Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) and the Senator from Massachusetts (Mr. KERRY) would each vote "Aye".

The result was announced—yeas 90, nays 4, as follows:

[Roll Call Vote No. 146 Leg.]

**YEAS—90**

Akaka
Alexander
Allard
Allen
Baucus
Bayh
Bennett
Bingaman
Bond
Boxer
Breaux
Brownback
Breaux
Bond
Bennett
Allen
Allard
Akaka

**NAYS—4**

Byrd
Durbin
Biden
Graham (FL)

**NOT VOTING—6**

Kennedy
Lieberman
Murkowski

The bill (S. 113), as amended, was passed, as follows:

The title was amended so as to read:

To amend the Foreign Intelligence Surveillance Act of 1978 to cover individuals, other than United States persons, who engage in international terrorism without affiliation with an international terrorist group.

**EXECUTIVE SESSION**

**NOMINATION OF JOHN G. ROBERTS, JR., OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Mr. HATCH. I ask unanimous consent that the Senate immediately proceed to executive session to consider the nomination of John Roberts, who will be a circuit judge for the DC Circuit.

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

Mr. HATCH. Mr. President, I am pleased that we are considering the nomination of John Roberts, who has been nominated by President Bush to serve on the United States Court of Appeals for the District of Columbia.

Mr. Roberts was first nominated to this post by President George H.W. Bush in 1992. He has been nominated for this post by two different Presidents on three separate occasions, and has waited more than 11 years for his confirmation, so I am glad to see that this day has finally come when we can expect a vote by the full Senate on his nomination.

Mr. Roberts has exceptional experience as a Supreme Court and appellate advocate. He has argued an astounding 39 cases before the Court and has argued in every Federal circuit court of appeals. His Supreme Court practice consists of seeking and opposing Supreme Court review, preparing amicus curiae briefs, and helping to prepare other counsel to argue before the Court. His clients have included large and small corporations, trade organizations, nonprofit organizations, States, and individuals.

Mr. Roberts is one of the most accomplished and brilliant legal minds that I have seen in either of my capacities as a member of the Senate Judiciary Committee. Not surprisingly, the ABA awarded him his highest possible rating of unanimously well-qualified. He is widely regarded as one of the best appellate attorneys of his generation. After reviewing his legal accomplishments it is easy to see why his colleagues have such respect and admiration for him. I would like to read excerpts from a few of the many letters that his colleagues have sent to the committee discussing his professionalism, character, and open-mindedness.

The first letter is from 156 members of the Bar of the District of Columbia, including such legal powerhouses as Boyden Gray, who was counsel to the first President Bush, and Lloyd Cutler, who was counsel to President Carter and Clinton. The letter states:

Although, as individuals, we reflect a wide spectrum of political party affiliation and ideological persuasions, each of us is firmly convinced that John Roberts will be an outstanding federal court of appeals judge and should be confirmed by the United States Senate. He is one of the best and most highly respected appellate lawyers in the nation, with a deserved reputation as a brilliant writer and oral advocate. He is also a wonderful professional colleague both because of his enormous skills and because of his unquestioned integrity and fair-mindedness. In short, John Roberts represents the best of the bar and, we would be a superb federal court of appeals judge.

The committee also received a letter signed by 13 of his former colleagues at the Office of the Solicitor General. The letter states:

Although we are of diverse political parties and persuasions, each of us is firmly convinced that Mr. Roberts would be a truly superb addition to the federal court of appeals. As the Committee will doubtless hear from many quarters, John is an incomparable appellate lawyer. Indeed, it is fair to say that he is one of the foremost appellate lawyers in the country. . . . The Office then, as now, comprises lawyer-political affiliation—Democrats, Republicans, and Independents. Mr. Roberts was attentive to and respectful of all views, and he represented the United States zealously but fairly. He had the deepest respect for legal principles and legal precedent—instincts that will serve him well as a court of appeals judge.

Now I would like to make a few comments about Mr. Roberts's impressive background. He entered Harvard College with a major in political science, where he earned a bachelor's degree in history, magna cum laude, then a law degree, magna cum laude. While in law school, he was an editor of the Harvard Law Review.

Following graduation, Mr. Roberts clerked for Judge Henry Friendly on the Second Circuit and for then-Justice William Rehnquist on the Supreme Court. His public service career included terms as Associate Counsel to President Reagan and Principal Deputy Solicitor General. He currently heads the prestigious DC law firm Hogan and Hartson, where his practice has focused on Federal appellate litigation.

Mr. Roberts has been involved with a variety of high-profile and significant legal cases. He has argued on different sides of a variety of different issues, firmly establishing his reputation as a lawyer's lawyer.

