amendment. It is my understanding Senators HATCH and HARKIN wish to second-degree that amendment. Senator DURBIN is, of course, waiting around to see what that second degree would do.

Senator DAYTON has an amendment. He is willing to offer that. It is a ''Buy American.'' He would agree to a short time period, but the Senator from Arizona said he wanted to be here when that amendment was offered so Senator DAYTON is somewhat hesitant. I am going to talk to Senator DAYTON and tell him he should get his vote out of the way today. If Senator MCCAIN does choose to offer a second degree, we would be that much further ahead.

Senator BINGAMAN has a number of amendments but it appears maybe they can be worked out. Senator BINGAMAN thinks so. Senator BYRD is going to make a decision tonight as to whether he is going to offer his amendment. Senator CORZINE is indisposed today and is unable to offer his two amendments, but they should be on short time agreements. Senator KENNEDY has said he would be ready to offer his first thing in the morning.

So we are moving along. We don't have too much left to do. But there are a few things that will take a little bit of time.

Mr. WARNER. Mr. President, if I could reply, first, I think the distinguished Senator from Nevada has been extremely helpful and is continuing to be that way. Let me point out that we are prepared to take up each and every one of those amendments that he just mentioned right now. In the case of Senator MCCAIN, it could be that I could present on his behalf the second degree, we could engage in part of that debate on DAYTON, and upon the arrival of Senator MCCAIN, I am sure he could move right in and conclude the debate.

Mr. REID. Senator DAYTON is here. He would be willing to do that.

Mr. WARNER. That is one option.

I am not certain as to the time of the arrival of the Senator from Utah, Mr. HATCH. But there again I don't have the knowledge. It is a matter unrelated to the Defense bill. As you know, it relates to dietary supplements. I understand my committee chairman, Senator GREGG, has some views on it. I expect we could begin to engage in some debate on that prior to the arrival of Senator HATCH.

Mr. FRIST. Mr. President, let me interject. The Senator from Utah will be here early afternoon, sometime right after 2:30.

Mr. WARNER. So we could get started on that.

Mr. FRIST. Mr. President, I will allow Senators to finish. I think from the discussion we all just witnessed, we are working very hard with certain limitations with people who are here and the way they want to express themselves.

From a leadership standpoint, because this is the last week before the recess and we have other important legislation, I want to encourage the managers to do exactly what they are doing, and the leadership on both sides of the aisle, to bring this bill to closure tomorrow night. If it means working very hard today and tonight and starting early tomorrow with votes continuing late tomorrow night, I ask them to give every consideration to that so we can move on to very important business before our recess.

Mr. WARNER. Fine. Mr. President, if I heard the distinguished leader properly, the word was ''closure'' tomorrow night, not ''cloture''? I want to make sure of that.

Mr. FRIST. That is correct, Mr. President. We want to proceed in good faith as we have been doing.

Mr. WARNER. As we have been doing.

Mr. FRIST. I vitiated the last cloture vote because I recognize the good faith both sides are working in, but we need to bring the bill to completion tomorrow night if it is at all humanly possible.

Mr. WARNER. I thank my leader.

With respect to the first issue raised by the distinguished Senator from Nevada about the Lautenberg measure, I did not mean in any sense to be negative about his approach. Frankly, it is a bipartisan issue, in my judgment. There will be Senators on both sides who will perhaps look at this amendment, which I believe is an important one in terms of the very critical subject before us today—that is, how this Nation best respects those who lose their lives in the combat operations in far lands today, primarily Afghanistan and Iraq. It is a serious amendment. There will be, I think, some support on both sides for my proposition and perhaps as well for the position of my distinguished friend from New Jersey, Senator LAUTENBERG.

But I wish to raise the subject of sequential votes in the case of second degrees. Each one should be looked at individually rather than just establishing an ironclad policy that we will proceed to have sequential votes every time there are second-degree amendments.

RESERVATION OF LEADER TIME

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities for the Department of Defense for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

Pending:

Brownback amendment No. 3235, to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

Burns amendment No. 3457 (to amendment No. 3235), to provide for additional factors in indecency penalties issued by the Federal Communications Commission.

Durbin amendment No. 3225, to require certain dietary supplement manufacturers to report certain serious adverse events.

Lautenberg amendment No. 3291, to require a protocol on media coverage of the return to the United States of the remains of members of the Armed Forces who are killed overseas.

Warner amendment No. 3458 (to amendment No. 3291), to propose a substitute expressing the sense of Congress on media coverage of the return to the United States of the remains of deceased members of the Armed Forces from overseas.

Reed amendment No. 3353, to limit the obligation and expenditure of funds for the Ground-Based Midcourse Defense Program pending the submission of a report on operational test and evaluation.

Mr. REID. Mr. President, the reason we have considered these side by side on a number of occasions is the person offering the amendment initially wants a vote on his amendment. The second degree usually wipes out that amendment, which causes that person to reoffer the amendment, which they have a right to do. It has been discovered in the past that we are much better off considering them side by side right off the bat rather than doing the parliamentary skirmishing. Of course, as I said to the distinguished Chair, if there is an overwhelming vote on the second degree, a lot of times the Senator who offers the first degree doesn't want to do that. That is what we will have to see.

Mr. WARNER. Mr. President, I concur in the observation of our distinguished colleague. All I am saying is we should look at each one individually rather than establishing a policy at this point—certainly with regard to this bill because, as the distinguished majority leader said, the Senate has devoted extensive time to this piece of legislation. It is very important. I am optimistic that we can meet the schedule for completion tomorrow night. I hope that optimism is shared on the other side.

At this time, the bill is open to amendment. The managers await the arrival of the first Senator.

Mr. REID. Mr. President, the first Senator we have indicated to speak on an amendment will be here at 2 o'clock. Senator DAYTON will be here on the Buy America amendment. Senator LEVIN has a missile defense amendment with which the distinguished Chair is familiar. He will be here also to offer that amendment shortly. We probably won't have too many other amendments offered today, but we will see. We have placed calls, as you know. We have lined up for today Senators LEVIN, DAYTON, BYRD, and BINGAMAN. But we now understand that Senator BINGAMAN may not want to offer his amendment, Senator BYRD

may not want to offer his, and Senator DAYTON's is with the condition, of course, which we have talked about. Senator LEVIN will be here. I assume Senator LEVIN's amendment will take probably an hour between both sides. He usually doesn't talk very long.

We are in a position to move forward.

Mr. WARNER. Mr. President, I hope we can perhaps reach the Byrd amendment today. It is an important amendment. I have shared many debates with my good and valued friend from West Virginia, and we are prepared. I cannot join him in support, but we will have a good, strong debate on it. It will be, I believe, a historic debate to initiate today.

Mr. REID. Mr. President, I spoke earlier today with Senator BYRD. He said he would make a decision tonight as to whether he is going to offer the amendment.

Mr. WARNER. Mr. President, I will be available tonight should the senior Senator from West Virginia desire to take up that debate tonight.

The PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I want to mention in the context of the discussion which has been held between the Senator from Virginia and the Senator from Nevada that I believe the second-degree amendment which I had intended to offer to Senator BROWNBACK's second-degree amendment will be in order. I have been working throughout the weekend. The question with the Parliamentarian was whether it would be relevant. I believe we have now revised that amendment so it will be relevant.

My understanding is Senator BROWNBACK has offered an amendment on indecency to this Defense authorization bill which came out of the Commerce Committee with respect to broadcasting. Senator BURNS of Montana offered a second degree to Senator BROWNBACK's amendment.

I would not offer an amendment that would be extraneous to the Defense authorization bill except that the amendment Senator BROWNBACK offered came out of Commerce Committee on a matter that addressed a related issue—that is, the concentration of broadcast ownership—which I, Senator LOTT, Senator SNOWE, and others added in the Commerce Committee. Senator BROWNBACK offered an amendment on the floor of the Senate excluding that provision. I understand why. I am not being critical of him at all. But I would want to add that back using a second-degree slot as soon as we can find a way in which Senator BURNS' second-degree slot will be resolved.

I say to the Senator from Virginia: I am here and ready any time to offer that amendment. It would not be my intention to hold up the Defense authorization bill. In fact, I wouldn't be offering this amendment were it not for the fact that Senator BROWNBACK's amendment on indecency was offered to the Defense bill when it came out of the Commerce Committee containing the amendment on broadcast ownership which I had previously offered with Senator LOTT.

I wanted to make the Senator from Virginia aware that the second degree I will offer, along with Senator SNOWE and some others, is certainly available, and I would want to find an opportunity to offer that amendment.

Mr. REID. Mr. President, through the Chair to the distinguished Senator from North Dakota, on this side we have been very careful about extraneous amendments being offered. There are a lot of things we would like to talk about. There is minimum wage, just to name one and which we feel is long overdue. There are a lot of amendments regarding Medicare we could offer on this legislation—prescription drugs. But because this is an important Defense bill, we have chosen not to offer any extraneous amendments. We have been very thorough in stacking amendments that would be offered on this side.

Speaking personally, that is why I am somewhat disappointed that an amendment dealing with broadcast indecency would be offered on this bill because there is no question it will hold up things. The Senator from North Dakota has led the effort in the Senate, and that effort has been successful. A limitation on what the administration did was passed by a wide margin. This just opens the door.

Senator DORGAN would be legislatively irresponsible if he didn't offer his amendment sometime during the pendency of this Brownback amendment. I am in support of the Senator from North Dakota in offering this amendment.

I want to underscore and underline that it is too bad this broadcast indecency amendment was offered on this bill because it is going to take a little bit of time.

Mr. WARNER. Mr. President, we are where we are. In the mortal words of someone smarter than I, we have to deal with the cards which have been dealt.

I have a suggestion. We are trying to work out how we could protect the parliamentary situation as it now exists with regard to the Burns second degree such that we could proceed now with the debate on the amendment of the distinguished Senator from North Dakota and at least have the debate in place in the hopes that perhaps we could resolve this dilemma as the day goes on.

Mr. REID. Mr. President, I want it made clear that the reason I said this is we have worked very hard to move this bill along. This is an important bill. We started off with about 300 amendments. Those amendments were defense oriented with rare exception. The majority leader has worked hard and filed a cloture motion. That was withdrawn, and rightfully so. But now we have this measure being offered on the other side of the aisle.

I want the RECORD to be very clear that the extraneous matters on this important Defense bill have not come from this side of the aisle.

Mr. WARNER. Mr. President, I so note that observation.

May I inquire of the Senator from North Dakota: Is the parliamentary situation on his amendment now clear?

Mr. DORGAN. Mr. President, in response, my amendment would be a second-degree amendment offered to Senator BROWNBACK, but that second-degree slot, I believe at this moment, is filled by an amendment previously offered by Senator BURNS. I don't quite know how to resolve that, but at some point Senator BURNS' second-degree amendment will be resolved, that second-degree slot will be open, and I will offer an amendment similar to that which we did in the Commerce Committee.

Mr. WARNER. I presume the Burns matter would require a recorded vote, so at this point in time I don't know whether the Senator is willing to use this available time to explain his amendment, although it will not be a pending matter before the Senate.

We will try to resolve the underlying parliamentary situation with regard to both amendments, the underlying amendment and the Burns second-degree amendment, so the Senator will have his opportunity.

Mr. DORGAN. Mr. President, let me take a moment to consult with some staff on our side with respect to the parliamentary situation.

Let me say again, so the Senator from Virginia is clear, and I think he is, this Defense authorization bill needs to get completed with some dispatch. I sympathize with the challenge he and the Senator from Michigan have had trying to move it along. It is not my intent in any way to delay that.

I feel obligated, as I think do others in the Senate, that when Senator BROWNBACK offered an extraneous amendment, that amendment which previously included broadcast ownership limitation issues dealing with the FCC rules, to add that back to the indecency language.

I will consult with our side in a moment and perhaps I can make some comments about it, and if others wish to make comments, we would find a way to vote as soon as the Burns second-degree amendment is disposed of. Let me do some consultation and perhaps I can speak.

Mr. WARNER. That is a reasonable request, and 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WARNER. Mr. President, together with the Senator from Nevada,

the Senator from Virginia, in consultation with leadership, presents to the Senate this UC: I ask unanimous consent that at 5:30 today the Senate proceed to a vote in relation to the Warner amendment No. 3458 which is to be drafted as a first degree; to be followed immediately by a vote in relation to the Lautenberg amendment No. 3291; provided that no second degrees be in order to the amendments prior to those votes.

AMENDMENT NO. 3291, AS MODIFIED

Mr. REID. Mr. President, I ask unanimous consent that the distinguished chairman allow me to send a modification for Senator LAUTENBERG to the desk prior to this consent being approved.

Mr. WARNER. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The modification will be made.

The amendment (No. 3291), as modified, is as follows:

At the end of subtitle G of title III, add the following:

SEC. 364. PROTOCOL ON MEDIA COVERAGE OF RETURN TO UNITED STATES OF REMAINS OF MEMBERS OF THE ARMED FORCES WHO DIE OVERSEAS.

(a) PROTOCOL REQUIRED.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall develop a protocol that permits media coverage of the return to the United States of the coffins containing the remains of members of the Armed Forces who die overseas.

(2) The protocol shall ensure the preservation of the dignity of the occasion of the return to the United States of members of the Armed Forces who die overseas.

(3) The protocol shall ensure the preservation of the confidentiality of the identity of each member of the Armed Forces whose remains are returning to the United States.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to Congress a copy of the protocol developed under subsection (a).

Mr. REID. Mr. President, there is no objection to the consent request by the Senator from Virginia.

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

Mr. WARNER. Mr. President, the leadership is working with the managers to see what we can do to resolve the question of one of the amendments which is pending before the Senate with regard to matters relating to the Commerce Committee. We see the Senator from North Dakota prepared to speak to his amendment. As soon as we can work out the parliamentary situation, we will proceed to that point.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we have been given a consent agreement drafted by the staff that is now being vetted with the majority. We should be in a position to approve that shortly which would allow us to handle the underlying Brownback amendment, the Burns amendment, and the Dorgan amendment, which we will offer on a future occasion not too long from now. That should resolve this totally. In the meantime, I think it would be appropriate if the Senator from North Dakota spoke about his amendment.

Mr. WARNER. It would be a valuable use of the time if we were to do so. We encourage that.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, let me say again this amendment is not related to the subject of the Defense authorization. The only reason I offer it is because the amendment offered by Senator BROWNBACK, which itself is not related to Defense authorization, was offered last Friday. I indicated when he offered that amendment, which I support, that I would second-degree it, because we second-degreed it in the Commerce Committee, and we merged two issues: indecency and the issue of broadcast ownership rules and regulations.

When my colleague from Kansas offers an indecency amendment to the Defense authorization bill, I don't have much choice except to offer the amendment we offered to it in the Commerce Committee. If this bill is stripped of all extraneous amendments, I will understand that and I will not complain. But if this bill is going to proceed with amendments of the type that came from the Commerce Committee, then I insist it also include the issue of broadcast ownership rules and regulations that were adopted by the Federal Communications Commission.

Let me describe what all this is about with respect to broadcast ownership. The Federal Communications Commission did a rulemaking on the issue of broadcast ownership. They had somewhere around three-quarters of a million Americans, unprecedented numbers of Americans, write and e-mail and send concerns and expressions of their interest to the Federal Communications Commission. Almost all of them said to the FCC: Don't change the rules and regulations with respect to broadcast ownership of properties in a way that injures the public interest.

It didn't matter to the FCC. They went ahead and changed the rules. The way the FCC constructed it, the rules say: It is all right if in your community—let's say you live in one of the biggest cities in America—one company owns three television stations, eight radio stations, the cable company, and the dominant newspaper. That is fine.

Well, it is not fine with me—it is not fine with, by far, the majority of the American people—to see fewer and fewer Americans, no more than a handful, who are going to have control over what the rest of the American people see, hear, and read.

Let me say again what the FCC allowed. In the biggest cities of the country, one company can come in and buy up eight radio stations, three television stations, the cable company, and the dominant newspaper—in many cases, the only newspaper. Why is this of concern? Well, it is of concern to me because we license the use of the airwaves. They don't belong to broadcasters or radio stations or television stations. They belong to the people. The airwaves belong to the American people. We license their use to certain companies in exchange for certain obligations.

One of those obligations that has never and will never be old fashioned is localism. That is not an old-fashioned requirement for broadcasters. So the question is, how do you develop or how do you maintain or how do you have localism in broadcast properties when one company owns, in this case, 1,200 radio stations. Yes, that is the case. One company owns 1,200 radio stations.

We did hearings about all these subjects. Let me tell you about something called voice tracking. This is antithetical to localism. Voice tracking is a process by which a company that owns a lot of radio stations will have someone in a basement in Baltimore, MD broadcasting. And he is broadcasting over, for example, a station in Salt Lake City, UT, saying: It is a beautiful morning here in Salt Lake City. The sun is shining over the mountains. What a great day to wake up in our city.

The problem is, that guy was broadcasting from Baltimore. He was using the Internet to find out that the sun is shining in Salt Lake City. It is called voice tracking. It is fooling the consumers into believing that announcer is there. It has nothing to do with localism or responsibilities of localism.

There is another approach used by television stations. It is called central casting. It is trying to make you believe the news team is from your city when, in fact, it is not. Central casting, voice tracking, these are mechanisms by which the large concentrations of broadcasters are trying to convince people there is localism to their broadcasts.

Some of us believe very strongly that this is moving in the wrong direction. I am not opposed to big because something is big. Good for the folks who are successful. If somebody has two radio stations and buys two more, good for them. If they have eight and buy eight more, good for them. If they have 50 and buy 50 more, I am not going to come here and complain about that. But 1,200 radio stations in the hands of one company? Or television broadcasting stations being gobbled up together under one big ownership group? Is that good for our country, especially in an area where, in most cases, you have monopolies or near monopolies and now this FCC rule says, in addition to all of that, with respect to broadcasting properties, we are going to get rid of that pernicious rule that allows cross ownership of broadcast properties with the newspaper?

At the hearing in the Commerce Committee, I held up a letter that was sent out all across the country by an investment banking company. They said: Get ready, because the FCC is fixing to change its rule, and when they

do, your newspapers can buy up a bunch of broadcast properties. And so they are already.

The FCC rule, fortunately for us, has not yet gone into effect because it was stayed by a Federal court. This issue is now in the Federal court. So there is a stay order. It may well be lifted soon when the Federal court makes its judgment. But that begs for the Congress to make its own judgment to overturn and rescind the FCC rules.

Senator LOTT, Senator SNOWE, myself, and others brought this issue to the Senate floor with something called a veto of an administrative rule. It is called the Congressional Accountability Act in which we have the opportunity to veto a rule by a Federal Agency. It has only been used once. We offered that. And by a very significant margin, we won. So the expression of the Senate already has been to say: We don't support the FCC rule. We believe it should be rescinded. And using the Congressional Accountability Act, the Senate, on a bipartisan vote, said: We don't want these rules to go into effect, FCC, start over and do it right. Well, that Senate vote went to the House of Representatives and it is now sitting at the desk in the House of Representatives 10 votes short. They need 218 votes. They have a letter with 208 signatures on it and they are 10 short and they cannot move.

The Speaker of the House and the administration very much oppose this. They have stymied it in the House of Representatives. My feeling is that the only opportunity we have in a circumstance such as this is to offer an amendment on a bill, such as the Brownback bill—and, incidentally, we are faithful to our determination to move this. We offered the same amendment in the Commerce Committee when Senator BROWNBACK brought up his legislation. We prevailed there.

I support the Brownback legislation and the second-degree amendment that Senator BURNS intends to offer to it as well. I hope the Senate will, once again, support my second-degree amendment once the amendment by Senator BURNS is disposed of.

We had testimony before the Senate Commerce Committee, and I don't remember the fellow's name. He testified two or three times. He owns a pretty big broadcasting company in one of the States south of here. He explained the problem with the growth and concentration in broadcasting. He said: I own a good television station, but I cannot tell the folks from Hollywood or New York what I want to show in my viewing area because if they are sending out a program I think is something I don't want to show, I don't have the opportunity to say we will not show that. I will lose my network affiliate status if I do that. I don't have the capability to make any kind of local decision about this.

Look, I happen to think broadcasting, whether it is radio or television, has some of the most breathtaking, wonderful, remarkable programming; some of it is extraordinary. I also think there are programs that are shabby, trashy, and disgusting. You have both sides of it. I don't know, maybe somebody adds to their cultural interests by tuning in on HDTV and seeing someone eating maggots from a bowl in a contest. I don't know. I would expect that very few find much interest in that. I guess it does achieve some ratings from time to time.

But when you have concentrations of broadcast properties, as has been the case, dramatic increases in just the hands of a few people deciding what the rest of the American people are going to see, read, and hear, I think it ought to be of great concern to the Congress. The FCC rule caved in almost instantly to the big economic interests here.

I know those who own newspapers are upset with the position I take. Those who own broadcast properties are upset with the position I take. But the fact is, this is about the public interest, and the public interest is best served when we decide localism is not old-fashioned. I don't object to some big companies. But I object to circumstances when the big companies are given the green light by the FCC to own almost everything in a community with respect to communications—radio station, television stations, the cable company.

