victims, including victims of terrorism. Shortly after the Oklahoma City bombing, I proposed and the Congress adopted the Victims of Terrorism Act of 1995. This legislation authorized the Office for Victims of Crime (OVC) to set aside an emergency reserve of up to $50 million as part of the Crime Victims Fund. The emergency reserve was intended to serve as a "rainy day" fund to supplement compensation and assistance...
grants to States to provide emergency relief in the wake of an act of terrorism or mass violence that might otherwise overwhelm the resources of a State’s crime victim compensation program and crime victim assistance services. Last month’s disaster created vast need in all but the Federal reserve. Section 621 of the USA Act authorizes OVC to replenish the reserve with up to $50 million, and streamlines the mechanism for replenishment in future years.

Another critical provision of the USA Act will enable OVC to provide more immediate and effective assistance to victims of terrorism and mass violence occurring within the United States. I proposed this measure last year as an amendment to the Justice for Victims of Terrorism Act, but was compelled to drop it to achieve bipartisan consensus. I am pleased that we are finally getting it done this year.

These and many VOCA reforms in the USA Act are long overdue. Yet, I regret that we are not doing more. In my view, we should pass the Crime Victims Assistance Act in its entirety. In addition to the provisions that are included in today’s bill, this legislation provides for reforms making clear law to establish enhanced rights and protections for victims of Federal crime. It also proposes several programs to help States provide better assistance for victims of State crimes. I agree that we have not done more for other victims of recent terrorist attacks. While all Americans are numbed by the heinous acts of September 11, we should not forget the victims of the 1998 embassy bombings in East Africa. Eleven Americans and many Kenyan and Tanzanian nationals employed by the United States lost their lives in that tragic incident. It is my understanding that compensation to the families of these victims has in many cases not been provided. I also hope that OVC will use a portion of the newly replenished reserve fund to remedy any inequity in the way that these individuals have been treated.

We cannot speak of the victims of the September 11 without also noting that Arab-Americans and Muslims in this country have become the targets of hate crimes, harassment, and intimidation. I applaud the President for speaking out against and condemning such acts. We must also endeavor to demonstrate by action that all religions are embraced in this country. I also commend the FBI Director for his periodic reports on the number of hate crime incidents against Arab-American and Muslims that the FBI is aggressively investigating and making clear that this conduct is taken seriously and will be punished.

The USA Act contains, in section 102, a sense of the Congress that crimes and discrimination against Arab-American and Muslims and that the FBI is aggressively investigating and making clear that this conduct is taken seriously and will be punished.

Many of us would like to do more, and finally enact effective hate crimes legislation, but the Administration has asked that the debate on that legislation be postponed. One of my greatest regrets regarding the negotiations in this bill was that objections prevented the inclusion of the Hate Crimes Prevention Act, S. 625, from being included in the USA Act.

The Administration’s initial proposal was entirely focused on Federal law enforcement. Yet, we must remember that State and local law enforcement officers have critical roles to play in preventing and investigating terrorist acts. I am pleased that the bill we consider today recognizes this fact.

As a former State prosecutor, I know that State and local law enforcement officers are often the first responders to a crime. On September 11, the nation saw that the first on the scene were the heroic firefighters, police officers and emergency personnel in New York City. Public safety officers, many of whom gave the ultimate sacrifice, remind us of how important it is to support our State and local law enforcement partners. The USA Act provides three critical measures to support for our State and local law enforcement officers in the war against terrorism.

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

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

This provision builds on the new law changes that were enacted last year. Senator SCHUMER and Congressman NAPOLITANO speed the benefit payment process for families of public safety officers killed in the line of duty in New York City, Virginia, and Western Pennsylvania, on September 11.

We have raised the total amount of Public Safety Officers’ Benefits Program payments from approximately $150,000 to $250,000. This provision retroactively goes into effect to provide much-needed relief for the families of the brave men and women who sacrificed their own lives for their fellow Americans during the year. Although this increase in benefits can never replace a family’s tragic loss, it is the right thing to do for the families of our fallen heroes. I want to thank Senator BIDEN and Senator HATCH for their bipartisan leadership on this provision.

We expand the Department of Justice Regional Information Sharing Systems Program to promote information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and authorize a doubling of funding for this year and next year. The RISS Secure Intranet is a nationwide law enforcement network that already allows secure communications among the more than 5,700 Federal, State and local law enforcement agencies. Effective communication is key to effective law enforcement efforts and will be essential in our national fight against terrorism.

The RISS Program enables its members agencies to send secure, encrypted ‘Smartgate’ cards and readers to secure their communications systems. The FBI agency in Philadelphia called soon after to request more Smartgate cards and readers. The FBI Headquarters called RISS officials to request ‘Smartgate’ cards and readers to secure their communications systems.

During negotiations following initial passage of the Senate and House bills, we added two new provisions to support State and local governments in the fight against terrorism. These provisions were to: 1, allow for the Senates’ $50 million program to provide: 1, additional flexibility to purchase needed equipment; 2, training and technical assistance to State and local responders; and 3, a more equitable allocation of funds to all States.

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

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

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

The USA Act includes my proposals to provide the substantial and long overdue assistance for our law enforcement and border control efforts along the Northern Border. My home State of Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement. The number of persons applying for visas or seeking to enter the United States at Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement. The number of persons applying for visas or seeking to enter the United States at Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement. The number of persons applying for visas or seeking to enter the United States at Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement. The number of persons applying for visas or seeking to enter the United States at Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement. The number of persons applying for visas or seeking to enter the United States at Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement.

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

The USA Act also includes important proposals to enhance data sharing. The bill, in section 403, directs the Attorney General and the FBI Director to give the State Department and INS access to the criminal history information in the FBI’s National Crime Information Center (NCIC) database, as the Administration and I both proposed. The Attorney General is directed to report back to the Congress in two years on progress in implementing this recommendation. The Administration has also proposed the National Information Sharing Technology Act of 2001, to make it easier for the State Department to share information with foreign governments for aid in terrorist investigations.

The USA Act contains a number of provisions intended to improve and update the Federal criminal code to address better the nature of terrorist activity and assist the FBI in translating foreign language information collected. I will mention just a few of these provisions.

The truth certainly seems self-evident that all the best surveillance techniques in the world will not help this country defend itself from terrorist attack if the information cannot be understood in a timely fashion. Indeed, within days of September 11, the FBI Director issued an employment ad on national TV calling upon Arabic speakers to apply for a job as an FBI translator. This is a dire situation that demands immediate action. The Administration has also proposed the National Information Sharing Technology Act of 2001, to make it easier for the State Department to share information with foreign governments for aid in terrorist investigations.

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The true penalty should be different for those who come to this country without difficulty and then begin to harm from gaining entry. At the same time, we must work with the Canadians to allow speedy crossing to legitimate visitors and foster the continued growth of trade which is beneficial to both countries.

Senators Cantwell and Schumer in the Committee and Senators Murray and Dorgan have been especially strong advocates of these provisions and I thank them for their leadership. In addition, the USA Act, in section 403(b), authorizes the Attorney General to waive the FTE cap on INS personnel in order to address the national security needs of the United States on the northern border. Now more than ever, we must patrol our border vigilantly and prevent those who wish America harm from gaining entry. At the same time, we must work with the Canadians to allow speedy crossing to legitimate visitors and foster the continued growth of trade which is beneficial to both countries.

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

First, we have trimmed the list of crimes that may be considered as terrorism predicates in section 808 of the bill. This shorter, more focused list, to be codified at 18 U.S.C. § 2332(g)(5)(B), more closely reflects the sort of offenses committed by terrorists.

Second, we have provided, in section 809, that the current 8-year limitations period for this new set of offenses will remain in place, except where the commission of the offense resulted in, or created a risk of, death or serious bodily injury.

Third, rather than make an across-the-board, one-size-fits-all increase of the penalties for every offense on the list, without regard to the severity of the offense, we have made, in section 810, more measured increases in maximum penalties that are proportionate, including life imprisonment or lifetime supervised release in cases in which the offense resulted in death. We have also
Senator WYDEN, who worked strenuously in the Senate knows more about law enforcement provision from the bill. No provision of the USA Act. This aban-
donment has removed a critical law enforcement provision from the bill. No one in the Senate knows more about the importance of this provision than Senator WYDEN, who worked strenuously to include the McCade law in this bill. His efforts and mine.

The McCade law has a dubious his-
tory, to say the least. At the end of the 106th Congress, it was slipped into an omnibus appropriations bill over the objection of every member of the Senate Judiciary Committee. Since it was adopted, it has caused numerous prob-
tems for Federal prosecutors, and we must amend this bill in order to make improvements to this law in the Internet Security Act, which passed the Senate as part of another bill. Our work is included in section 814 of the USA Act. This section would amend the law to clarify the appropriate jurisdiction over such a case, even if it was committed by suspected ter-
rorists. Clearly, there is an urgent need for strong criminal legislation to deter attacks against mass transportation systems. Section 801 will fill this gap.

The Computer Fraud and Abuse Act, 18 U.S.C. § 1030, is the primary Federal criminal statute prohibiting computer frauds and hacking. I worked with Senator HATCH in the last Congress to make improvements to this law in the Internet Security Act, which passed the Senate as part of another bill. Our work is included in section 814 of the USA Act. This section would amend the statute to clarify the appropriate jurisdiction over such a case, even if it was committed by suspected terrorists.

The Federal definition of "loss" to cover any reasonable cost to the victim in re-
spending to a computer hacker. Cal-
ulation of loss is important both in de-
termining whether the $5,000 juris-
dictional hurdle in the statute is met, and, at sentencing, in calculating the appropriate guideline range and resti-
tution amount.

(2) The bill amends the definition of "protected computer," to include qual-
ified computers even when they are physically located outside of the United States. This clarification will preserve the ability of the United States to assist in international hack-
ing cases and finally, this section eliminates the current directive to the Sentencing Commission requiring that all violations, including misdemeanor violations, of certain provisions of the Computer Fraud and Abuse Act be pun-
ished with a term of imprisonment of at least one year.

Borrowing from a bill introduced in the last Congress by Senator BRIDEN, the USA Act contains a provision in section 817 to strengthen our Federal laws relating to the threat of biological weapons. At a time when the national headlines are filled with news about anthrax and other biological threats, it is fitting that the House added this provision back to the bill after dropping it from H.R. 2975. Unfortunately, the amendment added by the regu-
larly proposed by the Administration, ini-
tially proposed and later with-
cluded in the bill to accommodate the Secret Service by in-
cluding these provisions in the bill to expand Electronic Crimes Task Forces and to clarify the authority of the Sec-
ett Service to investigate computer crimes.

The Secret Service is committed to the development of new tools to com-
bat the growing areas of financial crime, computer fraud, and cyberterrorism. Recognizing a need for law enforcement, private industry and academia to pool their resources, skills, and vision to combat cyberterrorism, the United States Department of the Treasury created the New York Elec-
tronic Crimes Task Force (NYECTF). This highly successful model includes
over 250 individual members, including 50 different Federal, State and local law enforcement agencies, 100 private companies, and 9 universities. Since its inception in 1995, the NYECTF has successfully investigated a range of financial and similar task forces in cities and regions across the country where critical infrastructure may be vulnerable to attacks from terrorists or other cyber-criminals.

Section 506 of the USA Act gives the Secret Service concurrent jurisdiction to investigate offenses under 18 U.S.C. § 1030 relating to fraud and related activity in connection with computers. Prior to the 1996 amendments to the Computer Fraud and Abuse Act, the Secret Service was authorized to investigate violations of Section 1030, pursuant to an agreement between the Secretary of Treasury and the Attorney General. The 1996 amendments, however, concentrated Secret Service jurisdiction on certain specified subsections of section 1030. The current amendment would return full jurisdiction to the Secret Service and would allow the Justice and Treasury Departments to decide on the appropriate work-sharing balance between the two facilities. The amendment will enable the Secret Service to investigate a wide range of potential White House network intrusions, as well as intrusions into remote sites (outside of the White House) that could impact the safety and security of its protectees, and to continue its missions to protect the nation’s critical infrastructure and financial payment systems.

The USA Act also authorizes, for the first time, a counter-terrorism fund in the 1994 Omnibus Appropriations Act of the United States to reimburse Justice Department for any costs incurred in connection with the fight against terrorism. I first authored this counter-terrorism fund in S. 1319, the 21st Century Department of Justice Appropriations Authorization Act, which Senator Hatch and I introduced in August. Specifically, this counter-terrorism fund may be used: (1) to reestablish an office or facility that has been damaged or destroyed as the result of any domestic or international terrorism incident; (2) to provide support to counter, investigate, or prosecute domestic or international terrorism, including paying rewards in connection with these activities; (3) to conduct terrorism threat assessments of Federal agencies; and (4) for costs incurred in connection with detaining individuals in foreign countries who are accused of acts of terrorism in violation of United States law.

This bill provides enhanced surveillance procedures for the investigation of terrorism and other crimes. The challenge before us has been to strike a reasonable balance to protect both the security and the liberties of our people. In some respects, the changes made are appropriate and important ones to update surveillance and investigative procedures in light of new technology and experience with current law. Yet, as I noted at the beginning of my statement, in other respects, I have deep concerns that we may be increasing surveillance powers and the sharing of criminal justice information without adequate community or congressional scrutiny. The bill, however, does not allow the determination of probable cause, no matter where the property to be searched is located. This will not only save time by avoiding having to bring up-to-speed another judge in another jurisdiction where the property is located, but also serves privacy and Fourth Amendment interests in ensuring that the most knowledgeable judge makes the determination of probable cause. The bill, in section 209, also authorizes voice mail messages to be seized on the authority of a probable cause search warrant rather than through the more burdensome and time-consuming process of a wiretap.

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

Finally, the bill, in section 212, permits, but does not require, an electronic communications service to disclose the contents of and subscriber information about communications in emergencies involving the immediate danger of death or serious physical injury. Under current law, if an ISP’s network receives an emergency e-mail, a police department may be required to issue a search warrant for the ISP's e-mail records under the Fourth Amendment. The amendment would clarify that the ISP need not issue the search warrant but may respond to an emergency call immediately without a search warrant, as long as the ISP is not made to disclose the content of the communication to law enforcement (or to any other third party as it sees fit). See 18 U.S.C. §2702(b)(3). On the other hand, current law does not expressly authorize the ISP to voluntarily provide information to law enforcement with the identifier, home address, and other subscriber information of the user making the threat. See 18 U.S.C. §2703(c)(1)(B),(C) (permitting disclosure
to government entities only in re-

sponse to legal process). In those cases

where the risk of death or injury is im-

mense, the law should not require pro-

viders to sit idly by. This voluntary dis-

closure, however, in no way creates an

affirmative obligation to review cus-

tomer communications—in search of

such imminent dangers.

Also, under existing law, a provider

even one providing services to the pub-

lic may be required to disclose a cus-

tomer’s communications—to law en-

forcement or anyone else—in order to

protect its rights or property. See 18

U.S.C. §2702(b)(5). However, the current

statute does not expressly permit a

provider voluntarily to disclose con-

tent records (such as a subscriber’s

login records) to law enforcement for

purposes of self-protection. See 18

U.S.C. §2703(c)(1)(B). Yet the right to
disclose the content of communica-
tions necessarily implies the less intru-
sive ability to disclose non-content

records. Cf. United States v. Auler,

539 F.2d 642, 646 n.9 (7th Cir. 1976) (phone

company’s authority to monitor and disclose
dispositions to prevent an attempt

gains against fraud necessarily implies right
to commit lesser invasion of using, and
disclosing fruits of, pen register device)

citing United States v. Freeman, 524

F.2d 337, 341 (7th Cir. 1975)). Moreover,
as a practical matter providers must

have the right to disclose the facts sur-

rounding attacks on their systems.

When a telephone carrier is defrauded by

a subscriber, or when an ISP’s au-

thorized user launches a network in-

trusion, a carrier or ISP may be

required to have the legal ability to re-

port the complete details of the crime
to law enforcement. The bill clarifies

that service providers have the statu-

tory authority to make such disclo-

sures.

There is consensus that the existing

legal procedures for pen register and

trap-and-trace authority are anti-

guished and need to be updated. I have

been proposing ways to update the pen

register and trap and trace statutes for

several years, but not necessarily in

the same ways as the Administration

initially proposed. In fact, in 1998, I

introduced with then-Senator Ashcroft,

the E-PRIVACY Act, S. 2067, which

proposed changes in the pen register

laws. In 1999, I introduced the E-

RIGHTS Act, S. 934, also with pro-

posals to update the pen register laws.

Again, in the last Congress, I intro-

duced the Electronic Communications

Security Act, S. 2430, on April 13, 2000, that proposed: 1,

changing the pen register and trap and

trace device law to give nationwide

effect to pen register and trap and trace

orders obtained by Government attor-

neys or the Department of Justice;

2, clarifying that such de-

vices can be used for computer trans-

missions to obtain electronic address-
es, not just on telephone lines; and

the case of a refusal to disclose, providing for

meaningful judicial review of govern-

ment attorney applications for pen reg-

isters and trap and trace devices.

As the outline of my earlier legisla-
tion suggests, I have long supported

modernizing the pen register and trap

and trace device laws by modifying the

statutory language to cover the use of

these orders on computer trans-
misions; to remove the jurisdictional

limits on service of these orders; and to

update the judicial review procedure,

which, unlike any other area in crimi-

nal procedure, bars the exercise of judi-

cial discretion in reviewing the jus-

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notion of obtaining access to a "virtual line," updating the law to keep pace with current technology is a better course.

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

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

While this is an improvement, the FBI and Justice Department are shortsighted in their refusal to define these terms. We should be clear about the consequence of not providing definitions for these new terms in the pen/trap device statutes. These terms will be decisive for the courts in the context of criminal cases where pen/trap devices have been used and challenged by defendants. If a court determines that a pen register has captured "content," which the FBI admits such devices do, in violation of the Fourth Amendment, suppression may be ordered, not only of the pen register evidence by any other evidence derived from it. We are leaving the courts with little or no guidance of what is covered by "addressing" and "routing." The USA Act also requires the government to use reasonably available technology that limits the interception under the pen/trap device laws "so as not to include the contents of any wire or electronic communications." This limitation on the technology used by the government to execute pen/trap orders is important since, as the FBI advised me in June 2000, pen register devices "do capture all electronic impulses transmitted by the facility on which they are attached, including such impulses transmitted after a phone call is connected to the called party. . . . This would include a caller's message . . . the call is connected could reflect the electronic banking transactions a caller makes, or the electronic ordering from a catalogue that a customer makes over the telephone, or the electronic ordering of a prescription drug."

This transactional data intercepted after the call is connected is "content." As the Justice Department explained in a May 1998 letter to then-House Judiciary Committee Chairman James Sensenbrenner, "the interception of the electronic impulses that a caller necessarily generated in attempting to direct the phone call" does not constitute a "search" requiring probable cause since "no part of the substantive information transmitted after the call" by the "inherent statutory standard" is obtained. But the Justice Department made clear that "all of the information transmitted after a phone call is connected to the called party . . . is substantive in nature. The June 1st pen/trap device "contents of the call: They are not used to direct or process the call, but instead convey certain messages to the recipient."

When I added the direction on use of reasonably available technology (codified as 18 U.S.C. 3121(c)) to the pen register statute as part of the Communications Assistance for Law Enforcement Act (CALEA) in 1994, I recognized that these devices collected content and that such collection was unconstitutionally broad. However, the FBI stated in June 2000 that pen register devices for telephone services "continue to operate as they have for decades" and that there has been no change . . . that would better restrict, the recording or decoding of electronic or other impulses to the dialed and signaling information utilized in call processing." Perhaps, if there were meaningful judicial review and account-ability, the House of Representatives would take the statutory direction more seriously and actually implement it.

Due in significant part to the fact that pen/trap devices in use today collect "content," I have sought in legislation introduced over the past few years to update and modify the judicial review procedure for pen register and trap and trace devices. Existing law requires an attorney for the government to certify that the information likely to be obtained by the installation of a pen register device will be relevant to an ongoing criminal investigation. The court is required to issue an order upon seeing the prosecutor's certification. The court is not authorized to look behind the certification to evaluate the judgment of the prosecutor.

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

Some have called this change a "roll-back" in the statute, as if the concept of allowing meaningful judicial review was an extreme position. To the contrary, this is a change that the Clinton Administration supported in legislation transmitted to the Congress last year. This is a change that the House Judiciary Committee also supported last year. In the Electronic Communications Privacy Act, H.R. 5018, that the Committee proposed that before a pen/trap device "could be ordered installed, the government must first demonstrate to an independent judge that specific and articulable facts reasonably indicate that a crime has been, is being, or will be committed, and information likely to be obtained by such installation and use . . . is relevant to an investigation of that crime." (Report 106-932, 106th Cong. 2d Sess., Oct. 4, 2000, p. 19). Unfortunately, the Bush Administration has taken a contrary position, and has rejected this change in the judicial review process.

Currently, an owner or operator of a computer that is accessed by a hacker has no means for the means for the hacker to reach a third computer, cannot simply consent to law enforcement monitoring of the computer. Instead, because the owner or operator is not technically a party to the communication, law enforcement needs wiretap authorization under Title III to conduct such monitoring. I have long been interested in closing this loophole. Indeed, when I asked about this problem, the FBI explained to me in June 2000 that:

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

I therefore introduced as part of the Internet Security Act, S. 2430, in 2000,
an exception to the wiretap statute that would explicitly permit such monitoring without a wiretap if prior consent is obtained from the person whose computer is being hacked through and used to send "harmful interference to a lawful computer system," computer system wiretapping.

The Administration initially proposed a different formulation of the exception that would have allowed an owner/operator of any computer connected to the Internet to consent to FBI wiretapping of any user who violated a workplace computer use policy or online service term of service and was thereby an "unauthorized" user. The Administration's proposal was not limited to computer hacking offenses under 18 U.S.C. 1030 or to conduct that caused harm to a computer or computer system. The Administration rejected these refinements to their proposed wiretap exception, but did agree, in section 217 of the USA Act, to limit the authority for wiretapping with the consent of an employer to communications of unauthorized users without an existing subscriber or other contractual relationship with the owner/operator.

This bill will make significant changes in the sharing of confidential criminal justice information with various Federal agencies. For those of us who have been concerned about the leaks from the FBI that can irremediably damage reputations of innocent people and frustrate investigations by alerting suspects to flee or destroy material evidence, the Administration's insistence on the broadest authority to disseminate such information, without any judicial check, is disturbing. Nonetheless, I believe we have improved the Administration's initial proposal in responsible ways. Only time will tell whether the improvements we were able to reach agreement on are sufficient.

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

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

For this reason, and others, the Justice Department at the time opposed an amendment proposed by Senators Kyl and Feinstein to S. 2507, the Intelligence Authorization Act for FY 2001, that would have allowed the sharing of foreign intelligence "intelligence information collected from wiretaps with the intelligence community. I deferred to the Justice Department on this issue and sought changes in the proposed amendment to address the Department's concerns that this provision was not only unnecessary but also "could have significant implications for prosecutions and the discovery process in litigation," "raises significant issues regarding the sharing of matters occurring before attorney for the government, such as the judge who authorized the wiretap, to the extent appropriate to the necessary to assist the attorney and an attorney for the government, such other government personnel as are necessary to assist the attorney and another grand jury. Further disclosure is also allowed as specifically authorized by a court order.

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

Moreover, the rubric of "national security" has been used to justify some disclosures where specifically authorized by statute whereas "national security" is not.

Current law requires that such information be used only for law enforcement purposes. This provides an assurance that highly intrusive invasions of privacy are confined to the purpose for which they have been approved by a court, based on probable cause, as required by the Fourth Amendment. Current law calls for minimization procedures to ensure that the surveillance does not gather information about private and personal conduct and conversations that are not relevant to the criminal investigation.

When the Administration reneged on the agreement regarding court supervision, we turned to other safeguards and were more successful in changing other questionable features of the Administration's bill. The Administration accepted my proposal to strike the term "national security" from the description of wiretap information that may be shared throughout the executive branch and replace it with "foreign intelligence" information. This change is important in clarifying what information may be disclosed because the term "foreign intelligence" is specifically defined by statute whereas "national security" is not.

Moreover, the rubric of "national security" has been used to justify some particularly unsavory activities by the government in the past. We must have at least some assurance that we are not embarked on a course that will lead to a repetition of these abuses because our statute does not more clearly define what type of information is subject to disclosure. In addition, Federal officials who receive the information
may use it only as necessary to the conduct of their official duties. Therefore, any disclosure or use outside the conduct of their official duties remains subject to all limitations applicable to their retention and dissemination of information of the type of information received. This includes the Privacy Act, the criminal penalties for unauthorized disclosure of electronic surveillance information under chapter 119 of title 18, and the contempt penalties for willful disclosure, which are applicable in the case of the grand jury information. In addition, the attorney general must establish procedures for the handling of information that identifies a United States person, such as the restrictions on retention and dissemination of foreign intelligence and counterintelligence information pertaining to United States persons currently in effect under Executive Order 12333.

While these safeguards do not fully substitute for court supervision, they can provide an assurance against misuse of the private, personal, and business information about Americans that is acquired in the course of criminal investigations and that may flow more widely in the intelligence, defense, and national security worlds.

The wiretap statute was not the only provision in which the administration sought broader authority to disclose highly sensitive investigative information, it also proposed broadening Rule 6(e) of the Federal Rules of Criminal Procedure to allow the disclosure of information relating to terrorism and national security obtained from grand jury proceedings to a broad range of officials in the executive branch of government. As with wiretaps, few would disagree that information learned in a criminal investigation that is necessary to combating terrorism or protecting the national security ought to be shared with the appropriate intelligence and national security officials.

The question is how best to regulate and limit such disclosures so as not to compromise the important policies of secrecy and confidentiality that have long applied to grand jury proceedings. I proposed that we require judicial review of requests to disclose terrorism and foreign intelligence information to officials in the executive branch beyond those already authorized to receive such disclosures. Once again, the administration reneged on its promise to my proposal on Sunday, September 30, but reneged within two days. As a result, the bill does not provide for any judicial supervision of the new authorization for dissemination of grand jury information throughout the executive branch. The bill does contain the safeguards that I have discussed with respect to law enforcement wiretap information. However, as with the new wiretap disclosure authority, I am troubled by this issue and plan to exercise the close oversight of the Judiciary Committee to make sure it is not being abused.

The Administration also sought a provision that would allow the sharing of foreign intelligence information throughout the executive branch of the government notwithstanding any current legal prohibition that may prevent or limit its disclosure. I have resisted this proposal more strongly than any other provision in the bill. What concerns me is that it is not clear what existing prohibitions this provision would affect beyond the grand jury secrecy rule and the wiretap statute, which are already covered by other provisions. Even then the Administration, which wrote this provision, has not been able to provide a fully satisfactory explanation of its scope.

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

Another issue that has caused serious concern relates to the Administration’s proposal for so-called “sneak and peek” search warrants. The House Judiciary Committee dropped this proposal from the bill. However, the Administration believes impede the necessary sharing of information pertaining to United States persons currently in effect under Executive Order 12333.