Beyond being considered by many to be one of the premier Supreme Court litigators of his generation, the record of John Roberts establishes that he is undeniably mainstream and fair. In fact, while in private practice Mr. Roberts has repeatedly been hired by Democratic public interest groups to repeatedly argued what many consider to be the so-called liberal side of cases.

In protecting the environment during the 2002 case of Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, Mr. Roberts successfully argued in the U.S. Supreme Court, on behalf of a State regulatory agency, in favor of limits on property development and in support of protection of the pristine Lake Tahoe Basin area. Environmental groups hailed his decision as a major victory, while the majority decision, saying it would help protect America's countryside from suburban sprawl.

In supporting consumer rights during the 2001 landmark Microsoft antitrust case, Mr. Roberts argued on behalf of the Clinton Department of Justice and a group of primarily Democratic State attorneys general that Microsoft's business practices violated the Sherman Antitrust Act.

In addition, Mr. Roberts has devoted much of his time to pro bono work. For instance, he represented a class of District of Columbia residents receiving welfare benefits, arguing that a particular change in eligibility standards that resulted in a termination of welfare benefits without an individual hearing denied class members procedural due process.

In another pro bono case, United States v. Halper, Mr. Roberts argued on behalf of the Clinton Department of Justice and a group of primarily Democratic State attorneys general that Microsoft's business practices violated the Sherman Antitrust Act.

In another pro bono case, United States v. Halper, Mr. Roberts was invited to the Supreme Court to represent Mr. Halper, who had been previously convicted under Federal criminal law for filing false Medicaid claims.
May 8, 2003

He successfully argued that the Double Jeopardy Clause barred the imposition of civil penalties under Federal law against an individual who had been convicted and punished under criminal law for the same conduct.

Mr. Roberts participates extensively in the pro bono program of his firm, assisting his colleagues prepare pro bono appeals on matters such as termination of parental rights, minority voting rights, noise pollution at the Grand Canyon, and environmental protection for Glacier Bay.

I have every confidence that Mr. Roberts will make a great addition to the DC Circuit. He is an exceptionally well-qualified jurist who has distinguished himself as one of the best in the legal profession. I am confident that Mr. Roberts will serve with distinction on the DC Circuit, and I ask for my colleagues’ full support of his nomination.

Mr. President, I ask unanimous consent that the nomination be confirmed, the motion is reconsidered be laid upon the table, the President be immediately notified of the Senate’s action, and the Senate then return to legislative session.

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

The nomination considered and confirmed is as follows:

THE JUDICIARY

John G. Roberts, Jr., of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. HATCH. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HATCH. It is my understanding that this judge has waited about 10 years. He has been nominated several times.

Mr. HATCH. He has waited 12 years, through three nominations, by two different Presidents.

Mr. REID. He is the 124th judge we have approved for the Bush administration. The record is 124 to 2.

Mr. HATCH. Keep in mind, as of tomorrow, those two will be waiting for 2 solid years. We need to get them done, too. I call on my colleagues on the other side to get rid of their wicked and evil ways and allow these people to have votes up and down.

Mrs. BOXER. I object.

Mr. HATCH. I heard an objection from the other side. I yield the floor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

AIR CARGO SECURITY IMPROVEMENT ACT

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 76, S. 165, the air cargo security improvement bill.

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

The assistant legislative clerk read as follows:

A bill (S. 165) to improve air cargo security.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, as follows, with the following:

S. 165

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE. This Act may be cited as the “Air Cargo Security Improvement Act”. SEC. 2. INSPECTIONS OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) of title 49, United States Code, is amended to read as follows:

“(f) CARGO INSPECTION.—(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

(B) all-cargo aircraft in air transportation and intrastate air transportation.

(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).”.

SEC. 3. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 499 of title 49, United States Code, is amended by adding at the end the following:

§ 44922. Regular inspections of air cargo shipping facilities

§ 44923. Regular inspections of air cargo shipping facilities

The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 499 of title 49, United States Code, is amended by adding at the end the following:

“(499) 49922. Regular inspections of air cargo shipping facilities”. SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 499 of title 49, United States Code, is further amended by adding at the end the following:

§ 44923. Air cargo security

“(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.

(b) INDIRECT AIR CARRIERS.—

“(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

“(2) EXPEDITING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

“(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet the security standards established under this title.

“(4) SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate of authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

“(5) INDIRECT AIR CARRIER.—In this subsection, the term ‘indirect air carrier’ has the meaning given that term in part 145 of title 49, Code of Federal Regulations.

“(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small and isolated communities and unique operational characteristics of carriers that serve those communities.”.

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 145 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act.

The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Transportation for Security such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 499 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following:

“§ 4924. Air cargo security.

SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program

S5929