Whatever happened to the market system? The market system is where you have robust competition, broadbased economic ownership. I don't see much of that market system in broadcasting these days. All you see are the gobbling up by big interests.

It is interesting, we now have a 35-percent ownership cap on national viewing by the major television networks, in terms of the number of stations they can own, which has now, as a result of last year's omnibus bill, gone to 39 percent. It used to be 25 percent.

In fact, in 1996, when we had a bill on the floor called the Telecommunications Act, we had a prohibition on owning television stations beyond 25 percent of the national audience. That new bill took 35 percent. I came to the Senate floor in 1996 and offered an amendment to take it back to 25 percent—the national ownership cap—with respect to one company. It is interesting, we debated that about 4 o'clock in the afternoon and then we had a vote. It turns out I won the vote. Senator Dole, with a pretty substantial opposition on the floor of the Senate when he wanted to be, was on the other side. So we had a vote on broadcast ownership limitation and I won, I think by three or four votes. I thought that was extraordinary, to win a vote like that. Then I believe Senator D'Amato, as the vote was coming to an end, changed his vote to be on my side, the prevailing side.

I knew something was wrong, but I didn't know what until 4 hours later. What had intervened 4 hours later was dinner. Apparently, there was some epiphany over dinner for four or five Senators, who came back, and there was a motion to reconsider; these Senators who had had some glorious meal, which apparently infused them with a different wisdom, changed their vote and it turned out I had won only for 4 hours. That happens around here. You can win big and long but sometimes not permanently. That was the case in 1996.

I express that to say this is not a new issue with me. I have been concerned about this concentration of broadcast ownership for a long while. What the FCC has done is compounded the problem. Not only are we saying ''Katey bar the door,'' whatever you want to buy, buy it, but we will add to the mix the newspapers. While you are buying each other up and playing these monopoly games, throw in the newspapers as well. We don't care very much. That is the message from the FCC.

Fortunately, the Senate has sent a different message. We already voted on this subject and expressed our interest that the rules crafted by the Federal Communications Commission are completely out of sync with reality and ought to be rescinded. That was a big vote in the Senate. There was no reconsideration. We had to come back and lose that one. Senator LOTT and myself and others spoke in support of overturning those rules. That is stuck in the House because the Speaker will not allow a vote on it. We are going to have to find a way, in whatever expression we can, to advance this issue.

Because Senator BROWNBACK brought to the floor a bill that used to include this amendment when it came out of the Commerce Committee, but is not what he offered on the floor, I am required to offer this amendment to the Brownback amendment. I will offer it in the second degree.

My understanding is, while there is already a second-degree in the form of Senator BURNS' amendment, when I offer this at the end of my presentation, the second-degree I will offer will be able to be disposed of when the amendment of Senator BURNS is disposed.

I support the Brownback amendment and the Burns amendment. If anybody can understand all that, they are perhaps better than I am. I say to the Senator from Virginia, I would like us to finish this Defense authorization bill and deal with these issues. I encourage the Senator to accept all three of these amendments and take them to conference.

If I might get the attention of the Senator from Nevada, Senator REID, I think we will need a unanimous consent request prior to my formally offering a second-degree amendment, since there is already a second-degree amendment in the slot. But having already spoken on this, I don't need to speak further. Perhaps Senators SNOWE, or LOTT, or others wish to speak in favor of the amendment. I will rely on the Senator from Virginia and

the Senator from Nevada to offer my amendment at the appropriate time when the consent is agreed to, and then mine would be disposed of following Senator BURNS' second-degree amendment.

Mr. WARNER. Mr. President, I think the Senator's understanding coincides with that of myself and the distinguished Senator from Nevada. In due course, several parties who have an active interest in not only the parliamentary situation but the substance are soon to arrive in the Senate. We have to wait a bit.

Mr. DORGAN. There are some interests, of course, outside of the Chamber that would not want this amendment to the Brownback bill. I want to make sure we have an understanding that I get the opportunity to do this. Otherwise, I have a much longer statement that I would be prepared to make. My preference would be to leave it at this and to simply get this pending as soon as possible.

Mr. WARNER. Mr. President, we understand. A Senator asked for a few minutes of morning business and then I would be prepared to engage with Senator BINGAMAN on his amendment, if that is agreeable.

Mr. REID. Mr. President, will the Senator from Virginia yield?

Mr. WARNER. Yes.

Mr. REID. The Senator from New Mexico is here to offer his amendment. The Senator from Minnesota, Mr. DAYTON, is on his way to offer his amendment. We also have the missile defense amendment to offer, and he indicated he would be happy to do that today. So we have a lot to do.

I was looking at my BlackBerry, which is giving this information, which is the reason we are here today:

Four U.S. servicemembers were killed Monday, shot repeatedly in the head during an ambush while they were on patrol in the Sunni Muslim stronghold of Ramadi. On Sunday, two servicemen were killed and 11 injured in an ambush on the road to the airport.

That is what this is all about today.

We ought to move this bill along, not only as quickly as we can, but with as much quality as we can. This is an important piece of legislation. We certainly understand that in 2 days, six Americans were killed in Iraq. We only know of 11 wounded, but I am sure a lot more than that were wounded. Each person in the Senate understands the importance of this legislation. We are reminded of that every day when we see news such as this.

Mr. WARNER. Mr. President, I thank my colleague for bringing up that point. I, too, am concerned, as is every Member of this body, about the daily, weekly loss of life and limb by our brave men and women in the Armed Forces. As the Senator says, this is their bill. That is what it is. It is their bill, whether they are privates or generals or admirals.

Might we accommodate the Senator from Ohio?

The PRESIDING OFFICER (Mr. CHAMBLISS). The distinguished Senator from Ohio is recognized.

Mr. DEWINE. I thank the Chair, and I thank my colleague from Virginia.

UPDATE ON DARFUR

Mr. DEWINE. Mr. President, several weeks ago, I came to the floor to talk about the crisis in Darfur, Sudan, where it is estimated at least 30,000 people have already been killed and 1 million people—maybe even 2 million—have lost their homes, have been driven from their homes in a government-led campaign of ethnic cleansing. To get a better idea or another way of looking at this, it is estimated that in this government-led campaign of ethnic cleansing, 341 villages have been completely destroyed, and 99 villages have been partially destroyed. It is also estimated these villages are, on average, made up of 4,000 or 5,000 people to a village. I think my colleagues can understand the gravity of this crisis.

Many of these individuals are now homeless. Those who have not been killed have fled, and many of them are in refugee camps. The looming crisis is absolutely unbelievable. This is clearly the world's greatest crisis today.

The Government of Sudan announced this past weekend it intends to disarm the militia responsible for these atrocities and present them to justice. We can only hope and pray what the Government of Sudan says is now correct. The Government of Sudan has made similar statements in the past that have turned out not to be true. The Government of Sudan has made similar statements in the past. For example, it is OK for refugees to return to Darfur, all at the same time their very own government planes were locating villages for the militias to attack. In addition, there are still 1 to 2 million people still in need of humanitarian assistance.

We do not need promises from the Government of Sudan. What we do need, though, is action. That is why I am back on the floor today to outline what we need to see accomplished in Darfur.

First, we need to see that the Government of Sudan is allowing unfettered access to humanitarian aid. This means granting visas and travel permits in a timely manner, not just to U.S. Government agencies, but to all of the groups trying to help deal with the humanitarian crisis that exists today in Darfur.

If one truck or one pallet of supplies is unreasonably delayed, the Government of Sudan must be held accountable. The Government of Sudan must know the world is watching and that we will not accept anything short of their full cooperation.

Second, the recent decision to disarm the militias needs to be accompanied by a plan to prosecute those guilty of ethnic cleansing and genocide. The ranks of the government and military branches in Sudan need to be searched, and those guilty of participating in the ethnic cleansing need to be prosecuted. Competent tribunals need to be established and justice served in Darfur. An unjust peace will provide no peace for Darfur.

Third, the Government of Sudan must prove they have a long-term plan to ensure that these atrocities simply will not continue. That is why it is essential we dedicate the resources necessary to ensure a robust African Union monitoring mission in Darfur. The Darfur region is the size of Texas and, therefore, a handful of monitors simply will not be enough to ensure that the killing and violence has stopped. We must be committed to this in the long haul and the Government of Sudan must be as well.

Until such time as the Government of Sudan accomplishes all of these things, we should not relieve any of the pressure we have put on them, and neither should the international community. The pressure is beginning to work, but it must continue. Therefore, I believe the United Nations Security Council must pass a resolution authorizing peacekeepers for Darfur. If the Government of Sudan is serious about ending this conflict, then they have no reason to object to U.N. troops monitoring the cease-fire and ensuring that the humanitarian aid flows. If the Government of Sudan objects to peacekeepers, we will know their promises were not serious. This is a litmus test and the world will be watching.

We also should expect the U.S. Department of State to move forward in naming names of militia members and Sudanese Government officials involved in the killings and atrocities. We must do everything in our power to ensure that the guilty are punished. For the women who are raped and then branded, for the children who were slaughtered, and for the 30,000 who were killed because of the color of their skin, we must ensure that justice is served.

I closed my speech last time talking about time and about how our window of opportunity was closing. Nothing has changed. We still face the worst humanitarian crisis in the world, and 2 million people are counting on us. If we are serious after the horrible tragedy a decade ago of Rwanda, if we are serious that we will never again allow genocide to go unpunished, if we are serious that we will not allow this to happen again, we cannot lose our focus. The Government of Sudan must know we are still watching, that we will continue to watch, and that nothing short of complete compliance will deter us from helping the people of Darfur.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, it is very important to keep in focus what Senator DEWINE spoke about. There has been much too little focus by all of us on this subject. The leadership of Senator DEWINE in reminding us of what is going on is critically important, and I thank the Senator for it.

For close to two decades, the nation of Sudan has been ravaged by a civil war that has claimed over 2 million lives. This civil war, which is the longest running conflict in Africa, shows few signs of abating as many efforts to negotiate peace agreements or ceasefires have failed. What is particularly troubling is the fact that this conflict has shifted and spread to the Darfur region in Western Sudan.

Historically, this civil war has pitted Northern Sudan, which is largely Muslim, against those in the south who are predominately Christian or animist. The conflict is not only religious in nature; while setting those who would force a program of Islamization upon the entire nation against unwitting supplicants, this conflict also draws upon disputes over oil, water rights, and the future shape and form that Sudan will take as a nation.

Given the nature of this conflict, the recent announcement by the Government of Sudan that it would disarm the Janjaweed—militias supported by the government of Khartoum—is a welcome sign. The ethnic cleansing undertaken by the Janjaweed has claimed tens of thousands of lives and has created over a million internally displaced persons as well as hundreds of thousands of refugees who have fled across the border to Chad.

Furthermore, the United Nations has noted that the conflict in the Darfur has claimed over 30,00 lives. according the International Crisis Group, as many as 350,000 more lives will be claimed in the next 9 months if conditions do not improve. It is imperative for the international community to take clear and decisive steps to halt the violence and to provide humanitarian aid to refugees and displaced persons.

The Government of Sudan has a long history of denying aid to those in need. Their tactics have been developed through decades of practice and have included refusing to allow U.N. chartered planes with relief goods to land in Sudan as well as instituting delays for trucks carrying relief items. Camps that serve as home to over a million Internally Displaced Persons are in woeful condition, and only exacerbate the spread of disease and illness. It is imperative that medical supplies and foodstuffs become available immediately. Further delays only mean that more lives will be lost. Just as there cannot be a delay in the distribution of aid, the international community must take steps to provide the needed funds for this aid. The United Nations initially appealed for over $170 million in aid for Darfur and Chad. Only $50 million, the bulk of which has been provided by the U.S., has been provided while the amount of funds needed has increased to $250 million.

Food and medical aid can save lives immediately, yet steps must be taken to ensure that a lasting a sustainable peace can be reached. To that end, rebels must be disarmed. Given that these rebels operate with the approval and support of the Sudanese Government and military, this is an undertaking that can occur immediately if the political will to do so can be mustered. Disarming the rebels is a good step, but it is not sufficient. The rebel groups cannot be subsumed into the military and police forces. All those involved in the perpetration and support of ethnic cleansing must be prosecuted so that justice can be administered.

None of this will occur without the leadership of the international community. Thus far, for two decades, the world had done too little to address this threat. The United States and the United Nations must take steps to ensure that the international community is empowered to effectively and efficiently ensure that a peace resolution is reached and that it is implemented immediately.

Unfortunately, the cry of ''never again'' has been used all too frequently when lamenting the propagation of conscious, deliberative, and genocidal actions. It is imperative that decisive action is taken to help bring peace to Sudan.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. I thank the Chair.

(The remarks of Mr. FRIST and Mr. WYDEN pertaining to the introduction of S. 2551 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we are awaiting, and there is diligence on the other side in every respect, either the amendment of Senator DAYTON or the amendment from Senator BINGAMAN. We have given them our second degrees in each case, which are now being studied. Until such time as one of the managers on the other side or these Senators appear, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2459

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

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

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 3459.

Mr. BINGAMAN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require reports on the detainment of foreign nationals by the Department of Defense and on Department of Defense investigations of allegations of violations of the Geneva Convention)

At the end of subtitle C of title X, add the following:

SEC. 1022. REPORTS ON MATTERS RELATING TO DETAINMENT OF PRISONERS BY THE DEPARTMENT OF DEFENSE.

(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and every six months thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the population of persons held by the Department of Defense for more than 30 days and on the facilities in which such persons are held.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall include the following:

(1) General information on the foreign national detainees in the custody of the Department for more than 30 days during the 6-month period ending on the date of such report, including the following:

(A) The total number of such detainees in the custody of the Department at any time during such period.

(B) The countries in which such detainees were detained, and the number of detainees detained in each such country.

(C) The total number of detainees in the custody of the Department as of the date of such report.

(D) The total number of detainees released from the custody of the Department during such period.

(E) The nationalities of the detainees covered by subparagraph (A), including the number of detainees of each such nationality.

(F) The number of detainees covered by subparagraph (A) that were transferred to the jurisdiction of another country during such period.

(2) For each foreign national detained by the Department of Defense during the six-month period ending on the date of such report the following:

(A) The name.

(B) The nationality.

(C) The place at which taken into custody.

(D) The circumstances of being taken into custody.

(E) The place of detention.

(F) The current length of detention or, if released, the duration of detention at the time of release.

(G) A categorization as a military detainee or civilian detainee.

(H) The intentions of the United States Government on such detainee, including whether or not the United States will—

(i) continue to hold such detainee with justification;

(ii) repatriate such detainee; or

(iii) charge such detainee with a crime.

(I) The history, if any, of transfers of such detainee among detention facilities, including whether or not such detainee been detained at other facilities and, if so, at which facilities and in what locations.

(3) Information on the detention facilities and practices of the Department for the six-month period ending on the date of such report, including for each facility of the Department at which detainees were detained by the Department during such period the following:

(A) The name of such facility.

(B) The location of such facility.

(C) The number of detainees detained at such facility over the course of such period and as of the end of such period.

(D) The capacity of such facility.

(E) The number of military personnel assigned to such facility over the course of such period and as of the end of such period.

(F) The number of other employees of the United States Government assigned to such facility over the course of such period and as of the end of such period.

(G) The number of contractor personnel assigned to such facility over the course of such period and as of the end of such period.

(c) FORM OF REPORT.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

Mr. BINGAMAN. Mr. President, this is a very straightforward amendment that would require the Department of Defense to provide to the appropriate committees of the Congress—that is the Armed Services Committee Senator WARNER chairs here in the Senate, the Armed Services Committee in the House, and the two Intelligence Committees of both the House and Senate—a report related to those prisoners they are detaining and that they have had in detention for at least 30 days.

Some could characterize this as the anti-ghost-prisoner amendment. This is an effort to be sure Congress has the basic information it needs to exercise oversight of the Pentagon, of the Department of Defense, with regard to detainees anywhere in the world. The effect of the amendment would be to require that the report advise the committees on who these people are, what is their nationality, where are they being detained—in which facility, that is—and whether the Department of Defense intends to keep them, has justification for intending to keep them in detention, intends to repatriate them to their home country, or intends to charge them with some crime and prosecute them. Those are the obvious choices. If there are others my colleagues could suggest, I would be glad to add those to the language of the amendment.

The idea is the committees of the Congress with jurisdiction in this area should have some knowledge about the extent of the detentions we are engaged in, our Department of Defense is engaged in. The amendment as I have drafted it calls for this report to be made every 6 months so the Congress could exercise a meaningful oversight.

You could say, What has prompted this kind of amendment? There are a lot of accounts in recent days in the news that have prompted it. I think many people have probably noticed some of these news accounts. There was an article in the Financial Times on Saturday. ''Guantanamo Prisoners Wrongly Held'' is the headline. Then the body of the article says:

The U.S. released more than two dozen prisoners from Guantanamo Bay earlier this year after Pentagon lawyers determined that some had been detained wrongly for as long as 2 years.

It goes on in another paragraph of the same article:

But the Financial Times has learned that in January the Pentagon sent a team of lawyers to Guantanamo to examine whether there was sufficient evidence to justify some of the detentions.

Then it goes on and says:

The Pentagon team's recommendation that in several cases there was insufficient evidence to justify their imprisonment alarmed the White House because of the need to persuade the Supreme Court of the legality of the detentions.

That is one article which obviously raised concerns. Frankly, what raised concerns, at least for me, was the various articles recounting the statements by the Secretary of Defense to the effect that he had directed the appropriate information as to at least one prisoner and perhaps several be withheld from the Red Cross. It is required to be given to the Red Cross under the Geneva Conventions. He had ordered that it not be given to the Red Cross at the request of the head of the CIA. This is the so-called ghost prisoner phenomenon we have been reading about in recent days.

About 10 months ago I offered an amendment here on the Senate floor to try to require a report from the Pentagon, and from the Department of Defense, on that category of prisoners whom the administration has designated as enemy combatants.

Unfortunately, that amendment failed. Many of my colleagues voted against it.

Senator STEVENS made a representation on the Senate floor that the Intelligence Committee has access to information about enemy combatants, including the names of who is being detained. It says the Red Cross is fully engaged in this information.

I tried, frankly, over a period of several weeks to find out if that was the case. My first information was the Senate Intelligence Committee did not have that information. I am now informed they do have the information but that it is classified in such a way that only the chairman and the ranking member of the Intelligence Committee have access to it.

I believe as Members of Congress who have responsibility of oversight of the executive branch it is appropriate that at least the appropriate committees get the same basic information about these detainees that we are required under the Geneva Conventions to give to the Red Cross. I don't know why information should be provided to the Red Cross that the Congress itself shouldn't be entitled to.

I hope my colleagues will agree both that we should provide the information to the Red Cross as the Geneva Conventions commit us to provide since we are signatories to the Geneva Conventions, and second, that Congress should be entitled to the same basic information.

I have asked in my amendment which I have sent to the desk for some additional information—information that the Red Cross is not entitled to under the Geneva Conventions.

The main thing I have asked for, frankly, with regard to the detainees is the Secretary of Defense advise the appropriate committees of the Congress as to what the intention of our Government is with regard to these individuals. Do we intend to maintain them in detention? Do we have justification to do so? Do we intend to repatriate them to another country? Or do we intend to charge them with a crime?

It seems to me that is an appropriate request for us to be making.

I have been embarrassed—as I believe many in the Congress have been—at the revelations about treatment of prisoners. I have also been surprised at the revelations about the extent of the detentions we are engaged in, particularly in Iraq but also in Afghanistan, and the number of people we seem to have in custody.

I think it is entirely appropriate that the Congress try to exercise some type of oversight on an ongoing basis to ensure that basic human rights are respected, and that the standards we have committed to in the Geneva Conventions are, in fact, being adhered to.

I think this is a very straightforward request. It does nothing but require a report every 6 months.

I know my colleague and former chairman, Senator WARNER, has had some concerns about the particular aspects of this amendment and has come up with an alternative which he would like to offer and put before the Senate as well as a second-degree amendment.

I would be happy to engage in some serious discussion about the particular provisions of my amendment as well as the second-degree amendment Senator WARNER has indicated he desires to offer. But, as I say, I think the basic bottom-line position I am taking is there is no reason Congress should be denied information which we are otherwise providing to the Red Cross.

There is certainly no problem if the Department of Defense believes this information needs to be held confidentially in classified form. My amendment provides for that. It is their determination. If they think this has to be classified, they can classify it. They can put portions of this report in a classified annex. But to say Congress should not get the information at all I think is not an appropriate response.

For that reason, I hope my amendment will be agreed to.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 3460 TO AMENDMENT NO. 3459

Mr. WARNER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3460 to amendment number 3459.

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

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

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 1022. REPORTS ON MATTERS RELATING TO DETAINMENT OF PRISONERS BY THE DEPARTMENT OF DEFENSE.

(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and every six months thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the population of detainees held by the Department of Defense and on the facilities in which such detainees are held. The report may be submitted in classified form.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall include the following:

(1) General information on the foreign national detainees in the custody of the Department during the six-month period ending on the date of such report, including the following:

(A) The total number of detainees in the custody of the Department as of the date of such report.

(B) The countries in which such detainees were detained, and the number of detainees detained in each such country.

(C) The total number of detainees released from the custody of the Department during such period.