The Administration’s original proposal would have ignored some of the key limitations created by the law for sneak and peek search warrants. First, it would have broadly authorized officers not only to conduct surreptitious searches, but also to secretly seize any type of property without any showing of necessity. This type of warrant, which has never been addressed by a published decision of a Federal appellate court, has been referred to in a law review article written by me, “PHI” and “SNEAK AND STEAL” warrant. See K. Corr, “Sneaky But Lawful: The Use of Sneak and Peek Search Warrants,” 43 U. Kan. L. Rev. 1103, 1113 (1995).

The Administration’s proposal would simply have adopted the procedural requirements of 18 U.S.C. § 2705 for providing delayed notice of a wiretap. Among other things, this would have extended the permissible period of delay to a maximum of 90 days, instead of the presumptive seven-day period provided in the caselaw on sneak and peek warrants. I was able to make significant improvements in the Administration’s original proposal that will help to ensure that the government’s authority to obtain sneak and peek warrants is not abused. First, the provision that is now in section 213 of the bill prohibits the government from seizing any tangible property or any wire or electronic communication or stored electronic information unless it shows a particularized showing of reasonable necessity for the seizure.

Thus, in contrast to the Administration’s original proposal, the provision is that the warrant will authorize only a search unless the government has made a specific showing of an additional need for a search. Second, the provision now requires that notice be given within a reasonable time of the execution of the warrant rather than giving a blanket authorization for up to 90 days. This delay gives a reasonable time, of course, will depend upon the circumstances of the particular case. But I would expect courts...
to be guided by the teachings of the Second and the Ninth Circuits that, in the ordinary case, a reasonable time is no more than seven days.

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

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

The Administration proposed that the period for FISA surveillance be changed from 90 days to one year in these cases. This proposal did not ensure adequate review after the initial stage to ensure that the probable cause determination remained justified over time. Therefore, the bill changes the initial period of the surveillance from 90 to 120 days and changes the period for extensions from 90 days to one year.

The initial 120-day period provides for a review of the results of the surveillance or search directed at an individual before one-year extensions are requested. These changes do not affect surveillance of a United States person.

The bill also changes the period for execution of an order for physical search under section 215, from 45 to 90 days. This change applies to United States persons as well as foreign nationals. Experience since physical search authority was added to FISA in 1994 indicates that 45 days is frequently not long enough to plan and carry out a covert physical search. There is no change in the restrictions which provide that United States persons may not be the targets of search or surveillance under FISA unless a judge finds probable cause. The bill changes the second element of probable cause to require belief that the target is an agent of a foreign power, in addition to the belief that there is probable cause to believe that the target is engaged in activities that are harmful to the national security of the United States or the conduct of the foreign affairs of the United States.

The bill, in section 206, seeks to ensure that the special court established under FISA has sufficient judges to handle the workload. While changing the duration of orders and extensions will reduce the number of cases in some categories, the bill retains the court's ability to order pen registers and trace cases and expands the court's responsibility for issuing orders for records and other tangible items needed for counterintelligence and counterterrorism investigations. Upon reviewing the court's requirements, the Administration requested an increase in the number of Federal district judges designated for the court from seven to 11 of whom no less than three shall reside within 20 miles of the District of Columbia. The latter provision ensures that more than one judge is available to handle cases on short notice and reduces the need to invoke the alternative Attorney General approval process under the emergency authorities in FISA.

Other changes in FISA and related national security laws are more controversial. In several areas, the bill reflects a serious effort to accommodate the requests for expanded surveillance authority with the need for safeguards against misuse, especially the gathering of intelligence about the lawful private activities of Americans. One of the most difficult issues was whether to eliminate the existing statutory “agent of a foreign power” standards for surveillance and investigative activities that pose important privacy concerns, but not at the level that the Supreme Court has held to require a court order and a probable cause finding under the Fourth Amendment. These include pen register and trap and trace orders for access to records that have statutory protection. The latter include bank, and credit records. Lawful political dissent and protest by American citizens against the government may not be the targets of search or surveillance and search when “a purpose” is to obtain foreign intelligence information. However, the “agent of a foreign power” standard is more stringent than the standard under comparable criminal law enforcement procedures which require only a showing of relevancy to a criminal investigation. The FBI’s experience under existing laws since July 1993 at various time over the past 15 years has been that, in practice, the requirement to show reasonable suspicion that a person is an “agent of a foreign power” has been almost as burdensome as the probable cause requirement. The Administration’s aim was to allow FISA surveillance and search for law enforcement purposes, so long as there was at least some element of a foreign intelligence purpose. This proposal is more controversial than the Administration’s original proposal to extend the period for FISA surveillance and search to one year. The Justice Department opinion did not define the constitutional status of the proposal. Instead, it addressed a suggestion made by Senator FEINSTEIN to the Attorney General regarding the Justice Department opinion provided by the Justice Department. The Justice Department opinion did not favor the constitutional proposal of the original proposal. Instead, it addressed a suggestion by Senator FEINSTEIN to the Attorney General regarding the Justice Department opinion provided by the Justice Department. The Justice Department opinion did not define the constitutional status of the proposal. Instead, it addressed a suggestion made by Senator FEINSTEIN to the Attorney General regarding the Justice Department opinion provided by the Justice Department.
Section 218 of the bill adopts “significant purpose,” and it will be up to the courts to determine how far law enforcement agencies may use FISA for criminal investigation and prosecution beyond the scope of the statutory definition of “foreign intelligence information.”

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

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

I remain concerned about the provision, in Section 412, but I believe that we have twice improved it from the original proposal offered by the Administration, first in S. 1530 and second in the bill we pass today. S. 1510 provided that the Justice Department had to charge an alien with an immigration or criminal violation within seven days of taking custody, and that the merits of the Attorney General’s certification were subject to judicial review. The bill we vote on today is further improved. First, if an alien is found not to be removable, he must be released from custody. Second, the Attorney General can only delegate the power to certify an alien to the Deputy Attorney General, ensuring greater accountability and preventing the certification decision from being made by low-level officials. Third, the Attorney General must review his certification of an alien every six months. Fourth, an alien who is found to be removable but has not been removed, and whose removal is unlikely in the reasonably foreseeable future, may be detained only if the Attorney General demonstrates that release of the alien will adversely affect national security or the safety of the community or any person. This improvement is essential to preserve the constitutionality of the bill. Fifth, habeas corpus review of detention is made available in the District where the detention is occurring, instead of only in the District Court in the District of Columbia. Despite these improvements, this remains a major and controversial power for the Attorney General, and I would urge him and his successors to employ great discretion in using it.

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

Throughout our negotiations on these issues, Senator Kennedy provided steadfast leadership. Although neither of us are entirely pleased with the final product, it is far better than it would have been without his active involvement. I was disappointed that the Administration’s initial proposal authorizing the President to impose unilateral food and medical sanctions would have undermined a law we passed last year with overwhelming bipartisan support. Under that law, the President already has full authority to impose unilateral food and medicine sanctions during this crisis because of two exceptions built into the law that apply to our current situation. Nevertheless, I will continue to work within this framework to impose these economic sanctions and to work both officially and informally with the President full authority regarding this conflict, and grants authority for the President to restrict exports of agricultural products, medicine or medical devices. I continue to agree with then-Senator Ashcroft, who argued in 1999 that unilateral U.S. food and medicine sanctions simply do not work when he introduced the “Food and Medicine for the World Act.” As recently as October 2000, then-Senator Ashcroft pointed out that hurling unilateral, unilateral embargoes of food or medicine are often counterproductive. Many Republican and Democratic Senators made it clear just last year that the U.S. should work with other countries on food and medical sanctions so that the sanctions will be effective in hurting our enemies, instead of just hurting the U.S. I am glad that with Senator Enzi’s help, we were able to make changes in the trade sanctions provision to both protect our farmers and help the President during this crisis.

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

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

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

I am also pleased that a number of provisions have been included in the Civil Asset Forfeiture Act of 2000, which I sponsored in the Senate, have been removed. In addition, this bill does not include language that would have unduly expanded administrative subpoena powers in all money laundering cases. A more targeted approach was necessary, and has been produced.

This measure could not be considered today and would not be in the improved condition it is without the steadfast commitment of our Majority Leader. Senator DASCHLE deserves all the credit for all that is good in this bill. Without his commitment and focus, we simply would not be in the position to pass this bill today.

On a more important note, Senator DASCHLE, and the staff of Majority Leader DASCHLE, and convenient circumstances to help us craft not misused.

sibilities include equipping such tools legislative package we could. While I the past month to put forward the best could have sped the process to reconsti-
tute this bill in the aftermath of those stop the Administration from reneging to a better balanced bill. I could not administration from renegoting on the agreement any more than I could have sped the process to reconsti-
tute this bill in the aftermath of those breaches. In these times we need to work together to face the challenges of international terrorism. I have sought to do so in good faith.

We have worked around the clock for the past month to put forward the best legislative package we could. While I share the administration's goal of promptly providing the tools necessary to deal with the current terrorist threat, I feel strongly that our responsi-

bilities include equipping such tools with safety features to ensure that these tools do not cause harm and are not misused.

I want to conclude my remarks with thanks for the efforts of many staff members who worked around the clock under unusual and enormously incon-
venient circumstances to help us craft the legislation before us today. In partic-
ular, I want to thank Mark Childress and Andrea LaRue on the staff of Majority Leader DASCHLE, and David Hoppe on the staff of Republican Leader LOTT. I would also like to thank Makan Delrahim, Jeff Taylor, Stuart Nash, and Leah Belaire with Senator HATCH, the Ranking Member of the Judiciary Committee, Melody Burright and Estelle O'Neill with Senator KENNEDY, Neil McBride and Eric Rosen with Senator BIDEN, Bob Schiff with Senator FENGOLD, and Stacy Baird and Beth Stein with Senator CANTWELL. Finally, I would like to thank my own Judiciary Committee staff, especially Bruce Cohen, Beryl Howell, Julie Katzman, Ed Pagano, John Elliff, David James, Ed Barron, Tim Lynch, Susan Davies, Manu Bhardwaj, Liz McMahon, and Tara Magner.

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

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

**The UNITING and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.**

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

**Sec. 1. Short title and table of contents.** Both S. 1510 passed by the Senate on October 11, 2001 (the “Senate bill”), and H.R. 2975 passed by the House of Representatives on October 12, 2001, included this section containing 16 provisions. Both the United States and Strengthening America (USA Act) of 2001” and the table of contents for the Act. H.R. 3182, the bill subsequently passed by the House on October 12, 2001 (“House bill”), changed the title to the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.”

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

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

**Sec. 101. Counterterrorism fund.** Both the House and Senate bills included this provision to establish a counterterrorism fund in the Treasury of the United States, without affecting prior appropriations, to reimburse Department of Justice components for costs incurred in terrorism and terrorism prevention, rebuild any Justice Department component damaged or de-
stroyed in the September 11th terrorist attack, pay terrorism-related rewards, conduct ter-
rorism threat assessments, and reimburse Federal agencies for costs incurred in connection with detaining suspected terrorists in foreign countries. Not in original Adminis-
tration proposal.

**Sec. 102. Sense of Congress condemning dis-

- crimination against Arab and Muslim Amer-
- icans.** Both the House and Senate bills included this provision to condemn acts of vio-
- lence and discrimination against Arab Amer-
- icans, American Muslims, and Americans excluded this provision to condemn acts of vio-
- lence and discrimination against Arab and Muslim Amer-
- icans in foreign countries. Not in original Admin-
- istration proposal.

**Sec. 103. Increased funding for the tech-

- nology project.** Both the House and Senate bills included this provision to increase funding for the support of Department of Justice activities relating to the enforcement of 18 U.S.C. § 2332a during an emergency situation involving a weapon of mass destruction. Current law references a statute that was repealed in 1994 relating to emergency situations. Not in original Administration proposal.

**Sec. 104. Expansion of National Electronic Crime Task Force Initiative.** Both the House and Senate bills included this provision to allow the Secret Service to develop a na-

- tional network of electronic crime task forces, based on the highly successful New York Electronic Crimes Task Force model, for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems. Not in original Adminis-

- tration proposal.

**Sec. 105. Presidential authority.** Both the House and Senate bills included this provi-

- sion to give to the President, in limited cir-

- cumstances involving armed hostilities or attacks against the United States, the power to use the Armed Forces of the United States to the extent necessary to stop the administration proposal.

**Sec. 106. Presidential authority.** Both the House and Senate bills included this provi-

- sion to give to the President, when the United States is engaged in military operations or has been subject to attack, to confiscate property of any foreign country, person or organization involved in attacks on the United States. This section also permits courts, when reviewing determina-

- tions made by the executive branch, to con-

- sider classified evidence ex parte and in camera. Same as original Administration pro-

- posal.

**Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism.** Both the House and Senate bills included this provision to add criminal viola-

- tions relating to terrorism to the list of predicate statutes in the criminal procedures for interception of communications under chapter 119 of title 18, United States Code. Not in original Administration proposal.

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

**Sec. 203. Authority to share criminal inves-

- tigative information.** Both the House and Senate bills included provisions amending the criminal procedures for interception of communications under chapter 119 of title 18, United States Code, and the grand jury pro-

- cedures under Rule 6(e) of the Federal Rules of Criminal Procedure to authorize disclosure of foreign intelligence information ob-

- tained by such interception or by a grand jury to any Federal law enforcement, intel-

- ligence, national security, national defense, law enforcement, protective or immigration personnel to as-

- sist the official receiving that information in
the performance of his official duties. Section 203(a) requires that within a reasonable time after disclosure of any grand jury information, an attorney for the government notify the judge of such disclosure and that such attorney or any other person involved in the grand jury proceedings be granted access to the records of any United States person who may have the effect of thwarting the identification of a specific person. As original Administration proposal.

Section 204. Clarification of intelligence exceptions. The House and Senate bills included this provision to amend the criminal procedures for interception of wire, oral, and electronic communications. Both the House and Senate bills included this provision to broaden the types of records that law enforcement may obtain by using a subpoena for electronic communications, including records and communications any United States person, such as the current procedures established under Executive Order 12333 for the intelligence community. This provision modifies the Foreign Intelligence Surveillance Act ("FISA") to allow surveillance to follow a person who uses multiple communications devices or locations, a modification which conforms FISA to the parallel criminal procedure for electronic surveillance in 18 U.S.C. §2518(11)(b). The court order need not specify, however, that the person whose assistance to the surveillance is required (such as a particular company or Internet service provider). The court finds that the actions of the target may have the effect of thwarting the identification of a specified person. As original Administration proposal.

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

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

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

Section 208. Designation of judges. Both the House and Senate bills included this provision to increase the number of Federal district judges designated to serve on the FISA court from seven to 11, and requires that no court have fewer than five judges. Not in original Administration proposal.

Section 209. Seizure of voice-mail messages pursuant to a FISA warrant or order. Both the House and Senate bills included this provision to authorize government access to voice mails with a court order supported by probable cause. The order may be issued by a judge anywhere within 20 miles of the District of Columbia. Not in original Administration proposal.

Section 210. Seizure of communications stored or recorded. Same as original Administration proposal.

Section 211. Clarification of scope. Both the House and Senate bills included provisions to amend the Cable Communications Policy Act of 1984 to specify that the authority, which acts as a telephone company or an Internet service provider, must comply with the same laws governing the interception and surveillance of wire communications that apply to any other telephone company or Internet service provider. This section also expressly provides, however, that authorized disclosures under this provision do not include records that reveal customer cable viewing activity. Modified original Administration proposal to clarify that targets do not need a wiretap order and amends title 47 to accomplish same purpose as administration proposal.

Section 212. Emergency disclosure of electronic communications. Both the House and Senate bills included this provision to authorize disclosure of electronic communications (or records of such communications) of their subscribers if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires the disclosure of the information without delay. This provision also corrects an anomaly in the current law by clearly permitting a provider to disclose non-content records (such as a subscriber's log-in records) as well as the content of the communications to protect their computer systems. Same as original Administration proposal.

Section 213. Extension of notice of the execution of a warrant. Both the House and Senate bills included this provision to amend 18 U.S.C. §3103a to a court order supported by probable cause. But the government is permitted to delay providing notice of the warrant's execution. Consistent with the requirements of case law from the Ninth Circuit, this provision also provides several limitations on this authority. See United States v. Villegas, 899 F.2d 1324 (9th Cir. 1990); United States v. Freitas, 804 F.2d 1451 (9th Cir. 1986). First, delayed notice is authorized only in cases where the government has demonstrated reasonable cause to believe that providing immediate notice of the warrant would frustrate an investigation. Second, in an adversary result as defined in 18 U.S.C. §2705, the provision prohibits the government from seizing any tangible records (such as stored communications) or stored wire or electronic communication unless it makes a showing of reasonable necessity for the seizure. Third, the government's initial notice of probable cause must be provided within a reasonable time of the execution of the search. Narrower than original Administration proposal, which would have permitted delay as long as law enforcement saw fit.

Section 214. Pen register and trap and trace authority under FISA. Both the House and Senate bills included this provision to modify the Foreign Intelligence Surveillance Act (FISA) to authorize surveillance for up to one year and not only to a specified person, as the original Administration proposal, which would have permitted surveillance for up to one year of non-United States persons who are agents of foreign intelligence information not concerning U.S. persons. Any investigation of a United States person may not be based solely on activities protected by the First Amendment. Narrower than original Administration proposal, which would simply have removed the "agent of a foreign power" requirement. Access to information concerning items under the FISA. Both the House and Senate bills included this provision to remove the "agent of a foreign power" standard for court-ordered access to certain business records under FISA and expands the scope of court orders to include access to other communications and tangible records that may be used for an investigation to protect against international terrorism or clandestine intelligence activities or to obtain foreign intelligence information not concerning U.S. persons. An investigation of a United States person may not be based solely on activities protected by the First Amendment. Narrower than original Administration proposal, which would have removed requirements of court order and the "agent of a foreign power" showing.

Section 215. Authorization of authorities relating to use of pen registers and trap and trace devices. Both the House and Senate bills included this provision to authorize courts to issue pen register and trap and trace orders that are valid anywhere in the nation. It also ensures that the pen register and trap and trace provisions apply to facilities other than the "communications common carrier" (i.e., Internet service providers). It also specifically provides, however, that the grant of authority to capture "routing" and
Sec. 220. Nationwide service of search warrants. Both the Senate bill and H.R. 204, which was placed in the Administration bill, contained none of the terrorism-related matters addressed in the Administration proposal, including exclusion of service provider subscribers from the protection of privacy in any communications transmitted to, through, or from the protected computer. However, it does not authorize the interception of the protected computer. Narrower than Administration proposal. The Administration proposal, which did not exclude service provider subscribers from definition of “interception” and did not limit interception authority to only those communications through the computer in question.

Sec. 218. Foreign intelligence information. Both the Senate bill and Senate bills included this provision to amend FISA to require that a”special measures” be taken to provide that warrants relating to the investigation of terrorist activities may be obtained. Where probable cause to believe that a person related to the terrorism may have occurred, regardless of where the warrants will be executed. Same as Administration proposal.

Sec. 219. Single-jurisdiction search warrants for terrorism. Both the House and Senate bills included this provision to amend Federal Rule of Criminal Procedure 41(a) to provide that warrants relating to the investigation of terrorist activities may be obtained. Where probable cause to believe that a person related to the terrorism may have occurred, regardless of where the warrants will be executed. Same as Administration proposal.

Sec. 222. Assistance to law enforcement. Both the Senate bill and H.R. 204, which was placed in the Administration bill, included this provision to amend FISA to require that a”special measures” be taken to provide that warrants relating to the investigation of terrorist activities may be obtained. Where probable cause to believe that a person related to the terrorism may have occurred, regardless of where the warrants will be executed. Same as Administration proposal.

Sec. 223. Civil liability for certain unauthorized disclosures. H.R. 2975 included this provision to amend 18 U.S.C. § 2703(a) to authorize law enforcement authorities of the electronic surveillance procedures set forth in title 18, United States Code, to obtain in narrow districts where Internet service providers are located. Narrower than Administration proposal. Same as Administration proposal.
cooperation among financial institutions, financial regulators and law enforcement officials, and to permit the sharing of information by law enforcement and regulatory authorities. Section 315 includes (a) authority to prescribe minimum standards required to be conducted outside the United States.

Sec. 315. Inclusion of foreign corruption offenses as money laundering crimes. Section 315, included in both the Senate bill and H.R. 3004, amends 18 U.S.C. §1956 to include foreign corruption offenses, certain U.S. export control violations, certain customs and firearm offenses, certain narcotics offenses, and certain violations of the Foreign Agents Registration Act of 1938, to the list of crimes that constitute “specified unlawful activities” for purposes of the criminal money laundering provisions.

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

Sec. 317. Long-arm jurisdiction over foreign money launderers. Section 317, which was included in both the Senate bill and H.R. 3004, amends 18 U.S.C. §1956 to give United States courts “long-arm” jurisdiction over foreign persons committing money laundering offenses in the United States, over foreign banks opening U.S. bank accounts, and over foreign persons who convert assets ordered forfeited by a U.S. court. It also permits a Federal court dealing with such foreign money laundering offenses to issue a pre-trial restraining order or take other action necessary to preserve property in the United States to satisfy an ultimate judgment. The Senate, but not the House, included language authorizing the appointment by a Federal court of a receiver to collect and take custody of assets of a defendant to satisfy criminal or civil money laundering or forfeiture judgments; with respect to the latter provision, the House receded to the Senate.

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

Sec. 319. Forfeiture of funds in United States interbank accounts. Section 319 combines sections 111, 112, and 113 of H.R. 3004 with section 319 of the Senate bill. This section amends 18 U.S.C. §981 to treat amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of justice and convenience of United States national interest, to suspend a forfeiture proceeding, based on that presumption. This section also adds a new subsection (k) to 31 U.S.C. §5318 to include financial institutions that do not file reports to reply to a request for information from a U.S. regulator relating to anti-money laundering compliance within 120 hours of receipt of such a request, and to require foreign banks that maintain correspondent accounts in the United States to appoint a bank in the United States to be their anti-money laundering compliance officer. The new §31 U.S.C. §5318(k) authorizes the Attorney General and the Secretary of the Treasury to require U.S. financial institutions to maintain at least semiannually, a report containing a detailed analysis of patterns of suspicious activity and other appropriate investigative findings derived from suspicious activity reports and law enforcement investigations. The final text of this section includes section 205 (House Financial Services Committee on Suspicious Financial Activities) and portions of section 205 (Public-Private Task Force on Terrorist Financing Issues) of H.R. 3004.

Sec. 320. Reporting of foreign financial institutions. Section 320, included in both the Senate bill and H.R. 3004, amends 18 U.S.C. §881 to permit the U.S. Attorney General to seek a restraining order to preserve a foreign financial institution’s assets in the United States, and to report annually to the Senate and House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs concerning progress toward that goal.

Sec. 321. Forfeiture of funds in United States interbank accounts. Section 321, included in both the Senate bill and H.R. 3004, amends 18 U.S.C. §5318 to require financial institutions to seek a restraining order to preserve a foreign financial institution’s assets in the United States, and to report annually to the Senate and House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs concerning progress toward that goal.

Sec. 322. Criminal penalties. Section 322, included in both the Senate bill and H.R. 3004, extends the prohibition against the maintenance of a forfeiture proceeding to include a corporation proceeding by a corporation whose majority shareholder is a fictitious and a proceeding in which the corporation’s claim is instituted by a fictitious person. Section 323. Enforcement of foreign judgments. Section 323, included in both the Senate bill and H.R. 3004, permits the government to seek a restraining order to preserve the availability of property subject to a foreign forfeiture or confiscation judgment.

Sec. 324. Report and recommendation. Section 324, included in both the Senate bill and H.R. 3004, directs the Secretary of the Treasury, in consultation with the Attorney General, the Federal banks agencies, the SEC, and other appropriate agencies, to submit a report to Congress concerning the provisions of subtitle A of Title III of the Act and recommend to Congress any relevant legislative action, within 30 months of the date of enactment.

Sec. 325. Concentration accounts at financial institutions. Section 325, included in both the Senate bill and H.R. 3004, authorizes the Secretary of the Treasury to issue regulations concerning the maintenance of concentration accounts by U.S. depository institutions in order to protect a financial institution’s customers from anonymously directing funds into or through such accounts.

Sec. 326. Verification of identification. Section 326, included in both the Senate bill and H.R. 3004, makes it a new subsection (k) of 31 U.S.C. §5318 to require the Secretary of the Treasury to prescribe by regulation, jointly with each Federal functional regulator, minimum standards for financial institutions and their customers reporting the identity of the customer that is opening an account at a financial institution; the minimum standards shall require financial institutions to implement, and customers of financial institutions to comply with, reasonable procedures concerning verification of customer identity, maintenance of records of identity verification, and the recording of account activity for known or unknown customers to the financial institution by a government agency, to be issued within one year of the date of enactment.

Sec. 326(b), included in both the Senate bill and H.R. 3004, requires the Secretary of the Treasury, again in consultation with the Federal functional regulators (as well as other appropriate agencies), to submit a report to Congress within six months of the date of enactment containing recommendations about the most effective way to require foreign nationals to provide financial institutions with the ability to determine the accurate identity information, comparable to that required to be provided by U.S. nationals, and to obtain an identification number that is equivalent to a U.S. national’s tax identification number.

Sec. 327. Consideration of anti-money laundering programs. Section 327, included in both the Senate bill and H.R. 3004, amends section 3(c) of the Bank Holding Company Act of 1956, and section 18(c) of the Federal Deposit Insurance Act to require the Federal Reserve Board and the Federal Deposit Insurance Corporation, respectively, to consider the effectiveness of a bank holding company or bank (within the jurisdiction of an appropriate agency) in combating money laundering activities, including, in overseas branches, in ruling on any merger or similar application by the bank or bank holding company. The Senate receded to the House, with the agreement that the amendments will apply only to applications submitted after December 31, 2001.

Sec. 328. International cooperation on identification of originators of wire transfers. Section 328, included in both the Senate bill and H.R. 3004, requires the Secretary of the Treasury, in consultation with the Attorney General, to enter into agreements with foreign governments to require foreign governments to provide notice to the Secretary of the Treasury, in consultation with the Attorney General, or the Secretary of the Treasury, in consultation with other appropriate agencies, to require financial institutions to take reasonable actions to ensure that the information contained in the wire transfer is accurate and complete, and to report annually to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs concerning progress toward that goal.

Sec. 329. Criminal penalties. Section 329, included in both the Senate bill and H.R. 3004, states the criminal penalties for officials who violate their trust in connection with the administration of Title III.

Sec. 330. International cooperation in investigations of money laundering, financial crimes, and the finances of terrorist groups. Section 330, included in both the Senate bill and H.R. 3004, states the sense of the Senate that the President should direct the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate and in consultation with the Federal Reserve Board, to seek negotiations with foreign financial supervisory agencies and other foreign officials, to ensure that foreign financial institutions maintain appropriate anti-money laundering organization or its membership, or any person engaged in money laundering or other financial crimes, and make such recommendations to the President and financial supervisory personnel when appropriate.
Subtitle B—Bank Secrecy Act Amendments and Related Improvements

Sec. 351. Amendments relating to reporting of suspicious activities. Section 351, included in both the Senate bill and H.R. 3004, amends 31 U.S.C. §5316 to require financial institutions to file suspicious activity reports pursuant to 31 U.S.C. §5318. Section 351(b) also create a safe harbor from civil liability for financial institutions filing suspicious activity reports pursuant to 31 U.S.C. §5318. The Senate recedes to the Senate with respect to the provision that the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission, to prescribe regulations relating to anti-money laundering activities of commodity pool operators. Section 351(c), included in both the Senate bill and H.R. 3004, requires the Secretary of the Treasury, the SEC and Federal Reserve Board to submit joint recommendations to Congress, within one year of the date of enactment, on the role of the IRS in the administration of the Bank Secrecy Act, with emphasis on whether IRS Bank Secrecy Act information processing responsibility (for reports filed by all financial institutions) or Bank Secrecy Act audit and examination responsibility (for certain non-financial institutions) should be retained or transferred.