(D) The nationalities of the detainees covered by subparagraph (A), including the number of detainees of each such nationality.

(E) The number of detainees covered by subparagraph (A) that were transferred to the jurisdiction of another country during such period, and the identity of each such country.

(2) Information on the detention facilities and practices of the Department for the six-month period ending on the date of such report, including for each facility of the Department at which detainees were detained by the Department during such period the following:

(A) The name of such facility.

(B) The location of such facility.

(C) The number of detainees detained at such facility over the course of such period and as of the end of such period.

(D) The capacity of such facility.

(E) The number of military personnel assigned to such facility over the course of such period and as of the end of such period.

(F) The number of other employees of the United States Government assigned to such facility over the course of such period and as of the end of such period.

(G) The number of contractor personnel assigned to such facility over the course of such period and as of the end of such period.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

Mr. WARNER. Mr. President, let me first say I think our colleague has brought to the attention of the Senate through his amendment a very important subject. It is my hope and expectation that we can eventually have a meeting of the minds. I don't take great joy in putting a second-degree amendment up on important subjects such as this, but I felt it imperative so we can frame for our membership what I perceive as a very conscientious presentation by the Senator of a set of goals in which I concur with two-thirds of the Senator's objectives. But where I ask there be a reservation, those reservations are of such severity that I am compelled to put in the second-degree amendment.

I would like to walk through the amendment which the distinguished Senator put forth page by page.

The first section says:

Reports on matters relating to detainment of prisoners by the Department of Defense.

Ordinarily, a report is something we are happy to grant a colleague. But in this instance, I will point out where my concerns are. First:

Reports required. Not later than 90 days after date of enactment of this Act, and every six months thereafter, the Secretary of Defense shall submit to the appropriate committees of the Congress a report on the population of detainees held by the Department of Defense and on the facilities in which detainees are held.

That is, have been held more than 30 days.

My understanding was originally it didn't have that, and 30 days to me is reasonable. The Senator also added that the report can be submitted now in classified form. Again, that is a very essential improvement.

But we then continue:

(b) Report Elements. Each report under subsection (a) shall include the following:

(1) General information on the foreign national detainees in the custody of the Department during the six-month period ending on the date of such report, including the following:

(A) The total number of detainees in the custody of the Department . . .

I think that is an important fact, and I simply say ''as of the date of such report.'' I think that should be something which would be acceptable to the Senator.

Section (B) we leave standing.

The countries in which such detainees were detained, and the number of detainees detained in each country.

That is acceptable.

Section (C) we take out simply because we modified (A) to state as of date of such report, and I think (C) is cared for by modifying (A) with date of such report.

Then we drop down:

The total number of detainees released from the custody of the Department during such period.

We accept that fully.

(D) The nationality of the detainees covered by subparagraph (A), including the number of detainees of each such nationality.

That, too, seems to us to be fine.

Then section (F)—no objection there. That says, ''The number of detainees covered by subparagraph (A) that were transferred from jurisdiction of another country,'' so you can track them.

The Senator modified the original amendment. I am working from the original to show to date how much we have had meeting of the minds.

The Senator took out section (G). I will not trouble to talk about it.

We take out subsection (2). That is subsection (2) of the first paragraph of the amendment, report elements under (b).

As drafted, we delete for each foreign national detained by the Department of Defense during the 6-month period ending on the date of such report: No. 1, the name of the individual; No. 2, his or her nationality; the place at which they were taken into custody; the circumstances of being taken into custody; the place of detention; the current length of detention, or at least the duration of detention at the time of release. And on it goes.

Here is the problem. That bit of information, even though it were classified, were it ever to leak out—and regrettably, we know things of this nature will happen from time to time—it would be devastating because the enemy would know a great deal about custody and what we are trying to do with those individuals.

It seems to me there is far greater benefit to an enemy in such engagements as we must take prisoners than it would be of benefit to the legislative body to monitor that prisoners are properly being cared for. For example, the Durbin amendment we had the other day goes to potential abuses. That has been accepted. It is a major step forward to codify prohibitions against abuse of prisoners. We are all troubled by that.

To have in the custody of the Congress this type of information, even though it is locked up in S–407, or wherever it may be, potentially there is a document that could do great harm to our ability to conduct military operations during which we obtained detainees.

Then there is the following paragraph:

(3) Information of the detention facilities and practices of the Department for the six-month period ending the date of such report, including for each facility of the Department at which detainees were detained. . . .

That is fine.

(A) The name of such facility.

(B) The location of such facility.

We have no objection to that. In fact, the entire next page of the amendment, we accept. We come to the conclusion of the amendment and no further objections. It simply is to the creation of a document that would have such detailed information that is not essential to the Congress in our oversight of these detention facilities and the practice of detention, and if that document would ever get out, it would be a devastating blow to the intelligence system, to giving the information to the enemy, who we have among their presumably lost and missing persons, and the like.

I urge my colleagues, this is something we should scrutinize carefully. I have framed it in such a way that colleagues will have to decide whether it

is a second-degree amendment that prevails or the underlying amendment that prevails.

Therein, with the exception of one other mention just this morning, the committee staff, the majority and the minority, were briefed on this document. It roughly looks to be 30 pages of unclassified material entitled ''Department of Defense proposed''—just being proposed at the moment—''administrative review of the detention of enemy combatants at Guantanamo Bay, Cuba.''

This is one of our facilities. The Secretary of Defense has established administrative review procedures to determine annually if enemy combatants detained by the Department of Defense at the U.S. Naval Base at Guantanamo Bay should be released, transferred, or continue to be detained, and so forth.

Much of it parallels what the Senator has in mind. I am confident after this morning's briefing the Congress will make several edits. I encourage the distinguished ranking member to engage our colleague, Senator BINGAMAN, a former member of our committee, to look at it also and see how we can improve and strengthen this. So this will soon be in effect.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Would my colleague yield for a question?

Mr. WARNER. I yield.

Mr. BINGAMAN. I appreciate the cooperative approach my colleague has taken. I greatly respect his judgment on many of these matters.

First, on the issue of whether revealing the name and identity of these people is a major security threat, we have obligated ourselves under the Geneva Convention to do exactly that with regard to information we are going to turn over to the Red Cross for every prisoner of war we take into custody.

The specific language in part V of the Geneva Conventions talks with respect to each prisoner of war:

> . . . the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

That is what the Geneva Conventions requires.

Could we explore the possibility of just saying that the appropriate committees of the Congress should be entitled to the same information that we have committed ourselves to provide to the Red Cross with regard to all detainees?

Mr. WARNER. Mr. President, that is a very good question. I will take a few minutes to answer. It deserves a very considered answer.

I have thought this through. It is interesting, coincidentally over the weekend I dealt with the Department of Defense. I did not have a chance to brief my distinguished ranking member yet on the question of the Red Cross's participation in our situations, both in the Afghanistan detention facilities and the Iraqi detention facilities. I am speaking for myself.

I am very concerned about those problems over there. Our committee had several hearings on it. The issue comes up, as it should. It came up in the Judiciary Committee the other day, about the role of the Red Cross. I have learned a great deal about that role in a short period of time.

I had some familiarity when I was Secretary of the Navy and during the Vietnam conflict. The Secretary of Defense was at that time—I have served under three of them—Secretaries Melvin Laird and Jim Schlesinger. They were very conscientious about working with the Red Cross.

The Red Cross has done a remarkable job in this very difficult area, going into these prisons, monitoring them, and going back to the government host of the prisons and making corrections and trying, in some instances, to benefit the incarceration detainees in terms of their individual personal status.

The success of that program has been dependent on the absolute sanctity of that material and the fact that the observations of the Red Cross have not gotten into the public domain. We are working with the Department of Defense now, such that the Senate can be given the benefit of the Red Cross inspections in our facilities in Afghanistan and in Iraq. It will be my recommendation to the committee that we will have it in a classified briefing. But we are not, hopefully, going to retain any of those documents in the Senate.

Were that material to get out in some manner, we are told by the Red Cross, it would seriously limit their ability to do this magnificent work they do all over the world. If some nations—and only in a classified forum can I give those names—but some nations that now allow the Red Cross in to get information and to hopefully provide corrections to prisoners' treatment, if that had gotten out, that is the last time the Red Cross would get into that country to examine those prisons.

So we come down to the very basic fundamental issue about those detainees, whether they are in the United States or wherever they are in the world in these prisons, the Red Cross is helping in many instances. But they say if the information they write up and send back to the host country of the prisons gets into the public domain, forget it; they will be precluded from going on. So we would face a similar situation.

It is very difficult for me, one who has been privileged to be in this body now my 26th year, to just say I am concerned that some material in classified form in the possession of the Senate could get out. But, regrettably, whether it got out from under the Senate or got out from another source and that source would then blame the Congress for leaking it—I don't know, we have all been through the leak scenario—it leads to a never-never land in this Government of ours.

But I urge that we consider this very detailed information which our colleague is seeking. The amendment in the second degree, which I am perfectly willing to withdraw to the extent we can come to a resolution and make it your first-degree amendment and no second—I believe we have to observe the practices with regard to this detailed information you are seeking.

Mr. LEVIN. I wonder if the Senator will yield.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. This is really a question for the sponsor of the amendment. I say to the Senator, I understand what you have just suggested is that the information which we provide to the Red Cross be shared with Congress, not that the information which the Red Cross gives to us be shared with the Congress; is that correct?

Mr. BINGAMAN. Mr. President, in answer to the question, that is exactly right. It is not my suggestion that the Red Cross reports on conditions in prisons or anything else be provided to us. All I am saying is if our Department of Defense turns over information to the Red Cross—as it is required to do under the Geneva Conventions—we ought to have access to that.

Mr. WARNER. Fine.

Mr. BINGAMAN. Even in classified form, Congress ought to be able to know as much as the Red Cross knows about who we are detaining in our facilities.

Mr. WARNER. Mr. President, I do not disagree in how you frame the issue, but I maintain my stance. Let me parse it very carefully. I say to the Senator, you are saying that what we give the Red Cross—not what the Red Cross comes back and tells us we are doing right or wrong—what we give to the Red Cross can be shared with Congress?

Mr. LEVIN. That is the question by the Senator from New Mexico. It seems to me that makes good sense.

Mr. WARNER. Here is where I respectfully differ. If the information we give to the Red Cross were to leak out, then other nations that are similarly following that practice will see this is now in the public domain and say: We are stopping, Red Cross, because we see it has gotten into the public domain of another country. Therefore, we don't want that to happen.

Mr. LEVIN. If the Senator would yield—and I guess I have the floor, but, in any event, this information the Senator from New Mexico is talking about is information we have which the executive branch has. Now, I believe the fear the Senator from Virginia just expressed is not that the Red Cross would leak it—because they do not——

Mr. WARNER. No.

Mr. LEVIN. They have proven they do not leak the information. They perform—I agree with the good chairman—a very valuable service as to what they do. But what it seems to me the chairman is saying is there is less confidence the legislative branch will protect the classification of this material than the executive branch will protect it. I do not think we can accept a premise that we are more likely to leak classified information here in the Congress than the executive branch is likely to leak it. As a matter of fact, recent history——

Mr. WARNER. Mr. President, I say to the Senator, I concede your point. You need not deliberate further. Fault lies on both sides, both branches of Government. All I am saying is—and I am informed by those who have greater knowledge about the procedures of the Red Cross than I; and I don't know whether it comes out of the executive branch or the Congress—further distribution of this information beyond one branch of Government to another branch of Government does increase the likelihood that somehow it gets out. And it will deal the Red Cross a very serious blow, I am told.

Mr. LEVIN. I wonder if the Senator from Virginia would consider this possibility as we explore ways of bridging the differences; and I, like our good friend, Senator BINGAMAN, very much appreciate, as always, the chairman's willingness to look for common ground. It seems to me the one sensitive area the executive branch has and that is in this amendment has to do with the name of the person.

For instance, it seems to me, if there is a number which is assigned to every prisoner—which I understand is true for every prisoner of war, every enemy combatant, or every civilian, for that matter, who is held in detention—it seems to me, if the number is given rather than the name, the rest of this information is very appropriate and will help in the oversight process.

The failure, it seems to me, to make clear to the world that we are going to abide by international conventions and that we are going to make sure our people are treated properly by our treating other people properly, that failure has cost us greatly. The purpose of the Bingaman amendment is clearly to get us back on track in terms of what our responsibilities are by giving Congress the ability to perform our oversight responsibility.

We do not have that ability now. We do not have this information. Without this information, we cannot perform the essential oversight which has been missing here, and I believe if it had been in place early enough perhaps it would have persuaded the administration to get back on course earlier than it has been persuaded.

But my specific question to the chairman would be—and I have not consulted with the sponsor of the amendment; I don't know whether he would be in an accepting mood—but if the number of the prisoner or the civilian who is being detained were substituted for the name, would that have the same problem?

Mr. WARNER. Mr. President, in other words, rather than the individual's name, that his number is No. 224—whatever it is? I would have to defer until I go to the heart of the experts. All I know is that the name—if we are detaining certain individuals and the enemy does not know whom we have captured, and they, therefore, have to shelve some of their plans, knowing that the persons who are missing from their roster, if they were to talk about the plans, they would make the plans less valuable to the enemy—I mean, I am just working through the obvious scenarios here.

Now, whether a number would suffice, I would like to go back to those who are dealing with this on a daily basis.

Mr. LEVIN. When the chairman does that I would perhaps propose that one other consideration be looked at, and that is, I understand we are obligated to provide the names to the Red Cross now, and those names go back to the families in order that the families can find their loved one, if that loved one is alive, or that brother, or father, or whoever. Now, I may be wrong in that, but it seems to me the purpose of the——

Mr. WARNER. Mr. President, it is interesting, over the weekend I had the opportunity, I say to my distinguished colleague, to visit the Department of Defense, and I was greatly impressed with an individual, who was a Member of the U.S. House of Representatives a decade or so ago, who is in charge of it. I will seek to have him come over right away and provide both sides with the expert to propound these questions. They are good questions. Let's see what we can do to work this thing out.

Mr. LEVIN. I thank the chairman. I believe we ought to try to work this out. This is really moving in an essential direction for our Nation and our troops. I commend the Senator from New Mexico for his leadership and thank the chairman. I think maybe we ought to lay this amendment aside temporarily. I do not know if——

Mr. REID. Mr. President, if the two managers will yield?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, Senator DAYTON is here to offer his amendment. He is going to take about 20 minutes. It is my understanding Senator MCCAIN or someone on his behalf will second degree this amendment. Following that, Senator HARKIN is here ready to offer a second-degree amendment to the Durbin amendment. That will be offered on behalf of Senators Harkin and Hatch, dealing with supplements.

Mr. WARNER. Yes. Mr. President, I think all that can be accommodated, so I join in the request at this time to lay aside the pending amendment in the second degree and the underlying amendment by our distinguished colleague from New Mexico and to then let the other Senators seeking recognition have the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

AMENDMENT NO. 3197

Mr. DAYTON. Mr. President, I thank the distinguished chairman of the committee and others for setting aside their amendments, and I call up amendment No. 3197.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DAYTON], for himself and Mr. FEINGOLD, proposes an amendment numbered 3197.

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

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

The amendment is as follows:

(Purpose: To strike sections 842 and 843)

Beginning on page 172, strike line 11 and all that follows through page 176, line 21.

Mr. DAYTON. Mr. President, my amendment strikes two sections of the bill, sections 842 and 843, which relate to ''Buy America'' and the Berry amendment, which are features that have been in existing law for quite a number of years to strengthen our national defense and our national economy.

This bill authorizes $422 billion for national defense programs for fiscal year 2005, a sum that doesn't even include the funding for ongoing operations in Iraq and Afghanistan. If you include those additional amounts, our national defense spending for the next fiscal year will be almost $500 billion.

Mr. WARNER. Mr. President, will the Senator yield for the purpose of allowing me to put a second-degree amendment at the desk so our colleagues can then begin to examine both as this very important debate is underway?

Mr. DAYTON. I yield to the chairman.

AMENDMENT NO. 3461 TO AMENDMENT NO. 3197

Mr. WARNER. Mr. President, I send to the desk, on behalf of Senator MCCAIN, an amendment in the second degree.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. MCCAIN, for himself and Mr. WARNER, proposes an amendment numbered 3461 to amendment No. 3197.

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

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

The amendment is as follows:

(Purpose: To perfect the matter proposed to be stricken)

In lieu of the matter proposed to be stricken, insert the following:

SEC. 842. WAIVER AUTHORITY FOR DOMESTIC SOURCE OR CONTENT REQUIREMENTS.

(a) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2539c. Waiver of domestic source or content requirements

''(a) AUTHORITY.—Except as provided in subsection (f), the Secretary of Defense may waive the application of any domestic source requirement or domestic content requirement referred to in subsection (b) and thereby authorize the procurement of items that are grown, reprocessed, reused, produced, or manufactured—

''(1) in a foreign country that has a Declaration of Principles with the United States;

''(2) in a foreign country that has a Declaration of Principles with the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a Declaration of Principles with the United States; or

''(3) in the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a Declaration of Principles with the United States.

''(b) COVERED REQUIREMENTS.—For purposes of this section:

''(1) A domestic source requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item that is grown, reprocessed, reused, produced, or manufactured in the United States or by a manufacturer that is a part of the national technology and industrial base (as defined in section 2500(1) of this title).

''(2) A domestic content requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item produced or manufactured partly or wholly from components and materials grown, reprocessed, reused, produced, or manufactured in the United States.

''(c) APPLICABILITY.—The authority of the Secretary to waive the application of a domestic source or content requirements under subsection (a) applies to the procurement of items for which the Secretary of Defense determines that—

''(1) application of the requirement would impede the reciprocal procurement of defense items under a Declaration of Principles with the United States; and

''(2) such country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

''(d) LIMITATION ON DELEGATION.—The authority of the Secretary to waive the application of domestic source or content requirements under subsection (a) may not be delegated to any officer or employee other than the Under Secretary of Defense for Acquisition, Technology and Logistics.

''(e) CONSULTATIONS.—The Secretary may grant a waiver of the application of a domestic source or content requirement under subsection (a) only after consultation with the United States Trade Representative, the Secretary of Commerce, and the Secretary of State.

''(f) LAWS NOT WAIVABLE.—The Secretary of Defense may not exercise the authority under subsection (a) to waive any domestic source or content requirement contained in any of the following laws:

''(1) The Small Business Act (15 U.S.C. 631 et seq.).

''(2) The Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

''(3) Sections 7309 and 7310 of this title.

''(4) Section 2533a of this title.

''(g) RELATIONSHIP TO OTHER WAIVER AUTHORITY.—The authority under subsection (a) to waive a domestic source requirement or domestic content requirement is in addition to any other authority to waive such requirement.

''(h) CONSTRUCTION WITH RESPECT TO LATER ENACTED LAWS.—This section may not be construed as being inapplicable to a domestic source requirement or domestic content requirement that is set forth in a law enacted after the enactment of this section solely on the basis of the later enactment.

''(i) DECLARATION OF PRINCIPLES.—(1) In this section, the term 'Declaration of Principles' means a written understanding (including any Statement of Principles) between the Department of Defense and its counterpart in a foreign country signifying a cooperative relationship between the Department and its counterpart to standardize or make interoperable defense equipment used by the armed forces and the armed forces of the foreign country across a broad spectrum of defense activities, including—

''(A) harmonization of military requirements and acquisition processes;

''(B) security of supply;

''(C) export procedures;

''(D) security of information;

''(E) ownership and corporate governance;

''(F) research and development;

''(G) flow of technical information; and

''(H) defense trade.

''(2) A Declaration of Principles is underpinned by a memorandum of understanding or other agreement providing for the reciprocal procurement of defense items between the United States and the foreign country concerned without unfair discrimination in accordance with section 2531 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 2539b the following new item:

''2539c. Waiver of domestic source or content requirements.''.

SEC. 843. CONSISTENCY WITH UNITED STATES OBLIGATIONS UNDER TRADE AGREEMENTS.

No provision of this Act or any amendment made by this Act shall apply to a procurement by or for the Department of Defense to the extent that the Secretary of Defense, in consultation with the Secretary of Commerce, the United States Trade Representative, and the Secretary of State, determines that it is inconsistent with United States obligations under a trade agreement.

Mr. WARNER. I thank my colleague for his courtesy. We now undertake a very important debate on this subject.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, we are going to spend, in the next fiscal year, some $500 billion. That is a half trillion dollars, a huge amount of the taxpayers' money; in fact, about one-fourth of all the money the Federal Government will spend for everything next year, including Social Security, Medicare, health care, and education.

The purpose of these expenditures is to strengthen our national security for now and the future. The six priorities that were approved by the Senate Armed Services Committee, of which I am proudly a member, along with the Presiding Officer and others, reported in the bill before us unanimously by the committee, include such measures as combating terrorism and winning the global war against terrorism, supporting our military operations in Iraq and Afghanistan, to sustaining the readiness of our Armed Forces to conduct the full range of military operations against all current and anticipated threats.

It goes on to state: Another object is modernizing and transforming our Armed Forces to successfully counter future threats. So we need to spend this money on the immediate needs and missions of our military and support the phenomenal job they have been doing on our behalf around the globe, but we also need to try to anticipate the future. That is difficult, but it is also important. It requires us to look at the big picture, at the global picture, and into the years and even, if possible, the decades that lie ahead. It means we don't want to do something now that is expedient or briefly beneficial that will have negative consequences for us in the future.