Sec. 352. Anti-money laundering programs. Section 352, included in both the Senate bill and 31 U.S.C. §310(b) to require financial institutions to establish anti-money laundering programs and grants the Secretary of the Treasury authority to set minimum standards for such programs. The Senate recedes to the Senate with respect to a provision in H.R. 3004 that the anti-money laundering program requirement take effect at the end of the one year period that began on the date of enactment of the Act and a related provision that the Secretary of the Treasury prescribe regulations before the end of that 180-day period that consider the extent to which the requirements imposed under amended §310(b) are commensurate with the risk, location, and activities of the financial institutions to which the regulations apply.

Sec. 353. Penalties for violations of geographic targeting orders and recordkeeping requirements, and lengthening effective period of geographic targeting orders. Section 353, included generally in both the Senate bill and H.R. 3004, amends 31 U.S.C. §§5316, 5322, and 5324 to clarify that penalties for violation of the Bank Secrecy Act and its implementing regulations also apply to violators of the Geographic Targeting Orders issued under 31 U.S.C. §5326, and to certain recordkeeping requirements relating to funds transfers. The Senate receded to the Senate with respect to a provision that amended 31 U.S.C. §5326 to make the period of a geographic target order 180 days.

Sec. 354. Anti-money laundering strategy. Section 354, included in both the Senate bill and H.R. 3004, amends 31 U.S.C. §5316(b) to add “money laundering related to terrorist funding” to the list of subjects to be dealt with in the annual report filed by the Secretary of the Treasury prepared by the Secretary of the Treasury pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998.

Sec. 355. Reporting to include suspicious activity reports. Section 355, included in both the Senate bill and H.R. 3004, amends 18 of the Federal Deposit Insurance Act to permit (but not require) a bank to include information, in a response to a request for an employment reference, by a second bank, about the presence of criminal activity in an institution-affiliated party in potentially unlawful activity. The Senate receded to the Senate with respect to a provision that the floor amendment of H.R. 3004 amends 31 U.S.C. §5316 to require the institution to ensure that funds are not paid to the auditing of each international financial institution to ensure that funds are not paid to persons engaged in or supporting terrorist activity.

Sec. 356. Financial crimes enforcement network. Section 356, included in H.R. 3004, adds a new §310 to subchapter I of chapter 3 of title 31, United States Code, to create the Financial Crimes Enforcement Network (“FinCEN”) a bureau within the Department of the Treasury, to specify the duties of the Director of FinCEN, to require the Secretary of the Treasury to establish operating procedures for the government-wide data access and communications center that maintains FinCEN, and to authorize appropriations for FinCEN for fiscal years 2002 through 2005. Finally, this section requires the Secretary to study methods for improving compliance with the reporting requirements for ownership of foreign bank and brokerage accounts by U.S. nationals imposed by regulations issued under 31 U.S.C. §5314. The required report is to be submitted within six months of the date of enactment and annually thereafter.

Sec. 357. Establishment of a publicly secure network. Section 357, included in H.R. 3004, directs the Secretary of the Treasury to establish, within nine months of enactment, a secure network with FinCEN that will allow financial institutions to file suspicious activity reports and provide such institutions with information regarding suspicious activities warranting special scrutiny.

Sec. 358. Increase in civil and criminal penalties for money laundering. Section 358, included in the Senate bill, increases from $100,000 to $1,000,000 the maximum civil and criminal penalties for a violation of provisions added to the Bank Secrecy Act by sections 311 and 312 of this Act.

Sec. 359. Uniform pseudoanonymity authority for Federal Reserve facilities. Section 359, included in H.R. 3004, authorizes certain Federal Reserve personnel to act as law enforcement officers and carry firearms to protect and safeguard Federal Reserve employees and premises.

Sec. 360. Reports relating to coins and currency received in nonfinancial trade or business. Section 360, included in H.R. 3004, adds 31 U.S.C. §5331 (and makes related and conforming changes) to the Bank Secrecy Act to require persons possessing in excess of $10,000 in coins or currency, in one transaction or two or more related transactions in the course of that person’s trade or business, to report such transaction with FinCEN. Regulations implementing the new reporting requirement are to be promulgated within six months of enactment.

Sec. 361. Efficient use of currency transaction report system. Section 361, included in H.R. 3004, requires the Secretary of the Treasury to report to Congress before the end of the one year period beginning on the date of enactment containing the results of a study of the possible expansion of the currency transaction system for collections from the currency transaction reporting requirements and ways to improve the use by financial institutions of the statutory exemption system, which would require the volume of unneeded currency transaction reports.
container, either into or out of the United States, and related forfeiture provisions. The Senate receded to the House language.

Sec. 372. Forfeiture in currency reporting cases. This provision, included in the House bill and H.R. 3004 with different language concerning mitigation, amends 31 U.S.C. § 5317 to permit confiscation of funds in connection with predicate offenses, consistent with existing civil and criminal forfeiture procedures. The Senate receded to the House language.

Sec. 373. Money transmission businesses. Section 373, included in H.R. 3004, amends 18 U.S.C. § 1960 to clarify the terms of the offense stated in that provision, relating to knowingly transferring, transporting, or transmitting in interstate or foreign commerce, with the intent to conceal or disguise the source or movement of, money, securities, or other property used in the commission of a crime.

Sec. 374. Counterfeiting domestic currency and obligation. Section 374, included in H.R. 3004, makes a number of changes to the provisions of 18 U.S.C. §§ 470–473 relating to the maximum sentences for various counterfeiting offenses. Not in original Administration proposal.

Sec. 375. Counterfeiting Foreign Currency and Obligations. Section 375, included in H.R. 3004, makes a number of changes to the provisions of 18 U.S.C. §§ 476–480 relating to the definition of counterfeiting offenses involving foreign obligations and adds to the definition of counterfeiting offense involving foreign obligations the use of a computer, printing, etc., of a foreign government image or other security of a foreign government.

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

TITILE IV—PROTECTING THE BORDER

Subtitle A—Protecting the Northern Border

Sec. 401. Ensuring adequate personnel on the northern border. Both the House and Senate bills included this provision to authorize the Attorney General to require paid overtime for INS employees in an amount in excess of $30,000 during the fiscal year 2001 that experienced personnel are available to handle the increased workload generated by the events of September 11, 2001. Same as original Administration proposal but based on a Leahy-Conyers proposal.

Sec. 405. Report on the integrated automated fingerprint identification system for visa issuance and entry. Both the House and Senate bills included this provision to require the Attorney General to report to Congress on the feasibility of enhancing the FBI's Integrated Automated Fingerprint Identification System or other identification systems to identify foreign passport and visa holders who may be wanted in connection with a criminal investigation in the United States or abroad before issuing a visa to that person or their entry or exit from the United States. Not in original Administration proposal.

Subtitle B—Enhanced Immigration Provisions

Sec. 411. Definitions relating to terrorism. Both the House and Senate bills included this provision to amend the definition of “engage in terrorist activity” to clarify that an alien who solicits funds or membership or provides material support to a non-designated terrorist organization is removable and mailable. Aliens who solicit funds or membership or provide material support to organizations not designated as terrorist organizations who are engaged in terrorist activities are not removable. Not in original Administration proposal.

Sec. 414. Visa integrity and security. This provision would advance the deadline for countries that participate in the visa waiver program to develop tamper-resistant passports. Results of the December 2000 auction for tamper-resistant documents. Not in original Administration proposal.

Sec. 417. Machine readable passports. This section requires the Government to conduct an annual audit to assess precautionary measures taken to prevent the counterfeiting and theft of passports among countries that participate in the visa waiver program, and ascertain that designated countries have established a program to develop and implement machine-readable passports. Not in original Administration proposal.


Sec. 419. Foreign student monitoring program. This section seeks to implement the foreign student monitoring program created in the temporary suspension of the collection of user fees mandated by the statute with an appropriation of $36,800,000 for the express purpose of fully and effectively implementing the program through January 2003. Thereafter, the program would be fund by user fees. Currently, all institutions of higher education that enroll foreign students or exchange visitors are required to participate in the monitoring program. This section expands the list of institutions to include air flight schools, language training schools, and vocational schools. Not in original Administration proposal.
Sec. 418. Prevention of consular shopping. This section directs the State Department to examine what concerns, if any, are created by the practice of certain aliens to "shop for a visa" between the consular posts. Not in original Administration proposal.

Subtitle C—Preservation of Immigration Benefits for Victims of Terrorism

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

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

Sec. 421. Special immigrant status. This section provides permanent resident status to an alien who was the beneficiary of a petition filed (on or before September 11) to grant the alien permanent residence as a family-sponsored immigrant or employer-sponsored immigrant, or of an application for labor certification (filed on or before September 11), if the petition or application was rendered null because of the disability of the beneficiary or loss of employment of the beneficiary due to physical damage or, destruction of the petition or applicant as a direct result of the terrorist attacks on September 11, or because of the death of the petitioner or applicant as a direct result of the terrorist attacks on September 11, or because of the death of the petitioner or applicant as a direct result of the terrorist attacks on September 11. Not in original Administration proposal.

Sec. 422. ''Age-out'' protection for children. Under current law, certain visas are only available to a alien's 21st birthday. This section provides that an alien whose 21st birthday occurs this September, (and who had a petition for adjustment of status for an employment-based immigrant visa) may have his or her application for adjustment adjudicated despite the death (if the application was filed prior to the death). Not in original Administration proposal.

Sec. 424. ''Age-out'' protection for children. Under current law, certain visas are only available to a alien's 21st birthday. This section provides that an alien whose 21st birthday occurs this September, (and who had a petition for adjustment of status for an employment-based immigrant visa) may have his or her application for adjustment adjudicated despite the death (if the application was filed prior to the death). Not in original Administration proposal.

Sec. 425. Temporary administrative relief. This section provides that temporary administrative relief may be provided to an alien who was lawfully present on September 10, was on that date the spouse, parent or child of someone who died or was disabled as a direct result of the terrorist attacks, and is not otherwise entitled to relief under any other provision of this legislation. Not in original Administration proposal.

Sec. 426. Evidence of death, disability, or loss of employment. This section instructs the Attorney General to establish procedures to verify the death, disability, or loss of employment due to physical damage to, or destruction of, a business, occurred as a direct result of the terrorist attacks on September 11. Not in original Administration proposal.

Sec. 427. No Benefits to Terrorists or Family Members of Terrorists. This section provides that no benefits in this subtitle shall be provided to anyone culpable for the terrorist attacks on September 11 or to any family member of any person culpable. Not in original Administration proposal.

Sec. 428. Definitions. This section defines the term "specified terrorist activity" as any terrorist activity conducted against the Government or the people of the United States on September 11, 2001. Not in original Administration proposal.

TITLE V—REMOVING OBSTACLES TO INVESTIGATING TERRORISM

Sec. 501. Attorney General's authority to pay rewards to combat terrorism. Both the House and Senate bills included this provision to authorize the Attorney General to pay rewards—payments to individuals who offer information pursuant to a public advertisement—to gather information on terrorism and defend the Nation against terrorist acts without any dollar limitation (Current law limits rewards to $2 million). Rewards of $250,000 or more require the personal approval of the Attorney General or the President and notice to Congress. Narrower than original Administration proposal.

Sec. 502. Secretary of State's authority to pay rewards. Both the House and Senate bills included this provision to authorize the Secretary of State to pay rewards—payments to individuals who offer information pursuant to a public advertisement—to gather information on terrorism and defend the Nation against terrorist acts without any dollar limitation (Current law limits rewards to $5 million). Rewards of $100,000 or more require the personal approval of the Secretary of State and notice to Congress. Narrower than original Administration proposal.

Sec. 503. DNA identification of terrorists and other violent offenders. Both the House and Senate bills included this provision to authorize the collection of DNA samples from any person convicted of certain terrorism-related offenses and other crimes of violence, for inclusion in the national DNA database. Modified from original Administration proposal.

Sec. 504. Coordination with law enforcement. Both the House and Senate bills included this provision to amend FISA to authorize consultation between FISA and law enforcement officers to coordinate efforts to investigate or protect against international terrorism, clandestine intelligence activities, domestic acts of a foreign power or an agent of a foreign power. Not in original Administration proposal.

Sec. 505. Miscellaneous national security authorities. Both the House and Senate bills included this provision to modify current statutory provisions on access to telephone, bank, and credit records in counterintelligence investigations to remove the "agent of a foreign power" standard. The authority may now be used only to protect against international terrorism or clandestine intelligence activities, and an investigation of a United States person may no longer be solely on the basis of the First Amendment. Narrower than original Administration proposal which simply removed "agent of foreign power" requirement.

Sec. 506. Extension of Secret Service jurisdiction. Both the House and Senate bills included this provision to give the Secret Service concurrent jurisdiction to investigate offenses relating to fraud and related activity in connection with computers, and permanently to invest in financial institution fraud. Not in original Administration proposal.
Sec. 507. Disclosure of educational records. Both the House and Senate bills included this provision to require application to a court to obtain educational records in the possession of educational agencies if it is determined by the Attorney General or Secretary of Education (or their designee) that doing so could reasonably be expected to result in or facilitate preventing a federal terrorism offense or domestic or international terrorism. Limited immunity is given to persons producing such information in good faith, and the Attorney General is directed to issue guidelines to protect confidentiality. Narrower than original Administration proposal.

Sec. 508. Information from NCES surveys. Both the House and Senate bills included this provision to require application to a court to obtain reports and records and this provision to make technical clarification that inadvertently reversed the existence of its various components including the Public Safety Officers Benefits Program.

Modified from original Administration proposal.

Subtitle B—Amendments to the Victims of Crime Act of 1984

[Note: The original Administration proposal did not include this provision of this subtitle to streamline the administration of the Crime Victims Fund.]

Sec. 621. Crime victims fund. Both the House and Senate bills included this provision to authorize the Office of Victims of Crime (OVC) to replenish the antiterrorism emergency reserve with up to $50 million and to make $250,000 available for replenishment in future years. Funds added to the Crime Victims Fund to respond to the September 11 attacks shall not be subject to the usual 15% cap or reserve. A technical clarification includes the September 11th Victim Compensation Fund established in Public Law 107–180 as one of the Federal benefits that should be a primary payer to the States. This section also replaces the annual cap on the Fund with a self-regulating system that ensures stability in the amounts distributed while preserving the amounts remaining for use in future years; it authorizes private gift-giving to the Fund; and it increases the penalty for failure to provide discretionary grants and assistance to victims of Federal crime. Significant expansion of original Administration proposal.

Sec. 622. Criminal violence. Both the House and Senate bills included this provision to increase the minimum threshold for the annual grant to State compensation programs. It clarifies that a payment of compensation to a victim shall not be used in means tests for Federal benefit programs. A technical clarification removes the dual requirement that victim compensation programs cover victims of terrorism occurring outside the United States. Not in original Administration proposal.

Sec. 623. Commerce. Both the House and Senate bills included this provision to authorize States to give VOCA funds to U.S. Attorney’s Offices in jurisdictions where the U.S. Attorney is the local prosecutor. It prohibits victim assistance programs from discriminating against certain victims; authorizes grants to eligible victim assistance programs for evaluation and compliance efforts; and allows use of funds for fellowships, clinical internships and training programs. Not in original Administration proposal.

Sec. 624. Victims of terrorism. Both the House and Senate bills included this provision to reform the antiterrorism section to the international terrorism section, giving OVC the flexibility to deliver timely and critically-needed assistance to victims of terrorism and mass violence occurring within the United States. It also makes a technical correction to recent legislation that inadvertently reversed the existing exclusion under VOCA of individuals eligible for other Federal compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Expansion of original Administration proposal.

Subtitle C—Information Sharing for Critical Infrastructure Protection

[Note: The original Administration proposal did not include this subtitle to expand regional information sharing to facilitate Federal-state-local law enforcement responses to terrorism.]

Sec. 701. Expansion of regional information sharing system. Both the House and Senate bills included this provision to expand the Regional Information Sharing Systems (RISS) Program to facilitate information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities and doubles its authorized funding for FY2002 and FY2003. Current law limits the flow of information to agencies responsible for currency and other financial securities, may constitute “material support or resources”.

Sec. 801. Terrorist attacks and other acts of violence against mass transportation systems. Both the House and Senate bills included this provision to establish a new statute (to be codified at 18 U.S.C. § 937) to make punishable acts of terrorism and other violence against mass transportation vehicles, facilities and systems. It prohibits victim assistance programs from discriminating against certain victims; authorizes grants to eligible victim assistance programs for evaluation and compliance efforts; and allows use of funds for fellowships, clinical internships and training programs. Not in original Administration proposal.

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

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

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

Sec. 805. Material support for terrorism. Both the House and Senate bills included this provision to amend 18 U.S.C. § 2339A, which prohibits providing material support to terrorists, in four respects. First, it adds three terrorism-related offenses to the list of §2339A offenses that trigger liability. Second, it adds §2339A to an existing BOP statute. Third, it clarifies that the monetary amount limitation on material support or resources.
for purpose of §2339A. Fourth, it explicitly prohibits providing terrorists with "expert advice or assistance," such as flight training, knowing or intending that it will be used to carry out an act of terrorism. Same as original Administration proposal.

Sec. 806. Assets of terrorists organizations. Both the House and Senate bills included this provision to provide that the assets of individuals and organizations engaged in planning or perpetrating acts of terrorism against the United States, as well as the proceeds and instrumentalities of such acts, are subject to civil forfeiture. Same as original Administration proposal.

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

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

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

Sec. 810. Alternative maximum penalties for terrorism offenses. Both the House and Senate bills included this provision to raise the maximum prison terms to 15 or 20 years, or, if death results, life, in the following criminal statutes: 18 U.S.C. § 81 (arson within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §1366 (destruction of an energy facility); 18 U.S.C. § 2155(a) (destruction of national-defense material, weapon of mass destruction, or material support to terrorists and terrorist organizations); 42 U.S.C. § 2284 ( sabotage of nuclear facilities or fuel); 19 U.S.C. § 46506 (destruction of a major pipeline); 18 U.S.C. § 2274 (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

Sec. 811. Penalties for terrorist conspiracies. Both the House and Senate-passed bills included this provision to ensure adequate penalties for certain terrorism-related conspiracies by adding conspiracy provisions to the following criminal statutes: 18 U.S.C. § 81 (arson within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. § 831 (destruction of property within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. § 1992 (wrecking trains); 18 U.S.C. § 2398A (material support to terrorists); 18 U.S.C. § 2394A (torture); 42 U.S.C. § 2284 ( sabotage of nuclear facilities or fuel); 19 U.S.C. § 46506 (destruction of a major pipeline); 18 U.S.C. § 4102(b) (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

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

Sec. 813. Inclusion of acts of terrorism as racketeering activity. Both the House and Senate bills included this provision to amend the RICO statute to include certain terrorism-related offenses within the definition of "racketeering activity," thus allowing multiple acts of terrorism to be charged as a single RICO offense. This section expands the ability of prosecutors to prosecute members of established, ongoing terrorism organizations that present present a continuing threat to the security of the United States. Not in original Administration proposal.

Sec. 814. Deterrence and prevention of cyberterrorism. Both the House and Senate bills included this provision to clarify the criminal statute prohibiting computer hacking, 18 U.S.C. § 1030, to cover computers located outside the United States when used in a manner that affects interstate commerce or communications of this country. Not in original Administration proposal.

Sec. 815. Additional defense to civil actions relating to terrorism. Both the House and Senate bills included this provision to provide an additional defense under 18 U.S.C. § 2707(e) to civil actions relating to preserving records in response to Government requests. Both the House and Senate bills included this provision to require the Attorney General to establish regional computer forensic laboratories to help combat computer crime. Not in original Administration proposal.

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

Sec. 817. Expansion of the biological weapons statute. The Senate-passed bill included this provision to amend the definition of "for international use as a weapon of mass destruction biological or chemical weapon," 18 U.S.C. § 175, to include all situations in which it can be proven that the defendant had any purpose other than a prophylactic, protective, or peaceful purpose. This section also creates a new criminal statute, 18 U.S.C. § 716b, which generally makes an offense for certain restricted persons, including non-resident foreign nationals of countries that support international terrorism, to possess a listed biological agent or toxin. Finally, this section provides that the Department of Health and Human Services enhance its role in bioterrorism prevention by establishing and enforcing standards and procedures governing the possession, use, and transfer of certain biological agents that have a high national security risk, including safeguards to prevent access to such agents for use in domestic or international terrorism. Not in original Administration proposal.

Sec. 818. Development of potential weapons. This section expands the ability of prosecutors to use as a weapon of mass destruction biological or chemical weapon, 18 U.S.C. § 175, to include all situations in which it can be proven that the defendant had any purpose other than a prophylactic, protective, or peaceful purpose. This section also creates a new criminal statute, 18 U.S.C. § 716b, which generally makes an offense for certain restricted persons, including non-resident foreign nationals of countries that support international terrorism, to possess a listed biological agent or toxin. Finally, this section provides that the Department of Health and Human Services enhance its role in bioterrorism prevention by establishing and enforcing standards and procedures governing the possession, use, and transfer of certain biological agents that have a high national security risk, including safeguards to prevent access to such agents for use in domestic or international terrorism. Not in original Administration proposal.

Sec. 819. Development and support of cyber-security forensic capabilities. Both the House and Senate bills included this provision to require the Attorney General to establish regional computer forensic laboratories to support existing computer forensic laboratories to help combat computer crime. Not in original Administration proposal.

Sec. 820. Alternative maximum penalties for terrorism offenses. Both the House and Senate bills included this provision to raise the maximum prison terms to 15 or 20 years, or, if death results, life, in the following criminal statutes: 18 U.S.C. § 81 (arson within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §1366 (destruction of an energy facility); 18 U.S.C. § 2155(a) (destruction of national-defense material, weapon of mass destruction, or material support to terrorists and terrorist organizations); 42 U.S.C. § 2284 ( sabotage of nuclear facilities or fuel); 19 U.S.C. § 46506 (destruction of a major pipeline); 18 U.S.C. § 2274 (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

Sec. 821. Penalties for terrorist conspiracies. Both the House and Senate-passed bills included this provision to ensure adequate penalties for certain terrorism-related conspiracies by adding conspiracy provisions to the following criminal statutes: 18 U.S.C. § 81 (arson within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. § 1366 (destruction of an energy facility); 18 U.S.C. § 2155(a) (destruction of national-defense material, weapon of mass destruction, or material support to terrorists and terrorist organizations); 42 U.S.C. § 2284 ( sabotage of nuclear facilities or fuel); 19 U.S.C. § 46506 (destruction of a major pipeline); 18 U.S.C. § 2274 (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

Sec. 902. Inclusion of international terrorism-related information in FISA. The House and Senate bills included this provision to revise the National Security Act definitions section to include "international terrorism" as a subset of "foreign intelligence." This change will clarify the DCI's responsibility for collecting foreign intelligence related to international terrorism. Not in original Administration proposal.

Sec. 903. Sense of Congress on the establishment and maintenance of intelligence related to international terrorism. Both the House and Senate bills included this provision to express the Sense of Congress that the CIA should make efforts to recruit informants to fight terrorism. Not in original Administration proposal.

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

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

Sec. 906. Foreign Terrorist Asset Tracking Center. The House and Senate bills included this provision to regularize the existing Foreign Terrorist Asset Tracking Center by creating an element within the Department of Treasury designed to review all-source intelligence in support of both intelligence and law enforcement efforts to counter terrorist financial networks. Not in original Administration proposal.

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

Sec. 908. Training of government officials regarding identification and use of foreign intelligence. Both the House and Senate bills included this provision to direct the Attorney General, in consultation with the DCI, to establish a training program for Federal, State and local officials on the recognition and appropriate handling of intelligence information. Not in original Administration proposal.

Title IX—IMPROVED INTELLIGENCE

Sec. 909. Responsibilities of Director of Central Intelligence regarding foreign intelligence gathered under the Foreign Intelligence Surveillance Act. Both the House and Senate bills included this provision to clarify the role of the Director of Central Intelligence ("DCI") with respect to the overall management of collection goals, analysis and dissemination of foreign intelligence gathered pursuant to the Foreign Intelligence Surveillance Act. Not in original Administration proposal.

Sec. 910. Inclusion of international terrorism activities within scope of foreign intelligence under National Security Act of 1947. Both the House and Senate bills included this provision to revise the National Security Act definitions section to include "international terrorism" as a subset of "foreign intelligence." This change will clarify the DCI's responsibility for collecting foreign intelligence related to international terrorism. Not in original Administration proposal.

Sec. 911. Sense of Congress on the establishment and maintenance of intelligence related to international terrorism. Not in original Administration proposal.
Sec. 101. Review of the Department of Justice. This provision authorizes the Inspector General of the Department of Justice to designate one official to review information and receive complaints alleging abuse of civil rights and civil liberties by employees and officials of the Department of Justice. Not in original Administration proposal.

Sec. 102. This provision condemns discrimination and acts of violence against Sikhs-Americans. Not in original Administration proposal.

Sec. 103. Expressing the sense of the Senate concerning the provision of funding for bioterrorism preparedness and response. This provision amends the Sense of the Senate that the United States should make a substantial new investment this year toward improving State and local preparedness to respond to potential bioterrorism attacks. Not in original Administration proposal.

Sec. 104. Grant program for State and local domestic preparedness support. This provision amends the Counterterrorism Act of 2001 to authorize the Department of Justice to provide grants to States to prepare for and respond to terrorist acts including but not limited to events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices. Not in original Administration proposal.

Sec. 105. Expansion and reauthorization of the Crime Identification Technology Act for antiterrorism grants to States and localities. This provision adds an additional antiterrorism purpose for grants under the Crime Identification Technology Act, and authorizes grants under that Act through fiscal year 2007. Not in original Administration proposal.

Sec. 106. Critical infrastructures protection and continuity through support for the National Infrastructure Simulation and Analysis Center (NISAC) to address critical infrastructures protection and support for activities related to counterterrorism, threat assessment, and risk mitigation. Not in original Administration proposal.

Sec. 107. Authorization of funds for DEA police training in South and Central Asia. This provision authorizes money for anti-drug training in the Republic of Turkey, and for increased precursor chemical control efforts in the South and Central Asia region. Not in original Administration proposal.

Sec. 108. Feasibility study on use of biometric identifier scanning system with access to the FBI Integrated automated fingerprint identification system at overseas consular facilities. Not in original Administration proposal.

Sec. 109. Study of access. This provision directs the FBI to report to Congress on the feasibility of using a biometric identifier (fingerprint) scanner, with access to the FBI fingerprint database, at consular offices abroad and at points of entry into the United States. Not in original Administration proposal.

Sec. 110. Temporary authority to contract with the State governments for performance of security functions at United States military installations. This provision provides temporary authority for the Department of Defense to enter contracts for performance of security functions at any military installation of facility in the United States with a proximately located State government. Not in original Administration proposal.

Sec. 111. Crimes against charitable Americans. This provision amends the Tele-marketing and Consumer Fraud and Abuse Prevention Act to require any person engaged in telemarketing for the solicitation of charitable contributions to disclose to the person trying to sell the call that the purpose of the call is to solicit charitable contributions, and to make such other disclosures as the FTC considers appropriate. Not in original Administration proposal.

Sec. 112. Limitation on issuance of hazmat licenses. This provision allows the Department of Transportation to obtain background records checks for any individual applying for a license to transport hazardous materials in interstate commerce. Not in original Administration proposal.
We have the ability, with our intel-
ligence agencies and our law enforce-
ment, to seek out and stop people be-
fore this happens. We are in an open
session today, so I won’t go into the
number of times we have had to do
that. But certainly in the last year, we
have had, time and time again, during the former
Bush administration, during the Clinton
administration, and in the present
administration, potential terrorist at-
tacks thwarted. People have either been apprehended or eliminated.

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

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

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

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

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

We have done our utmost to protect Americans against abuse of these new law enforcement tools. And there are new law enforcement tools involved. In granting these new powers, the American people but also we, their rep-

representatives in Congress, grant the ad-
ministration our trust that they are not going to be misused. It is a two-
way street. We are giving powers to the administration; we will have to extend some trust that they are not going to be misused.

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

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

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

This is not precisely the bill that
Senator HATCH would have written. It is not precisely the bill I would have
written, or not precisely the bill the President or the Senate floor would have written. But it is a good
bill. It is a balanced bill. It is a greatly
improved piece of legislation. It is one
that sets up the checks and balances necessary in a democratic society that allow us to protect and preserve our liberty.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Sen-
ator from Utah.

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

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

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

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

This legislation truly represents the product of intense, yet bipartisan, ne-
gotiations. Senator LEAHY and I car-
didly worked closely with Chairman SENSEN-
BRENNER in the House, Mr. CONYERS,
the ranking member on the House Jud-
diciary Committee, and other leaders in our effort to complete legislation that could receive near unanimous approval and support in the Congress. Although I do not expect every Senator to vote in favor of this legislation, Senator LEAHY and I have taken great pains to accommodate every concern. While Members ultimately may differ on some of these proposals, I know we all share the same overriding concern, and that is protecting our country from further harm.

The bill before us, which I hope we will pass today, differs in several re-
spects from the legislation we passed in the Senate 2 weeks ago. These changes result from negotiations with our House counterparts, and some of the changes are certainly not objection-
able. For example, we have included language requiring prosecutors to no-
tify Federal courts when they have dis-
covered a threat, rather than notify Federal agencies for national security
purposes. Also, the bill includes a pro-
vision requiring law enforcement to provide detailed reports concerning their use of the FBI’s so-called Carni-
val computer surveillance program. These changes will properly encourage the law enforcement community to use these tools responsibly.

Unfortunately, not all of the changes are welcome. For instance, our effort to mitigate the consequences of a provision cre-
ted by a change in the law govern-
ing the discipline of Federal pros-
ecutors was rebuffed by the House of
Representatives. As a result, Federal prosecutors will continue to be hampered by the myriad and often contradictory State bar rules, and sometimes very politicized State bar rules. Even more alarming, Federal law enforcement authorities in those States of Oregon and Nevada should be prohibited from engaging in legitimate undercover activity—even undercover activity designed to infiltrate a terrorist cell. That is ridiculous. Nevertheless, we could not get our House counterparts to think in terms of national security.

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

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

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

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

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

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

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

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

Before I yield the floor, I must take a moment to acknowledge the hard work by my staff, the staff of Senator Leahey, and the representatives of the administration, from the White House and the Justice Department and elsewhere. I thank them for their cooperation in the negotiation of this bill. These people have engaged in discussions literally around the clock over the 6 weeks to produce this legislation. So I thank everybody who has worked on this legislation.

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

The PRESIDING OFFICER. The Senator from Florida.

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

It was not that long ago that America was beset by the scourge of organized crime. Many of our communities had been seriously invaded by these insidious influences of organized crime. People, many of whom occupy the chairs that we now occupy in this very Chamber, decided that 50 years or more ago that was intolerable and we would take the necessary steps to re-capture the essential values of our country.

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

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

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

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

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

With the fall of the Berlin Wall, the world changed in terms of intelligence requirements. Suddenly, instead of one enemy, we had dozens of enemies. Suddenly, instead of having command of one language which made us linguistically competent, there were scores of languages we had to learn to speak. In
As it turns out, our intelligence community was not fully empowered.

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

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

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

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

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

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

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

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

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

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

I urge the adoption of this conference report.

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

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

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

We have before us today legislation that stands firm before those who mean us harm. This antiterrorism package, the product of an earnest bipartisan effort, is an intelligent and thorough response to the immediate security needs of our Nation. I commend to the Senate the immigration provisions of this legislation, which will strengthen our immigration laws to better combat terrorism.
I am pleased to report this legislation. I reserve the remainder of my time, and I yield the floor. I urge my colleagues to support the legislation and note as well we are continuing to refine further other potential areas where we can make changes in our immigration laws to better be able to catch those who seek to enter our country to do us harm. Senator KENNEDY and I are working on bipartisan legislation to do just that. We hope to introduce this next week.

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

The PRESIDING OFFICER. The Senator from Vermont?

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

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

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

We added something the administration did not include—money laundring. The Attorney General and the administration and the Senate think this illegal activity. The locals, in turn, complain about the feds failing to follow important leads.

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

Cooperation is necessary. The mayor of New York City, Mayor Giuliani, called me saying the police commissioner has justifiable concerns about the previous lack of cooperation from the Federal Government in their own antiterrorist efforts, although New York City has one of the best antiterrorist units in the country. The mayor of Baltimore has called, as have other mayors.

I ask unanimous consent to have printed in the RECORD the Washington Post op-ed piece by Robert D. Novak in today's paper entitled “Same Old FBI.”

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

SAME OLD FBI

Behind the facade of cooperation following the Sept. 11 attacks, less than amicable relations exist between New York Mayor Rudolph Giuliani and the FBI have further deteriorated. According to New York City sources, the mayor has engaged in more than one shouting match with FBI Assistant Director Barry Mawn. It's the same old problem because it's the same old FBI. Newly appointed, much-acclaimed FBI Director Robert Mueller has little difference. The bureau refuses to share information with local police agencies. It won't permit security clearances for high-level official. Federal officials around the country say that attitude lent itself to catastrophe on Sept. 11 and could permit further disasters.

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

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

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

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

Chitwood's experience is most bizarre. He was infuriated to learn that the FBI knew of a visit to Portland by two Sept. 11 hijackers but did not inform local officials. He pursued a witness of that visit, the FBI threatened to arrest the chief. "I ignored them," Chitwood told me. Has cooperation with the bureau improved? "Not a bit," he said. Only Tuesday he learned from reading his local newspaper about a plane under federal surveillance parked at the Portland airport for seven weeks.

Oates is familiar with the FBI, having tried to work with the feds during 21 years as chief of the NYPD before retiring this year to go to Ann Arbor. As a deputy chief who was commanding officer of NYPD intelligence, he describes the FBI as "obsessed with turf."

Closing doors to police officers particularly infuriates Oates. "The security clearance issue is a tired old excuse that allows the FBI not to share," he told me. "They should hand out 10,000 security clearances to cops around the country." Oates and other police chiefs believe Sept. 11 might have been averted had the FBI alerted local police agencies about a Misty's School report of an Arab who wanted instructions for steering a big jet but not for landing or taking off.

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

A promise that things will change in the FBI was implicit in Director Mueller's remarks to city police chiefs last Friday. Philadelphia Police Commissioner John Timoney of the 20,000 officer NYPD was more cautious in his criticism of the feds than his former colleague Oates, sounded skeptical after the meeting. "I'm hopeful, he told me, but he would make no predictions.

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

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

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

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

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

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

I said earlier, as Benjamin Franklin once said, a nation that would trade its liberty for rulers and people, equally in war and peace, covered with the shield of its protection all classes of men, at all times, and under all circumstances. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution.

I have approached the events of the past week and my role in proposing and reviewing legislation relating to it in this spirit. I believe we must, we must, redouble our vigilance. We must redouble our vigilance to ensure our security and to prevent further acts of terrorism. But we must not let our vigilance to preserve our values and the basic rights that make us who we are.

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

Of course, there have been periods in our nation’s history when civil liberties were threatened. The War on Terror has rekindled that fear.

In World War II, the government interned Japanese-Americans based on their race. After the attack on Pearl Harbor, the government interned some 11,000 of German origin and over 3,000 of Italian origin.

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

As a member of Congress, I sought to understand the minds of other men and women: the spirit of liberty is the spirit which weighs their interests alongside its own without bias. . . .

Was it not at least partially bias, however, when passengers on a Northwest Airlines flight a month ago insisted that Northwest remove the plane three Arab men who had cleared security?

Of course, given the enormous anxiety and fears generated by the events of September 11, it would not have been difficult to anticipate some of these reactions, both by our government and some of our people. Some have said rather cavalierly that in these difficult times we must accept some reduction in our civil liberties in order to be secure.

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

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

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

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

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

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

Polls show that most Americans believe that the current criminal forfeiture laws to be unconstitutional. Search overseas was a hotly debated issue during the debate over the Wiretap Act, which would allow law enforcement agencies in wiretaps of electronic communications without a court order. The courts have almost uniformly rejected efforts to restrain assets before conviction unless they are assets gained in the alleged criminal enterprise. This provision, in my view, was simply an effort on the part of the Department to take advantage of the emergency situation and get something that they’ve wanted to get for a long time.

As I have indicated, the foreign wiretap and criminal forfeiture provisions were dropped from the bill that we considered in the Senate. Other provisions were rewritten based on objections that I and others raised about them. For example, the original bill contained sweeping permission for the Attorney General to get copies of educational records without a court order. The final bill requires a court order and a certification by the Attorney General that he has reason to believe that records are relevant to a intelligence investigation. That is relevant to an investigation of terrorism.

So the bill before us is certainly improved from the bill that the administration sent to us on September 19, and we made some improvements. The final bill requires a court order and a certification by the Attorney General that he has reason to believe that records are relevant to a intelligence investigation. That is relevant to an investigation of terrorism.

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

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

That bothers me. I bet it bothers most Americans.

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

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

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

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

I am also very troubled by the broad expansion of Government power under the Foreign Intelligence Surveillance Act, also known as FISA. When Congress passed FISA in 1978, it granted to the executive branch the power to conduct surveillance in foreign intelligence investigations without having to meet the rigorous probable cause standard under the fourth amendment that is required for criminal investigations. There is a lower threshold for obtaining a wiretap order from the FISA court because the FBI is not investigating a crime. It is investigating foreign intelligence activities. But the law currently requires that intelligence gathering be the primary purpose of the investigation in order for this much lower standard to apply. The bill changes that requirement. The Government now will only have to show that intelligence is a “significant purpose” of the investigation. So even if the primary purpose is a criminal investigation, the heightened protections of the fourth amendment will not apply.

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

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

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

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

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

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

Under this provision, the Government can apparently go on a fishing expedition and collect information on virtually anyone. All it has to allege, in order to get an order for these records, is that the information is sought for an investigation of international terrorism or clandestine intelligence gathering. That is it. They just have to say that. On that minimal showing, in an ex parte application to a secret court, with no showing even that the information is relevant to the investigation, the Government can lawfully compel a doctor or a hospital to release medical records or a library to release circulation records.

This is truly a breathtaking expansion of police power, and something that I think brings us full circle to the concern about this legislation, which I expressed on the day after the attacks. These are two very troubling provisions dealing with our immigration laws in the bill.

First, the administration’s original proposal would have granted the Attorney General’s power to detain immigrants indefinitely, including legal permanent residents. The Attorney General could do so based on mere suspicion that the person is engaged in terrorist activity. I believe the administration was really overreaching here. I am pleased that our distinguished chairman of the Judiciary Committee, Senator LEAHY, was able to negotiate some protections.

The bill does not require the Attorney General to charge the immigrant within 7 days with a criminal offense or immigration violation. In the event the Attorney General does not charge the immigrant, the immigrant must be released. This protection is an improvement, but the provision remains fundamentally flawed. Even with this 7-day charging requirement, the bill would nevertheless continue to permit the indefinite detention in two situations. First, basically all their deportation cases may be continued to be held if the Attorney General continues to have suspicions. Second, this provision creates a deep unfairness to immigrants who are found not to be deportable for terrorism but have an immigration status violation, such as overstaying a visa. If the immigration judge finds that they are eligible for relief from deportation, and therefore can stay in the country—for example, if they have longstanding family ties here—nonetheless, the Attorney General can continue to hold them indefinitely.

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

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

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

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

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

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

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

Here is where my caution in the aftermath of the terrorist attacks and my concern about the reach of the antiterrorism bill come together. To the extent that the expansion of new immigration powers that the bill grants the Attorney General are subject to abuse, who do we think is most likely to bear the brunt of that abuse? It probably won’t be immigrants from El Salvador or Nicaragua or immigrants from Haiti or Africa. Most likely it will be immigrants from Arab, Muslim and South Asian countries.

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

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

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

We must grant law enforcement the tools that it needs to stop this terrible threat, without we must give them only those extraordinary tools that they need and that relate specifically to the task at hand.

In the play, "A Man for All Seasons," Sir Thomas More questions the bounder Roper whether he would level the forest of English laws to punish the Devil. "What would you do?" More asks, "Cut a great road through the law to get after the Devil?" Roper affirms, "I’d cut down every law in England to do that." To which More replies,

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

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

Protecting the safety of the American people is a solemn duty of the Congress. We must work tirelessly to prevent more tragedies like the devastating attacks of September 11. We must prevent more children from losing their mothers, more wives from losing their husbands, and more firefighters from losing their heroic colleagues. But the Congress will fulfill its duty only when it protects both the American people and the freedoms at the foundation of American society.

So let us preserve our heritage of basic rights. Let us practice as well as preach that liberty, and let us fight to maintain that freedom that we call America.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

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

Mr. HATCH. May I make a few comments before?

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

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

The Senator from Utah.

Mr. HATCH. I rise to address briefly a couple of the points made by the distinguished Senator from Wisconsin.

First, what he called a "sneak and peek" search warrant, these warrants are already being used throughout the United States, throughout our whole country. The bill simply codifies and clarifies the practice making certain that only a Federal court, not an agent or prosecutor, can authorize such a warrant. Let me be clear. Courts already allow warrants under our fourth amendment. It is totally constitutional. It has been held so almost from the beginning of this country; some will say from the beginning of this country. Together with Senator LEAHY, we carefully drafted a provision that standardizes this widely accepted practice.

Second, to respond to the suggestion that the legislation is not properly mindful of our constitutional liberties—my friend from Wisconsin talks theoretically about maybe the loss of some civil liberties—I would like to talk concretely about the loss of liberty of almost 6,000 people because of the terrorist acts on September 11. I am a little bit more concerned right now about the loss of life. I am even more concerned now that they have lost their lives that thousands of other Americans don’t lose their lives because we fail to act and fail to give law enforcement the tools that are essential.

It is a nice thing to talk about theory. But we have to talk about reality. We have written this bill so the constitutional realities are that the Constitution is not infringed upon and civil liberties are not infringed upon except to the extent that the Constitution permits law enforcement to correct difficulties.

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

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

Thousands of Americans died that day, thousands. This is real. It has been told there may be some other actions taken by terrorists. That may be real. To the extent that may be real, we sure want to make sure our law enforcement people, within the constraints of the Constitution, have the optimum law enforcement tools they need to do the job.

As the past few weeks have made clear, these terrorists still have a gun that canSniper, Waco Windshield Wiper, or a bomb that can track terrorists. Under current law, we cannot do that with the efficiency that needs to be used here. I don’t see any
Mr. DORGAN. I inquire of the Senator from Utah, what possibly could be their motive to not want this in the antiterrorism bill?

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

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

Mr. DORGAN. Madam President, I appreciate the one subcommittee of the Senator from Utah. It is not his fault. I understand he strongly supports this. I care very much, something agreed to in the Senate now no longer in this legislation. Here is the issue. I held and chaired a hearing in my subcommittee on Appropriations a couple weeks ago. The Customs Service was there and Immigration was there. They said we have a system in this country called the advance passenger information system. It is a system under which international air carriers electronically transmit to the Customs Service passenger and cargo manifests, so that before they enter and are cleared for departure, we know who is on that plane and what is on that plane, so we can determine whether there are people who should not be allowed to enter this country. That is the advance passenger information system. It works, but it is voluntary and only 85 percent of the carriers are complying.

I asked at my hearing of Customs and Immigration: Should this be mandated? Absolutely, we need you to make this mandatory. We had the antiterrorism bill on the floor of the Senate, I had cleared an amendment in the managers' package that would make this mandatory. Let me tell you of the airlines that do not comply with it. We don't get advance passenger information: Saudi Arabia, Kuwait, Royal Jordanian, Pakistani International, to name a few airlines that do not comply under the voluntary standard and give us notice of who is boarding.

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

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

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

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

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

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Congress that none of the $20 billion we appropriated for security is going to go for increased resources at the northern border for Customs. The other side, Immigration and Border Patrol, are going to get increased resources, but the Treasury Department says: No, we do not need additional resources. We have the Customs Service.

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

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

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

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, on behalf of Senator LEAHY, I yield 10 minutes to the Senator from Massachusetts, and I ask unanimous consent that his remarks follow—there are order already in effect for Senator WELLSTONE to be heard now—the remarks of Senator WELLSTONE.

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

The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Chair.

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

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

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

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

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

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

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

On the criminal justice side, the bill clarifies existing “cybercrime” law to cover computers outside the United States that affect communications in the United States. It strengthens civil liberty safeguards. At the same time, the bill establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government’s antiterrorism authority. It strengthens our Federal laws relating to the threat of biological weapons and enhances the Government’s ability to prosecute suspected terrorists in possession of biological agents. It will prohibit certain persons, particularly those from countries known to support terrorism, from possessing biological agents. And it will prohibit any person from possessing a biological agent of a type of quantity that is not reasonably justified by a peaceful purpose.

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

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

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

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

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

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

When it comes to electronic surveillance, as Senator Feingold has stated with considerable eloquence, the legislation is a step in the direction of trying to prevent this from happening and to provide protection to people in our country and other nations as well.

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

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

The bill includes measures to enhance surveillance, to improve the working relationships of Federal, State, and local agencies—that has to happen—to strengthen control of the Canadian border. For our States up North, that is very important. When it comes to some of the concerns which made this such a better piece of legislation.

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

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

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

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

These are the important provisions.

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

We are going to have to monitor this aspect very closely. It has been said, and it should be said, we do not want to pass legislation that undermines our democratic principles or practices. If we do that, the terrorists have won a victory. If I thought this was such legislation, I would not support it.

I want to go here: From my point of view, this legislation is better than it was when it passed the Senate. The sunset provision is critically important. Ultimately, where I come down is if we do not take some of these provisions with suspensions which I have outlined, which are very important, very positive in protecting people, and more people are killed and there is more loss of life of innocent people, you cannot bring those lives back.

I am not a lawyer, and this is my layperson way of analyzing this. If there are some abuses with the surveillance, we monitor it, we can pass new legislation, and we can change it. It is reversible, and I err on the side of protection for people. I wish we did not even have to consider this legislation. I wish we were not even living in these times. I believe we are going to end it. I think we are going to end it. I think it is going to be a part of our children’s lives. I think it is going to be a part of our grandchildren’s lives. I think this is going to be the struggle for several generations to come. No one action and no one step is going to end it. I think that is now the world, unfortunately, in which we live. That is now the world in which all of God’s children live.

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

I yield the floor.

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

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

I particularly thank Senator DASCHLE, Senator Leahy, Senator SARGENDES, Senator HATCH, and Senator LEVIN for their work in developing this legislation. I am pleased the Conference Report includes what I consider to be a very important provision regarding money laundering that has been hard fought over and, frankly, I do not think we have been working on this for quite a few years, almost 10 years or more when I was a member of the Banking Committee and within the Foreign Relations Committee where I was Chairman of the Subcommittee on Narcotics, Terrorism and International Operations. This really is the culmination of much of that work.
I am pleased at the compromise we have reached on the antiterrorism legislation, as a whole, which includes the sunset provision on the wiretapping and electronic surveillance component. It has been a source of considerable concern for people, and I think the sunset provides Congress a chance to come back and measure the record appropriately, and that is appropriate.

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

This is a bill I introduced several years ago that assists our ability to be able to crack down on the capacity for criminal elements, not just terrorists, who are criminals themselves. But also narcotics traffickers, arms proliferators, people who traffic in people themselves. There are all kinds of criminals who benefit from access to the American financial system. All of these will now be on notice that our law enforcement community has additional tools to use to be able to close the incredible benefits of access to the American financial marketplace.

The global volume of laundered money staggers the imagination. It is estimated to be 2 to 5 percent of the gross domestic product of the United States. That is $600 billion to $1.5 trillion that is laundered, that comes into the country or passes through banks without accountability. Those funds escape the tax system, for one thing. So for legitimate governments struggling to generate revenue while the average citizen who gets their paycheck deducted or those good corporate citizens and others who live by the rules, they are literally being required to assume a greater burden because other people using the laundering and lack of accountability escape that responsibility.

The effects of money laundering go far beyond the parameters of law enforcement, creating international political situations, undermining domestic political crises. International criminals have taken advantage of the technology and the weak financial supervision in many jurisdictions to simply smuggle their funds into our system. Globalization and advances in communications and technology have allowed them to move their illicit gains with much more secrecy, much faster, commingled, and in technologies have allowed them to move into our system. Globalization and advances to simply smuggle their funds.

Money laundering has additional tools to use to be able to hold people accountable where it is legitimate to do so.

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

I spent a number of years as a prosecutor. We make pretty good judgments in the law enforcement community about probable cause. They are not always without question and they are not, obviously, without error at times. We understand that. We have a pretty good system in the United States to protect against that. What we are trying to do with this legislation is to put those protections in place, but even as we put in a series of steps that allow the Secretary of the Treasury to be able to target a particular area as a known money-laundering problem, and then be able to respond to that area, that entity, a cooperative effort. It is only if the entity or government's cooperative effort at several different stages is not forthcoming that the Secretary would ultimately consider exercising the power to denying that entity as a whole, or individual banks or other financial institutions, access to our financial marketplace and to its benefits.

I believe this leverage will be critical in our ability to wage a war on terror as well as to be able to wage a sufficient law enforcement effort against the criminal enterprises that exist on a global basis.

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

Let me comment on one criticism that is often raised by some opponents of this legislation who do not like the Senate's approach. We should in some way put in place sanctions against an entity that has a lower tax rate than we happen to have. I emphasize there is nothing in this legislation that empowers us to take action because an other government has a lower tax rate. That is their privilege. It is healthy, as all Members know, to have competition in the marketplace of taxes, too. The Chair is a former Governor and he knows well the competition between States. States will say: We will not have a sales tax; we will not have an excise tax; we will try to make ourselves more business friendly. We want to be as competitive and as low tax as we conceivably can be.

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

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

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

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

I also point out this bill will require the financial institutions to use appropriate caution and diligence when opening and managing accounts for foreign financial institutions. It will actually prohibit foreign shell banks, those who have no physical location in any country, from opening an account in the United States. Think about that. We currently allow a bank that has no physical presence anywhere—a bank—to open an account in the United States. That is today. With this legislation, that will change. It is high time.

The conference report expands the list of money-laundering crimes and will assist our law enforcement efforts in making it easier to prosecute those crimes. It requires the Federal Reserve to take into consideration the effectiveness financial institutions in combating money-laundering activities before any merger is approved. We will have an ability to judge the road traveled, to open up new opportunities for financial institutions.

The following is a description of the legislative intent of the Counter Money Laundering and Foreign Anti-Corruption Act of 2001 which was included in section 311 of subtitle A—International Counter Money Laundering and Related Measures of the conference report. First, the Secretary of the Treasury determines whether “reasonable grounds exist for concluding” that a foreign jurisdiction, a financial institution operating in a foreign jurisdiction, or a type of international transaction, is of “primary money laundering concern.” In making this determination, the Secretary must consult with the Secretary of State, the Attorney General, the Director of the Federal Bureau of Investigation, and the United States Trade Representative. The Secretary is also directed to consider any relevant factor, including the quality of a jurisdiction’s bank secrecy, bank supervision, and anti-money laundering laws and administration, the extent to which a particular institution or type of transaction is involved in money laundering as compared to legitimate banking operations, whether the U.S. has a mutual legal assistance treaty with the jurisdiction, and whether the jurisdiction has high levels of official or internal corruption.

Second, if a jurisdiction, institution, or transaction is found to be a “primary money laundering concern,” the Secretary then selects from a menu of five “special measures” to address the identified issue. These five special measures are: requiring additional record keeping and/or reporting on particular transactions; requiring reasonable steps to identify the beneficial foreign owner of an account opened or maintained in a domestic financial institution; requiring the identification of those using a foreign bank’s payable-through account with a domestic financial institution; requiring the identification of those using a foreign bank’s correspondent account with a domestic financial institution; prohibiting the opening or maintaining of certain corresponding accounts for foreign financial institutions. The special measure relating to the restriction or prohibition of accounts can only be imposed if something in this legislation will in any way restrict the right of the Secretary of the Treasury to impose a rule immediately and to ask for comment at the same time. The other four special measures may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of the issuance of such order.

In choosing which special measure to impose and how to tailor it, the Secretary shall consider to which extent to which they are used to facilitate or promote money laundering, the extent to which they are used for legitimate business purposes and the extent to which such action will sufficiently guard against money laundering. The Secretary is also to consult with the Chairman of the Board of Governors of the Federal Reserve. If the Secretary is considering prohibiting or restricting correspondent accounts, he is also to consult with the Secretary of State and the Attorney General. The Secretary is also obligated to consider three factors: whether other countries or multilateral groups are taking similar actions; whether the imposition of the measure would create a significant competitive disadvantage for U.S. firms, including any significant cost or compliance; the extent to which the action would have an adverse systemic impact on the payment system and legitimate business; and the extent to which the action undermines national security and foreign policy.

Within 10 days of invoking any of the special measures against a primary money laundering concern, the Secretary must notify the House and Senate Banking Committees of any such action taken.

The conference report includes a provision within section 351 relating to reporting of suspicious transactions which would allow financial institutions to file a Suspicious Activity Report (SAR) applies in any litigation, including suit for breach of contract or in an arbitration proceeding and clarifies the prohibition on disclosing that a SAR has been filed.

Section 333 of the conference report also includes a provision that increases penalties for violation of Geographic Targeting Orders (GTO) by making it a civil and criminal offense on par with existing civil law to file reports required by a Geographic Targeting Order; requiring structuring transactions to fall below a GTO-lowered threshold a civil and criminal offense on par with structuring generally; and extends the presumptive GTO period from 60 to 180 days.