Ideally, we want policies that strengthen our country now and in the future. That has been the compelling reason for the so-called ''Buy American'' requirements of the Department of Defense, the military branches, and all other Federal agencies for the past 70 years.

''Buy America'' came out of the depths of the Great Depression. Buy America to strengthen America is really what it should be called. Buy America to strengthen America—that was the reason, the purpose, and it has been the result for seven decades. However, the law has always provided for exceptions, exceptions that essentially give, as they should, the full authority to the Secretary of Defense to waive domestic purchase requirements whenever necessary to provide our Armed Forces with equipment, weapons, clothing, food, or anything else that is not available in the United States, that could not be produced or provided in this country when it is needed, that lacks the quality or features or advantages, or that is not priced competitively with non-U.S.-made products.

So the law has essentially said: Try to buy American, but if you can't or you shouldn't, then don't. It has worked for almost 70 years, through 11 different administrations—six Democratic, five Republican—until last year this administration and this Senate shredded that bill. That shredding was reduced to a few slices by the strong opposition of the House conferees, led by the House Armed Services Committee chairman.

We in this body are exceedingly fortunate to have the chairman of the Senate Armed Services, who is unparalleled as a leader and public servant. Last July, I traveled to Iraq with the distinguished chairman of the Armed Services Committee, the senior Senator from Virginia, Mr. WARNER. We went through the country with 115-degree temperatures. I struggled to keep

up with him as he charged fearlessly into every perilous situation. He is in every respect—leading that committee, here on the floor, or out in the field around the world—one of the most outstanding leaders and pubic servants I have ever met anywhere in my walk of life.

I also greatly admire my colleague and friend, the senior Senator from Arizona, Mr. MCCAIN, whose military experience and expertise and whose devotion to his country and his service to it are all remarkable.

However, on that occasion last year regarding ''Buy America,'' I thanked our Founding Fathers for the wisdom of bicameralism. And I must respectfully but strongly again disagree this year with the Senate bill's provisions that would effectively destroy ''Buy America'' by its exceptions to it.

If we pass the legislation that is before us now with the language in it, the second degree to my amendment that has been put down today, we might as well eliminate the entire ''Buy America'' statute as it applies to the Department of Defense and the armed services and others that are funded by this bill because that will be the result if this current Senate language if we pass it.

I challenge those in the Bush administration and those in the Senate and those lobbying for the big multinational corporations and for the foreign governments they represent, who truly believe that we will be better off without any ''Buy America'' requirements, or certainly, in the case of the paid lobbyists, who know that they and their clients will be better off without them, and those who believe that for whatever reason, they should just say so and put the repeal before us in black and white and have us vote on that rather than just creating more exceptions and more loopholes that give more foreign countries and the corporations that operate in them more and more of the money from this bill in the products that they buy and the jobs for which they pay, because under this language that exists in the bill now, those tax dollars, those products, those jobs will go to people in other countries but not to Americans.

There will be no more ''Buy America'' to strengthen America. It will be buy abroad, because of what? Because it is cheaper? Because it is better? Because it doesn't matter?

Let's have that debate in the Senate. Is it cheaper to buy overseas? After counting all the costs of not only the product prices but also the wages that are gained or lost, the taxes paid by those wage earners in this country or somewhere else, the unemployment costs in this country, the welfare cost, the food stamp cost, not to mention the human cost of people who lose their jobs, is it better to buy these products overseas? Better for whom? Who gains, who loses, when American dollars are spent abroad to buy foreign goods made by foreign workers instead of American goods made by American workers? Does it matter? Evidently not to this President or to this Pentagon leadership. But it sure matters to the American people, who will lose their jobs or won't get new jobs or better jobs. Do they have a say in where their tax dollars are spent? Does it matter to this Senate that there are now 2½ million fewer manufacturing jobs in this country than there were when President Bush took office? Yes, 2½ million manufacturing jobs have been lost in this country in the last 3½ years, despite the so-called recovery and recent job gains in some other sectors of our economy. There are still 2½ million less manufacturing jobs today than there were in January 2001.

Many of those American jobs have been sent overseas and were replaced in other countries by low-wage jobs. Importing all those foreign-manufactured products has now produced a U.S. trade deficit that last month was $48.2 billion. That is another all-time worst trade deficit—$48.2 billion for a single month, and it will probably be broken again next month or soon thereafter. Over the next year, if that continues, it will produce an annual trade deficit of $578 billion—almost $100 billion more than last year's record trade deficit.

We are told we cannot do anything about this massive bleeding of jobs and wages, capital investments, profits, and tax payments out of our country. We are told we should not even try; it is free trade, globalization, and it is good for America. Is 2.5 million lost manufacturing jobs good for America? Over $100 billion in lost wages and benefits every year is good for America? Over $30 billion of lost tax revenues each year for Federal, State, local governments, and school districts is good for America? Our Federal budget deficits, our State and local government deficits, U.S. trade deficit, national debt increasing, all of which are going higher and higher—is that all good for America? Jobs and wages, production of goods and services, capital investment by businesses, allowing people—as consumers buy goods and services, producing tax revenues, individual and corporate, they are the lifeblood of any economy. They are its vitality. Corporate profits, stock prices, dividends, and capital gains are all vitally important as well, but they are not enough.

This country's economic vitality is bleeding away. Our economic strength is weakening. Our economic strength is essential to our military strength. Our economic security is essential to our national security. This legislation, this authorization to spend $500 billion on our national security, had better strengthen, not weaken, our economic security as well.

I am aware of the letter to the chairman from a group calling itself the National Defense Industrial Association. It claims to represent over 1,300 member companies and purports to be the ''voice of the industrial base.'' Who are these companies? Whose industrial base are they speaking for? Many are companies that have moved their production overseas, that are making better profits from paying low wages to foreigners instead of good wages to Americans. We cannot stop them from doing so. But why should we reward them with American tax dollars going to support their foreign production? They can certainly continue that foreign production, and they will. But if they want these U.S. military contracts, they should fill them with American workers, not with foreigners.

They should make those products or provide those services in American communities, not foreign cities. They should pay taxes from those profits to our school districts and local governments, not someone else's. These are American tax dollars that are paying for our national defense, not from their corporate profits from foreign operations—profits on which they will pay taxes to foreign governments, not our own.

Someone has to look out for the best interests of this country, and it sure is not the National Defense Industrial Association. Maybe that is not their responsibility. But the best interests of this country are our responsibility here in the Senate. So they should not tell us or try to make us or the American people believe their interests are America's interests. In their letter, they claim it would negatively impact the ability of the U.S. industrial base to compete in the international marketplace and would therefore negatively impact the Warfighter, and the bill's amendment gutting ''Buy American'' will represent important steps in the Department of Defense's transformation plans and send positive signs to our allies that the United States is supportive of existing trade agreements. I am deeply offended that American companies, most of which are headed by American citizens, would try to hide their financial self-interests behind pretenses like these. They want defense contracts they can fulfill with their existing foreign operations that provide them with greater profits. They don't want to have to shift that production back to the U.S. and employ fellow American citizens. They want only what is good for themselves, not what is best for America's military strength or our Nation's economic vitality.

In some cases, as the letter discloses, they coddle foreign governments that want to buy American military hardware and then want us to buy the same amount of their foreign-made military products from their countries. We signed, evidently—somebody in the Department of Defense signed these agreements. There are countries where our trade deficits last year totalled over $120 billion for all goods and services. But in this one sector of military goods and services, where we run a trade surplus, we agree to give up our surplus by buying more foreign products, some of which, of course, are made in those countries by—surprise—

some of the companies in the National Defense Industrial Association. Those companies win both ways, but the rest of America loses.

These memoranda of understanding are not free trade; they are certainly not fair trade. They are dumb trade. It is amazing to me that somebody would sign them. It is like something out of the movie ''Dumb and Dumber,'' where I give you $20. You are going to give me $10 back, but you say, wait a minute, I am losing my $10. You have a responsibility to make up for my $10 with your $10. So we do that. We agree to that in this memorandum. We are going to match their $10 with ours and even up that part of the deal and leave the $20 that goes to them—leave it out and let it go. That is dumb trade.

We spend more on our defense products, goods, and services than the next 10 countries in the world combined. They need our markets; we don't need theirs. They are cutting back on their military production, so they want these agreements to prop up their industries and provide jobs for their workers at our expense. They are smart enough to look for it, and we are dumb enough to give it to them. It is also dangerous trade. This month's Jane's Intelligence Review, a widely regarded international publication, reports that ''Europe Considers Ending Chinese Arms Embargo.'' The Chinese premier was in some European Union countries last month and he concluded, saying, ''I have great confidence that there will be a solution to this problem.''

I ask unanimous consent that this article be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. DAYTON. It reads:

On the European side, the attractions of tapping China's defense market are significant: China is the world's largest importer of defense equipment ($3.6 billion worth in 2002), and . . . France and Germany in particular are pushing to lift the arms embargo; France because the government is under pressure from its defense industry to resume arms sales; and Germany because it wants to maintain its currently good and close relationship with Beijing.

Opponents to lifting the ban include, most vociferously, the USA. . . .

Richard Fisher, from the Jamestown Foundation, told [Janes Intelligence Review]: ''The real impact of a deep and wide EU-PLA [People's Liberation Army]—

The army of China, the People's Republic of China—

military alliance will fall on the USA, in terms of accelerating a military-technical arms race that will burden U.S. taxpayers and place ever greater pressure on the U.S. political/military alliance system in Asia.''

Who are these countries protecting or helping in this language I want to strike out of this bill that have these offsetting reciprocal agreements with the United States? They include Belgium, Denmark, Germany, Netherlands, Portugal, Spain, Switzerland—all European Union countries. Others that are also exempt by other features include France, Italy, and Luxembourg—all European Union countries.

We are going to contribute to their building up their defense industries, and then they are going to turn around, most likely, soon and sell those products, that technology, those military advantages to a country in opposition to our foreign policy and against our own military interests, against our own national security interests.

That is just one example of how this kind of expediency and also the corporate pressures that drive some of it are a danger to our national security and to our future economic strength.

In conclusion, for the last 70 years, ''Buy America'' has worked for America, and it has helped Americans work in America to build a strong national defense, to build a strong national economy, and to build a strong American industrial base until this administration arrived. The Bush administration believes evidently we can have a strong national defense and a strong national economy without a strong American industrial base, without Americans making American products in American communities. They are so indifferent to that need that at a time when the United States has lost over 2.5 million manufacturing jobs held by 2.5 million American workers in the last 3½ years, they support this bill and its language to send more American taxpayers' dollars to pay for foreign products made by foreign workers.

Maybe those who do not care about other Americans' jobs should offer to give up their own job. Practice what they preach and find out for themselves what unemployment is really like. But it is our responsibility, exercising our collective wisdom, to act in the best interests of the United States of America.

I know my colleagues share that desire. We may have our honest differences and disagreements, but I beseech my colleagues in this instance to review this measure and this language and consider the consequences of it for our military strength, for our economic strength, as well as for the jobs of Americans and the quality of products and the security of products provided to the men and women serving courageously around the globe.

I yield the floor.

EXHIBIT 1

[From Jane's Intelligence Review, June 1, 2004]

EUROPE CONSIDERS ENDING CHINESE ARMS EMBARGO

(By John Hill)

Chinese Premier Wen Jiabao began his first official visit to Europe on 5 May with the issue of lifting the European Union's (EU) ban on the sale of weapons systems to China high on his agenda.

Beijing had hoped that a decision to end the ban would be made at the meeting of EU foreign ministers on 26 April, but at the annual Asia Europe Meeting (ASEM) held in Dublin a week earlier, Irish Minister for Foreign Affairs Brian Cowen, said that a change in the issue was unlikely during Ireland's EU presidency. Undaunted, in Brussels on 5 May, Wen said: ''I have great confidence that there will be a solution to this problem.''

For months now it has appeared that the arms embargo, which was imposed following the Tiananmen Square violence in 1989, would be scrapped, and Beijing certainly has many powerful European friends working on its behalf. Javier Solana, the EU's High Representative for Foreign Policy, as well as representatives from both France and Germany have in recent months assured the Chinese publicly that they think the time has come to resume arms sales.

On the European side, the attractions of tapping China's defence market are significant: China is the world's largest importer of defence equipment (US$3.6bn-worth in 2002), and currently Russia is the main beneficiary. According to Jean-Pierre Cabestan of the French National Centre for Scientific Research, France and Germany in particular are pushing to lift the arms embargo: France because the government is under pressure from its defence industry to resume arms sales; and Germany because it wants to maintain its currently good and close relationship with Beijing. Both the European Aeronautic Defence and Space Company (EADS) and the French electronics company Thales told JIR that although they do not currently export military equipment to China, they are monitoring the situation.

Opponents to lifting the ban include, most vociferously, the USA. In January, Richard Boucher, spokeswoman for the US Department of State, said: ''Our statutes and regulations prohibit sales of defence items to China. We believe that others should maintain their current arms embargoes as well. We believe that the US and European prohibitions on arms sales are complementary, were imposed for the same reasons, specifically serious human rights abuses, and that those reasons remain valid today.'' The UK is remaining circumspect; although obviously its defence industry would like to sell to the Chinese market, the government is reportedly upholding the US line on the issue.

There is debate over the consequences that lifting the ban would have. Professor Shen Dingli, an expert in International Relations at Shanghai's Fudan University, told JIR: ''[Ending the embargo] won't be significant, as China has its own arms research, development and manufacturing capability, and can access Russia's military aircraft and ship technology. Reportedly, soon China will acquire its own manufacturing capability of more modern military aircraft, and by that time, China will export its own technology.''

However, the USA remains worried that the end of the embargo could spark an arms race. US China analyst Richard Fisher, from the Jamestown Foundation, told JIR: ''The real impact of a deep and wide EU–PLA [People's Liberation Army] military alliance will fall on the USA, in terms of accelerating a military-technical arms race that will burden US taxpayers and place ever greater pressure on the US political/military alliance system in Asia.'' Fisher argued that if the ban was lifted, the French would be ''first out of the gate'' with submarine and satellite technology. He added that the competition would also spur on the Russians, who ''are now openly talking about selling advanced SSK [submarine] co-production rights to the PLA to trump the EU''.

SALES UNDER THE BAN

The EU embargo is somewhat vague on what is covered, and as a result has been interpreted differently by EU member states. The EU declaration on China, the European Council document issued in the wake of the Tiananmen Square violence, called only for

an 'interruption' of military co-operation and an embargo on trade in arms with China. The French and the UK governments have in the interviewing years produced their own interpretations of the extent of the embargo's reach.

In 1995, the British government made explicit that its interpretation of what was banned included: lethal weapons such as machine guns, large calibre weapons, bombs, torpedoes, rockets and missiles; specially designed components of the above, and ammunition; military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms; any equipment which is likely to be used for internal repression.

Under the ban, the UK has exported significant military components, but not entire systems, to China. Most controversially, a license was granted to Rolls-Royce for the export of between 80 and 90 Spey aero-engines for the JH–7 fighter-bomber in 2001, although a license would not be granted (by the UK government's definition of the ban) for a whole military aircraft incorporating such engines. Other major UK sales have involved Racal (now part of Thales), which in 1996 sold airborne early warning radars; and Surrey Satellite Technology (SSTL).

The most recent UK government annual report on strategic export controls, covering 2002, details 177 export licenses for China worth £50m (US$89m), including components for frigates, general military aircraft components, technology for military aero-engines and technology for military aircraft head-up displays. A spokesman for the UK Foreign Office told JIR that there was a very rigorous process for the licensing of the export of weapons components that was equal to that for whole systems.

Other European countries have also sold equipment to the PLA. In 1997, the French pronounced that co-operation with the Chinese would be increased to include ''co-operation in the technical, technological and infrastructure fields''. They added: ''This technological and industrial co-operation will be conducted within the framework of our European and international commitments.'' Among the items licensed for export were French diesel engines for Chinese 054-class frigates and German-licensed diesel engines for Song-class submarines.

Such 'reinterpretations' have led to accusations that the Europeans have been 'weaselling' around their embargo. For example, Fisher said London's 'reinterpretation' enabled the UK to sell engines, radar, military electronics and small satellite technology to China. ''Now British technology is helping China to shoot at US Navy ships, to find them at sea, and potentially to blind the US Navy's first line of defence in space,'' he wrote in the Washington Times in 2001.

However, the USA is not without its own gray areas in controlling arms exports to China. In 2001, Senator Jon Kyl told the Senate that US regulations had allowed the export to China of $15bn of ''strategically sensitive'' materials during the 1990s, including equipment that could be used for manufacturing missile and nuclear weapons components. In 1998, Harold Johnson of the General Accounting Office told the US Congress Joint Economic Committee that between 1990 and 1996 US sources provided 6.5 per cent of the $5.3bn-worth of foreign military items delivered to China, compared to the EU's 2.3 per cent.

The embargo is unlikely to prevent China from making its own technological advances and there are arguments that engagement rather than isolation can better serve international security. Sir Martin Sweeting, chief executive of Surrey Satellite Technology (SSTL), told JIR: ''China [and other countries] will develop their own space capability irrespective of outside assistance. Refusing to work with them will not prevent them—they have access to all the components we use and are capable people. Rather than relying on an isolation policy that creates an illusory impression of maintaining a capability lead, is it not more advantageous to work with China in a carefully controlled manner so that we are aware of their developments and consequential implications for their capability and further development?'' He added: ''[While] virtually all satellites have military 'implications' to whatever country, none of the satellites sold by SSTL to China have significant military utility.'' He thought that lifting the ban could speed up the export licensing process, a development that ''would be welcomed by SSTL''.

LIFTING THE EMBARGO

The debate on lifting the arms embargo essentially revolves around two issues. The first is that such an embargo is extremely unusual—the only other states subject to such treatment are Sudan, Myanmar and Zimbabwe. In the context of the EU's developing and deepening relationship with Beijing, banning arms sales to China, which is regarded as a responsible and important member of the international community, appears incongruous. The Chinese position is that the ban is an inappropriate holdover from the Cold War.

However, another issue involves continuing concerns about China's human rights record. The ban is of course seen as a way of influencing China, but the underlying problem is more likely to be US pressure to maintain the ban, ostensibly on human rights grounds.

Nicolas Kerleroux, a spokesman for the European Council, stressed that in the end, the decision to continue the embargo was made by the EU. He added that the process that would have to be gone through to lift the embargo is not entirely clear, and would only become clearer closer to the time of any possible change.

Any decision to lift the embargo would need the unanimous agreement of all EU member states. The process itself could take place at the European Council, a meeting of EU heads of state or the monthly meeting of foreign ministers. The statement of the Irish Minister of Foreign Affairs that no change would be made during the Irish presidency of the EU has no official status, but is simply a personal assessment of the situation, according to Kerleroux.

He added that the question is a complex one and must be addressed in an ''orderly fashion'', which means that it will take time. Asked if any states were particularly against the change, he told JIR: ''No one has said 'never'.'' He pointed out that when EU leaders tasked their ministers to re-examine the issues in December 2003, ''no one opposed'' the request.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, before I get into the substantive debate in rebuttal to my distinguished colleague—and I say distinguished. We are very proud of his participation on our committee. Indeed, I remember vividly our trip together to Iraq. That was his first trip. It was helpful for all of us. I thank him for his remarks about the old Senator from Virginia. It is kind of nice to hear those after being on this bill now our 15th day. But we are making progress.

First, I think inadvertently—and I say to my friend inadvertently—he made reference in his opening statement that the language of the authorization bill for this year changes the status of the Barry amendment. Did the Senator make mention of that?

Mr. DAYTON. Mr. President, I meant to say that it changes the overall law and which the Barry amendment is part of this general reference to ''Buy America.''

Mr. WARNER. I wonder if I might bring to the Senator's attention—the bill is at the desk—if he would look at page 175 of the bill. He will see section (f), ''Laws Not Waivable'':

> The Secretary of Defense may not exercise the authority under subsection (a) to waive any domestic source or content requirement contained in the following laws. . . .

No. 4 is the Barry amendment. We do not touch it. I assure the Senator, section 2533 A(a) of title X is the Barry amendment, and that remains untouched.

Mr. DAYTON. Mr. President, the chairman is correct in that regard.

Mr. WARNER. The Senator is doing his best, and I have lived with these things for so many years.

The other is interesting. No. 1, we do not waive the Small Business Act, 15 U.S.C. 631, which sets aside 23 percent of the dollar volume of all defense contracts must go to small business.

The Javits-Wagner, No. 2, is all products manufactured by the blind and the handicapped. We do not touch that.

No. 3, section 7309, shipbuilding, we do not touch that.

And No. 4 is the Barry amendment, and that covers textile, food, and speciality medicine.

I draw my colleague's attention to those points. He might wish to review it himself and make amendments to his opening statement.

Mr. President, I say to my colleague again, it is fascinating in a sense. He goes on about what we put into this bill, which I think in a very modest way strengthens America's position, in my judgment. For example, his bill goes after one Department, the Department of Defense; am I not correct?