Finally, section 355 of the conference report includes a provision that grants the United States jurisdiction for excluding of criminal wrongdoing in a written reference on a current or former employer.

It has been brought to my attention that this bill, as originally passed by the House, contained a rule of construction which could have limited our ability to provide assistance and cooperation to our foreign allies in their battle against money laundering. The House-passed rule of construction could have potentially limited the access of foreign jurisdictions to our courts and could have required them to negotiate a treaty in order to be able to take advantage of our money-laundering laws in their fight against crime and terrorism. The conference report did not include a rule of construction because the Congress has always recognized the fundamental right of friendly nations to have access to our courts to enforce their rights. Foreign jurisdictions have never had to agree to have access to our courts. Since some of the money-laundering conducted in the world today also defrauds foreign governments, it would be hostile to the intent of this bill for us to interject into our statute an immunity of legislative language which would in any way limit our foreign allies access to our courts to battle against money laundering. That is why we did not include a rule of construction in the conference report. That is why we today clarify that it is the intent of the legislature that our allies will have access to our courts and the use of our laws if they are the victims of smuggling, fraud, money laundering, or terrorism. I make these remarks today because there should be no confusion on this issue and comments made by others should not be construed as a reassertion of this rule of construction which we have soundly rejected. Our allies have had and must continue to have the benefit of U.S. laws in this fight against money laundering and terrorism.

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

Ms. CANTWELL. Mr. President, we must act on many fronts to wage a successful fight against terrorism. The USA Patriot Act of 2001 will provide our law enforcement agencies with significant new tools to fight this battle on the home front. There are many good things in this bill. I am especially pleased that the bill includes language to allow the tripling of manpower on our northern border. The bill also includes a provision to set a new technology standard for our visa program so we can better identify people coming into this country. I am very proud of the changes the bill for law enforcement. This legislation increases the number of FISA judges to speed law enforcement’s ability to get taps in place and going and contains excellent new provisions to help law enforcement and banks better track and freeze financial assets of terrorists. Furthermore, the bill provides for expedited hiring and training of FBI translators. Finally, the legislation takes steps to allow better sharing of information between the law enforcement and intelligence communities, and blurring the line between the two communities. Where information is sought for the purpose of law enforcement, we must ensure that fourth amendment protections apply. Our fear about the legislation comes from a legitimate concern that information gathered ostensibly for intelligence and defense purposes could be used for law enforcement purposes. The intelligence community does not prosecute and lock up its targets; it uses information to interdict before they can do harm America or Americans. But the law enforcement community has a different mission, to catch and prosecute criminals in our courts of law. Because law enforcement acts upon U.S. citizens, it must do so within the bounds of the Constitution. The differences in these missions must be acknowledged, and we must be vigilant to maintain the distinctions.

Last week, Senator LEAHY and I discussed here on the floor the need to maintain strict oversight of the law enforcement community’s use of new authorities enumerated in this legislation. Today I want to reiterate the need for that oversight, the need for regular Government Accounting Office reports to Congress of the use of the new authorities under FISA and pen register and trap and trace law and the need for the Committee on the Judiciary to scrutinize the use of these new authorities regularly. I am pleased that my colleagues of the Senate believe we must pursue this duty diligently.

I am also pleased that the final version of this legislation incorporates a four-year limit on the applicability of these and many other search authorities. With this “sunset,” law enforcement and intelligence agencies will be able to use new powers to identify and act on terrorist efforts and Congress will have the ability to review fully the implications of the new law.

We can all agree that the events on September 11 have focused America on the fight against terrorism, and we applaud the efforts of the administration in the weeks since that tragic day. Clearly, there were failures in our investigative network, and this legislation will help avoid such failures in the future. By allowing the sharing of information that could foil terrorists before they carry out their brutal schemes against innocent civilians.

The question then becomes how to make sure that this isn’t abused—in fact used for law enforcement purposes or fishing expeditions. Over many years and with great effort, we have crafted a careful balance in protecting personal privacy. The bottom line is this legislation could circumvent or supersede Federal and State privacy laws that have balanced law enforcement needs and privacy concerns, going well beyond the changes to the law needed for intelligence technology standards on ordinary time for our country. But in this process we must remember those Fourth Amendment rights that we have so diligently fought for in the past.

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

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

Pursuant to Section 403(c) of the USA PATRIOT Act of 2001, the Federal Government is required to develop and implement a technology standard that can facilitate extremely high confidence in confirming the identity of an alien seeking a visa or seeking entry into the United States pursuant to a visa.

The standard required by these provisions will facilitate the capture and sharing of all relevant identity information regarding the alien applicant,
including biometrics, and information relevant to determining the eligibility of such a person for entry into the United States from and between all relevant departments and agencies through compatible, interoperable systems.

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Missouri.

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

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

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

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

I said: Is it possible?

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

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

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

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

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

I also trust the State Department will change the directions in their
manual which has said in recent years that merely urging terrorist activities or belonging to a terrorist organization do not disqualify you from coming to the United States. I mean, if you are a member of al-Qaeda, you say: Oh, well, he may be just a lot of the talking about the United States. Give me a break. If there is any ground for keeping somebody out of the United States, it ought to be that they are a member of al-Qaeda. I hope in the future we can share that information and make sure they do not come in.

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

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

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

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

One of the problems we think are in Western Europe who operates under the visa waiver system has a problem with 60,000 stolen passports. Right now, if you buy a passport or take somebody else’s visa, we have a tough time tracking them. But once they get that biometric card, we know positively. We have a modern-day thumbprint on them. We can check them out overseas; we can check them in our records. When they come to the port of entry, we check them at the port of entry to make sure they are who they are. And if they do not get out of the country in time, we turn that information over to law enforcement agencies, so if there is a contact with a law enforcement agency, this rings a bell: You are out of status. You stayed too long. Or if a student leaves the school, departs the school which he or she is supposed to attend or an H-1B visa holder leaves the country. We’re going to have that information reported to the INS and they can turn over that information. Any law enforcement official in the United States who comes in contact with him will know that person is out of status. Somebody is going to know if they are out of status?

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

This is not going to be 100 percent effective. But when people are out of status, particularly if they are acting suspiciously, we will have a record on them which will update the system to know when they leave. Right now, it just depends upon the airlines, making sure they tell us who leaves the country. That is not good enough. We need to keep a record of who comes in and who leaves. So we know who is overstaying their visa. They say 4 to 6 million people are here illegally because they overstayed their visa, and we don’t have any idea how to find them. At least if we have a biometric card, when they come in contact with a law enforcement agency, then we can do that.

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Vermont is recognized.

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

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

Mr. LEAHY. Mr. President, I know the distinguished senior Senator from New York has been waiting on the floor for some time. How much time is in the Senate from New York going to want? Mr. SCHUMER. I ask for 7 minutes.

Mr. LEAHY. I see the distinguished senior Senator from California. How much time does she want? Mrs. FEINSTEIN. I will take 1 additional minute; 8 minutes.

That was meant to be a joke.

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

Mr. President, I ask that 8 minutes of my time be given to the Senator from
New York and 8 minutes to the Senator from California, both of whom are valued members of the Senate Judiciary Committee.

Mr. CONRAD. Mr. President, will the manager of the bill for including the provisions that Senator BOND, myself, and Senator SNOWE authored to tighten our borders, to provide coordination with schools and employers when visa holders come to this country, to coordinate the work of our intelligence agencies with the INS and the State Department so we are confident of who is coming in, and to impose these new provisions using biometrics so we really know who is coming to our country.

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

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

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President.

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

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

If there is one key word that underscores this bill, it is “balance.” In the new post-September 11 society that we face, balance is going to be a key word. Technology has forced us to recalibrate in many different ways. The technology that allowed these horrible people to do what they did to my city and to America and the technology that allowed these horrible people to do what they did to my city and to America.

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

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

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

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

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

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

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

The bill does a good job of that.

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Sen-
ator from California.

Mr. LEVIN. Mr. President, I wonder
if the Senator from California would
yield for a unanimous consent request.
Mrs. FEINSTEIN. I would be happy to
yield.

The PRESIDING OFFICER. The Sen-
ator from Michigan.

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

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

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. The Sen-
ator from California.

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

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

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

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

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

Mr. LEVIN. Mr. President, the
antiterrorism bill which the Senate is
about to pass reflects the sentiments
the American people have expressed
since the events of September 11—that
we must act swiftly and strongly to de-
fend our country without sacrificing
our cherished values. The Senate
antiterrorism legislation means that
terrorists who evade Foreign Intelligence
visa cards, reform the Visa waiver program,
and improve and beef up identity documents.
I passed around at the press con-
ference a pilot’s license, easily repro-
ducible, no biometric data, no photo-
graph, perforated around the edges
showing that it had been removed from
a bigger piece. This is the pilot’s li-
cense that every 747 pilot carries, every
private pilot carries. It is amazing to
note that 20 years ago this could be a Federal
document and be as sloppy as it is in this
time.

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

Both Senator KYL and I also met
with Larry Ellison, the CEO of Oracle.
Oracle has stated that they are willing
to devote some 1,500 engineers to de-
velop a national identity database.

What we are proposing is different from
that. He said they would devote their
software free of charge.

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terrorists who evade the Floodgates of a
dam. This bill prevents that.

Overall, this bill gives law enforce-
ment and the intelligence community
the tools they need to go after what is
an increasingly sophisticated terrorist
element. I am very pleased this legislation
also includes a number of provisions I
drafted with Senator GRAHAM well be-
tween the domains of the CIA and the
intelligence community, a larger role
with regard to the analysis and dis-
semination of information gathered under FISA. These enhance the
law enforcement share informa-
tion with the intelligence community.

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

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

I agree with the 4-year sunset in-
cluded for certain surveillance provi-
sions in the bill. In committee I sug-
gested a 5-year sunset. The House had 2
years. It is now 4 years. That is an ap-
propriate time. It gives us the time to
review whether there were any out-
rageous uses of these provisions or
whether uses were appropriate under
the basic intent of the bill.

Let me briefly touch on a related
topic of great importance in the war
against terrorism. As an outgrowth of
the Technology, Terrorism, and Gov-
ernment Information Subcommittee,
today Senator Jon KYL of Arizona and
I held a press conference indicating a
bipartisan effort to create a new, cen-
tral database, a database that is a lookout database into which
information from intelligence, from
law enforcement, from all Federal
agencies will go. That database will be
for every visa holder, every person who
crosses borders coming in and out of
this country. The legislation will pro-
vide for “smart visas cards”, reform the
Visa waiver program, reform the un-
regulated student program, and
improve and beef up identity documents.

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We now have these anti-terrorism
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Let me briefly touch on a related
topic of great importance in the war
against terrorism. As an outgrowth of
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today Senator Jon KYL of Arizona and
I held a press conference indicating a
bipartisan effort to create a new, cen-
tral database, a database that is a lookout database into which
information from intelligence, from

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

I yield the floor.

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

Mr. LEVIN. Mr. President, the
antiterrorism bill which the Senate is
about to pass reflects the sentiments
the American people have expressed
since the events of September 11—that
we must act swiftly and strongly to de-
fend our country without sacrificing
our cherished values. The Senate
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the principles of due process and fairness embedded in our Constitution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In my floor statement of October 11, I explained the related requirement in Section 313 that U.S. financial institutions take reasonable steps to ensure that other foreign banks are not allowing their U.S. accounts to be used by shell banks. The purpose of this language is to prevent shell banks from getting indirect access to the U.S. financial system by operating through a correspondent account with another foreign bank.

That requirement was included in both the House and Senate bills, and in the final version of the legislation. It is a key provision because it will put pressure on all foreign financial institutions that want to do business in the United States to shut off the access that shell banks now enjoy in too many countries around the world.

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

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

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

The most important change made to the due diligence requirement during the House-Senate negotiations was to make the definitional provisions in section 311 also apply to section 312. Specifically, the House and Senate negotiators amended what is now Section 311(e) to make sure that its provisions would be applied to both the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318. How the House-Senate negotiators defined “beneficial ownership” will have profound implications for these new provisions as well as for other aspects of U.S. anti-money laundering laws.

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

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

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

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

Section 311(e)(4) authorizes the Treasury Secretary to further define terms used in subsection (e)(1), and Treasury may want to use that authority to issue regulatory guidance clarifying the scope of the term “foreign financial institution” to help U.S. financial institutions understand the extent of their due diligence obligation under the new 31 U.S.C. 5318(b). In fashioning this regulatory guidance, Treasury should keep in mind the intent of Congress in issuing this new due diligence requirement—to require all U.S. financial institutions to use greater care when allowing any foreign financial institution inside the U.S. financial system.

The issue of beneficial ownership is at the heart of the fight against terrorists and other criminals who want to use our financial institutions against us. Terrorists and other criminals want to hide their identity as well as the criminal origin of their funds so that they can use their U.S. accounts without alerting law enforcement. They want to use U.S. and international payment systems to move their funds to anyone, anywhere. They want to use our financial institutions against us. Terrorists and other criminals who want to hide their identity as well as the criminal origin of their funds so that they can use their U.S. accounts without alerting law enforcement. They want to use U.S. and international payment systems to move their funds to anyone, anywhere. They want to use our financial institutions against us.

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increase the financial resources available to them. They want to set up credit card accounts and lines of credit that can be used to finance their illegal activities. Above all, they do not want U.S. financial institutions determining who exactly is the owner of their accounts, nor the knowledge about the information stored. They seek to prevent closure of the accounts, seizure of assets, exposure of terrorist or criminal organizations, and other actions by law enforcement.

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

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

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

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

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

Fourth, Section 311(e)(2) directs the Treasury Secretary to issue regulations clarifying how the term "account" is used by other financial institutions other than banks. This authority should be read in conjunction with Section 311(e)(4) which allows, but does not require, the Secretary to issue regulations defining in the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318. These two regulatory sections should, in turn, be read in conjunction with Section 312(b)(1) which directs the Secretary to issue regulations further clarifying the due diligence policies, procedures and controls required under that section. Together, these grants of regulatory authority provide the Treasury Secretary with ample authority to issue regulations facilitating the due diligence requirement in place for years, and in fact requires account on Invest a specific document, called "Form A," declaring the identity of the account's beneficial owner. The difficulties associated with determining beneficial ownership can be addressed.

Next is due diligence and correspondent banking. Section 312 imposes an ongoing, industry-wide legal obligation on all types of financial institutions operating in the United States to exercise appropriate care when opening and operating correspondent accounts for foreign financial institutions or wealthy foreign individuals seeking access to the U.S. financial system.

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

Finally, Section 313 imposes an ongoing, industry-wide legal obligation on all types of financial institutions operating in the United States to exercise appropriate care when opening and operating correspondent accounts for foreign financial institutions or wealthy foreign individuals seeking access to the U.S. financial system.

The beneficial ownership regulation will be a challenging undertaking. But there is plenty of expertise to draw upon, from FATF, the Basel Committee, U.S. financial and tax regulators, other countries with beneficial ownership requirements and, of course, from our own financial community.
The three elements specified in Section 5318(i)(2) for enhanced due diligence policies, procedures and controls are not meant to be comprehensive. Additional reasonable steps would be appropriate before opening or operating foreign accounts for these two categories of foreign bank accounts, including:

1. Check the foreign bank's past record and local reputation, the jurisdiction's regulatory environment, the bank's major lines of business and client base, and the extent of the foreign bank's anti-money laundering program.

2. Apply heightened due diligence requirements to ascertain the identity of the foreign bank's non-United States official owners; to ascertain the source of funds deposited into the account; and to monitor the account to detect and report any suspicious activity. If the account is opened for or on behalf of a senior foreign political figure or a close family member or associate of the political figure, the U.S. financial institution must use enhanced due diligence policies, procedures and controls with respect to those accounts.

3. Close the account if the financial institution suspects that money laundering or other financial crimes may be occurring in the account.

Moreover, other categories of foreign financial institutions will also require use of enhanced due diligence policies, procedures and controls, including, for example, offshore broker-dealers or investment companies, foreign money exchanges, foreign casinos, and other foreign money service businesses.

Now I would like to discuss due diligence and private banker. The new Section 5318(i) also addresses due diligence requirements for private banking accounts. The private banking staff report issued by the Permanent Subcommittee on Investigations explains why these types of private banking accounts are especially vulnerable to money laundering and why initial and ongoing due diligence reviews are needed to detect and report any suspicious activity.

The House and Senate versions of the bill are very similar. The primary difference between them is that the House bill included a definition of "private banking accounts" that originally appeared in the Levin-Grassley bill, S. 1371, while the Senate left the term undefined. The final version of Section 5318(i) includes the House definition. It has three elements.

First, the account in question must require a $1 million minimum aggregate of deposits. Second, the account must be opened on behalf of living individuals who are beneficial owners or officers of a financial or nonfinancial entity. Third, the account must be assigned to, administered, or managed by U.S. personnel from inside the United States.

The purpose of the private banking definition is to require U.S. financial institutions to exercise due diligence when opening and managing private banking accounts, including those opened at other types of financial institutions, including securities firms which have developed lines of business in private banking accounts for wealthy foreign individuals. In addition, the section is intended to cover not only private banking accounts physically located inside the United States, but also private banking accounts that are physically located outside the United States but are managed by U.S. personnel from inside the United States. For example, the private banking account conducted by my Subcommittee found that it was a common practice for some U.S. private banks to open private banking accounts for foreign clients in an offshore or bank secrecy jurisdiction, but then to manage those accounts using private bankers located inside the United States. In such cases, the U.S. financial institution is required to exercise the same degree of due diligence in opening and managing those private banking accounts as it would if those accounts were physically located within the United States.

Another area of inquiry involves the $1 million threshold. Some financial institutions have asked whether the $1 million minimum would be met if an account initially held less than the required threshold, or the account's total deposits dipped below the threshold amount on one or more occasions, or the same individual held accounts both inside and outside the private bank and kept the private bank account's total deposits below the threshold amount.

Finally, the House-Senate negotiators adjusted the effective date of the due diligence provision. The new effective date gives the Secretary 180 days to issue regulations clarifying the due diligence policies, procedures and controls required under the new 31 U.S.C. 5318(i). These regulations are, in turn, intended to provide regulatory guidance to the range of U.S. financial institutions that will be compelled to exercise due diligence before opening a private banking or correspondent banking account. Section 312(b) states that, whether or not the Secretary issues the 180-day deadline for regulations, the due diligence requirement will go into effect no later than 270 days after the date of enactment of the legislation.
them the option of using a court-appointed receiver to chase down the laundered funds.

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

The third point about the Federal receiver provision is that it is intended to make it clear that Federal receivers appointed under U.S. money laundering laws or forfeiture proceedings may request and obtain financial information from the U.S. Financial Crimes Enforcement Network in Treasury and from foreign countries as if the receiver were standing in the shoes of a federal prosecutor. This language is essential to increase the effectiveness of receivers who often have to work quickly, in foreign jurisdictions, in cooperation with foreign law enforcement and financial regulatory personnel, and who need clear statutory authority to make use of international investigation sharing arrangements available to assist U.S. law enforcement. The provision is intended to make it clear that the Federal receiver has the same access to international law enforcement assistance as a Federal prosecutor would if the prosecutor were personally attempting to recover the laundered funds. The language is also intended to make it clear that Federal receivers are bound by the same policies and procedures that bind all Federal investigators in such matters, and that Federal receivers have no authority to exceed any restrictions set by the Attorney General.

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

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

There are many other noteworthy provisions of this legislation, from requirements involving legal service of subpoenas on foreign banks with U.S. accounts, to new ways to prosecute money laundering crimes, to new arrangements for cooperation among U.S. financial institutions, regulators and law enforcement to stop terrorists and other criminals from gaining access to the U.S. financial system. There just is not sufficient time to go into all of them. To reiterate, the anti-terrorism bill we have before us today would be very incomplete—only half of a toolbox—without a strong anti-money-laundering title to prevent foreign terrorists and other criminals from using our financial institutions against us. With the anti-money-laundering provisions in this bill, the anti-terrorism bill gives our enforcement authorities a valuable set of additional tools to fight those who are attempting to terrorize this country.

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

The intention of this bill is to impose anti-money laundering requirements across the board that reach virtually all U.S. financial institutions.

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Maryland is recognized.

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

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

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

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

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

Title III represents the most significant anti-money-laundering legislation in many, many years—certainly since money laundering was first made a crime in 1986. The Senate Committee on Banking, Housing, and Urban Affairs, which I have the privilege of chairing, marked up and unanimously approved the key anti-money-laundering provisions on October 4. Those provisions were approved unanimously, 21–0. Those were approved as Title III of S. 1510, the Uniting and Strengthening America Act on October 11 by a vote of 98–1. H.R. 3004, the Financial Institution Antiterrorism Act of 2001, contained many of the same provisions and added important additional provisions, passed the House of Representatives by a vote of 412–1 on October 17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bank Secrecy Act is so named because it bars bank secrecy in America by preventing financial institutions from maintaining opaque records or hiding money. It was a mistake to think that secrecy is a hiding place for crime, and Congress has barred our institutions from allowing those hiding places.

The second part of our money-laundering defenses are the criminal statutes enacted in 1986 that make it a crime to launder money and that allow criminal and civil forfeiture of the proceeds of crime.

The third part is a statutory framework that allows information to be communicated to and between law enforcement officials. Our goal must be to assure, to the greatest extent consistent with reasonable privacy protections—and we understood the necessity of balancing these considerations—to assure ourselves that necessary information can be used by the right persons in real time to cut off terrorism and crime.

Title III modernizes provisions in all three areas to meet today’s threats in the financial economy. Its provisions are divided into three subtitles dealing respectively with international counter-money-laundering measures, sections 311 through 330; Bank Secrecy Act amendments and related improvements, sections 351 through 366; and currency crimes and protections, sections 371 through 377.

There are 46 provisions in Title III. At this time, I want to summarize some of the bill’s most important provisions.

Section 312 focuses on another aspect of the fight against money laundering, the financial institutions that make money laundering risks—offshore banks and banks in jurisdictions found to have substantial money laundering controls or which the Secretary determines to be of primary money laundering concern under the new authority given him by section 311.

The section also specifies certain minimum standards for the enhanced due diligence that U.S. financial institutions are required to apply to correspondent accounts opened by foreign banks. The standard is high due diligence for accounts sought by offshore banks or banks in jurisdictions found to have substantial money laundering risks—offshore banks and banks in jurisdictions with weak anti-money laundering and banking controls. These minimum standards were developed from, and are based upon, the factual record and analysis that was prepared by the staff of the Senate Permanent Subcommittee on Investigations, which Senator Levin chairs. Section 312 is essential to Title III. It addresses, with appropriate flexibility, mechanisms whose very importance for the conduct of commercial banking
Section 371 creates a new Bank Secrecy Act offense involving the bulk smuggling of more than $10,000 in currency in any conveyance, article of luggage, package or container either into or out of the United States, and related forfeiture provisions. This provision has been sought for several years by both the Departments of Justice and the Treasury.

Other provisions of the bill address relevant provisions of the Criminal Code. These provisions were worked out with the House and Senate Judiciary Committees and are included in title II because of their close relationship to the provisions of title I added or modified by title III.

The most important is section 315, which expands the list of specified unlawful transactions under 18 U.S.C. 1956 and 1957 to include foreign corruption offenses, certain U.S. export control violations, offenses subject to U.S. extradition obligations under multilateral treaties, and various other offenses. The Department of Justice should make use of the expanded authority, created by section 315, to make the risk of detection to foreign kleptocrats immediate and palpable.

Section 316 establishes procedures to protect individuals who believe any property may be subject to confiscation in the exercise of the government’s antiterrorism authority. This provision is designed to assure that there is no situation in which the defendant in a forfeiture action will lack the opportunity to challenge the forfeiture simply because of the authority under which the forfeiture is sought.

Section 319 treats amounts deposited by foreign intermediaries with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of fairness and consistent with the United States’ international obligations, to suspend a forfeiture proceeding based on that presumption. This closes an important forfeiture loophole.

A third important set of provisions modernize information-sharing rules to reflect the reality of the flight against money laundering and terrorism.

Section 314 requires the Secretary of the Treasury to issue regulations to encourage cooperation among financial institutions, financial regulators and law enforcement officials and to permit the sharing of information by law enforcement and regulatory authorities with such institutions regarding persons reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. The section also allows banks to share information involving possible money laundering or terrorist activity among themselves—with notice to the Secretary of the Treasury.

Section 330 states the sense of Congress that the President should direct certain cabinet officers to seek negotiations with foreign supervisory agencies to ensure that foreign institutions maintain adequate records relating to any foreign terrorist organization or person engaged in any financial crime and to make such records available to U.S. law enforcement and financial supervisory personnel.

Section 331 states but does not require, a bank to include information, in a response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in potentially unlawful activity, and creates a safe harbor from civil liability for the bank that includes such information in response to an employment reference request, except in the case of malicious intent.

Section 350 contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act to permit information subject to those statutes to be used in the conduct of United States intelligence or counterintelligence activities to protect against international terrorism.

Section 361 seeks to enhance the ability of FinCEN to address money laundering and terrorism. The section makes FinCEN a Department of the Treasury and requires the Secretary to establish operating procedures for the government-wide data access service and communications center that FinCEN operates. In recognizing FinCEN’s evolution and maturity, it is not our intention to require existing delegations of authority to be reissued simply because FinCEN’s organizational status has changed from Treasury office to Treasury bureau.

The modernization of our money-laundering laws represented by Title III is long overdue. It is not the work of one or two weeks but represents years of careful study and a bipartisan effort to produce prudent and effective legislation. The care taken in producing the legislation extends to several provisions calling for reporting on the effect of the legislation and a provision for a three-year review of the effectiveness of the legislation. Title III responds, as I have indicated, to the statement of former Attorney General Chertoff, the head of the Department of Justice’s Criminal Division. I want to express my appreciation to him, Under Secretary Gurule at the Treasury, and his associates for their help in this effort.

At the hearing on September 26, Assistant Attorney General Chertoff said, and I quote him, “We are fighting with outdated weapons in the money-laundering arena today.” Without this legislation, the criminal financial system of which bin Laden spoke would remain open. We should not, indeed we cannot, allow that to continue. And that is why enactment of this legislation is so important.

Title III is a balanced effort to address a complex area of national concern. It is the result of a truly bipartisan effort on both sides of Congress working closely with the executive branch, with the White House, with the Department of the Treasury, and the Department of Justice. I very strongly urge support for this essential component of the antiterrorism package.

I ask unanimous consent that a section-by-section summary be printed in the Record.

There being no objection, the material was ordered to be printed in the Record.

TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTI-TERRORISM ACT OF 2001—SECTION-BY-SECTION SUMMARY

Section 301. Short title and table of contents

Section 302. Findings and purposes

Section 303. 4-year congressional review-exemed consideration

Section 313 provides that the provisions added and amendments made by "Title III will terminate after September 30, 2004, if the Congress enacts a joint resolution to that effect, and that any such joint resolution will be considered by the Congress expeditiously.