I say to my distinguished colleague, the Department of Defense is among the few Departments of our Government with contracts generating a surplus. The area in which the Senator from Minnesota wants to go to preserve jobs is in other Departments and agencies of the Federal Government. Let me point this out.

We had $63 billion in defense sales in the last year—$63 billion—to nations all over the world. We bought only $5 billion of weapons from other nations. Those nations that sell us the $5 billion are basically the ones that are participating largely in the $63 billion. So there is a mutual trade there. We are selling them, by and large, far more than we are buying from them, and if you were successful, you would begin to bring down significantly the $63 billion, and that translates into hundreds of thousands of jobs in America would be lost because we are saying to those

countries: We are not buying anything from you anymore. And they will say: If that is the case, we have had it, we are not going to buy from you, and down goes our $63 billion surplus.

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

Mr. WARNER. Yes.

Mr. DAYTON. Does the Senator say we should apply that same principle to all of our trade agreements and require that the $478 billion we spent last year in deficits, we should require those countries buy the equivalent in U.S.-made products?

Mr. WARNER. Mr. President, I am not going to tread beyond the Department of Defense. Our bill goes strictly to the Department of Defense. If there are other areas in which my distinguished colleague and those who are aligned with him want to go, then other Senators who have the oversight responsibilities for their respective departments are the ones who will have to respond. So I am going to stick to DOD.

We have the largest, as far as I know—maybe in agriculture there may be some segments which are somewhat equally or larger in significance.

At the end of my remarks, I ask unanimous consent to have printed in the RECORD the letters that we have received from a number of nations respecting the pending matter that the distinguished colleague from Minnesota has put before the Senate.

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

(See exhibit 1.)

Mr. WARNER. I start off with the Ambassador of the Netherlands:

Dear Senator, Mindful of the long-standing strong relationship between the United States and the Netherlands, I would like to express support for several very important amendments to the Defense Authorization Bill 2005 that were agreed this week . . .

And he then refers to those sections. Then we have the ambassador from the Embassy of Sweden:

As you are aware, Sweden is a significant supplier and partner to the United States in several defense technology areas such as anti-tank weapons systems and naval composite technology. With almost 50 percent U.S. content, the Swedish fighter aircraft Gripen is another example of close Swedish-American cooperation. This extensive cooperation is to the benefit of our respective defence industries.

I am only reading just a fraction of these letters. Another one from Mr. David Manning, the Ambassador from the British Embassy in Washington:

I am writing to express the strong support of the United Kingdom for three amendments to the Senate Armed Services Committee mark up of the 2005 Defense Authorization Bill.

Those are the provisions, Mr. President, that my distinguished colleague seeks to strike. He goes on, ''These amendments are contained in section,'' so and so. He then goes on:

As you know, the UK and US armed services have a relationship of unparalleled closeness, as our forces fight side by side in Iraq and elsewhere. . . . I therefore hope you will be able to support these amendments . . .

And eventually get them into law.

The Canadian Embassy sent a similar letter. We have a similar letter from the Danish Ambassador. We also have a letter from the Aerospace Industries Association of America. They state:

The future of U.S. aerospace is in the global marketplace. Our industry exports 40 percent of the products it manufactures in the United States and books the largest export surplus of any sector of our economy.

I say to the Senator from Minnesota, he is facing a serious issue if he prevails. We have a similar statement from the Government Electronic Industries Alliance. We have the National Defense Industrial Association, Strength Through Industry & Technology:

Dear Mr. Chairman:

NDIA has had a long and productive association with you and the committee. I look forward to discussing these issues . . .

They support the bill, and I could go on, but this is a sample.

I will say in recognition of the issues that the Senator raises, in the second-degree amendment we pair down the list of 21 nations to the 7 that we believe absolutely have to be kept intact and not subjected to the strike that the Senator has in hand. The obvious ones are the United States, Australia, the Netherlands, Italy, Sweden, Canada, and Norway. So I think some advancement has been made in terms of limiting the number of nations that have to deal with this, but at this point in time I say to my colleagues that I think the second-degree amendment from the Senator from Virginia embraces the position that is the most important one that we should take versus the distinguished colleague from Minnesota.

I wonder if I might put in a quorum call for a brief few minutes when I have to absent myself from the floor. Does the Senator from Iowa wish to speak to this issue?

Mr. HARKIN. No. If the chairman would yield, it is this Senator's intention to call for the regular order, which would bring up the Durbin amendment, and I have a second degree to the Durbin amendment. Then I will speak on that. I assume right after I finish, Senator HATCH will speak on it.

Mr. WARNER. I say to my colleague, I think we can accommodate him because this important debate brought by the Senator from Minnesota, to which I have made a reply, will be laid aside because other Senators, hopefully, on both sides of the aisle, will come to support the amendment in the second degree by the Senator from Virginia.

I am anxious to hear from the Senator from Minnesota. Did he want to reply to some of my comments?

Mr. DAYTON. If the Senator will yield for one last question.

Mr. WARNER. Yes, I will yield.

Mr. DAYTON. Then we can conclude this discussion so the Senator can leave the floor. I am glad to see the second degree would reduce the number of countries exempted to seven. I ask if the Senator and Senator MCCAIN would consider language in the amendment that would prohibit the consequences that I just outlined of the sale of goods and military products to China, that there be language in this amendment that would preclude these countries that are getting these benefits from, then in turn providing those gains to countries that are outside of our own military and foreign policy.

Mr. WARNER. I thank my colleague. I would be happy to consider that if he wishes to bring that forth to change the documents that are presently before the Senate; that is, the underlying and second-degree amendments. So perhaps at this time we could lay aside this package with the understanding that we will bring it up again today for further debate and in the interim we can consider the measures that the distinguished Senator wishes to address.

Mr. DAYTON. I agree with that.

EXHIBIT 1

THE AMBASSADOR, EMBASSY OF THE KINGDOM OF THE NETHERLANDS,
Washington, May 17, 2004.

DEAR SENATOR: Mindful of the long standing and strong relationship between the United States and the Netherlands I would like to express support for several very important amendments to the Defense Authorization Bill 2005 that were agreed this week in the discussions in the Senate Armed Services Committee.

I refer specifically to the proposals in Title VIII—Acquisition Policy, Acquisition Management and Related Matters, Subtitle D—Industrial Base Matters (Sections 841, 842 and 843).

I consider the Section with regard to a ''Commission on the Future of the National Technology and Industrial Base'' as a highly constructive proposal. Specifically the balanced tasking of the Committee seems to inherently guarantee certain success. Taking into account the increasingly important subject of interoperability, specifically relevant in the present day environment, I also value the amendment concerning the ''Conforming standard for waiver of domestic source or content requirements'' as an important building block for a fertile environment for defense trade of which the warfighter of today and of tomorrow will be able to benefit. Also the section that deals with the ''Consistency with United States obligations under trade agreements'' is seen as a positive and relevant assurance for other countries.

Although not directly related to the above referenced proposals allow me to share with you the idea that in our perception, part of the discussion which is seen by some as the danger posed by foreign dependency can be satisfied by bilateral Security of Supply agreements which can be negotiated as more detailed arrangements under a Declaration of Principles or a reciprocal defense procurement MOU.

In conclusion I would like to assure you of my broad support for the proposals which I mentioned above.

EMBASSY OF SWEDEN,
Washington, May 27, 2004.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR: As you are well aware, Sweden is a significant supplier and partner

to the United States in several defense technology areas such as anti-tank weapon systems and naval composite technology. With almost 50 percent U.S. content, the Swedish figher aircraft Gripen is another example of close Swedish-American cooperation. This extensive cooperation is to the benefit of our respective defence industries.

Mindful of this long-standing and strong relationship between the United States and Sweden, I would like to express support for several important provisions in the 2004 Defence Authorizations Bill.

The provisions contained in Section 841, 842, and 843 of the proposals for title VIII on Acquisition Policy set a common standard of waiver of domestic source and content requirements. They also call for a Commission on the future of the national technology and industrial base.

I would like to assure you of my country's strong support for these provisions when they come before the Senate.

Sincerely,

JAN ELIASSON,
Ambassador of Sweden to the United States.

BRITISH EMBASSY,
Washington, 17 May 2004.

Hon. JOHN MCCAIN,
Washington, DC.

DEAR SENATOR: I am writing to express the strong support of the United Kingdom for three amendments to the Senate Armed Services Committee mark up of the 2005 Defence Authorizations Bill. These amendments are contained in Sections 841, 842, and 843 of the proposals for Title VIII on Acquisition Policy. They set a common standard of waiver of domestic source and content requirements. They also call for a Commission on the future of the national technology and industrial base.

As you know, the UK and US armed services have a relationship of unparalleled closeness, as our forces fight side by side in Iraq and elsewhere. If approved, the measures proposed under Title VIII would be an important step forward towards improving interoperability across the full range of our mutual defence cooperation.

I therefore hope you will be able to support these amendments when they come before the Senate later this week.

Best wishes. Yours sincerely,

DAVID MANNING.

CANADIAN EMBASSY,
Washington, DC, June 16, 2004.

Hon. JOHN WARNER,
Chairman, Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN WARNER: I am writing to convey the views of the Government of Canada with respect to the Ronald W. Reagan National Defense Authorization bill (S. 2400) under consideration by the United States Senate.

I want to draw particular attention to Amendment 3311 put forward by Senator CHRISTOPHER DODD (D–CT) that would cause the Secretary of Defense to impose a new scheme of U.S. offsets on foreign suppliers. We strongly believe that Senator DODD's language would undermine existing trade agreements and defense cooperation relationships, notably with U.S. allies whose defense industries are often closely integrated with American suppliers and partners. Furthermore, such a provision would hurt manufacturers and workers in the United States, since they are the overwhelming beneficiaries of U.S. defense exports. These exports have grown dramatically in recent years, thanks to the willingness of U.S. companies to provide for local economic development through offset agreements. This amendment would have the effect of disrupting this export trade in which the United States has come to assume a dominant place. In terms of employment alone, a Department of Commerce report published in July 2003 illustrates the point that offsets have a net beneficial impact on U.S. jobs. Looking at offsets spanning the years 1993–2000, the Department of Commerce found that offsets maintained an average of 41,666 jobs per year while costing only 9,688 in lower tier supplier bases, leaving a net benefit of 31,978 U.S. jobs.

The Governor of Canada supports the Senate bill's original language (sections 841, 842 and 843) with respect to complying with existing trade agreements, protecting the Secretary of Defense's authority to issue waivers for Memorandum of Understanding countries and the proposed establishment of a Commission on the Future of the National Technology and Industrial Base. Regrettably, Amendment 3197 offered by Senator MARK DAYTON (D–MN) would, in our view, send the wrong message to U.S. allies by deleting language that would encourage and support international defense trade cooperation that would ultimately benefit U.S. taxpayers and American troops.

Under your leadership, the Senate Armed Services Committee has adopted a constructive approach to the defense authorization process characterized by openness to U.S. allies, a commitment to liberalized defense trade and export control reform. We encourage you to stay true to this course which has been so beneficial to cooperative defense and U.S. prosperity.

We thank you for taking our concerns into consideration.

Your sincerely,

BERTIN COTE,
Charge d' Affaires, a.i.

DANISH EMBASSY,
Washington, DC, May 18, 2004.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR SENATOR WARNER: Let me first express our gratitude for your efforts and leadership last year to limit to a minimum the ''Buy American'' language in the National Defense Authorization Act for fiscal year 2004.

I write to you again in the context of the renewed pressure in Congress to restrict cooperation with foreign defense industry companies, including those from countries that have offset policies or related arrangements. As of now, it is difficult to fully assess the scope of the proposals, including if it would affect the U.S.-Danish trade, but this new development is at any rate worrisome.

As of the strongest and most ardent allies of the U.S., it would be very difficult to understand and explain if Denmark were to face new restrictions in the industrial cooperation with the U.S. Especially in light of our participation in Iraq since the beginning of the military operations and the continues presence of 500 Danish troops—one of the largest contingents in both absolute numbers and certainly in proportion of population.

I therefore strongly hope that the language will not be part of the final act and would like to express my government's strong support for your continued efforts to secure the mutual beneficial international cooperation between the U.S. and its partners in the defense area.

Sincerely,

ULRIK FEDERSPIEL,
Danish ambassador to the U.S.

Mr. WARNER. I ask unanimous consent that this package be laid side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEVIN. I ask that so the Senator from Iowa can proceed with the amendment.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 3225

Mr. HARKIN. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. With respect to which amendment?

Mr. HARKIN. No. 3225.

The PRESIDING OFFICER. The amendment is now pending.

AMENDMENT NO. 3462 TO AMENDMENT NO. 3225

Mr. HARKIN. Mr. President, I have a second-degree amendment. I send it to the desk on behalf of myself and Mr. HATCH. It is a second-degree amendment to amendment No. 3225.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. HATCH, proposes an amendment numbered 3462 to amendment No. 3225.

Mr. HARKIN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express the sense of the Senate concerning legislation requiring reports of serious adverse events related to dietary supplements and over-the-counter drugs)

In lieu of the matter proposed to be inserted, insert the following:

SEC. 717. SENSE OF THE SENATE CONCERNING SERIOUS ADVERSE EVENT REPORTS.

(a) DEFINITION.—In this section, the term ''dietary supplement'' has the same meaning given the term in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)).

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Food and Drug Administration should make it a priority to fully and effectively implement the Dietary Supplement Health and Education Act of 1994 (Public Law 103–417, 21 U.S.C. 321 note), including taking appropriate enforcement action against unsafe dietary supplements;

(2) not more than 180 days after the date of enactment of this section, the Department of Health and Human Services should develop a plan for mandatory reporting of serious adverse events occurring as the result of the ingestion of any dietary supplement or over-the-counter drug and provide that plan for review and consideration by Congress; and

(3) adequate resources should be made available for the effective oversight of dietary supplements and for sound scientific research on dietary supplements.

Mr. HARKIN. Mr. President, I wish to speak to the pending amendment by my colleague from Illinois, Senator DURBIN, and then to outline what this second-degree amendment does.

I have to say I feel somewhat uneasy about this because I so rarely find myself in disagreement with my friend from Illinois. He and I see eye to eye on many issues. On this, while I believe we have some of the same objectives, we disagree on the appropriate approach.

I wanted to set the context for my remarks in somewhat broader terms. For well over a decade, I have spoken out about the need to fundamentally reorient health care in America, reorient it toward prevention and wellness and self-care.

When it comes to helping people stay healthy in the first place, we have very little in the way of help or incentives or information. In fact, I have long said we do not have a health care system here in America, we have a sick care system. It is costing us dearly both in terms of health care costs and premature deaths.

This is not to say we have not made any progress in the recent past. In the last decade, we have taken some steps toward fixing this major flaw. We have expanded coverage of cancer screenings, we have increased childhood immunization rates, we have expanded prenatal care, and we have more aggressively gone after the promotion of tobacco to children.

Another step we took in the last decade toward keeping people healthy in the first place is the passage of the Dietary Supplement Health and Education Act of 1994, otherwise known by its acronym DSHEA.

Over 158 million Americans take dietary supplements to maintain and improve their health, this Senator included, from vitamin C to calcium to glucosamine to beta carotene to ginko biloba. There is a full range of health supplements that are part of the daily lives of people all over this country. Consumer expenditures on these products reached a reported $17.1 billion in 2000, double the amount spent just 6 years earlier.

According to a recent report by the Food and Drug Administration, the use of dietary supplements is likely to grow, due to factors such as the aging of the baby boom generation, increased interest in self-sufficiency, and advances in science that are uncovering new relationships between diet and disease.

In response to efforts by the Food and Drug Administration to inappropriately cut off consumers' access to vitamins, minerals, and supplements, in 1994 the House and Senate unanimously approved the Dietary Supplement Health and Education Act, DSHEA. Both Senator HATCH and I were pleased to have played a role in crafting this important legislation and getting it through the Congress. This law balanced continued consumer access to vitamins, minerals, and other dietary supplements. It has also resulted in nearly $100 million in new rigorous scientific research on the benefits and risks of supplements.

DSHEA provides a number of important consumer protections. First, it requires that claims made on supplement labels, packaging, and accompanying material be, and I quote here from the law, ''truthful, nonmisleading and substantiated.''

Let me repeat that. The law, DSHEA, requires that anything put on labels, packaging, and accompanying material be ''truthful, nonmisleading and substantiated.''

In addition, the act prohibits manufacturers from making claims that products are intended to diagnose, treat, cure, or prevent disease.

DSHEA also provides for good manufacturing practice standards setting requirements for potency, cleanliness, and the stability of products. That is in the law.

The FDA was supposed to publish regulations on these good manufacturing practices after the bill was passed in 1994.

Finally, after 10 years of pushing and prodding by Senator HATCH, others, and me, the FDA has finally, this year, proposed good manufacturing practices regulations. They expect to have final regulations out by the end of this year. It took them 10 years, but I point out that the law requires it.

DSHEA also requires that manufacturers submit adequate information as to the safety of any new ingredients contained in dietary supplements before those products can be sold.

Again, I want to repeat that for the RECORD because when I listened to Senator DURBIN last week, you would think someone could put a dietary supplement out there without ever having anything reviewed or looked at or reported to FDA. The law requires that manufacturers submit adequate information as to the safety of any new ingredients contained in dietary supplements before they can be sold.

I might point out that the FDA has rejected over half of the proposals to market new dietary ingredients using existing authority.

To listen to my good friend from Illinois, you would think everyone could put anything they want out there. That is absolutely not true.

DSHEA also provided the Federal Government a number of avenues for the removal of unsafe dietary supplements from the marketplace. If the Secretary of Health and Human Services determines that a product poses an unreasonable risk when taken as directed, the product can be removed from the market. The Secretary utilized this authority earlier in the year to remove products containing ephedra from the market.

DSHEA gives the Secretary yet another tool to protect the public from unsafe supplements. If the Secretary determines that a product poses an imminent hazard to the public health, he can remove the product from sale.

Finally, in order to promote expanded scientific research on the benefits and health effects of dietary supplements, DSHEA mandated the establishment of the Office of Dietary Supplements within the National Institutes of Health. This has resulted in roughly $100 million in new scientific research that is crucial to expanding reliable information to the American people.

Unfortunately, despite some recent improvements, the history of implementation of DSHEA by FDA has been lax.

I want to point out here that I serve on the HELP Committee. That is the committee that gives approval to nominees to be FDA Commissioners. Since DSHEA was passed, I have asked every FDA Commissioner for the record, both under the previous administration and under this administration, whether DSHEA gives the FDA enough authority to remove from the shelves harmful products for public consumption. Everyone who has come before us has said, yes, that DSHEA gives them all the authority they need to remove harmful products from the shelf.

The problem is the FDA has failed to use all of the tools we provided DSHEA. They have failed to carefully review substantiation of claims. For 10 years they failed to put in place good manufacturing practice standards. It has failed to aggressively remove from the market the illegal street drug knockoffs and other products that are in clear violation of DSHEA requirements.

I recently met with the FDA Commissioner and told him about some of the things I have seen in some of the gasoline stations that have these stores attached to them where they have knockoff items which are clearly harmful to people, and yet the FDA is not removing them.

Part of the problem has been resources. The FDA needs adequate resources to implement and enforce DSHEA. Congress last responded by regularly providing funds over the last several years beyond those requested in the Presidents' budgets—both the previous President and this President—reaching $9.7 million in fiscal year 2003. This is to provide oversight of dietary supplements.

Last year, the Senate adopted an amendment that Senator HATCH, Senator DURBIN, and I proposed to increase funding for implementation and enforcement of DSHEA—to increase it by 17.5 percent. It required FDA to spend no less than $11.4 million for this purpose, $1 million more than requested by the administration. This was a substantial and necessary increase. In fact, I would like to see even more devoted to this purpose.

In fact, S. 1538, legislation Senator HATCH and I introduced earlier this session would increase FDA funding to $20 million next year, rising to $65 million per year within 5 years. We will continue to work to gain adoption of this more aggressive approach.

That is sort of the background. What I wanted to point out in my remarks is that we passed DSHEA to give people

access to vitamins, minerals, and supplements to keep them healthy in the first place.

We provided in the law all that was necessary for the FDA to take harmful products off the shelf. We provided in the law that any claims have to be truthful, not misleading, and substance indicated. We provided that any new ingredients put into these dietary supplements must be approved by FDA.

I did not hear Mr. DURBIN, the Senator from Illinois, mention any of that in his comments last week.

I want to point out that there are more than adequate safeguards in DSHEA to keep the public safe and informed about dietary supplements, minerals, and vitamins.

Turning to the direct subject of the amendment of the Senator from Illinois, I support what I think is the basic essence of the Senator's amendment—getting good and timely information about safety concerns with anything that Americans consume or use—whether that be drugs over the counter, medical devices, foods, or dietary supplements.

In any of that area, if there are safety concerns, yes, we need good and timely information.

In fact, as I said, Senator HATCH and I have fought to increase the resources that FDA dedicate to implementing an effective adverse events reporting system. Today, we spend about $1.5 million a year for the monitoring of serious adverse events associated with ingesting dietary supplements.

Again, I agree with the Senator from Illinois that a mandatory adverse events reporting system for dietary supplements and over-the-counter drugs is something we should consider. However, the issue has to be dealt with in a more comprehensive fashion to be effective and efficient. We need to make sure we have a reporting system that will provide timely, accurate, and useful information. Senator DURBIN's amendment in its current form is too limited and does not ensure that we will have a workable system. Therefore, while I support the creation of a mandatory national adverse events reporting system that is broader in scope to protect the American people, I cannot support Senator DURBIN's amendment.

First, serious adverse health events resulting from consumption of a dietary supplement is a national issue. Any reporting system for such events needs to be national, not just pertaining to Army bases. And it should apply to all supplements, not just those containing caffeine.

As a matter of fairness and protection of the public health, it should apply to over-the-counter drugs as well.

My colleague from Illinois said on Friday in describing his amendment that over-the-counter drugmakers are required to report serious adverse events associated with their products. I am sorry, that is simply not the case for the vast majority of these over-the-counter drugs. This leads to a number of inconsistencies. I will point out one example that will result from this omission in Senator DURBIN's amendment.

Under his proposed amendment, one could buy a product whose brand name is No-Doz or similar over-the-counter products with a substantial amount of caffeine, yet be blocked from buying a dietary supplement that contained just a fraction of that stimulant. That simply does not make sense. If we are going to require reporting for dietary supplements, the same should be required of over-the-counter medication.

Under Senator DURBIN's amendment, on an Army base you could buy No-Doz, which is packed with caffeine, but could not buy a dietary supplement that might have a third, a half or a tenth as much caffeine in it. It makes no sense.

Senator DURBIN's amendment also excludes drinks that contain stimulants. Again, you could buy Red Bull—this is another brand name product, Red Bull—chock full of caffeine. There is no reporting requirement. But one could not purchase a supplement which had much less caffeine in it. This does not make sense.

Second, while I support a broader system, as I have said, the Defense authorization bill is not the place to work out the details of such an important public health matter. As our experience with mandatory adverse events reporting for drugs and medical devices has shown, implementing a mandatory system involves significant practical, technical, and legal issues that must be carefully worked out.

Third, there are serious shortcomings in the existing adverse event reporting system that need to be reformed before, or at least in tandem with, a mandatory reporting scheme. One need look no further than a recent report by the GAO.

Before we have a mandatory reporting scheme, let's look at the adverse event reporting system. Let's fix it. It is broken. Let's fix that before we have a mandatory scheme that relies upon an adverse reporting system that is totally inadequate. I may have more to say later regarding the GAO study.

These are serious shortcomings that clearly need to be addressed regarding a dietary supplement adverse event reporting system to effectively protect public health.

While I agree with much of what the Senator from Illinois is aiming to do, his approach is not something we should be approving. Therefore, Senator HATCH and I are offering a more comprehensive approach to Mr. DURBIN's amendment.

Our amendment says three things. First, the FDA should make it a priority to fully and effectively implement the Dietary Supplement Health and Education Act of 1994, including taking appropriate enforcement action against unsafe dietary supplements. They have the authority to do that. It is in the law. Every FDA Commissioner has said they have that authority.

Secondly, our amendment says within 180 days of enactment of this provision, the Department of Health and Human Services should develop a plan for mandatory reporting of serious adverse events occurring as a result of the ingestion of any dietary supplement or over-the-counter drug and provide that plan for review and consideration by Congress. That is the logical way to proceed.

Third, our amendment says adequate resources should be made available for the effective oversight of dietary supplements and for sound scientific research on dietary supplements. This is a more important response. It deals with the real and broader issues at hand.

I look forward to working with my colleagues, including the Senator from Illinois, Mr. DURBIN, to assure that consumers continue to benefit from healthful dietary supplements and we have a strong quality assurance system that includes good manufacturing practice standards and an improved serious adverse event reporting system.

I hope our colleagues will join in supporting our amendment which will permit people to have access to vitamins, minerals, and supplements which will tighten up the adverse event reporting system and which will also get adequate resources to the FDA to provide the adequate oversight of dietary supplements.

I see my good friend from Utah, one of the great leaders on this issue. Regarding enactment of DSHEA, I am proud to be a cosponsor with him, working to make sure all of our people get vitamins, minerals, and supplements to keep them healthy.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Utah.

Mr. HATCH. I thank my colleague for his statement about this matter. We worked very hard on the Dietary Supplement Health and Education Act back in 1994. It has served this country very well. There are now almost 150 million Americans who, daily, take dietary supplements much to the betterment of their health.

Amendment No. 3225 offered by our colleague from Illinois, Mr. DURBIN, is a solution in search of a problem. It is neither wise nor necessary. The Harkin-Hatch substitute should be approved in the alternative.

The Durbin amendment is yet again another attack on dietary supplements and it should be rejected.

Instead, I ask colleagues to vote in favor of the second-degree amendment Senator HARKIN and I have drafted, an amendment which will put us firmly on record in favor of enforcing the law we passed—not once but twice—by unanimous consent.

This law gives FDA all the enforcement tools it needs to act against problem supplements, a fact that has been confirmed by the FDA Commissioner in

the Clinton administration, Dr. Jane Henney, by the first FDA Commissioner in the Bush administration, Dr. Mark McClellan, and by today's head of the FDA, Dr. Lester Crawford.

The law I reference, the Dietary Supplement Health and Education Act, provides all the tools we need to ensure consumer access to safe dietary supplements and information about their benefits and potential problems.

But for that consumer protection to be a reality, the law must be implemented through regulation and enforced in the courts, and Congress must provide the resources for the agency to do its job.

There is no question that FDA has been slow to act on problem supplements. But it is coming around and is doing a much more vigorous job, taking many more enforcement actions against illegally marketed products in recent months. By the way, they did not have this power before the DSHEA.

I believe this new emphasis on enforcement, albeit under our prodding, is due to both the leadership of Dr. McClellan, who has committed to me and Senator HARKIN that he would compel the agency to implement DSHEA more vigorously, and to our colleagues, Chairman BOB BENNETT, before him Chairman COCHRAN, and Ranking Minority Member HERB KOHL, who have acted to put more funding in the hands of the FDA to enforce the dietary supplement law.

By and large, dietary supplements—vitamins, minerals, herbs and amino acids—are used safely by hundreds of millions of Americans each year in order to help them lead healthy lifestyles. Critics of the industry point to the very few supplements that raise safety or labeling concerns, concerns that I firmly believe the law is adequate to address.

I hope it comes as no surprise to Senators that Senator HARKIN and I have been as critical as Senator DURBIN about the agency's lack of action in enforcing against problem supplements.

We have pressed FDA to remove from the market products which are harming young athletes, products such as androstenedione or ''andro.'' Earlier this year, under the leadership of Dr. McClellan and HHS Secretary Tommy Thompson, andro was removed from the market. I was there. I was there at the announcement. I was one who backed that. It can no longer masquerade as a dietary supplement.

We have also been concerned about ephedra. I have said for a number of years that if the agency believes this product is unsafe, it should remove it from the market under the abundant authority we provided in DSHEA, the Dietary Supplement Health and Education Act. This includes seizure, fines, and injunctive relief against misbranded or adulterated dietary supplements. Again, although belatedly, the agency has acted against ephedra products, although there is litigation over this because there is some body of evidence that indicates properly used ephedra can be beneficial in weight reduction and perhaps in other areas as well. But we backed whatever the FDA did, we, the authors of the dietary supplement act.

As my colleagues are aware, I am one of the original authors of the Dietary Supplement Health and Education Act of 1994. I would like to take a few minutes to talk about the history of DSHEA, which will shed some light on why the Harkin-Hatch language is preferable to the Durbin amendment. This may be helpful for some of our colleagues who were not here when President Clinton signed DSHEA into law. It may also help reassure those who voted for the measure that it is working.

At the outset, it is important for Senators to realize the Dietary Supplement Health and Education Act established a rational, regulatory framework that provides the Food and Drug Administration with the tools it needs to assure the safety of products consumed by the American public, and to provide consumers with access to safe products and information about those products.

Indeed, the DSHEA law allows the more than 150 million Americans who regularly consume dietary supplements to have access to products in order to achieve the health benefits they desire. DSHEA enables Americans to buy relatively inexpensive dietary supplements, including vitamins and minerals, which may achieve a wide array of health improvements.

The passage of the Dietary Supplement Health and Education Act followed decades of Food and Drug Administration antipathy toward dietary supplement products. This animosity, well documented by hearings in the Labor and Human Resources Committee and by the committee's 1993 report, and the lack of clear regulatory structure for supplements, was the basis for our Senate votes.

That is also why a majority of the Senate—two-thirds of our membership—cosponsored the bill. That also helps explain why the bill passed without one dissenting vote in the Senate.

As I believe Senator HARKIN has noted, there is a great need to set the record straight. Dietary supplements are regulated by the Food and Drug Administration. In fact, the FDA has had this authority for a century. What we did in 1994 was to clarify and strengthen FDA's authority. Thus, media reports that supplements are ''unregulated'' are patently false.

The basic structure of DSHEA allows all products marketed as dietary supplements at the time the bill was enacted to continue to be marketed as dietary supplements unless they are determined to be unsafe or otherwise violate prohibitions in the Federal Food, Drug, and Cosmetic Act with respect to labeling, purity, and manufacturing.

This so-called grandfather provision was enacted into law. In addition, for new dietary ingredients, those not marketed in the United States before the law was enacted, manufacturers must provide evidence of safety to the FDA 75 days in advance of marketing. Again, new dietary ingredients must also comply with the Food, Drug, and Cosmetic Act requirements for safety, purity, and labeling.

Responsible companies have followed the rules. Over 150 times they have notified the FDA, as the law requires. About half of those were rejected because there were safety concerns or because the products were not appropriately marketed as dietary supplements.

The Dietary Supplement Health and Education Act works. The law specifically prohibits supplements that present ''significant or unreasonable risk of illness or injury under . . . conditions of use recommended or suggested in labeling.'' A supplement not meeting that requirement is deemed adulterated, and, thus, illegal. This requirement does not require the agency to prove harm to anyone, rather, to make a determination that a significant or unreasonable risk of illness or injury is present.

In addition, the law prohibits any poisonous or deleterious substances in dietary supplements. A supplement is illegal if it is ''unfit for food,'' a very broad authority which allows the agency to act against a product that is not fit for human consumption, and an authority that was not there before DSHEA.

Under DSHEA, a dietary supplement cannot claim that it will diagnose, cure, mitigate, treat, or prevent a disease. Any labeling to that effect immediately makes the product subject to regulation as a drug and, thus, illegally marketed as a supplement.

Under DSHEA, the labeling for a product must be truthful and informative. If the labeling is ''false or misleading'' in any way, the product is misbranded, and, thus, illegal.

Senators should be aware there are substantial sanctions for violations of these requirements, sanctions that did not exist before. Violations subject the product to recall, seizure, condemnation, and destruction. Persons committing the violations could be subject to both injunction and criminal prosecution. So the Dietary Supplement Health and Education Act has teeth, teeth that were not there before.

The hallmark of DSHEA is the balance between allowing for beneficial dietary supplements while at the same time maintaining regulatory authority for FDA to remove any supplements that are detrimental to health. Any objective analysis of the law must conclude that it has produced public health benefits of enormous dimensions.

The growth in the dietary supplement market since enactment of DSHEA is astounding. Today, there are hundreds of thousands of safe, well-labeled products on the market offering consumers who want to maintain or

improve their health a panoply of options. Many of these products are manufactured in my own home State of Utah.

There also is much greater information available to consumers about these products as a result of DSHEA. Indeed, the provisions of the law clarifying what information could be provided with a supplement are nothing but consumer friendly. Before the law, it was FDA's official position that it was illegal for a store owner to distribute a Centers for Disease Control, or CDC, publication touting the benefits of folic acid use for pregnant mothers.

That is interesting because CDC knew that if mothers would take 400 micrograms of folic acid—I think it is micrograms or milligrams of folic acid—that would help to prevent neurotube defects. Even though they knew that, FDA would not allow that claim to be made, and about 1,250 children a year were born with spina bifida as a result that could have been avoided. We have come a long way since then.

Congress wisely recognized that had to change, and public health authorities believe hundreds of babies have been born without spina bifida because of the now wide use of folic acid—something we knew 11 years before DSHEA of which the FDA was aware but would not allow pregnant women to understand.

Now, are there problems with DSHEA? If there are problems, I believe they lie largely in the fact it has not been enforced vigorously. We certainly have given FDA the power to enforce the law. Both Senator HARKIN and I have complained that up until recently they had not been enforcing the law, almost sitting aside waiting for something to occur that was out of the ordinary. I have to say, since Dr. McClellan took over, and now Dr. Crawford, I believe the law is being enforced, and we have seen some very strong evidence of that.

As many of our colleagues, I have been frustrated with the agency's slowness in implementing certain provisions. For example, the law authorized FDA to develop good manufacturing practice guidelines, or GMPs, specific to supplements. The agency failed to act on this provision until 1999—5 years later—only submitting a proposal to the Office of Management and Budget in the last month of the Clinton administration. Delays and rewrites occurred for 2 years. Finally, the proposal was published earlier this year—almost 10 years after we gave them the power to do this.

Why are GMPs, good manufacturing practices, so important? They are the standards FDA inspects against to make sure the products are manufactured with purity and sanitation, to make sure they are properly labeled. So these are very important rules to have on the books, and this delay has been very troubling, especially to us as authors of the bill giving them the authority to do this.

But that has changed, as I cited earlier, noting the FDA's actions against androstenedione and ephedra, among other products. We have a carefully crafted safety standard in the law, a standard that was agreed to by then-Chairmen KENNEDY, DINGELL, and WAXMAN. When the FDA took action against ephedra-containing products earlier this year, it was the first time in the 10-year history of the law that the safety standard was invoked, even though we have been pushing to have it invoked. It is hard to maintain a law is not working if its powers are not used. I am heartened that the FDA acted to remove andro from the market earlier this year, thus helping to protect young athletes from its numerous adverse health effects, but it should not have taken that long for the agency to act.

We do have tools within the law that give the FDA the authority to act against problem supplements, as I have outlined.

I might add that to assure Chairman DINGELL, we also gave the FDA a very broad safety authority, a tool so broad that I was reluctant to provide it to the FDA given the agency's animosity against supplements. That authority, the ability of the Department of Health and Human Services to declare a product an ''imminent hazard'' and remove it from the market, no questions asked, has never been invoked either. Some have alleged it has not been invoked because it is ill-defined. On the contrary, it was deliberately crafted to be defined by HHS to meet any safety concerns the agency may raise. So here is another powerful tool the agency can use against a product if it has safety concerns.

Finally, with regard to the safety profile of so-called stimulants, I am aware this is a special concern of Senator DURBIN and Senator KENNEDY. Under the law, as it currently exists, as we enacted it, a dietary supplement—be it what Senator DURBIN considers to be a stimulant or any other product—must be safe. If it is not, the FDA can immediately act against it under the law. It is hard to segregate one type of product or define it, an inherent problem in trying to tailor the law to address stimulants only. Should we include caffeine? Everybody knows that is a stimulant. What about colas? What about chocolate? Why shouldn't they be included? What about over-the-counter stimulant products? Generally, there are no requirements for adverse events reporting for them either. Why the differentiation?

In 2002, estimates are that 182 persons died from taking acetaminophen as directed. Yet this is a broadly sold drug, over-the-counter drug. Why should there not be AER requirements for such over-the-counter products as well, or maybe that is where we are headed with this type of an amendment.

Perhaps we should look at the very notion that an AER system would prevent death or injury. AERs tell us that 55 men died in the first few months Viagra was marketed. What was the response? The FDA did not move to pull the product from the market. Instead it moved to include warnings for those men who may have been at risk due to cardiac disease, which is what you would expect. Believe it or not, Congress didn't have to take any action. It is the same situation here.

It is important for our colleagues to understand this background about the law as it is useful for evaluating the Durbin amendment, which I hope our colleagues on the Senate floor will vote down. I hope it will help my colleagues understand why voting in favor of the Durbin amendment at this time is very premature.

This amendment would amend the DOD reauthorization bill to prohibit military installations from selling stimulant-containing dietary supplements unless the manufacturer agrees to mandatory reporting of any serious adverse events to the FDA related to the use of the product. It may surprise some to know that I am not opposed to better reporting of adverse events connected with supplements; nor, for that matter, am I opposed to better reporting of adverse events for over-the-counter drugs which many erroneously believe are generally subject to adverse event reporting or AERs, as this debate calls them. Indeed, Senator HARKIN and I have been working to improve adverse event reporting for dietary supplements and over-the-counter drugs. Funding has been included in a number of appropriations laws to give FDA resources for adverse event reporting for supplements. If there is a serious problem with an aspirin, a vitamin, an herb, or a cold remedy, should not our policy be the same, that authorities are alerted to that serious problem?

But the Durbin amendment is not the way to go about this. First, it is an extraneous amendment to the Department of Defense bill, especially at a time when our Nation is at war. This is the wrong time and the wrong place for this discussion. I wonder if the families of our service members are bewildered watching us spend so much time talking about what products they can buy at the commissary, especially when the DOD already has the authority to limit any sales. If there is an issue with a dietary supplement or supplements—and in this case, I do not believe there is—it should not be considered only in the context of military installations but, rather, as a matter of overall food and drug policy. Indeed, it is inconsistent with standing food and drug law to establish a policy governing a regulated product sold throughout the Nation and apply that policy only to certain facilities such as military installations.

Surveys have shown that 70 to 90 percent of soldiers are users of dietary supplements. Military personnel and their families, as all other Americans, benefit from the protective effects of

supplements and from their positive health benefits. What is the rationale for singling them out for different treatment? I find this particularly peculiar given that the Department of Defense has the ability to decide what is marketed on military bases. In fact, DOD removed ephedra from commissaries long before the FDA banned the product for general use.

If the Department of Defense perceives a problem with these supplements, it can preclude their sale to the military, as the DOD has already done with regard to ephedra. But beyond that, I am not aware of any reported problem relating to the sale of ''stimulant'' dietary supplements on military bases and, thus, see no reason to place the restrictions contained in the Durbin amendment.

Second, in a similar vein, in view of the FDA's too-long, ridiculously long lag time in coming to grips with the regulation of ephedra, which I can only assume gave rise to this amendment, I recognize that the Durbin amendment has a certain curbside appeal. I urge my colleagues to look beyond that. As a matter of food and drug law, there is no basis for separating one type of dietary supplement from another. I maintain that if there are serious adverse events associated with any legally sold dietary supplement, then there should be a better reporting system so FDA can take appropriate action. I remain ready and willing to work with any or all of my colleagues to create such an adverse event reporting system.

Third, as a matter of food and drug law, it does not make sense to have what amount to interparty agreements between a manufacturer and a defense installation for an FDA-regulated product to be marketed. We have a long history of tradition in this country, grounded in the Federal Food, Drug, and Cosmetic Act, that policies governing FDA-regulated products are national in nature, applying across points of sale, across manufacturers, and across the various States.

Let us say for the sake of argument that a certain dietary supplement is found to cause respiratory problems. Should the FDA only become aware of the problems when the product has been sold in a commissary? As a matter of public health, wouldn't we want to know if that is the case wherever the product is sold and in whatever store and in whatever State so appropriate public health safety measures can be considered?

Fourth, the timing of this amendment is premature. It has not been studied by the committee of jurisdiction, nor has the Food and Drug Administration, the administering agency, taken a position. Surely they should have a hand in the development of any such policy, as I believe should Senator HARKIN and I as the prime Senate authors of the 1994 law governing regulation of supplements.

I am deeply troubled that the Senate HELP Committee, which has jurisdiction over the Federal Food, Drug, and Cosmetic Act, has not even been able to consider this proposal. Since this is such an important matter, I believe it must be considered by the committee of jurisdiction before it is considered by the full Senate. That is the way we usually operate in these very serious Food, Drug, and Cosmetic Act and food supplement areas.

I have learned after many years in the Senate that the most successful legislative proposals are those that are properly considered and debated by and within the committees of jurisdiction. I would like to see consultation with the HELP Committee, with the Food and Drug Administration, and other scientific organizations, with appropriate input from the dietary supplement industry before any proposal is voted upon by the full Senate. That would be the fair and reasonable way to go about this, not just some off-the-cuff amendment that specializes in a particular area—in this case the military commissaries—that has no real backing to it other than that some people think it might be helpful.

The final reason this amendment is unnecessary is the FDA is already investigating products the Senator from Illinois terms ''stimulants.'' The FDA is well aware of issues associated with products Senator DURBIN refers to as stimulants, although there is no such category in food and drug law. FDA is looking closely at products such as ephedra, which it recently banned, and ephedra substitutes such as citrus aurantium or bitter orange. FDA and the National Institutes of Health are studying the safety of citrus aurantium. The proposed amendment singles out supplements that contain stimulants, including those that contain caffeine.

As a point of fact, some military personnel are encouraged to use stimulants. Pilots use them on long flights. I submit that many service members use more caffeine through coffee, tea, and soft drinks such as Coca-Cola, Pepsi, Mountain Dew, and Dr. Pepper than they do in dietary supplements. For all of the concerns of the distinguished Senator from Illinois, I am not aware of many adverse reports that would come from their use, nor am I aware of real serious adverse reports that would come through the use of basic dietary supplements. But if they do, then the FDA should consider those. And they would be important. At least we would have a system that works. I could see groups in this society ginning up adverse event reports for no other reason than to damage some manufacturer. We want to prevent that. That is another reason why we want to look this over.