SUBTITLE A. INTERNATIONAL COUNTER-MONEY LAUNDERING AND RELATED MATTERS

Section 311. Special measures for jurisdictions, financial institutions, or international transactions or accounts of primary money laundering concern

Section 311 adds a new section 31 U.S.C. 5318A, entitled “Special measures for jurisdictions, financial institutions, or international transactions or accounts of primary money laundering concern.” To the Bank Secrecy Act. The new section gives the Secretary of the Treasury, in consultation with other senior government officials, authority (in the Secretary’s discretion), to impose one or more of five new “special measures” against foreign jurisdictions, foreign financial institutions, transactions involving such jurisdictions or institutions or one more types of accounts, that the Secretary, after consultation with Secretary of State and the Attorney General, determines to pose a “primary money laundering concern,” to the United States.

The special measures include: (1) requiring additional recordkeeping or reporting for particular transactions, (2) requiring the identification of customers of a foreign bank who use an interbank payable-through account opened by that foreign bank at a U.S. bank, (4) requiring the identification of customers of a foreign bank who use an interbank correspondent account opened by that foreign bank to support loans and other use of receipts reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities.
bank at a U.S. bank, and (5) after consulta-
with the Secretary of State, the Attor-
ry General, and the Chairman of the Fed-
eral Reserve Board, restricting or prohibi-
ting the opening or maintaining of certain 
interbank correspondent or payable through 
accounts. Measures 1–4 may not be imposed 
for more than 120 days except by regulation, 
and measure 5 may only be imposed by regu-
lation.
Section 312. Special due diligence for 
correspondent accounts and private banking 
accounts
Section 312(a) of the Act adds a new 
subsection (1), entitled “Due Diligence for 
United States Private Banking and Cor-
respondent Banking Accounts involving For-
eign Financial Institutions.” The new 
subsection requires a U.S. financial institution 
that maintains a correspondent account or 
private banking account for a non-United 
States person (or that person’s representa-
tive) to establish appropriate, specific, and, 
where necessary, enhanced due diligence pro-
cedures that are reasonably designed to de-
tect and report instances of money laun-
dering through such accounts. For this pur-
pose, a correspondent account is defined in 
the new section 5318A, added to the Bank Se-
curity Act of 1970, as a deposit account.

The general requirement is supplemental 
by two additional, more specific, due dil-
gence standards that are required for certain 
types of correspondent and private banking 
accounts.

Correspondent Accounts.—In the case of cer-
tain correspondent accounts, the additional 
standards required by a subsection 5318A(2) re-
quire a U.S. financial institution to, at a 
minimum, do three things. First, it must as-
certain the identity, and the nature and ex-
tent of the interests of the ultimate owners 
of any foreign bank correspondent whose 
shares are not publicly traded. Second, it 
must conduct enhanced scrutiny of the cor-
respondent account to guard against money 
laundring and satisfy its obligation to re-
port suspicious transactions under the terms 
of 31 U.S.C. 5318(g). Third, it must ascertain 
whether any foreign bank correspondent in 
turn provides correspondent accounts to 
third party foreign banks; if so the U.S. fi-
nancial institution must ascertain the iden-
ty of that foreign bank’s affiliate, and, 
where necessary, enhanced due diligence pro-
cedures that are reasonably designed to de-
tect and report instances of money laun-
dering through such accounts. For this pur-
pose, a correspondent account is defined in 
the new section 5318A, added to the Bank Se-
curity Act of 1970, as a deposit account.

These additional standards apply to cor-
respondent accounts requested or main-
tained by or on behalf of any foreign bank 
operating an offshore banking li-
cense (defined by the statute as a banking li-
cense that bars the licensee from conducting 
banking activities with citizens of, or in the 
currency of, the jurisdiction that issued 
the license), or (ii) under a banking li-
cense issued (A) by any country designated 
as noncooperative with international anti-
money laundering standards by an inter-
ministerial body of which the United States 
is a member, with the concurrence of the 
U.S. representative to such body, or (B) by a 
country designated by the Secretary of the 
Treasury as warranting special measures 
(i.e., the special measures author-
ized by new section 5318A, added by 
section 312(c) of the Act), due to money laun-
dering concerns.

Private Banking Accounts.—In the case of 
private banking accounts, the additional 
standards of subsection 5318A(2) require a 
U.S. financial institution to, at a 
minimum, do two things. First, the U.S. fi-
nancial institution must take reasonable 
steps adequate to conduct enhanced 
scrutiny, that is reasonably designed to de-
tect and report transactions that may in-
volve the proceeds of foreign corruption, for 
any person (or that person’s representa-
tive), in that institution that is re-
quested or maintained by, or on behalf of, 
a senior foreign political figure (or any imme-
diate family member or close associate of 
such a political figure).

A private banking account for this purpose 
is any account or combination of accounts 
that requires a minimum aggregate deposit 
of at least $1 million and is held by a pri-
ty customer.” In the case of a foreign 
bank correspondent of the U.S. insti-
tution, as defined by the statute as a 
correspondent account, the additiona-

Section 313. Prohibition on United States 
correspondent accounts with foreign shell banks
Section 313(a) of the Act adds a new 
subsection (1), entitled “Prohibition on United States Correspondent Accounts with Foreign Shell Banks” to 31 U.S.C. 5318. The new 
subsection bars any depository institution or 
registered foreign bank from establishing, 
maintaining, administering, or managing 
a correspondent account in the United 
States for a foreign bank, if the foreign bank 
does not have “a physical presence in any 
country.” The subsection also includes a re-
quirement that any financial institution 
covered by the subsection must take reason-
able steps (as delineated by Treasury regula-
tions) to ensure that it is not providing 
the prohibited services indirectly to a “no-
physical presence bank,” through a third party 
that is not subject to supervision by the U.S. 
institution. The prohibition does not apply, how-
ever, to a correspondent account provided by 
the United States to a foreign “no physical 
presence bank” if the foreign bank is an af-
filiate of a depository institution (including 
a credit union or foreign bank) that does 
have a physical presence in some country 
and the foreign shell bank is subject to su-
pervision by a banking authority that regu-
lates its “physical presence” affiliate in that 
country. Both the terms “affiliate” and 
“physical presence” are defined in the new 
subsection.

Section 313(b) provides that the ban on pro-
vision of correspondent accounts for brasse-
erie types of foreign financial institution 
shall take effect 270 days after the date of enact-
ment.
States' national interest, to suspend a forfeiture proceeding that is otherwise based on the "U.S. deposit" presumption.

Section 320 amends 18 U.S.C. 1961 to permit the United States to institute forfeiture proceedings against the proceeds of foreign crimes committed in the United States.

Section 321 amends 31 U.S.C. 5312(2) to add credit unions, future commission merchants, commodity trading advisors, and registered commodity pool operators to the definition of "financial institution" for purposes of the Bank Secrecy Act, and to include the Commodity Futures Trading Commission within the term "federal functional regulator" for purposes of the Bank Secrecy Act.

Section 322 extends the existing prohibition, in 18 U.S.C. 4166, against the maintenance of a forfeiture proceeding on behalf of a fugitive to include a proceeding by a corporative shareholder that is a fugitive and a proceeding in which the corporative's claim is instituted by a fugitive.

Section 323 provides criminal penalties for officials who violate their trust in connection with the administrative functions of the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate.

Section 324 states the sense of the Congress that the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate, be to ensure that any relevant legislative action, within 30 months of the date of enactment.

Section 325 amends 31 U.S.C. 5318(h) to authorize the Secretary of the Treasury to issue regulations concerning the minimum standards for financial institutions and their customers regarding the identity of the opening and maintenance of accounts, and customers (after being given adequate notice) to comply with reasonable procedures for the verification of customers. The regulations are to be issued within one year of the date of enactment.

Section 326 amends 31 U.S.C. 5318(g) to clarify the terms of the safe harbor from civil liability for financial institutions filing suspicious activity reports pursuant to 31 U.S.C. 5318(g). The amendments to paragraph (g)(3) also create a safe harbor from civil liability for financial institutions filing employment references sought by other banks pursuant to the amendment to the Federal Deposit Insurance Act made by Section 355 of Title III.

Section 327 amends section 3(c) of the Bank Holding Company Act of 1956, and section 18(c) of the Federal Deposit Insurance Act to require the Federal Reserve Board and the Federal Deposit Insurance Corporation, respectively, to consider the effectiveness of a bank holding company or bank (within the jurisdiction of the agency) in combating money laundering activities, including in overseas branches, in ruling on any merger or similar application by the bank or bank holding company.

Section 328 requires the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to take all reasonable steps to encourage governments to require the inclusion of the name of the originator of wire transfer instructions in wire transfers to the United States in order to protect against terror financing.

Section 329 amends section 18 of the Federal Deposit Insurance Act to permit (but not require) a bank to provide information, in response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in potentially unlawful activity. A bank that provides information to a second bank under the terms of this amendment is protected from civil liability arising from the provision of the information unless the first bank acts with malicious intent.

Section 330 states the sense of the Congress that any national, regional, or international organization or financial institution that has adequate measures in place in order to ensure that all financial information is protected from civil liability arising from the provision of the information shall be commended.

Section 331(a) directs the Secretaries of the Treasury, in consultation with the Commodity Futures Trading Commission, to prescribe regulations requiring future kommodity futures dealers, and certain commodity pool operators to submit suspicious activity reports under 31 U.S.C. 5318(g). To a significant extent, the regulations clarify and restate the terms of existing law, but it also signals our concern that the Treasury move quickly to
determine the extent to which suspicious transaction reporting by commodities firms is necessary as a part of the nation’s anti-money laundering programs.

Section 365. Includes 31 U.S.C. 5331 (and makes related and conforming changes) to the Bank Secrecy Act to require any person who receives more than $10,000 in coins or currency, in one transaction or two more related transactions in the course of that person’s trade or business, to file a report with respect to such transaction with FinCEN; regulations implementing the new reporting requirement are to be promulgated within six months of enactment.

Section 366. Efficient use of current transaction reporting system.

Section 366 requires the Secretary of the Treasury, prior to the end of the one year period beginning on the date of enactment containing the results of a study of the possible expansion of the statutory definitions of transactions made from the currency transaction reporting requirements and ways to improve the use by financial institutions of the statutory exemption system as a way of reducing the volume of unneeded currency transaction reports.

Section 367. Bulk cash smuggling.

Section 371 creates a new Bank Secrecy Act offense, 31 U.S.C. 5332, involving the bulk smuggling of more than $10,000 in currency in any conveyance, article of luggage or merchandise or container, either into or out of the United States, and related forfeiture provisions.

Section 372. Forfeiture in currency transaction reporting cases.

Section 372 amends 31 U.S.C. 5372 to permit confiscation of funds in connection with currency transactions consistent with existing civil and criminal forfeiture procedures.

Section 373. Illegal money transmitting business.

Section 373 amends 18 U.S.C. 1960 to clarify the terms of the offense stated in that provision, relating to knowing operation of an unlicensed (under state law) or unregistered (under federal law) money transmission business.

Section 374. Counterfeiting domestic currency and obligations.

Section 374 makes a number of changes to the provisions of 18 U.S.C. 377–473 relating to the maximum sentences for various counterfeiting offenses, and adds to the definition of counterfeiting in 18 U.S.C. 474 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of the United States.

Section 375. Counterfeiting foreign currency and obligations.

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

Section 376. Laundering the proceeds of terrorism.

Section 376 amends 18 U.S.C. 1956 to add the provision of support to designated foreign terrorist organizations to the list of crimes that constitute “specified unlawful activities” for purposes of the criminal money laundering statute. (This provision was originally included in another title of the terrorism legislation.)

Section 377. Extraterritorial jurisdiction.

Section 377 amends 18 U.S.C. 1029 to vest United States authorities with extraterritorial jurisdiction over acts involving access device, credit card and similar frauds that would be crimes if committed within the United States and that are directed at U.S. entities or linked to U.S. activities.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, what Senator DASCHLE would like to do, and this has been cleared with the two managers, is have a vote before 2 p.m. today, approximately 5 minutes to 2 p.m. There is a meeting at the White House. There are a number of very important hearings, one including the Secretary of State. We are waiting for one of the Secretaries who has 15 minutes. We understand that Senator SPECTER is on his way.

I ask unanimous consent that the vote on passage of the Counterterrorism Act occur at 1:55 p.m. Further, that there be 10 minutes of open debate. I will alter that by saying whatever time Senator SPECTER does not use, it will be divided between the two managers of the bill.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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 sought recognition to state my support

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for the pending legislation. This is very important legislation in response to the atrocious terrorist attacks of September 11. We will at some date in the future conduct congressional oversight to make a determination as to whether there were any deficiencies in our intelligence priorities, which expired on September 11. However, we should wait until the appropriate time because our intelligence entities are busy now collecting intelligence to avoid any recurrence of the terrorist attacks. But it is important that law enforcement have appropriate tools at their disposal to combat terrorists. In the United States that means careful legislation which is in accordance with our constitutional rights and our civil liberties.

I believe Congress has responded appropriately in this matter with due deliberation. There is obviously a temptation in the face of what occurred on September 11 to respond spontaneously or reflexively, but we have undertaken this legislation, I think, with appropriate care and now have a good product.

I had expressed concerns when the bill was on the Senate floor that there could have been some confusion about the urgency of the deliberative process because the Supreme Court of the United States has held acts of Congress unconstitutional where they questioned the thoroughness or deliberation. I think this bill as presented today does meet that standard.

The legislation has very important provisions under the Foreign Intelligence Surveillance Act where a modification has been made to authorize electronic surveillance where there is a “significant” rather than a “primary” purpose, allowing use of the Foreign Intelligence Surveillance Act.

I chaired the Judiciary subcommittee, which did Department of Justice oversight, getting into the Foreign Intelligence Surveillance Act in some detail with respect to the Wen Ho Lee case. This is a change which is necessary, and I believe it is a change which will pass constitutional muster.

The electronic surveillance adds terrorism to wiretap predicates. It is rather surprising that terrorism, or allegations of terrorism, have not been sufficient to authorize electronic surveillance in the past. This corrects a longstanding deficiency.

The bill has been expanded for nationwide orders, which makes sense on an administrative level and does not conflict with any issues of civil liberties or constitutional rights. The bill increases the civil liability for civil liberties or constitutional rights. I think, are very important additions to take a stand, to stop terrorist organizations such as al-Qaeda and terrorists such as Osama bin Laden not to be financed through the laundering which has been possible through laxity of the banking regulations.

In short, I believe this is a very significant step forward. There is a very heavy responsibility for the Department of Justice today with what is happening here with our efforts to respond in so many ways to September 11. Now with the anthrax, we are all concerned about what may happen in the future.

Having the report of the Intelligence Committee back in the 1995-1996 time period and chairing the appropriations subcommittee on terrorism, I am glad to see us move forward with this legislation which will give law enforcement the tools which would give them a better opportunity to prevent any more sneak attacks, any recurrence of the dastardly deeds of September 11.

I thank the Chair, and I yield the floor.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a joint memorandum on the immigration provisions of H.R. 3162 be printed in the RECORD.

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

JOINT MEMORANDUM OF SENATOR EDWARD M. KENNEDY AND SENATOR SAM BROWNBACK ON THE IMMIGRATION PROVISIONS OF "THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001"

The U.S. PATRIOT Act of 2001 contains certain immigration provisions worked out between the Administration and members of both parties. Because the legislation was developed outside the ordinary committee processes, this memorandum was prepared by the usual reports elaborating on the background and purpose of its provisions. This memorandum is accordingly submitted on behalf of the Chairman and Ranking Member of the Subcommittee on Immigration of the Senate Committee on the Judiciary to provide some background and explanations for these provisions.

TITLE IV: PROTECTING THE BORDER

SUBTITLE A—PROTECTING THE NORTHERN BORDER

Section 401 Ensuring Adequate Personnel on the Northern Border

This section permits the Attorney General to lift the cap on the number of “full-time equivalent” employees that the Immigration and Naturalization Service (INS) may assign to the northern border.

Section 402 Northern Border Personnel

This section triples the number of Border Patrol agents, INS Inspectors, and Customs Service employees in each state along the northern border. It adds additional staff and facilities needed to support northern border personnel. Further, this section provides $50 million to the INS and $50 million to the Customs Service to implement the northern border and to acquire additional equipment for this purpose.

Section 403 Requiring Sharing by the Federal Bureau of Investigation of Certain Criminal Record Extracts with Other Federal Agencies in Order to Enhance Border Security

This section provides the State Department and the INS with electronic access to the information contained in the Federal Bureau of Investigation’s National Crime Information Center Interstate Identification Index (NCIC-II), Wanted Persons File, and other files maintained by the National Crime Information Center. This information is to be used in determining whether a visa applicant or an applicant for admission to the United States has a criminal history.

Under this section, the FBI must provide the State Department and the INS with extracts from its criminal history and periodically update those extracts. Within four months of enactment of this legislation, the State Department must issue regulations regarding the proper use of the information provided by the FBI. Within two years of enactment, the Attorney General and the Secretary of State will report to Congress on the implementation of this section.

Further, this section directs the Attorney General and the Secretary of State, working with the National Institute of Standards and Technology (NIST) and other agencies, to develop and certify a technology standard that can conform the identity of a visa applicant or applicant for admission. As these agencies do not utilize a single technology, the development of a technology standard will facilitate the collection and sharing of relevant identity information between all the pertinent agencies. Further, the section instructs those agencies to investigate the use of biometric technology. The technology standard must be developed and certified by NIST within two years of the date of enactment of this subsection.

Section 404 Limited Authority to Pay Overtime

This section eliminates the $30,000 limit on overtime pay for INS personnel during 2001. The limit was contained in the 2001 Department of Justice Appropriations Act, which did not contemplate the extraordinary demands that have been placed on the INS since the terrorist attacks of September 11.

Section 405 Report on the Integrated Automated Fingerprint Identification System for Points of Entry and Overseas Consular Posts

This provision instructs the Attorney General, in consultation with the heads of other federal agencies, to report to Congress on the feasibility of enhancing the FBI’s Integrated Automated Fingerprint Identification System (IAFIS), and other identification systems, to better identify national wanted in connection with criminal investigations in the United States and abroad.

SUBTITLE E: ENHANCED IMMIGRATION PROVISIONS

Section 411 Definitions Relating to Terrorism

Under current law, unless otherwise specified, an alien is inadmissible and deportable for engaging in terrorist activity only when
the alien has used explosives or firearms. Because a terrorist can use a knife, a box-cutter, or an airplane in a terrorist act, this section expands the definition of terrorist activity to include the use of any ‘‘other explosive or dangerous device.’’ The language looks to the purpose, not the instrument, in determining whether an activity is terrorist in nature.

Current immigration law contains no provision acknowledging organized terrorist threats, and therefore cannot provide a basis for inadmissibility or deportability based on activities involving ‘‘terrorist organizations.’’ Section 411 defines terrorist organization and sets forth criteria for organizations designated by the Secretary of State as terrorists. The Attorney General is responsible for certifying under section 219 of the INA that an organization is a terrorist organization. The Attorney General may certify an organization as a terrorist organization only if the Secretary of State has so designated or if a court has made a determination. The Attorney General’s certification is subject to judicial review. See section 414.

Further, it permits certification of aliens whom the Attorney General has ‘‘reasonable grounds to believe’’ are described under the terrorism grounds of the INA or are engaged in terrorist activities that directly affect the national security of the United States. ‘‘Reasonable grounds’’ is a higher standard than mere ‘‘reason to believe’’ and requires objective, articulable grounds.

The Attorney General must, in certified cases, either initiate removal proceedings within seven days or release the alien. In certified cases involving an alien certified by the Attorney General, proceedings should continue to be initiated within the time provided by the regulations. See 86 Fed. Reg. 4685 (May 26, 2011). The seven-day window to initiate proceedings is limited to cases certified under section 236A and should be used judiciously, with charges filed promptly as possible.

For aliens whose removal is unlikely in the reasonably foreseeable future, the Attorney General is required to demonstrate that release of the alien will adversely affect national security or the safety of the community or any person before detention may continue beyond the removal period. Indefinite detention of aliens is permitted only in extraordinary circumstances. Zadvydas v. Davis, 531 U.S. Ct. 2491 (2001).

This section shall review the certification of an alien every six months and, when appropriate, revoke the certification and release the alien under such conditions as the Attorney General determines appropriate. The alien may submit documentation or other evidence to be considered by the Attorney General in reviewing his or her certification.

The Attorney General’s decision to certify and detain an alien is subject to judicial review in habeas corpus proceedings. This review encompasses the Attorney General’s certification decision and any decision to extend detention beyond the expiration of the removal period where removal is unlikely in the reasonably foreseeable future. Habeas corpus review is permitted in any appropriate district court of the United States, but appeals are limited to the United States Court of Appeals for the District of Columbia, with review available in the United States Supreme Court on certiorari or by original petition for habeas corpus. Restricting appellate review to a single court protects the government’s interest in uniformity, while providing an alien with a meaningful opportunity to seek judicial review.

Section 413 Multilateral Cooperation Against Terrorism

The records of the State Department pertaining to the issuance of or refusal to issue visas to enter the United States are confidential and can be used only in the formulation and enforcement of U.S. law. This section allows the State Department to provide such records to a foreign government on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism.

Section 414 Visa Integrity and Security

In 1996, Congress enacted legislation mandating the development of an automated entry/exit system to screen out those who might pose a threat to the United States. The INS lacks the technology and funding to implement this measure at all ports of entry, especially on the land border. Last year Congress amended the law to establish reasonable implementation deadlines. This provision directs the Attorney General, in consultation with the Secretary of State, to fully implement the entry/exit system, as amended, as expeditiously as practicable, with particular focus on the utilization of biometric technology and the development of tamper-resistant documents. To that end, this section also permits the appropriation of such funds as may be necessary to implement this system.

The entry/exit system will notify the INS when a foreign national enters the United States under the terms of their visas. Since the vast majority of people who enter the United States do not pose a threat to our safety, the bill requires the INS to require that the information obtained from the entry/exit system be interfaced with intelligence and law enforcement databases to ensure that the INS is focusing its apprehensions on those few who do pose a threat.

Federal intelligence and law enforcement agencies maintain ‘‘look out lists’’ containing the names of foreign nationals who pose safety or security threats. Not all critical information is currently shared with the INS and the State Department, which are the two agencies charged with determining whether a visa is granted or admitted to the United States. This provision requires the Office of Homeland Security to submit a report to Congress outlining how information that these two agencies need to effectively screen out those who might pose a threat to the United States.

Section 415 Participation of Office of Homeland Security on Entry Task Force

This section includes the new Office of Homeland Security as a participant in the Entry and Exit Task Force established by the Immigration and Naturalization Service Data Management Improvement Act of 2000.

Section 416 Foreign Student Monitoring Program

In 1996, Congress established a program to monitor foreign students entering the United States under nonimmigrant visas. Countries participating in the program must have nonimmigrant visa refusal rates, have machine readable passport programs, and not compromise the law enforcement interests of the United States.

Currently, all institutions of higher education that enroll foreign students or exchange visitors are required to participate in the monitoring program. This section also extends the list of authorized nonimmigrant student visa issuers to the United States, funded by user fees. While a pilot phase of this program ended in 1999, this system has not been implemented nationwide. This section requires the system to be fully implemented and temporarily funds the program through January 2003.

The Visa Waiver Program permits nationals of participating countries to enter the United States without obtaining nonimmigrant visas. Countries participating in the program must have low nonimmigrant visa refusal rates, have machine readable passport programs, and not compromise the law enforcement interests of the United States.

This section requires the Secretary of State to conduct an annual audit of the program to assess measures to prevent the counterfeiting and theft of passports and to assess whether participating countries have established a program to develop tamper-resistant passports. Results of the audit will be reported to Congress.

Currently, nationals of participating countries have until October 1, 2007 to obtain machine-readable passports to seek admission to the United States. This section advances the deadline to October 1, 2008, and requires the Secretary of State to waive the requirements imposed by the deadline for all nationals of a program country, if that country issues machine-readable passports.
This section directs the State Department to examine the concerns, if any, created by the practice of certain aliens to "shop" for a visa between issuing posts.

**Section 418 Prevention of Consulate Shopping**

This section provides permanent residence as special immigrants to the spouses and children of certain victims of the terrorist attacks. It also grants permanent residence to an individual who obtained permanent residence through a family or employment-based category, but obtained permanent residence through a family or employment-based category, but would be granted to the fiance or fiancee as a direct result of the terrorist attacks on September 11, 2001. Permanent residence would be granted to the fiance or fiancee of an alien lawfully present on the terrorist attacks. Aliens who turn 21 pending are no longer considered children of the terrorist attacks. Aliens who turn 21 pending are no longer considered children of the alien. This section also protects recipients of diversity visas who were adversely affected by the terrorist attacks.

**Section 429 Extension of Filing or Reentry Deadlines**

Current law provides that an alien who was the spouse of a U.S. citizen for at least two years before the citizen died shall remain eligible for immigrant status as an immediate relative. This eligibility also applies to the children of the alien. This section provides that if the U.S. citizen died as a direct result of the terrorist attacks, the alien can seek permanent resident even if the marriage was less than two years old.

This section also protects the spouse and unaccompanied minor children of a permanent resident killed in the terrorist attacks by allowing them to seek permanent resident either through a pending visa petition (filed by or on behalf of the deceased) or by filing a "self-petition" based on their relationship to the deceased permanent resident.

**Section 424 'Age-Out' Protection for Children**

By providing a brief filing extension, this provision allows an alien with "age-out" of eligibility to immigrate as the result of the terrorist attacks. Aliens who turn 21 years of age while their applications are pending are protected if an individual who obtained permanent resident under the INA, and therefore "age out" of eligibility to immigrate.

**Section 425 Temporary Administrative Relief**

This section provides temporary administrative relief to an alien lawfully present on September 11, 2001. The spouse, parent, or child of someone killed or disabled by the terrorist attacks and otherwise not entitled to relief.

**Section 426 Evidence of Death, Disability, or Loss Employment**

This section directs the Attorney General to establish evidentiary standards regarding on constitutes death, disability, or loss of employment "as a direct result" of the terrorist attacks. Regulations are not required to implement the provisions of this subtitle.

**Section 437 No Benefit to Terrorists or Family Members**

No benefit under this subtitle will be provided to anyone involved in the terrorist attacks on September 11 or to any family member of such individual.

**Section 428 Definitions**

The term 'specified terrorist activity' means any terrorist activity conducted against the United States, its government, or its people on the United States on September 11, 2001.

**Title VIII**

Mr. GRAHAM. Mr. President, several provisions of title VIII would establish criminal prohibitions or expand existing criminal laws to deter terrorist conduct. My understanding is that the Senate certainly does not intend title VIII to criminalize otherwise lawful and authorized United States Government activities. Would the Senator confirm my understanding of the intent of title VIII.

Mr. LEAHY. The Senator's understanding is absolutely correct. Unless expressly provided, none of the general restrictions in title VIII are intended to criminalize lawful and authorized United States Government activities.

Mr. BIDEN. Mr. President, 6 years ago I stood on this floor and called upon the Senate to join the fight against terrorism in the wake of the horrific bombing in Oklahoma City. Back then some argued terrorism was something that usually happened far away, in distant lands, over distant conflicts. Well, that's all changed.

Terrorism has come to America.

We have to be a little proactive now.

Back then, I proposed a series of precise anti-terrorism tools to help law enforcement catch terrorists before they commit their deadly act, not ever imagining the events of September 11.