I got an e-mail from a service member's father this morning about his son who is currently serving in Baghdad. His division commanders have now banned the consumption of Red Bull, the highly-caffeinated energy drink, after reports of several soldiers collapsing and perhaps dying while patrolling in 120-degree heat after consuming this drink.

This shows the defects in the Durbin amendment—since it would not even address high levels of caffeine use—and the fact the system works, since military leaders are taking action to preclude unwise use of this product or any other product, for that matter.

As many in this body are aware, Senator DURBIN has a companion bill, S. 722, which proposes one way to set up an AER system for supplements. The Durbin bill, as with the present Durbin amendment, is very troubling.

One huge concern I have with this bill is it could lead to premarket approval of so-called ''stimulants.'' For this body to impose a premarket approval system on dietary supplements would be a blunder of vast proportions.

If my colleagues contemplate the matter, they will quickly realize it would not be practical for manufacturers to seek marketing approval of dietary supplements, most of which cannot be patented. How would a company underwrite the high costs of FDA approval, costs which can run into hundreds of millions of dollars in the case of pharmaceutical products?

The answer is simple: Companies cannot sustain this cost and consumers will lose their ability to choose the dietary supplement products they will purchase. If the Members of the Senate and Congress want hundreds of thousands of letters and phone calls to come from the users of dietary supplements, if that is what it takes, we will accommodate them because the people out there know these products are helpful to them. They know they are more healthy because of them. They do not want the Senate telling them what to do. They would, I think, prefer the FDA to determine what is and what is not efficacious, only after there has been serious compliance with the Dietary Supplement Health and Education Act which gives FDA the authority to do some of the things that can be done to protect the public.

A premarket approval requirement would be the death knell for the dietary supplement industry. That is one reason why we fought through the Dietary Supplement Health and Education Act. We fought it through because we knew it would kill this very important industry that 150 million people benefit from every day. Beyond that, there is no need for preapproval of dietary supplement products.

Indeed, the grandfather provision in the law was suggested by House Democrats, who no doubt recognized the majority of supplement products on the market pose no safety concerns. That, coupled with strong enforcement authority for the FDA, gives consumers assurance that they are taking safe products.

Back to the amendment at hand.

It is obvious to me the target of this amendment is FDA regulation of certain stimulant-containing dietary supplements, not the health and readiness

of our Armed Forces. Let me emphasize that the DOD reauthorization bill is the wrong vehicle to amend the Dietary Supplement Health and Education Act. This amendment will not—I repeat, will not—ensure the health and readiness of the members of the Armed Forces.

For these reasons, I urge my colleagues to vote against the Durbin amendment. The Hatch-Harkin amendment is a much better alternative. It states the sense of the Congress that the FDA should make it a top priority to fully and effectively implement the Dietary Supplement Health and Education Act, including taking appropriate enforcement action against unsafe supplements.

Our amendment urges the Department of Health and Human Services to work with outside scientific organizations and the industry, as appropriate, to develop a proposal for better adverse event reporting both for dietary supplements and for OTC products for the Congress to consider.

Finally, our amendment restates the obvious: that adequate resources must be made available for the effective oversight of dietary supplements and sound, scientific research about their benefits and/or problems.

On April 19, just 2 short months ago, Dr. Crawford, currently running FDA, outlined a science-based plan for dietary supplement enforcement. He said:

FDA is absolutely committed to protecting consumers from misleading claims and unsafe products.

He noted that in the past 6 months, the agency had inspected 180 domestic supplement manufacturers, sent 119 warning letters to distributors, refused entry to 1,171 foreign shipments of supplements, and seized or supervised voluntary destruction of almost $18 million worth of mislabeled or adulterated products.

''We will continue to aggressively enforce the DSHEA against unsafe and mislabeled products,'' the Acting FDA Commissioner said. Congress should support him in that effort, and this amendment does not constitute that type of support. That is the aim of the Hatch-Harkin amendment, and I ask our colleagues to join with us in supporting this measure.

Millions of Americans enjoy the daily benefits of dietary supplements. Among them are military families. Let's not act precipitously. Let's not upset an agency that is finally starting to do its job and enforce the law we gave them 8 years ago giving them the powers to do the job. Let us adopt the Hatch-Harkin amendment and guarantee American consumers have continued access to the safe, beneficial products they want.

I am proud of DSHEA. DSHEA has given FDA the authority it never had before. There is no excuse for FDA not to do the job. Since Dr. McClellan took over at FDA and now Dr. Crawford, they are doing the job. It took us almost 10 years to push them to do that, and now all of a sudden, they are doing a great job in this regard, and I do not want to undermine what they are doing. There is plenty of authority within the DSHEA law for them to do the job and do it right.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3463 TO AMENDMENT NO. 3225

Mr. DURBIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 3463 to amendment No. 3225.

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

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

The amendment is as follows:

(Purpose: To require certain dietary supplement manufacturers to report certain serious adverse events)

At the end of the amendment, insert the following:

(d) This section becomes effective upon enactment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, for the edification of my colleagues, we are working on a procedural agreement on how to address these amendments in a timely fashion. I hope we can reach that agreement, and I think we will soon. In the meantime, I will speak to the merits of the issue. Senators HARKIN and HATCH have offered an amendment relative to dietary supplements to the bill before us, the DOD authorization bill.

People are asking, Why would you have a debate over dietary supplements on this bill? Sadly, the fact is dietary supplements have been such a danger to our Armed Forces that between 1997 and 2001, 30 Active-Duty personnel in the U.S. military have died after taking ephedra, a dietary supplement marketed for weight loss and energy and was eventually banned by all branches of the armed services, and ultimately by the FDA.

In fact, the danger of ephedra-containing dietary supplements was first noted by our Armed Forces when they looked at the prevalence of their usage and the dangerous outcomes from these supplements. Before the FDA took this product off the market in America, the U.S. military took it off the market on all of our military bases and warned our soldiers. U.S. Armed Forces Commander, COL Jerald Cross said:

The bottom line is that dietary supplements are not a safe choice for soldiers or their families.

To argue that the issue of dietary supplements has no place in the Department of Defense authorization bill ignores the obvious. Soldiers serving America have died taking dietary supplements that were sold on military bases. As a result of those deaths and serious outcomes of more than 30 soldiers, the military banned dietary supplements, and particularly those containing ephedra. Now they are watchful of many others.

Recently published in one of the military publications was an article on performance-related supplements, it detailed the product, claim, and fact, so that members of the Armed Forces know the danger of dietary supplements. To suggest that this issue doesn't belong on this DOD bill is wrong. It is an issue which may not rise to the moment of fighting a war in Iraq or a war on terrorism, but it is a life-and-death issue which has claimed the lives of 30 unsuspecting, innocent, patriotic Americans serving in our Armed Forces.

Before us today is an alternative being offered by Senators HARKIN and HATCH. Both of them were involved in the early days in the creation of the bill that regulates dietary supplements in America. It is worth a minute or 2 to describe to those following the debate what this is about. The decision was made in 1994 to create a category of compounds being sold and call them dietary supplements. We originally had, of course, prescription drugs, over-the-counter drugs, and foods; and in 1994 the decision was made to create this new category of dietary supplements. Within that category falls a lot of benign and safe products that many of us take every day. I took my vitamin this morning. I asked Senator HARKIN, and he took his, too. That is good. Maybe it is good for me, maybe it is not. I think it might be good for me to take it and so do millions of other Americans.

The obvious question is, when you go beyond the multivitamins, the vitamin C, fish oil, flax oil—when you go beyond these into new compounds called dietary supplements that are sold with the stated purpose of helping you to have more energy, to lose weight, then you have moved beyond the simple compounds in vitamins and minerals and into new combinations which, frankly, fall into the category of dietary supplements.

So how are these supplements tested? There is one thing Senators HATCH and HARKIN have not mentioned, which should be on the record. Dietary supplements, before they are sold to Americans, are not tested. There is no requirement in the law for dietary supplements to be tested. So when these products come to the shelves of our local vitamin and mineral nutrition store, or the local drugstore, and you walk in and read the label and think you would like to have more energy, so

you will take this dietary supplement, understand this: You are a test case. You are testing this product. You are going to decide from your physical reaction whether this product is safe, whether, in fact, it should be sold in America.

Secondly, what if it is not? What if the dietary supplement, created by some company here or overseas, is not safe? What if you take an ephedra product, as a 16-year-old high school student did a few miles from my home—he bought it at a gas station over the counter and washed it down with Mountain Dew because he wanted more energy for his high school football game. He took the product and started feeling poorly and died the next day of a heart attack—a healthy 16-year-old boy—from an ephedra product.

Ask yourself, if his family contacted the company that sold the product and said, what—he bought Yellow Jackets, which is the name of the ephedra product. If they notify the company, what does Senator HATCH's law require the company to do with that information? A 16-year-old boy died from that Yellow Jacket. The answer is, there is nothing, no requirement—none whatsoever—to report a death or heart attack or stroke from a dietary supplement. That is what DSHEA—the Dietary Supplement Health Education Act—is all about. There is no testing in advance to make sure the supplement is safe, no testing to make sure it actually gives you more energy, even if it claims it does on the label, and no requirement of the company making the supplement to notify the Government that people are getting sick and dying from taking the product.

How many Americans know that? How many Americans know that when you walk into that drugstore and grab that bottle of Metabolife, one of the biggest sellers of dietary supplements, that this product, a stimulant that could be dangerous for some people, has never ever been tested? No clinical testing whatsoever. How many people know that the claims that this product, Metabolife, gives you more energy have never been verified? They just state that on the label.

Consumer beware. How many people knew that Metabolife, which sold millions of dollars' worth to consumers all across America, caused significant adverse events when it was combined with ephedra? About 4 years ago, they went to Metabolife and asked: How many people have reported having taken your product and had bad results?

Metabolife said: None, zero.

Then do you know what happened? Lawsuits and investigations showed they lied, they deceived the Government. They had over 16,500 adverse events of Metabolife with ephedra reported. They never told the Government, but because of lawsuits, they were forced to disclose them. Some of them were extremely serious. More than 100 people had died from these ephedra-related products, and there was no requirement under DSHEA whatsoever for that company to report to the Government that, in fact, people had died as a result of taking it.

My amendment says, if you want to sell a dietary supplement containing a stimulant on a military base, you have to report to the Food and Drug Administration if there is a serious adverse health event from the product you are selling. If someone has a stroke, is hospitalized, faces some serious injury, or dies, you have to report it.

Now, is that too much to ask? Is that so radical that this industry is now flooding e-mails across America about this terrible Durbin amendment?

This is what they say about it: The Durbin amendment holds dietary supplements to a higher level of scrutiny than prescription drugs, over-the-counter drugs, and food additives. Partially true. Certainly a higher level than food additives. I do not think people who sell cinnamon, vanilla extract, or salt and pepper should be required to send in adverse event reports to the Food and Drug Administration, but I do believe if someone is selling Metabolife with ephedra or its latest replacement drug, this citrus aurantium, bitter orange, and people die as a result of it, yes, I think it ought to be reported. I would think if someone is buying dietary supplements, at the very minimum they would want that company to report to the Government that someone is dying from their products.

Now we have my colleagues from Iowa and Utah tell us this is an outrageous request, that it goes too far, that what we are asking for in this amendment is entirely unnecessary. At one point, they have called for a study that the Food and Drug Administration would engage in to determine whether these so-called adverse event reports should take place, not just for dietary supplements but for over-the-counter drugs.

There is nothing wrong with a study. In fact, a study is such a good idea that it has already been done, and it was released this year. Who asked for this study on dietary supplements? The Food and Drug Administration. Whom did they turn to ask for it? The Institute of Medicine.

I do not think this Institute has any ax to grind. These are professionals and they were asked to take a look at the dietary supplement regulatory structure.

Do my colleagues know what they found on page 13.5? Here is the recommendation from the Institute of Medicine: Congress should amend DSHEA to require that a manufacturer and distributor report to the FDA in a timely manner any serious adverse event associated with use of its marketed product of which the manufacturer or distributor is aware.

That is exactly what my amendment calls for when it comes to sales on military bases.

The Senator from Utah has said, Why are we not taking this up in a larger context? Why are we not discussing this for all dietary supplements for all Americans? I am for it. Let us hold the hearings.

I have already held three hearings in the Government Affairs Committee on dietary supplements. As a result of the first hearing, we started sending letters to Secretary Tommy Thompson of Health and Human Services, and after over a year of deliberation the Food and Drug Administration joined my State of Illinois and others, the nation of Canada, military bases, as well as major sports organizations, and called for the banning of ephedra. They said that dietary supplement was too dangerous.

Well, we held our hearings. I am certainly open to holding more, but we have a good starting point. It appears everybody agrees and understands the premise that if one is going to sell a product in America, that is supposedly designed to make people healthier, then, at the very minimum, when that product causes a bad health result, a serious adverse health result, it should be required to be reported so we can gather that information. If we find that 5, 10, 15, 20, 100, or 1,000 people are getting sick from this dietary supplement, for goodness' sake, would we not want to take it off the shelf? Do we not owe that to the American consumers?

Some argue, like the industry: Leave us alone. Let us sell whatever we want. Let us make whatever health claims we want. We should not have to test our products. We should not have to even have standards when it comes to what is included in those products.

I say to Senator HATCH, it has been 10 years since he enacted DSHEA and he knows, as I do, that the Food and Drug Administration has yet to promulgate good manufacturing practices for that industry. Do my colleagues know what that means? Ten years after Senator HATCH and Senator HARKIN worked on this law, it means that even the things that are represented on the labels of these dietary supplements are not necessarily true. There is no requirement to list the purity of the ingredients. There is no requirement in terms of standards and contents of these ingredients. Here we are 10 years after this law was enacted and it is the Wild West. It is a product and an industry with, frankly, little or no regulation.

They put one provision in there which is supposed to give us some comfort, and cold comfort it is. The Food and Drug Administration, which, in the opinion of some has lots of resources and lots of time to spend on this thing, can decide that a product for sale in America is dangerous, investigate it, and remove it. The burden is not on the producer, the manufacturer; the burden is on the Government to prove it is dangerous.

So how often do my colleagues think the Food and Drug Administration can comb through the shelves of these nutrition and drug stores and come up

with the new combinations and test them to find out that they are safe? That is an impossible responsibility to shift to the Food and Drug Administration. As a result of that——

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

Mr. DURBIN. I would be happy to yield for a question.

Mr. HATCH. I have been enjoying listening to the distinguished Senator. Let me ask this: Would the Senator be willing to resolve this problem by working with Senator HARKIN and me to come up with a broad-based law that handles the adverse events reporting matter? Because my objection is that this is a helter-skelter approach to doing it, that will not solve the problems that the distinguished Senator thinks exist. I would be willing to work with the Senator rather than do this in this fashion on this particular bill, because I am not against adverse event reporting.

I am against premarket approval, which is what the Senator seems to be arguing for, which would price vitamins, minerals, and other products off the charts so that the average person, the 150 million people who use them for their health benefit, including, I am sure, the distinguished Senator and myself, would not be able to afford them.

I think it is going to take some very careful workmanship, working with the HELP Committee and with other Senators and Members of the House, to do an appropriate adverse events reporting enactment or statute that makes sense rather than do this on an ad hoc basis without defining how it is done, defining what adverse event reporting is, how they report, what they report on, and what is meaningful. I would be more than happy to work with my friend. I am sure I can speak for Senator HARKIN as well. Our goal is not to allow companies that are not doing appropriate dietary supplements to be in business. If the Senator would withdraw his amendment, I am willing to work very carefully with him in good faith and work hard to try to resolve this problem, because I think the Senator also would—and I would ask him if he would know this as well—know that there are people in this world who do not like anybody and there could be a lot of phony adverse event reporting.

The Senator uses the term ''serious.'' I am not against having serious adverse event reporting but what the Senator is asking for here is not definitive. It would not be accurate. It could be interpreted to place severe burdens on the whole dietary supplement industry, which has been a very health-promoting industry over the years and which is one of the great industries of our country.

Those who are the top people in the industry want the industry to be totally honest in its approach toward everything that is manufactured as a dietary supplement. Certainly I do and certainly Senator HARKIN does, and I acknowledge that the distinguished Senator from Illinois does.

I would be happy to work with the Senator. I do not think this is the way to do it. In fact, I know it is not the way to do it. All we are going to do is get in big arguments without getting anything done.

Mr. DURBIN. I thank the Senator from Utah. In response to his inquiry, the answer is a very strong affirmative. The answer is, yes, I would like to work with the Senator from Utah and the Senator from Iowa.

Mr. HATCH. Then why do you not withdraw the amendment.

Mr. DURBIN. Let me make a suggestion to the Senator from Utah, if I may. First, a serious adverse health event is specifically defined in my amendment to include death, life-threatening conditions, inpatient hospitalizations, disability, and incapacity. So it is very serious.

Mr. HATCH. Those are broad categories.

Mr. DURBIN. I think death is a very narrow category. You stop breathing. If that occurs, I think perhaps your dietary supplement needs to be looked at.

Mr. HATCH. Is the Senator aware the pharmaceutical industry is willing to keep going because of the hoped-for benefits in the dietary supplement industry? There are 100,000 people a year who die from toxicity. Even in the cases the distinguished Senator has quoted, there is a real question whether the deaths occurred from dietary supplements or from other factors. I think it is very difficult. Naturally people want to blame it on dietary supplements, but we have had 100 years or more—actually centuries of dietary supplements without deaths. All of a sudden, every time somebody dies they blame it on a dietary supplement.

We are a far cry from defining what it means to report adverse events. I would be willing to work with the Senator. I believe we could come up with something that really would work, that would be accepted by the industry and accepted by the FDA, and would give the FDA even more teeth than it has perhaps now, although we gave them plenty in DSHEA. I went over that in my remarks on the Senate floor, but I would be happy to do that.

Mr. DURBIN. Let me say to the Senator from Utah, let me make a suggestion if I might. My bill to amend DSHEA has three component parts to it. One of them was to ban steroids sold as dietary supplements. I know the Senator agrees with that position.

Mr. HATCH. I do.

Mr. DURBIN. Because he and Senator BIDEN have introduced a bill to accomplish the same goal. I would like to suggest to the Senator from Utah that we work together to add the adverse reporting requirement into that bill.

Mr. HATCH. If the Senator will withdraw his amendment, I will commit to do exactly that. What I do not want is a Dietary Supplement Health and Education Act adulterated with helter-skelter amendments that do not apply across the board. Frankly, I think the amendment of the distinguished Senator is in that nature, even though I know it is well meaning and sincere. But I am saying if you work together, we will do that.

Mr. DURBIN. My good friend and colleague from Utah is an extraordinarily busy man with responsibility on the Senate Judiciary Committee and responsibility of chairing that important committee. It was important for me to get his attention and the attention of all those in this industry, and now we are in dialog and I would like to suggest to the Senator from Utah the following: If he will agree to work with me and others to amend the bill he has introduced with Senator BIDEN on the steroids used as a dietary supplement to include adverse event reporting, which at least meets the goals we have talked about here, I would be more than happy to work with him, and I will be prepared to withdraw my amendment.

Mr. HATCH. You will withdraw the amendment if I am willing to do that?

Mr. DURBIN. If I have your assurance that we can work on this.

Mr. HATCH. As long as the industry is being consulted and is not just being pushed around. If the industry is consulted.

Mr. DURBIN. Oh, absolutely.

Mr. HATCH. I believe responsible people in the industry—and most all of them are—if they are consulted, I believe they can help us in this area. I believe we can do the consuming public a great service in coming up with an efficient, workable, well-thought-out adverse event reporting system that FDA would appreciate as well. Yes, I am willing to work with the distinguished Senator, and I am willing to work—I can't speak for Senator BIDEN, but I believe he would be willing to work to add that to the ban on steroid use.

Mr. DURBIN. I say to the Senator, if I might through the Chair, I would like to set as a goal doing it this year.

Mr. HATCH. If we could get our leadership to do that on both sides, I would like nothing better than to pass that Hatch-Biden bill. I would like nothing better than for us to come up with an appropriate way of handling adverse event reporting that really makes sense, that helps the industry and yet makes sense for the consuming public as well, and to FDA. But it would have to have consultation with the industry as well.

Mr. DURBIN. I agree with the Senator. I would tell you endorsers of my amendment, the American Medical Association, American Dietetic Association, the American Osteopathic Association, the Center for Science and the Public Interest, the American Society for Clinical Pharmacology—I want them to be in on this conversation, too.

Mr. HATCH. No problem.

Mr. DURBIN. Let's bring them all together. With that understanding, I am

prepared to withdraw our amendments which we have pending.

Mr. HATCH. We will withdraw ours if the Senator withdraws his.

AMENDMENTS NOS. 3463, 3462, AND 3225 WITHDRAWN

Mr. DURBIN. I ask unanimous consent to withdraw my perfecting amendment and, after the substitute is withdrawn, to withdraw my underlying amendment.