In particular, I said that it simply did not make sense that many of our law enforcement tools were not available for terrorism cases.

For example, the FBI could get a wiretap to investigate the mafia, but they could not get one to investigate terrorists. To put it bluntly, that was crazy! What's good for the mob should be good for terrorists.

Anyway, some of my proposals were enacted into law in 1996, a number were not.

There were those who decided that the threat to Americans was apparently not serious enough to give the President all the changes in law he requested.

Today, 5 years later, I again call on my colleagues to provide law enforcement with a number of the tools which they declined to pass back then. The anti-terrorism bill we consider today is measured and prudent. It has been strengthened considerably since the Administration originally proposed it in mid-September. It takes a number of important steps in waging an effective war on terrorism.

It allows law enforcement to keep up with the modern technology these terrorists are using. The bill contains several provisions which are identical or nearly identical to those I previously proposed.

For example: it allows the FBI to get wiretaps to investigate terrorists, just like they do for the Mafia or for drug kingpins; it allows the FBI to get a roving wiretap to investigate terrorists—so they can follow a particular suspect, regardless of how many different forms of communication that person uses; and it allows terrorists to be charged with Federal "racketeering offenses," serious criminal charges available against organizations which engage in criminal conduct as a group, for their crimes.

I am pleased that the final version of the bill we are considering today contains three provisions that I fought for.

First, section 613 incorporates a bill that Senator HATCH and I introduced earlier this year, S. 899. Named in honor of Delaware State trooper Francis Collender, who was tragically killed while on a traffic stop in Jessa, DE this past February, S. 899 and section 613 of this bill will raise the one-time death benefit paid to the families of slain or permanently disabled law enforcement officers. This benefit has stood at $100,000. It was indexed for inflation and currently stands at $151,000, but even this is far too low for the families of these heroes to make ends meet. The bill we consider today raises the benefit to $250,000, continues to index it for inflation, and makes it applicable to the family of any law enforcement or fire personnel who lost their life or on after January 1, 2001. It's the least we can do for the Collender family. The least we can do for the hundreds of families who tragically lost a loved one on September 11, and I'm grateful my colleagues have agreed we need to include this in this larger anti-terrorism bill today.

Second, section 817 is based on legislation I introduced in the 106th Congress, S. 3202. It may shock my colleagues that under current law, anyone, including convicted felons, fugitives, and aliens from terrorist-sponsoring states, can possess anthrax or other biological agents. And under current law, the FBI has no tool at its disposal to charge someone with possess-
bona fide research reason. If not, you’re going to be charged with a felony and you face up to ten years in Federal prison.

Finally, section 1005 of this bill incorporates my First Responders Assistance Act, which I’ve spoken with too many local police officers, chiefs, firemen and women, and others who feel left out of our fight against terrorism. I commend FBI Director Mueller for recently pledging to do a better job sharing with our State and local law enforcement people, but clearly more needs to be done. Who responds first to a terrorist incident? On September 11 it was the New York City and Arlington County, VA police and fire departments. That’s always going to be the case, local law enforcement is our first line of defense against terrorists, and we need to give them the tools they need to get that job done well.

My provision will, for the first time, give local law enforcement and fire personnel the opportunity to apply directly to the Justice Department to receive terrorism prevention assistance. Specifically, departments will now be able to get help purchasing gas masks, hazardous material suits, intelligence equipment, twenty-first century communications devices and other tools to help them respond to terrorist threats. This section also creates a new anti-terrorism training grant program that will fund seminars and in-service sessions to help local police departments better analyze intelligence information they come across, help local fire departments acquire the knowledge they need to respond to critical incidents, and assist those agencies which may be called upon to stabilize a community after a terrorist incident. It is my intent that these funds go to professional law enforcement organizations who are in some instances already delivering this type of training. The Department of Justice’s Office for Domestic Preparedness does some of this, but their program is a block grant sent to the Governor. I want to involve local police and fire departments directly in the fight against terrorism, and this section is an important step towards meeting that goal. The funds authorized, $100 million over the next four years, may not be enough to get the job done, but it’s a good start. I thank the Police Executives Research Forum for working with me to craft this proposal, and I look forward to seeing significant dollars allocated to it in future spending bills.

So this bill contains many provisions critical to law enforcement. Some may say it doesn’t go far enough. I have to say, I was disappointed that the Administration dropped some proposals from an early draft of its bill, measures which I called for five years ago. Those measures are in the bill we consider today, but I continue to believe that they’re common-sense tools we ought to be giving to our men and women of law enforcement.

We should be extending 48-hour emergency wiretaps and pen-registers, caller-ID-type devices that track incoming and outgoing phone calls from suspects, to terrorism crimes. This would allow police, in an emergency situation, to immediately obtain a surveillance order. In addition, the bill provides the go to a judge within 48 hours and show that they had the right to get the wiretap and that emergency circumstances prevented them from going to the judge in the first place. Now, the law is only available for organized crime cases and the bill we consider today does not expand this power to terrorist investigations.

We should be extending the Supreme Court’s “good faith” exception to wiretaps. This well-accepted doctrine prevents criminals in other types of offenses from going free when the police make an honest mistake in seizing evidence or statements from a suspect. We should apply this good faith exception to terrorist crimes, to prevent terrorists from getting away when the police make an honest mistake in obtaining a wiretap.

I’m pleased Chairman LEAHY and the Administration were able to reach consensus on the two areas which gave me some pause in the Administration’s original proposal: those provisions dealing with mandatory detention of illegal aliens and with greater information sharing between the intelligence and law enforcement communities.

The agreement reached has satisfied me that these provisions will not upset the balance between strong law enforcement and protection of our valued civil liberties.

This bill is not perfect. No one here claims it embodies all the answers to the question of how best to fight terrorism. But I am confident that by updating our surveillance laws, by taking terrorism as seriously as we do organized crime, we can make a real impact. The important role state and local law enforcement has to play in this campaign, that we are taking a step in the right direction by passing this bill today.

ANTITERRORISM

Mr. KYL. Mr. President, I rise in strong support of the anti-terrorism bill. The bill will provide our Nation’s law-enforcement personnel with important tools to more effectively investigate and prevent further attacks against the people of the United States.

At the outset, I want to make clear that we did not rush to pass ill-conceived legislation.

During the past two Congresses, when I chaired the Judiciary Committee’s Subcommittee on Technology and Terrorism, the Subcommittee held 19 hearings on terrorism. I want to repeat that: 19. The witnesses who appeared before the Subcommittee included the Secretary of Defense, the FBI, Louis Freeh, and representatives of all three of the congressionally-mandated commissions on terrorism that have issued reports over the last two years. Additional hearings on terrorism were held by the full Judiciary Committee and by other committees.

Many of the provisions proposed by the Attorney General, and included in the legislation we sent to the President to be signed into law, were dropped by one or more of the major terrorism commissions and have already been examined by the committee of jurisdiction. In fact, some of these provisions had already been voted on and passed by the Senate. In other legislation.

Indeed, as I will detail fully in a minute, the language sent forward by the Attorney General to establish nationwide trap and trace authority was included in the Hatch-Feinstein-Kyl Amendment to the recently passed Commerce, Justice, State Appropriations bill. Much of the remaining language in that amendment was included in the Counterterrorism Act of 2000, which the Senate passed last fall, after a terrorist attack on the U.S.S. Cole killed 17 American sailors and injured another 99. That bill was based on recommendations of the bipartisan, congressionally-mandated National Commission on Terrorism, known as the Bremmer Commission, which was established in 1998 in response to the embassy bombings in Tanzania and Kenya.

One particularly important provision, which was included in both the CJS bill and the current bill, updates the law to keep pace with technology. The provision on pen registers and trap and trace devices: one, would allow judges to enter pen/trap orders with nationwide scope; and two, would codify current case law that holds that pen/trace orders apply to modern communication technologies such as e-mail and the Internet, in addition to traditional phone lines.

Nationwide jurisdiction for a court order will help law-enforcement to quickly identify other members of a criminal organization such as a terrorist cell. Indeed, last year Director Freeh testified before the Terrorism Subcommittee that one of the problems law-enforcement faces is “the jurisdictional limitation of pen registers and trap-and-trace orders issued by federal courts.”

He continued: “Today’s electronic crimes, which occur at the speed of light, cannot be effectively investigated with procedural devices forged in the last millennium during the infancy of the information technology age.”

Prior to the legislation we passed today, in order to track a communication that was purposely routed through Internet Service Providers located in different States, law-enforcement was required to obtain multiple court orders. This is because, under existing law, a Federal court can order only those communications carriers within its district to provide tracing information to law enforcement.
According to Director Freeh’s testimony before the Terrorism Subcommittee, “As a result of the fact that investigators typically have to apply for numerous court orders to trace a single communication, there is a needless waste of time and resources, and important investigations are either hampered or delayed entirely in those instances where law enforcement gets to a communications carrier after that carrier has already discarded the necessary information.”

This is the problem. I would also like to address another important provision.

The bill will more clearly to criminalize the possession of biological and toxin agents by those who should not possess them. The bill would amend the implementing legislation for the 1972 “Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological, Biological, and有毒 Weapons and on their Destruction,” BWC. Article I of the BWC prohibits the development, production, stockpiling, acquisition, or retention of Microbial or other biological agents, or toxins, whatever their origin or method of production, of types and in quantities that are not justified for prophylactic, protective, or other peaceful purposes. It is not the intent of the BWC, nor is it the intent of Section 802, to prevent the legitimate application of biological agents or toxins for protective agencies’ R&D, medical, or other peaceful purposes. These purposes include, inter alia, medical and national health activities, and such national security activities as may include the confiscation, securing, and/or destruction of possible illegal biological substances.

In addition to the other provisions in this anti-terrorism legislation that will provide our law enforcement communities with the tools to weed out and stop terrorism, I want to express my support for the immigration provisions upon which the administration, key members of the House Judiciary Committee, Senators HATCH, KENNEDY, LEAHY and I have reached agreement, and which are included in this bill.

We must not forget, however, that the United States will continue to face overwhelming infrastructure and personnel needs at our consular offices abroad, along both the southern and northern borders. In our immigration offices throughout the United States. And, in addition to the provisions included in this anti-terrorism bill, the U.S. government will need additional tools to keep terrorists out of the country and, once they are in the country, find them and remove them. That means, among other things, eliminating the ability of terrorists to present altered international documents, and improving the dissemination of information about suspected terrorists. This process continues in the time available and requires the ability to follow up on tips and take dramatic action if necessary.

After hearing first-hand about the extraordinary weaknesses of our immigration and visa processing systems, Senate Judiciary Terrorism Subcommittee Chairwoman DIANE FEINSTEIN and I will soon introduce legislation to better equip our government with the tools necessary to make our immigration and visa processing systems more secure.

With that said, the anti-terrorism bill will certainly provide a better legal framework for keeping foreign terrorists out of the United States, and retaining them should they enter. First, the bill clearly clarifies that the Federal Bureau of Investigation is authorized to share data from its “most wanted list,” and any other information contained in its national crime-information system, with the Immigration Naturalization Service and the State Department. This will help the INS and State Department identify suspected terrorists before they come to the United States, and, should they gain entry, will help track them down on our soil. It also allows the State Department, during a U.S. criminal investigation, to give foreign governments information on a case-by-case basis about the issuance or refusal to issue a U.S. visa.

The bill enforces a U.S. law prohibiting the entry of, and requiring the removal of, individual alien terrorists. It will probably surprise the Members of this body a great deal to know that, under current law, a terrorist alien is not considered deportable if, or deportable from, the United States even if he or she has “endorsed or espoused terrorist activity that undermines the efforts of the United States to fight terrorism, or has provided material support to a terrorist organization.” Nor is an individual deportable for being a “representative of a terrorist organization.” The anti-terrorism bill makes it clear to U.S. officials considering whether to allow someone to come to the country, that someone who meets any of these criteria is not welcome to come here. Although the final bill prohibits admission of individuals who have endorsed, sponsored or are representatives of a terrorist organization, neither of those criteria will make such an individual deportable. I will work to make it clear that such criteria are deportable.

As former chairman and now ranking Republican of the Judiciary Committee’s Terrorism Subcommittee, I have long suggested, and strongly supported, many of the anti-terrorism and immigration initiatives now being advocated by Republicans and Democrats alike. In my sadness about the overwhelming and tragic events that took thousands of precious lives, I am resolved to push forward to make the United States a safer place for millions of law-abiding citizens and legal immigrants. That means delivering justice to those who are responsible for...
Mr. LEAHY. The Secretary will rely on his authority, notwithstanding its noble intention, to clarify some of these issues for me.

Mr. LEAHY. I fully agree with the gentleman. The legislation must address foreign drivers to cover adequately the security risks applicable to hazmat transportation.

Mr. THURMOND. Mr. President, the Senate has passed the Transportation Security Act, and making it clear that delays not due to the applicant should not force him to be out of work and that his existing license remains in effect pending completion of the security risk review process.

Mr. HOLLINGS. I am troubled by the lack of due process protections for the applicant. What is the gentleman's opinion on this subject?

Mr. LEAHY. I agree with the gentleman. The section needs to be clarified. The regulations issued making clear that any applicant denied a hazmat license because of a security risk will be advised of the reasons for such denial and given an opportunity to present any comments he deems appropriate. We need to provide the applicant with a right to challenge the Secretary's decision and insure due process is protected.

Mr. HOLLINGS. Finally, isn't there a concern that foreign drivers transporting hazmat present an equal, if not greater, security risk than that presented by U.S. drivers? If so, how will we deal with foreign drivers because they do not appear to be covered by section 1012.

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Mr. LEAHY. I fully agree with the gentleman. The legislation must address foreign drivers to cover adequately the security risks applicable to hazmat transportation.

Mr. THURMOND. Mr. President, the Senate has passed the Transportation Security Act, and making it clear that delays not due to the applicant should not force him to be out of work and that his existing license remains in effect pending completion of the security risk review process.

Mr. HOLLINGS. I am troubled by the lack of due process protections for the applicant. What is the gentleman's opinion on this subject?

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Mr. LEAHY. I fully agree with the gentleman. The legislation must address foreign drivers to cover adequately the security risks applicable to hazmat transportation.
countries to live up to their responsibilities. Also, we need to look into expanding the use of identification cards for aliens, including more fingerprinting.

The antiterrorism bill demonstrates that the government is now addressing the problems we face regarding immigration. I look forward to working with my colleagues to continue our important work in this area. It must remain a top priority. We should not rest until we have illegal immigration under control in this country.

Ms. SNOWE. Mr. President, I rise today in support of the anti-terrorism legislation we have before us, the USA PATRIOT Act. I supported the Senate bill when it passed 2 weeks ago, and this bill—which was overwhelmingly passed by the House yesterday—retains key provisions that give our Government the tools it needs to combat terrorism.

One of the key issues during the House-Senate negotiations was that of the so-called “sunset.” While the Senate-passed bill ensured these provisions would remain in effect as long as necessary, the House voted to suspend the bill’s provisions after 4 years. Ultimately, the bill before us today includes a 4-year extension to 1998. While I believe the provisions of this bill will be needed to combat terrorism beyond 4 years, it is fair to say Congress should review the provisions and make an assessment of their effectiveness in 4 years.

Let me also say I am pleased to have worked in conjunction with Senator Bond and Senator Conrad in support of the Visa Integrity and Security Act. This bill addresses many of the concerns we raised, such as the importance of information sharing among government law enforcement and intelligence agencies with the State Department and tightening tracking controls on those entering the U.S. on student visas, including those attending flight schools. These are critical issues, and I commend both Senators for their efforts, and I am pleased the bill before us contains provisions from this bill on information sharing and the use of biometric technology for the entry and exit of aliens.

With this legislation, we take reasonable, constitutional steps to enhance electronic and other forms of surveillance and to protecting the rights of Americans. We will also institute critical measures to increase information sharing by mandating access to the FBI’s National Crime Information Center, or NCIC, by the State Department and INS.

Incidentally, while intelligence is frequently exchanged, no law requires agencies like the FBI and CIA to share information on dangerous aliens with the State Department or INS. While I am pleased the bill before us contains provisions for better sharing between the FBI, State Department and INS, I believe it does not go far enough as other crucial agencies, such as the DEA, CIA, or DoD, that may have information the State Department and INS need, but are still not required to share information. In short, by only providing access to the FBI’s NCIC system, we are not summoning the sum total of U.S. Government information on individual aliens which is now needed in our war on terrorism.

I saw firsthand the consequences of serious inadequacies in coordination and communication during my 12 years as ranking member of the House Foreign Affairs International Operations Subcommittee and chair of the subcommittee’s Senate counterpart. Access to the FBI’s NCIC system by the State Department is a first step, and one that I advocated in 1993, after the Justice Department ruled that because the State Department was not a “law enforcement agency,” it no longer had free access to the NCIC. Tellingly, after ruling, the visa denial rate for past criminal activities plunged a remarkable 32 percent, evidence that we can’t afford to tie the hands of America’s overseas line of defense against terrorism.

Although my legislation designated the State Department a “law enforcement agency” for purposes of accessing the NCIC when processing any visa application, whether immigrant or non-immigrant, a revised provision enacted in 1994 only provided the State Department with free access for purposes of processing visas—dropping my requirement for non-immigrant visas eventually used by all 19 suspected hijackers. Even that limited law was sunsetted in 1997 with a brief 6-month extension to 1998. Currently, U.S. posts check the lookout database called the Consular Lookout and Support System—Enhanced, or CLASS-E, prior to issuing any visa. CLASS-E contains approximately 5.7 million records, most of which originated when consulates abroad issued visas through the visa application process. The INS, DEA, Department of Justice, and other federal agencies also contribute lookouts to the system, however, this is voluntary. To further fortify our front-line defenses against terrorism—to turn back terrorists at the point of origin—information sharing should be mandatory, not voluntary. That is why I introduced a bill that would require that information obtained from citizens and from immigration and other Federal agencies be shared with the State Department and INS for the purpose of issuing visas and permitting entry into the U.S. And while my bill would have gone farther than the legislation before us, by including the DEA, CIA, Customs and the Department of Defense in the mandated information-sharing network, I am pleased that this bill we are considering at least mandates access to the NCIC by INS and the State Department.

The bottom line is, if knowledge is power, we are only as strong as the weakest link in our information network. Therefore, we must ensure that the only “turf war” will be the one to protect American turf.

Another important issue is that of verifying the identity of a visa holder. Once a visa is issued at the point of origin, we should be ensuring that it is indeed the same person who entered at the point of entry. The fact is, we don’t know how many, if any, of the 19 terrorists implicated in the September 11 attacks entered the U.S. on visas that were actually issued to someone else.

Currently, once reviewed and approved by the State Department, it then falls to INS officials at a port-of-entry to determine whether to grant entry. The problem is, no automated system is available to be used to ensure that the person holding the visa is actually the person who was issued the visa. In other words, the INS official has to rely solely on the identification documents the person seeking entry is carrying—making that official’s job that much more difficult. That is why I introduced the legislation I introduced would require the establishment of a fingerprint-based check system to be used by State and INS to verify that the person who received the visa is indeed the same person at the border crossing station trying to enter the country.

Simply put, it requires the State Department and INS to jointly create an electronic database which stores fingerprints, and that other agencies may use as well. When a foreign national receives a visa, a fingerprint is taken, which then is matched against the fingerprint taken by INS upon entry to the U.S. This is a common-sense approach that would take us one step closer to minimizing the threat and maximizing our national security.

The fact of the matter is fingerprint technology, one part of the larger category of biological factors that can be used for identification known as biometrics, is not new. In fact, the U.S. Government has already employed biometrics to verify identities at military and secret facilities, at ports-of-entry, and for airport security, among many others.

The bill before us includes a provision that requires the Attorney General to report on the feasibility of enhancing the FBI’s Integrated Automated Fingerprint Identification System (IAFIS) or other identification systems to identify visa holders who may be wanted in a criminal investigation in the U.S. or abroad before they are issued a visa or permitted entry or exit to the U.S.

This surely doesn’t sound all that different from the legislation I have proposed. I am pleased this bill at least starts us down the road toward implementing biometric technologies, and I hope this can be achieved as soon as possible.

Although I would prefer an even stronger bill and indeed worked toward the inclusion of measures that would have accomplished this goal, this legislation negotiated by the House and Senate is vital to our national security, and I am proud to support it. The
war on terrorism is a war on many fronts. Some of the battles will be great in scale, many will be notable by what is not seen and by what doesn’t happen, namely, that individuals who pose a serious threat to this nation never see these shores and never set foot on our soil.

Many of our greatest victories will be measured by the attacks that never happen, in battles we win before they ever have a name, in conflicts we prevent before they ever claim one American life. We will pass and enact legislation that will help make that possible, and urge my colleagues to join me in supporting this bill.

Mr. President, I ask unanimous consent to have printed in the RECORD an op-ed from The Bangor Daily News:

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

[From the Bangor Daily News, Oct. 24, 2001]

HOMELAND SECURITY AND THE “THREE C’S”: COORDINATION, COMMUNICATION, AND COOPERATION

(By U.S. Senator Olympia J. Snowe)

This week, Congress is expected to send to the President landmark legislation for a new era. I am thrilled that we have been able to bring together the two primary sources of the federal government to bear in our war against terrorism. One of the most critical elements of this anti-terrorism package — which includes expanded authority to hunt down and identify terrorist activity within our own borders—addresses the “Three Cs” that have been lacking among those that are integral to preventing terrorism: coordination, communication, and cooperation.

Incredibly, there is no provisions of current law that mandates State Department access to sources such as the FBI’s National Crime Information Center (NCIC). This system, which maintains arrest and criminal information from a wide variety of federal, state, and local sources as well as from Canada, will be used by the State Department to deny visas to dangerous aliens. Similar to legislation I introduced in 1993, the recordkeeping in conference will finally make such information-sharing a requirement, and when combined with the new Office of Homeland Security, it will ensure that our law enforcement agencies are as united in the effort against terrorism as the American people. I urge my colleagues to further strengthen this requirement, so both State and the Immigration and Naturalization Service (INS) have access to the full range of information gathered by U.S. intelligence and law enforcement agencies.

During my twelve years as ranking member of the House Foreign Affairs Committee and Chair of the subcommittee’s Senate counterpart, I saw firsthand why removing impediments to a cooperative federal effort is a national priority. My proposal, even with the egregious example came to light in our investigations into the coming-and-goings of radical Egyptian cleric Sheikh Omar Abdel Rahman, mastermind of the 1993 World Trade Center bombing.

Astoundingly, we found that in the period since 1987 when Sheikh Rahman was placed on the State Department’s terrorist watch list, he re-entered and exited the U.S. five times totally unimpeded. Even after the State Department formally revoked his visa, INS granted him permission to re-enter. When he was finally caught on July 31, 1991, reentering the U.S., he was immediately released back into U.S. society to allow him to pursue a multi-year appeal process.

Just as unbelievable is the fact that, even after the 1993 attack on the World Trade Center, the government, organization in and of itself—with the exception of the PLO—was not sufficient grounds for visa denial. The Immigration and Nationality Act of 1990 required the government to prove that an individual either was personally involved in a terrorist act, or planning one. This absurd threshold makes it possible to block individuals, such as Sheikh Rahman, from entering the country legally. Legislation I introduced in 1993 removed that bureaucratic and bureaucratic roadblock, so that the visa denial process would take nearly three more years to enact it as part of the Anti-Terrorism and Effective Death Penalty Act of 1996.

Further, to respond to the trail of errors we uncovered, provisions from my bill were enacted in a year later, in 1994, requiring modernization in the State Department’s antiquated microfiche “lookout” system to keep dangerous aliens from entering the United States. Recognizing the need to make these new technologies with the need for the FBI, INS lost control over vital information, the bill also attempted to address the issue of access. Tellingly, after the State Department lost free access to the NCIC because of a 1990 Justice Department ruling that the State Department was not a “law enforcement agency”, the visa denial rate for past criminal activities plunged a remarkable 45 percent.

Therefore, my 1993 bill also designated the State Department a “law enforcement agency” for purposes of accessing the NCIC as well as other FBI criminal records when processing any visa application, whether immigrant or non-immigrant. Unfortunately, a revision to the NCIC Act of 1994 provided the State Department with free access to these FBI resources only for purposes of processing immigrant visas—dropping my requirement for non-immigrant visas eventually used by all 19 of the suspected hijackers. Even that limited law was allowed to expire, despite my legislation enacted in 1996 repealing the requirement that visa applicants be informed of the reason for a denial—a provision that law enforcement agencies legitimately believed would impede ongoing investigations and threat methods.

Having introduced my own legislation after the attacks to mandate information sharing among all agencies such as the FBI, CIA, and the State Department, I would have preferred that the recently-passed anti-terrorism bill go even further. Nevertheless, re-instating State Department access to the NCIC for both types of visas is a critical step in ensuring that information sharing will no longer be voluntary and ad hoc.

To further identify our front-line defenses against terrorism and turn back terrorists at their point of origin, I also proposed mandating a Terrorist Lookout Committees, comprised of the head of the political section of each embassy and senior representatives of all U.S. law enforcement and intelligence agencies. The committees would be required to meet on a monthly basis to review and submit names to the State Department for inclusion in the visa lookout system. Unfortunately, Senators did not reach agreement on amendments that could be added to the anti-terrorism bill, so the package was ultimately passed without them. Consequently, I will continue to work to pass this important measure separately.

Clearly, the catastrophic events of September 11th are a harbinger of an era, and everything if forever changed. We must move heaven and earth to remove the impediments that keep us from maximizing our defense against terrorism, and that means changing the prevailing system and culture by re-focusing on the ‘Three C’s’ of coordination, communication and cooperation.

The bottom line is, if knowledge is power, we are only and second weakest link in our information network—therefore, if we were to lose that strength, we will be the one to protect American turf. In our fight against terrorism, we can do no less.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent the time be divided equally between the distinguished chairman and myself.

Mr. HATCH. Mr. President, as we wind down the debate and move to final passage, I want to continue my acknowledgment of those who worked so hard and were instrumental in getting this legislation enacted. I want to start again by expressing my gratitude to Senators Kyl and Feinstein for their efforts. No Senators have worked harder over the past few years in such a bipartisan manner on terrorist missions.

They have both done an excellent job. Also, Senators Bob Graham and Shelby, who cosponsored this legislation, deserve credit for significant contributions. In the Intelligence Committee, of course, Senator Sannes and Senator Phil Gramm are to be praised for the money laundering provisions of the package. They developed that in this bill. I credit the hard work of other fellow members of the Judiciary Committee: in particular, Senators Biden and Schumer, who have devoted their energy to several of these proposals. Their assistance was instrumental in shaping this final product.

Next, I thank my dedicated staff and my chief counsel and staff director, Brigham Cannon, who has been a critical assistant in putting this bill together. I also thank my crime policy counselors on the Judiciary Committee: Jeff Taylor, whose background as a federal prosecutor was crucial in crafting the many technical provisions of this legislation, as well as Stuart Nash, another former federal prosecutor, and Leah Belaire, each of whom has brought invaluable expertise to this process; my lead immigration counsel, Dustin Pead, and our tireless legislative assistant, Kindred Shedeford. I can’t say enough about my former law clerk, Leah Sanne, who has been critical assistance. I am also grateful to Elizabeth Maier on Senator Kyl’s staff, David Neal on Senator Brownback’s staff, and Esther Olavarria on Senator Kennedy’s staff for their input on the immigration provisions. I also extend our thanks to Sharon Prost, my former chief counsel who recently was appointed by President Bush to serve as a Federal appellate judge, for her wise counsel on this legislation.

In conclusion, I personally thank our Chairman, Senator Leahy. I reserve that until the end. His staff deserve a lot of credit and I personally thank
them for their long hard hours. I thank personally his chief counsel and staff director, Bruce Cohen, and other members of his staff: Beryl Howell, Julie Katzman, Ed Barron, Ed Pagano, Tim Lynch, David James, and John Eliff, each of whom exerted himself personally found invaluable. I am grateful for the many long hours they devoted to drafting this bill and helping ensure that our final product has strong bipartisan support. I enjoyed working with them and I certainly always enjoy working with the distinguished Senator from Vermont. I am grateful we have been able to pull together, in a short period of time, an antiterrorism bill that really is going to make a difference in all our lives. So I urge my colleagues’ support for this important legislation, thank my colleagues for all their help.

Mr. President. The Department of Justice has prepared an excellent and precise analysis of the legislation, with which I fully agree. I ask unanimous consent that the analysis be printed in the RECORD.

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

**OVERVIEW**

In the wake of the tragic, criminal act of violence perpetrated against the United States on September 11, the Bush Administration proposed legislation that would provide the Department of Justice with the tools necessary to disrupt terrorist attacks, and to punish or defeat terrorist threats. On October 24, the House passed a bill which contains a substantial number of the key provisions originally requested by the Department of Justice. The Department of Justice strongly supports this bill and urges the Senate to act quickly so that these new authorities and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice.

The events of September 11, 2001 demonstrate that terrorist acts are perpetuated without regard to borders, to advance their objectives, and to counter the infrastructure of terrorist organizations, to prevent or thwart terrorist attacks, and to punish or defeat terrorist threats. On October 24, the House passed a bill which contains a substantial number of the key provisions originally requested by the Department of Justice. The Department of Justice strongly supports this bill and urges the Senate to act quickly so that these new authorities and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice.

Existing laws fail to provide our national security authorities and law enforcement with certain critical tools they need to fight and win the war against terrorism. Indeed, we have tougher laws for fighting organized crime and drug trafficking than for combating the threat of terrorism. For example, technology has dramatically outpaced our statutes. Many of our most important intelligence-gathering practices and capabilities were established decades ago, in and for an era of rotary telephones. Meanwhile, our enemies use e-mail, the Internet, mobile communications and voice over Internet. Uniting our government’s tools will allow us to act more efficiently.

Existing laws fail to provide our national security authorities and law enforcement with certain critical tools they need to fight and win the war against terrorism. Indeed, we have tougher laws for fighting organized crime and drug trafficking than for combating the threat of terrorism. For example, technology has dramatically outpaced our statutes. Many of our most important intelligence-gathering practices and capabilities were established decades ago, in and for an era of rotary telephones. Meanwhile, our enemies use e-mail, the Internet, mobile communications and voice over Internet.

Enhanced surveillance procedures (title II)

Enhancing domestic security against terrorism (title I)

DISCUSSION ON SUBSTANTIVE PROVISIONS

**Enhancing domestic security against terrorism**

(title I)

These provisions would provide new fund and structural reforms in the fight against terrorism. A counterterrorism fund would be established to address terrorism and structural reforms in the fight against terrorism and terrorism. The President’s powers under the International Emergency Economic Powers Act would be expanded in cases of military hostilities and to provide effective law enforcement in chemical weapons emergencies.

**Discussion on substantive provisions**

This new terrorist threat to Americans on our soil is a turning point in America’s history. It is a new challenge for law enforcement. Our fight against terrorism is not solely a war against terrorist organizations—id it is defense of our nation and its citizens. We cannot wait for terrorists to strike to begin investigations and take action. The anti-terrorism proposals that have been submitted by the Administration and considered by the Senate and House represent careful, balanced, and precise improvements to our capacity to combat terrorism.
note that in drafting these provisions, the Department’s goal was and remains ensuring that the scope of the authority remains the same—in other words, that no more or less information currently is obtained through a particular device (for example, a pen register) on a telephone, is obtainable from a computer.

Law enforcement must have intelligence gathering tools that match the pace and sophistication of the technology utilized by terrorists. Critically, we also need the authority to present relevant and timely national security intelligence information with our national security and intelligence agencies in order to prevent future terrorist attacks.

Terrorist organizations increasingly take advantage of technology to hide their communications from law enforcement. Today’s terrorist organizations are carried over multiple mobile phones and computer networks—frequently by multiple telecommunication providers located in different jurisdictions. To facilitate their criminal acts, terrorists do not discriminate among different kinds of technology. Regrettably, our intelligence gathering laws don’t give law enforcement the flexibility.

The bill creates a technology-neutral standard for intelligence gathering, ensuring law enforcement’s ability to trace the communications of terrorists over mobile phones, computer networks and any new technology that may be developed in the coming years.

We are not seeking changes in the protections in the law for the privacy of law-abiding citizens. The bill would streamline intelligence gathering procedures only. Except for under the current legal authorities based on current law, the content of communications would remain off-limits to monitoring. The information captured by this technologically neutral standard would be limited to the kind of information you might find in a phone bill, such as the phone numbers dialed by a particular telephone.

The Department strongly opposed the two-year “sunset” on these critical provisions in the original House version of the legislation. The President and the Attorney General have stressed that the threat of terrorism will not “sunset”; rather the fight against terrorism will be a long struggle, and law enforcement must be able to continue to fight this war over the long term. However, law enforcement must have these tools now. To calm fears of a permanent authority, the bill provides a four-year “sunset” provision for several provisions as noted during the discussion of the impacted provisions, at which time it is the Administration’s hope that these changes in surveillance law will be made permanent.

Foreign Intelligence Surveillance Act (FISA) amendments (title II)

These provisions sharpen the tools used by the FBI, CIA, and NSA for collecting intelligence on international terrorists and other targets under FISA, 50 U.S.C. §§1801–63. The amendments in this area would enable the agencies to use the tools of the FBI and CIA and the analysts of NSA to respond more quickly and efficiently to crises and to operational opportunities against terrorists and other threats.

Period of FISA Surveillance and Search Orders

Problem: Currently, with limited exceptions, applications to the FISA Court for its authorization for electronic surveillance and physical search must be renewed by the Court every 90 and 45 days, respectively. Applications to the Court for surveillance pursuant to the Foreign Intelligence Surveillance Act and spies are noncontroversial but bog down the agencies and clog the Court.

Solution: The legislation would, for the conduct of electronic surveillance and physical search against foreign terrorists and spies, extend the duration of an approval order to 128-days with extensions possible for up to a year for electronic surveillance and would extend the duration for searches from 45 to 90 days. (§207). This provision would sunset in four-years.

Multi-Point Authority

Problem: Foreign terrorists and spies are trained to change mobile or ground-line phones, hotel rooms, and restaurants in order to defeat surveillance, to defeat FISA coverage at a new facility, DOJ must develop and draft a new application, go first certified by the Director of FBI and signed by the Attorney General and present it to a judge on the FISA Court. This delays or defeats our coverage of these targets and impairs our ability to investigate and detect terrorism and espionage.

Solution: The bill would enable the FBI, in response to such actions by FISA targets that thwart coverage (§206), to serve an order on a previously unidentified vendor or facility in order to maintain the coverage. Congress passed a similar provision for Title III a few years ago. These provisions will sunset in four-years.

Mobility—Nationwide Search Warrants

As communications technology now provides significant mobility to its users, who can pass from jurisdiction to jurisdiction in minutes, intelligence officers need that same flexibility.

The bill provides for nationwide search warrants for voice mail (§209), e-mail (long as long as the offense being investigated) (§220), and in investigations involving terrorism (§219).

Foreign Intelligence Information

Problem: Currently, as interpreted, the FISA requires that the FBI Director or other senior official certify that the collection of foreign intelligence is “the purpose” of the FISA search or surveillance. As interpreted by the FISA Court, that standard has hindered the Department’s ability to coordinate multi-faceted responses to international terrorism, which is intelligence and criminal investigations and equities.

Solution: The bill would change this standard. The legislation would provide that the collection of foreign intelligence is “a significant purpose,” rather than “the purpose,” of the FISA search or surveillance; that standard is subject to the four-year sunset applicable to several FISA provisions. (§218).

Foreign Intelligence Information Sharing

Problem: Currently, with few exceptions, criminal investigators may not share grand jury or Title III information with the intelligence agencies. Records obtained through grand jury subpoenas and insights gained through surveillance through the Department’s intelligence agencies that need such information in their operations and analysis.

Solution: The bill would enable foreign intelligence agencies to coordinate, to participate in a criminal investigation, including information obtained through a grand jury or Title III, to be shared with intelligence and other federal officers, subject to the four-year sunset and would require the court to be notified after any such information sharing occurs in the case of grand jury information. (§230). In addition, the legislation would establish procedures for the release of information when it pertains to a case against a United States citizen. Also, the FBI has been authorized to provide electronic funds transfers to financial institutions are encouraged to participate in this endeavor by providing civil
liability immunity to financial institutions that disclose suspicious activity. (§ 314). The bill further includes financial institutions in this endeavor by requiring them to have anti-terrorism programs (§§ 314, 352).

The bill would expand the scope of predicate money laundering offenses to include providing material support to terrorist organizations. (§ 310). These offenses would further not be limited to conduct occurring within the United States, as long as the tools of the offense are in or passed through the United States. (§§ 302, 377).

Various common banking problems are also addressed in the bill, such as shell bank accounts, concentration accounts. (§§ 312, 313, 325). Treasury would be authorized to order special measures be taken by financial institutions where they are deemed unresponsive to such accounts or other primary money laundering concerns. (§ 311). Information would be made available to such crucial facts as the beneficial, as opposed to nominal, owner of a bank account and minimum standards and policies would be put into effect to deal with correspondent and concentration accounts involving foreign persons (§§ 326, 329, 330).

Employee references would be permitted to include reference to suspicious activity by the employee without fear of liability and other cooperation among financial institutions, law enforcement, and regulatory authorities would be encouraged. (§§ 314, 330, 355).

These money laundering provisions are all subject to the four-year sunset. Protecting the border (title IV)

The legislation expands the grounds for deeming an alien inadmissible or deportable from the United States for terrorist activity, provides for the mandatory detention of aliens whom the Attorney General certifies pose a risk to national security, and facilitates information sharing within the U.S. and with foreign governments. Current law allows some aliens who are threats to the national security to enter and remain in the United States. The provisions in the bill correct these inadequacies and are necessary tools to prevent detain and remove aliens who are national security threats from the United States. The Attorney General would also have the authority to detain suspected terrorists who are threats to national security. Removal or removal proceedings or criminal charges are filed within 7 days. (§ 412). In the rare cases where removal is determined appropriate but is not possible, detention would continue on review by the Attorney General every 6 months. (§ 412). The bill further would expand the definition of terrorists for purpose of inadmissibility or removal to include public endorsement of terrorist activity or provision of material support to terrorist organizations. (§ 411). The bill further expands the types of weapons the use of which can be considered terrorist activity. (§ 411).

The ability of alien terrorists to move freely across national borders presents a serious level as we have done for many drug crimes. to the full force of our laws. Just as the law currently regards those who harbor persons engaged in espionage, the bill would make the harboring of terrorists a criminal offense. The bill also increases the penalties for conspiracy to commit terrorist acts to a serious level as we have done for many drug crimes.

Key Provisions

Removing impediments to effective prosecution—revision of national statute of limitations for offenses creating the risk of death or personal injury and extending the statute for all other terrorism offenses to 8 years (§ 804).

Removing impediments to effective investigation—single jurisdiction search warrants; expanded jurisdiction to include terrorism against U.S. facilities abroad. (§ 804).

Strengthening substantive criminal law—prohibition on harboring terrorists and on material support of terrorists (§§ 803, 805, 807); making terrorist crimes RICO predicates (§ 813); extending powers of asset forfeiture to terrorists’ assets (§ 806); including altering cyberterrorism offense (§ 813); expanding the offense of possession of bio- weapons (prohibiting possession of biological toxins by felons and aliens) (§ 817); creating a federal offense for attacking mass transportation systems (§ 801); expanding definition of domestic terrorism and offenses of the crime of terrorism, requiring a showing of coercion of government as an element of the offense (§ 810).

Strengthening criminal penalties—longer prison terms and postrelease supervision of terrorists (§ 812); higher conspiracy penalties for terrorists (§ 811); alternative maximum sentences up to life for terrorism offenses (§ 810).

Improved intelligence (title IX)

The bill authorizes the Director of the CIA to establish requirements and provide for the collection of foreign intelligence. The Director would also be asked to ensure proper dissemination of foreign intelligence information. Only if the appropriate officials have all the relevant information will prevention, investigation, and prosecution be fully functioning. The bill also would provide for the tracking of terrorist assets as part of the collection of information. (§§ 901, 905).

Miscellaneous (title X)

The bill would finally require the Department of Justice Inspector General to designate an official to receive civil liberty and civil rights complaints and report those complaints to Congress. The presumption is that such information will be used in determining the continuing viability of the provisions in the bill subject to sunset in 2005. (§ 1001).

Mr. HATCH. Mr. president, I also ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

FINAL COUNTER-TERRORISM BILL SECTION-BY-SECTION ANALYSIS
Permits sharing of grand jury information regarding foreign intelligence, law enforcement, intelligence, protective, immigration, national defense and national security personnel.

Permits a court that has issued a warrant related to the collection of evidence or to restore a grand jury to conduct a grand jury investigation related to the national security.

Sharing of witness information regarding foreign intelligence, counterintelligence, and foreign intelligence information with federal law enforcement, intelligence, protective, immigration, national defense and national security personnel notwithstanding other law.

Requires that foreign intelligence gathering authorities are not disrupted by changes to pen register/trap and trace statute.

Permits the Secretary to establish a new method of translating by the FBI.

Permits the court to authorize any surveillance under FISA where court finds that the actions of the target may have effect of thwarting the identity of a target.

Increase the number of orders that may be issued by the FISA Court to 11, to less than 3 of whom must reside within 20 miles of Washington, D.C.

Allows wire store mail with a third party provider to be obtained with a search warrant rather than a wiretap order.

Modifies the limitations on how communications providers, including the libraries and source of payment.

Clarifies that the servicing of telephone and internet communications and not the bundling provisions of the Cable Act apply to cable companies that provide internet or telephone service in addition to cable television programming.

Permits the computer service provider to disclose and records of communications to protect life and limb and clarifies that victims of computer hacking can disclose non-content records to protect their property.

Amends 18 U.S.C. 1033 to permit delayed notice of searches warrants where court determines that immediate notice would have an "adverse result"; officers may seize property if court finds "reasonable necessity." 214. To get pen register and trace order under FISA, the court must certify that it is necessary to obtain related to an ongoing investigation to protect against international terrorism or clandestine intelligence activities; investigations of 75 persons may not be conducted unless based on the basis of First Amendment protected activities.

Business records provision allows any designee of FBI director no lower than Assistant Special Agent in Charge to apply to FISA court or a magistrate designated by Chief Justice for an ex parte order requiring production of any tangible thing for an investigation to protect against international terrorism or clandestine intelligence activities; investigation must be conducted under AG Guidelines to D.C. 1333 and 1334.

Amends the pen register and trace act to apply to international communications, and to allow for a single order valid across the country.

Authorizes the Attorney General to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

Authorizes AG to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

One-time expansion of INS authority to pay overtime.

Requires the AG to detain aliens whom he certifies as threats to national security. AG must charge aliens with criminal or immigration offenses within seven days. AG must detain aliens until they are removed or

Requires the AG to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

Obliges the AG to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

Authorizes AG to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

Permits sharing of grand jury information with state officials pursuant to a sworn order.

Permits sharing of witness information with state officials pursuant to a sworn order.

Permits sharing of foreign intelligence, counterintelligence, and foreign intelligence information with federal law enforcement, intelligence, protective, immigration, national defense and national security personnel notwithstanding other law.

Assures that foreign intelligence gathering authorities are not disrupted by changes to pen register/trap and trace statute.

Permits the court to authorize any surveillance under FISA where court finds that the actions of the target may have effect of thwarting the identity of a target.

Increase the number of orders that may be issued by the FISA Court to 11, to less than 3 of whom must reside within 20 miles of Washington, D.C.

Allows the AG to review how consular officers issue visas to determine whether consular shopping is a problem.

Obliges the AG to review how consular officers issue visas to determine whether consular shopping is a problem.

Requires AG to detain aliens whom he certifies as threats to national security. AG must charge aliens with criminal or immigration offenses within seven days. AG must detain aliens until they are removed or

Requires AG to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

Includes a scienter requirement for the crime of engaging in a terrorist activity.

Obliges the AG to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

Permits the AG to establish evidentiary guidelines for demonstrating that death or disability occurred as a result of terrorist activity.

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Mr. LEAHY. Mr. President, I thank the distinguished senior Senator from Utah for his comments. Senator HATCH and I, over the last generation, have spent a great deal of time with each other on many issues, on numerous committees, especially the Judiciary Committee. We have spent so much time together on this, we even appear to be coordinating our wardrobes with gray suits and blue shirts today. But I appreciate his help.

I appreciate so many who helped on crafting and moving forward with this legislation. I thank our leader, Senator DASCHLE. It would have been impossible for us to be here at this point without his steadfast commitment to the committee system and his willingness to have the committee work diligently to improve the legislation initially presented by the Administration. Senator REID has also provided valuable counsel and assistance as we have moved first the original Senate USA Act, S. 1510, and now the House-passed bill, H.R. 3162.

Many others also helped us: Senator HATCH and Senator SPECTER and Senator GRASSLEY and Senator DURBIN, Senator SCHUMER, Senator CANTWELL, and so many others on the Judiciary committee.

I said many times we are merely constitutional impediments to staff.

In particular, I want to thank Mark Childress and LaRue on the staff of Majority Leader DASCHLE, and Luke Albee, J.P. Dowd, David Carle, and others. These are dear friends, but they are also people who bring such enormous expertise—expertise they had in their other careers before they came to the Senate, and how helpful they are.

Mr. President, we are about to vote and we will vote in a matter of minutes. I want us to think just for a moment why we are here.
shocked the sadness, the horror of September 11. We are seeing Members of Congress and the White House threatened, tragic deaths in the Postal Service, those who died in the Pentagon, those who died at the Twin Towers.

It is also a cliche to say America under attack, but that is what it is. Each of us has a job helping to respond to that. We are not Republicans or Democrats in that, we are Americans preserving our Nation and serving our democracy. But, you know, we play different roles just for today, we preserve it for the long run. That presents the kind of questions we have to answer in a bill such as this.

I suspect terrorist threats against the United States will exist after all of us, all 100 of us, are no longer serving in the Senate. It is a fact of life. It will come from people who hate our democracy, hate our diversity, hate our success. But that doesn’t mean we are going to stop our democracy, our diversity, our sacrifices.

Think what we cherish in this Nation. Our first amendment, for example, gives us the right to speak out about what we want—as we want. How many countries even begin to give that freedom away?

Also, in that same first amendment, the right to practice any religion we want, or none if we want.

The leaders of the Judiciary Committee, Senator Hatch and I, belong to different religions which we hold deeply. I think we gain a great deal of inner strength from our respective faiths. But we know we are not judged by our religion. That is something we must protect and hold. We are judged by how well we do in representing our States and our Nation.

Because we face terrible terrorist attacks today, we should not succumb to the rush to do anything, anything. I have not brought more of my 26 years here in the Senate, in anybody I know of, and he has worked hard to protect us with this bill.

I will vote for this legislation knowing that we will continue to do our duty, and to follow it carefully to make sure that these new powers are used within our Constitution.

I suggest that all time be yielded, and that we be prepared to vote. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk will call the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

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

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 333 Leg.]

YEAS—98

Akaka        Donnelly        McCaskill
Allen        Durbin          Melendez
Baucus       Edwards         MI
Baucy        Ensign          Miller
Bennett      Feinstein       Markowitz
Biden        Fitzgerald      Murray
Bingaman     Frist           Nelson (FL)
Bond          Graham          Nelson (NE)
Boxer         Grassley        Nickles
Braun         Gregg           Reed
Brownback     Hagel           Rockefeller
Bunning      Hart            Santorum
Burns         Hatch           Sarbanes
Byrd          Helms           Schumer
Campbell      Hollings       Sessions
Carnahan      Hutchinson      Shelby
Carper        Hutchinson      Smith (NH)
Chafee        Inhofe          Smith (OK)
Cleland       Inouye          Specter
Clinton       Jordon          Stabenow
Coakley       Kennedy        Steven
Collins       Kerry           Thomas
Corzine       Kohl            Thompson
Craig          Kyl             Thurmond
Crappo        Leahy           Torricelli
Daschle       Levin           Voinovich
D’Alesandro   Lieberman       Warner
Dawson        Logan           Wexler
Dayton         Lott            Wyden
Dodd          McConnell      Young
Domenici         

NAYS—1

Feingold

We have so much in this country—so much. But it is our rights and our Constitution that give us everything we have, which allows us to use the genius of so many people who come from different backgrounds and different parts of the world. That makes us stronger. We become weak if we cut back on those rights.

We have had some difficult times in our Nation where we have not resisted the temptation to cut back. Here we have. The American people will know that this Congress has worked hard to protect us with this bill.

I will vote for this legislation knowing that we will continue to do our duty, and to follow it carefully to make sure that these new powers are used within our Constitution.

I suggest that all time be yielded, and that we be prepared to vote. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

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

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 333 Leg.]
NOT VOTING—1

Landrieu

The bill (H.R. 3162) was passed. Mr. COCHRAN, Mr. President, I move to reconsider the vote, and I move to lay that motion on the table. The motion to lay on the table was agreed to.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

The PRESIDING OFFICER (Mr. JOHNSON). Under the previous order, the Appropriations Committee is discharged from consideration of H.R. 2330 and the Senate will proceed to its consideration.

The clerk will report the bill by title. The assistant legislative clerk read as follows:

A bill (H.R. 2330) making appropriations for agriculture, rural development, Food and Drug Administration, and related agencies programs for fiscal year ending September 30, 2002, and for other purposes.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 2:31 p.m., recessed until 3:01 p.m., and reassembled when called to order by the Presiding Officer (Mr. NELSON of Florida).

AMENDMENT NO. 1969

Mr. KOHL. Mr. President, pursuant to yesterday's unanimous consent agreement, I rise to offer the text of S. 1191 as reported by the Senate Appropriations Committee as a substitute amendment for H.R. 2330, the fiscal year 2002 appropriations bill for Agriculture, Rural Development, Food and Drug Administration, and related agencies. The text of S. 1191 is at the desk of the Senator from Wisconsin (Mr. KOHL), for himself and Mr. COCHRAN, proposes an amendment numbered 1969.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. KOHL), for himself and Mr. COCHRAN, proposes an amendment numbered 1969.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to. (The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. KOHL. Mr. President, I am pleased to present to the Senate, the fiscal year 2002 appropriations bill for agriculture, rural development, the Food and Drug Administration, and related agencies. This bill was approved by the Appropriations Committee without dissent, and I hope it will receive the support of all Senators. I believe this bill strikes an appropriate balance of programs, consistent with the interests of all the needs of the farm sector, the environment, and rural America generally; nutrition assistance to our Nation's most vulnerable citizens; provide adequate resources to the Food and Drug Administration for our food supply and other aspects of public health; and to support other national and international priorities.

This bill provides $73.9 billion in new budget authority for both mandatory and discretionary programs under our subcommittee's jurisdiction, and is within our 302(b) allocation. This bill is $2.8 billion below the level provided for fiscal year 2001, and is $78 million below the President's request. Let me restate, this bill is below the President's request.

Although this bill is $2.8 billion below the level provided last year, I should explain that the fiscal year 2001 bill included $3.6 billion in emergency response spending for natural disaster and market loss related assistance to farmers and rural communities. No emergency funding is provided in the bill now before the Senate, and when compared to the non-emergency spending for fiscal year 2000, we are providing an increase of approximately $850,000. That amount represents an increase of slightly more than 1 percent from the previous year.

Before I go any further, I want to publicly thank my friend from Mississippi, Senator COCHRAN, ranking member on the Subcommittee, for his help and guidance. I also want to thank his staff: Rebecca Davies, minority clerk for the subcommittee, Martha Scott Pinedexter, and Rachelle Schroeder. With their help and expertise, presentation of this bill to the Senate today would not have been possible. I owe a great deal of gratitude to Senator COCHRAN and his staff, as do all Senators.

Mr. President, when someone refers to this bill simply as the "Agriculture" appropriations bill, one might be left with the impression that it relates only to programs important to the farming community. While this bill does much to support our Nation's farmers, it also does much more. This bill provides substantial funding for agriculture research, including human nutrition research, biotechnology, energy alternatives, and many other important areas of inquiry. It also provides increases in conservation programs that protect our soil, water, and air resources, including examination of global change, and other critical aspects of environmental protection.

This bill also supports rural communications through economic development programs and assistance for basic needs such as housing, electricity, safe drinking water and waste disposal systems, and to help move rural America into the information age by promoting new technologies in the area of telecommunications and internet services. More and more, Americans are seeking relief from the congestion and sprawl of urban centers, and with the proper technology and policies, we can promote viable job opportunity alternatives. Programs in this bill do much to help rural communities provide the infrastructure necessary to create those jobs.

In addition, funding in this bill supports many nutrition and public health related programs. These include the food stamp, school lunch, and other nutrition assistance programs such as the Women, Infants, and Children program—WIC. This bill also provides funding for the Food and Drug Administration, which includes an increase for the Office of Generic Drugs to help make lower cost medications available to Americans as quickly as possible. Funding for the Food and Drug Administration and other agencies included in this bill will also help guarantee that the food Americans eat is not only the most nutritious and affordable in the world, but that it is also the safest.

Assistance in this bill does not stop at our shores. This bill also includes a number of international programs such as Public Law 480, which provide humanitarian food assistance to people in dire need around the world. This bill also supports international trade through a number of programs designed to open, maintain, and expand markets for U.S. production overseas.

Before I describe some of the specific program included in this bill, let me offer a few observations in view of recent events. World headlines this past year have described the devastation to the rural sector of the United Kingdom and other areas where foot and mouth disease outbreaks have raged out of control. Should such outbreaks occur in this country, the effect to the farm sector, and the general economy, would be staggering. Thankfully, this country has a strong set of safeguards to keep our shores safe from problems such as foot and mouth disease. But our safeguards are only as strong as the weakest part.

More recently, we all witnessed the horrific events of September 11. Suddenly, we were reminded that the significant concerns were held, in regard to accidental introductions of exotic pests and disease, may pale in comparison to what could befall this country by design. This is true for protection of our food supply, and in order to ensure that our public health system has the resources for immediate response to any threat at any time.

Last week, events occurring in the United States Senate, itself, reminded us of the need to keep strong our nation's defenses in the area of public health and safety. This bill, with jurisdiction for the food and Drug Administration, the Food Safety Inspection