Mr. HATCH. Under these circumstances I ask unanimous consent to withdraw my substitute amendment as part of that unanimous consent agreement, and you will withdraw the underlying amendment?

Mr. DURBIN. That is correct.

The PRESIDING OFFICER. Without objection, the underlying amendment and the two amendments thereto are withdrawn.

Mr. HATCH. All three amendments.

The PRESIDING OFFICER. The Democratic whip?

Mr. REID. Mr. President, people wonder if debate helps. It does. This is a perfect example of how. This debate has helped resolve a very contentious issue. I congratulate Senators HATCH and DURBIN for their work.

I ask unanimous consent that there be 2 minutes equally divided prior to the vote with respect to the Warner amendment this evening.

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

Mr. REID. I ask also there be 2 minutes prior to the Lautenberg vote we are going to have this evening.

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

Mr. REID. Mr. President, at this time the Senator from Wisconsin——

Mr. HATCH. Will the Senator yield for just a minute?

Mr. REID. I am happy to.

Mr. HATCH. I would like to thank my colleague from Illinois for his willingness to withdraw his amendments. I want to work very closely with him in resolving these problems we have been discussing on the Senate floor. I am grateful to do that, and I think it is important.

Mr. REID. The Senator from Wisconsin has been waiting very patiently all afternoon. He has an important amendment. He can finish the debate prior to 5:30 today when our vote starts. The majority will have to make a decision on what they want to do with his amendment.

I ask the pending amendment be set aside and the Senator from Wisconsin be recognized to offer his amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Wisconsin.

AMENDMENT NO. 3288, AS MODIFIED

Mr. FEINGOLD. I thank the Senator from Nevada for his help making it possible to bring up this amendment.

I call up amendment No. 3288 and ask for unanimous consent to modify my amendment.

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

Mr. FEINGOLD. I send those modifications to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself, Mr. BYRD, Mr. LEAHY, Mr. DODD and Mr. WYDEN, proposes an amendment numbered 3288, as modified.

Mr. FEINGOLD. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To rename and modify the authorities relating to the Inspector General of the Coalition Provisional Authority)

At the end of subtitle F of title X, add the following:

SEC. 1055. REDESIGNATION AND MODIFICATION OF AUTHORITIES RELATING TO INSPECTOR GENERAL OF THE COALITION PROVISIONAL AUTHORITY.

(a) REDESIGNATION.—(1) Subsections (b) and (c)(1) of section 3001 of the Emergency Supplemental Appropriations Act for Defense and Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1234; 5 U.S.C. App. 3 section 8G note) are each amended by striking ''Office of the Inspector General of the Coalition Provisional Authority'' and inserting ''Office of the Special Inspector General for Iraq Reconstruction''.

(2) Subsection (c)(1) of such section is further amended by striking ''Inspector General of the Coalition Provisional Authority'' and inserting ''Special Inspector General for Iraq Reconstruction (in this section referred to as the 'Inspector General')''.

(3)(A) The heading of such section is amended to read as follows:

''SEC. 3001. SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION.''.

(B) The heading of title III of such Act is amended to read as follows:

''TITLE III—SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION''.

(b) CONTINUATION IN OFFICE.—The individual serving as the Inspector General of the Coalition Provisional Authority as of the date of the enactment of this Act may continue to serve in that position after that date without reappointment under paragraph (1) of section 3001(c) of the Emergency Supplemental Appropriations Act for Defense and Reconstruction of Iraq and Afghanistan, 2004, but remaining subject to removal as specified in paragraph (4) of that section.

(c) PURPOSES.—Subsection (a) of such section is amended—

(1) in paragraph (1), by striking ''of the Coalition Provisional Authority (CPA)'' and inserting ''funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund'';

(2) in paragraph (2)(B), by striking ''fraud'' and inserting ''waste, fraud,''; and

(3) in paragraph (3), by striking ''the head of the Coalition Provisional Authority'' and inserting ''the Secretary of State and the Secretary of Defense''.

(d) RESPONSIBILITIES OF ASSISTANT INSPECTOR GENERAL FOR AUDITING.—Subsection (d)(1) of such section is amended by striking ''of the Coalition Provisional Authority'' and inserting ''supported by the Iraq Relief and Reconstruction Fund''.

(e) SUPERVISION.—Such section is further amended—

(1) in subsection (e)(1), by striking ''the head of the Coalition Provisional Authority'' and inserting ''the Secretary of State and the Secretary of Defense'';

(2) in subsection (h)—

(A) in paragraphs (4)(B) and (5), by striking ''head of the Coalition Provisional Authority'' and inserting ''Secretary of State''; and

(B) in paragraph (5), by striking ''at the central and field locations of the Coalition Provisional Authority'' and inserting ''at appropriate locations of the Department of State in Iraq'';

(3) in subsection (j)—

(A) in paragraph (1), by striking ''the head of the Coalition Provisional Authority'' and inserting ''the Secretary of State and the Secretary of Defense''; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking ''the head of the Coalition Provisional Authority'' the first place it appears and inserting ''the Secretary of State or the Secretary of Defense''; and

(II) by striking ''the head of the Coalition Provisional Authority considers'' the second place it appears and inserting ''the Secretary of State or the Secretary of Defense, as the case may be, consider''; and

(ii) in subparagraph (B), by striking ''the head of the Coalition Provisional Authority considers'' and inserting ''the Secretary of State or the Secretary of Defense, as the case may be, consider''; and

(4) in subsection (k), by striking ''the head of the Coalition Provisional Authority shall'' each place it appears and inserting ''the Secretary of State and the Secretary of Defense shall jointly''.

(f) DUTIES.—Subsection (f)(1) of such section is amended by striking ''appropriated funds by the Coalition Provisional Authority in Iraq'' and inserting ''amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund''.

(g) COORDINATION WITH INSPECTOR GENERAL OF DEPARTMENT OF STATE.—Subsection (f) of such section is further amended striking paragraphs (4) and (5) and inserting the following new paragraph (4):

''(4) In carrying out the duties, responsibilities, and authorities of the Inspector General under this section, the Inspector General shall coordinate with, and receive the cooperation of, each of the following:

''(A) The Inspector General of the Department of Defense.

''(B) The Inspector General of the United States Agency for International Development.

''(C) The Inspector General of the Department of State.''.

(h) POWERS AND AUTHORITIES.—Subsection (g) of such section is amended by inserting before the period the following: '', including the authorities under subsection (e) of such section''.

(i) REPORTS.—Subsection (i) of such section is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''and every calendar quarter thereafter,'' and all that follows through ''the Coalition Provisional Authority'' and inserting ''again on July 30, 2004, and every calendar quarter thereafter, the Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Inspector General and the programs and operations funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund'';

(B) in subparagraph (B), by striking ''the Coalition Provisional Authority'' and inserting ''the Department of Defense, the Department of State, and the United States Agency for International Development, as applicable,'';

(C) in subparagraph (E), by striking ''appropriated funds'' and inserting ''such amounts''; and

(D) in subparagraph (F), by striking ''the Coalition Provisional Authority'' and inserting ''the contracting department or agency'';

(2) in paragraph (2), by striking ''by the Coalition Provisional Authority'' and inserting ''by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund'';

(3) in paragraph (3), by striking ''June 30, 2004'' and inserting ''July 30, 2004''; and

(4) in paragraph (4), by striking ''the Coalition Provisional Authority'' and inserting ''the Department of State and of the Department of Defense''.

(j) TERMINATION.—Subsection (o) of such section is amended to read as follows:

''(o) TERMINATION.—The Office of the Inspector General shall terminate on the date that is 10 months after the date, as determined by the Secretary of State, on which 80 percent of the amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund by chapter 2 of title II of this Act have been obligated.''.

Mr. FEINGOLD. I ask unanimous consent Senators BYRD, LEAHY, DODD, and WYDEN be added as cosponsors of the amendment.

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

Mr. FEINGOLD. Mr. President, last year I offered an amendment to the supplemental bill for Iraq and Afghanistan that established an inspector general for the Coalition Provisional Authority so that there would be one auditing body completely focused on ensuring taxpayer dollars are spent wisely and efficiently, and that this effort is free of waste, fraud, and abuse.

Today the CPA, as we all know, is phasing out, but the reconstruction effort has only just begun. According to the Congressional Research Service, as of May 18, only $4.2 billion of the $18.4 billion Congress appropriated for reconstruction in November had even been obligated. This amendment would ensure that the inspector general's office can continue its important work even after June 30 rather than being compelled to start wrapping up and shutting down while so much important work remains to be done.

It renames the Office of the CPA IG, changing it to Special Inspector General for Iraq Reconstruction. The amendment establishes that this inspector general shall continue operating until the lion's share of the money Congress has appropriated to date for the Iraq relief and reconstruction fund has been obligated.

American taxpayers have been asked to shoulder a tremendous burden when it comes to the reconstruction of Iraq. Over 20 billion taxpayer dollars have been appropriated for the Iraq relief and reconstruction fund. That is more than the entire fiscal year 2004 Foreign Operations annual appropriation. It is more than the entire fiscal year 2004 Foreign Operations annual appropriation. This is a tremendous sum to devote to one country.

We all agreed last year that it required an entity on the ground, exclusively focused on this effort, to ensure adequate funding and oversight. We agreed that we need a qualified, independent watchdog with all the powers and the authorities that accrue to inspectors general under the Inspector General Act of 1978. We agreed that business as usual whereby individual agency IGs attempt to oversee this mammoth effort in addition to everything else the agency does is simply not appropriate in this case. There is nothing ordinary about the nature of the U.S. taxpayer investment in Iraq. Ordinary measures will not suffice.

This amendment modifies the legislation creating this IG to ensure that it does not disappear along with the CPA, but instead continues to operate until the amount of reconstruction spending in Iraq more closely resembles other large bilateral foreign assistance programs, which are overseen by existing agency inspectors general. Specifically, it phases out the special IG after 80 percent of the Iraq Relief and Reconstruction Fund appropriated to date is obligated. If that fund grows substantially in the next calendar, then Congress can consider the wisdom of adjusting this mandate accordingly.

Let there be no confusion—this inspector general is only tasked with overseeing how U.S. taxpayer dollars are spent. It does not have a mandate to oversee Iraqi resources. That is not what this is about. So there is nothing at all in continuing this operation that is inconsistent with the transfer of sovereignty on June 30.

Because the Department of Defense has responsibility for what is happening to some reconstruction dollars and the Department of State will have responsibility going forward, it makes good sense to have a focused IG on the ground who is able to see the entire picture at once—not being completely required to just focus on the State Department position or just focus on the Department of Defense portion. This amendment is in no way hostile to the reconstruction effort. This amendment is about trying to get it right.

Suggesting that a special inspector general's office continues to be in order in Iraq is hardly revolutionary. As I have mentioned, the reconstruction budget for Iraq is bigger than the entire FY04 Foreign Operations Appropriations bill. Yet five different inspectors general—at USAID, at the State Department, at the Defense Department, at the Treasury, and at the Export-Import Bank—are charged with overseeing portions of that account. in fact, currently some 41 Federal establishments and designated Federal entities with annual budgets less than $21 billion have their own, independent, statutorily mandated inspector general, from the Railroad Retirement Board to the Smithsonian Institution. We ask for focused accountability when taxpayer dollars are a stake in these situations. We must demand the same in Iraq.

Obviously, when you are talking about $20 billion just for this Iraq situation, we have to do the same thing. We must demand the same in Iraq.

To date, the inspector general for the Coalition Provisional Authority has made important progress, and has a some 30 active investigations and 19 audits underway. A whistleblower hotline established by the inspector general has received hundreds of calls. This is clearly not the time to pull the plug on his important effort.

I urge my colleagues to support this amendment. This is the critical point: to oppose this amendment is to vote for less oversight of the reconstruction effort in Iraq than we have today. It is a step backward if we don't. We cannot abdicate our oversight responsibility. The stakes are far too high for that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, there is a Senator who has concerns about the amendment now pending offered by the Senator from Wisconsin.

Frankly, I find a lot of appeal in this amendment. I am not able to indicate to the Senator how we will deal with this on this side until I have had an opportunity to consult with that particular Senator.

I suggest this be laid aside with the full understanding that it can be brought up again—maybe this evening or possibly tomorrow morning for such further comments as our side may have.

Mr. FEINGOLD. Mr. President, I appreciate the Senator's remarks and openness on the amendment. I certainly understand that he needs to consult with the chairman of the Appropriations Committee. I am eager to hear what possible concerns there may be.

I ask, once we come back to this, that the yeas and nays be ordered for purposes of a vote at some point.

Mr. WARNER. That is the Senator's prerogative.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEVIN. Mr. President, I wonder if I might ask the Senator from Wisconsin a question before the amendment is laid aside.

As I understand it, under the Senator's amendment, the CPA's inspector general which now exists will go out of existence on June 30 without the kind of careful oversight which the inspector general provides unless language is provided which continues that kind of careful oversight, which is the purpose of the Senator's amendment. Is that my understanding?

Mr. FEINGOLD. Mr. President, the Senator from Michigan is correct. It would be very unfortunate given the important auditing work that is already underway. It is essential that we act and act quickly to allow those entities to continue in a renamed form.

Mr. LEVIN. Mr. President, I think this is a very vital amendment.

As I understand it, what the Senator from Virginia is saying is there is opposition that he knows of, or there is not.

Mr. WARNER. I will not characterize it as opposition, but a Senator on this side has indicated to me that he wishes to address this amendment before I as manager can speak for the committee. Actually, this is a matter now before our committee. Out of respect for him, I just ask it be laid aside.

Mr. LEVIN. I have no problem with laying that aside.

I have one other additional question so that our record can be clear. Perhaps this has already been stated. As I understand it, under the current state of the law, the situation that the State Department has determined is that when the CPA goes out of existence on the 30th, the inspector general goes out of existence with them. As I understand it, the State Department would like to take the $65 million in appropriated funds remaining in the CPA inspector general's account and apply it to some other purpose in that kind of oversight.

Is that the understanding of the Senator?

Mr. FEINGOLD. I am concerned. What the State Department proposes to do here is, instead of continuing the independent inspector general who would have the ability to report both to the Defense Department and the State Department—what the State Department partly wants to do is simply subsume this function within its normal inspector general and reinventing the wheel, which is not what we should be doing at this point. But I do believe the Senator has characterized correctly what we have been told the State Department would prefer to do here.

Mr. LEVIN. It is also my understanding that the CPA inspector general has about 40 auditors and investigators in Iraq—that the State Department apparently does not have plans to establish an inspector general's office of any size in Iraq. Is that understanding correct as far as the Senator knows?

Mr. FEINGOLD. I do know that the State Department certainly doesn't have people on the ground. It is definitely the case that the inspector general for the CPA has people on the ground—substantial staff working—I believe 80 people.

Let me check that.

Mr. LEVIN. Mr. President, we have provided in the supplemental bill which was enacted last year $18 billion in a special fund for the reconstruction of Iraq, and created an inspector general, giving that inspector general responsibility for auditing the expenditure of these funds. We appropriated money for that inspector general's activities. It seems to me the Senator from Wisconsin, as he so frequently does, put his finger on a very important accountability issue to make sure the taxpayers' funds are properly spent.

This is a huge expenditure of American taxpayers' funds. We have to find a way—and I think the Senator from Wisconsin has identified the path—that we can continue this function in a way to protect the taxpayers' funds.

I congratulate the Senator for this amendment, and I ask to be added as a cosponsor.

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

Mr. FEINGOLD. I thank the Senator from Michigan.

I misspoke when I said 80 staff members. There are 60 staff members at this point, including 20 auditors and investigators in Iraq.

The point the Senator from Michigan has already made is that the State Department itself indicates they would have to start from ground zero and staff up for this. We have excellent people already conducting a number of audits, and they are on the ground. It would not make sense to do it.

I am delighted the distinguished Senator from Michigan is a cosponsor. I look forward to further debate.

Mr. LEVIN. I have no objection to the amendment being laid aside for the purpose the chairman has indicated. That is perfectly fine.

Mr. WARNER. I thank my colleague.

Now, after the votes now scheduled to start momentarily, it would be our hope—I hope we share this—that you could bring up this very important amendment you have on missile defense and that it could be debated immediately following this vote. Debate might not be concluded tonight, but at least we can cover a significant portion of it. Am I correct?

Mr. LEVIN. The amendment does relate to homeland security needs to fissile material security and to missile defense all in one amendment. I am happy to begin the debate tonight, but I do not want to complete the debate tonight given the fact the vote is tomorrow.

Mr. WARNER. The Senator made that clear. So we begin debate right after that for such period of time as the Members involved debate—of course you, the presenter, I would be in opposition, and I am planning to have one or two others from my side in opposition—and that could consume, would the Senator estimate, maybe an hour, an hour and 20 minutes?

Mr. LEVIN. Depending on how many people are on the other side of the issue, it could be that long.

Mr. WARNER. I thank the Senator.

I am wondering, I will inquire whether or not we could go ahead and start the votes and use that time productively.

Mr. President, I now understand that is not feasible because Members are travelling to the Senate from considerable distances.

Mr. LEVIN. In addition, I believe one of the sponsors of the amendment may be on his way here and perhaps could use the few minutes that have been allocated.

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

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

There are now 2 minutes of debate evenly divided.

Mr. LAUTENBERG. Mr. President, we are going to have a couple of amendments voted on very shortly. Our good friend, the distinguished chairman of the Armed Services Committee, and I have had a private colloquy. He has been very fair in his review of the amendment I originally proposed. He has a different amendment, and he will speak to his amendment.

I would like to amend my amendment. I am going to ask unanimous consent if it is possible to make a modest amendment to the amendment I already have at the desk.

Mr. WARNER. I say to my good friend, it is exactly 1½ minutes before the votes are scheduled. I have to object at this time. This would be an amendment in the first degree. Under the rules, it is not permissible without unanimous consent.

The PRESIDING OFFICER. The objection is heard.

Mr. LAUTENBERG. I hear my colleague and respect his ability to make a decision.

The PRESIDING OFFICER. The time for the Senator is expired.

Mr. LAUTENBERG. Thank you very much.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 3458

Mr. WARNER. Mr. President, I will divide such time as I have. I believe it is 2 minutes. I will take 1 minute and give the Senator a minute.

We had a very good debate. It involves an extremely sensitive subject, the handling of the remains of those who die or perish one way or another in these theaters of conflict as they are brought to the United States.

The amendment in the second degree is drawn to preserve the most important priority, and that is the privacy of the families. It is, therefore, my position that the better course of action for the Senate is to go with the amendment in the second degree which is before all parties tonight and not open this matter to great scrutiny by the press, as does the underlying amendment in the first degree.

I yield the floor.

Mr. BIDEN. Mr. President, I rise to explain why I cannot support either the Warner or the Lautenberg amendment regarding the return of the remains of military personnel to Dover Air Force Base.

The Warner amendment was an endorsement of the current policy, which prohibits any news coverage. The Lautenberg amendment would allow for news coverage in all cases. I do not believe either approach is correct.

In terms of the Warner amendment, I do not agree with the current policy. It denies the sacrifice made by the brave men and women of our military. Anonymous photographs of flag draped coffins tell a real story about honor, courage, and sacrifice. The current Defense Department policy suppresses that story.

However, when those coffins are individually and respectfully taken from the transport plane to the mortuary, then the families should decide. At the point that caskets are being transported to the mortuary or when they are beginning their journey to their final resting place, each fallen hero is honored individually. In some cases, family members may be present. In most cases, they are not. Either way, the honor being paid to their loved one is for them to share or not. Some families may wish to honor their loved one by having the press present and others may find that same press coverage intrusive. It should be their decision. The families should have a clear veto authority and a clear ability to agree to press coverage of their loved one's transport at and within Dover Air Force Base. Unfortunately, the Lautenberg amendment does not clearly provide that authority.

For me, it is simple. We must not turn away from honoring our war heroes, but we must also recognize that each sailor, soldier, airmen, and marine is somebody's son, daughter, husband, wife, brother, or sister. When they die in the service of this Nation, they have made the ultimate sacrifice and it is the family that must bear the ultimate loss. The least we can do is let the family decide how much of that experience they wish to share.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment.

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. Mr. President, I ask for the yeas and nays, to inform our colleagues of the need for a record vote.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. I thank the Chair. Mr. President, that is on the second-degree as well as the first-degree amendment?

The PRESIDING OFFICER. It is on the amendment of the Senator from Virginia only.

Mr. WARNER. I thank the Chair.

Mr. LAUTENBERG. I have a question, Mr. President, for my colleague. The question is, Was it going to be a second-degree amendment or were these going to be independent, first-degree amendments?

Mr. WARNER. Let's go to the unanimous consent agreement. The Chair advised the Senate with regard to the unanimous consent agreement that was put in early this afternoon.

Mr. President, am I not correct that the vote is now scheduled for 5:30 on the second-degree amendment, and the yeas and nays have been ordered?

The PRESIDING OFFICER. The unanimous consent agreement provided that the amendment of the Senator from Virginia would be redrafted as a first-degree amendment.

Mr. WARNER. The Chair is correct. I accept the ruling. And the yeas and nays have been ordered; am I not correct?

The PRESIDING OFFICER. Yes, they have.

The question is on agreeing to amendment No. 3458, as modified. The yeas and nays have been ordered. The clerk will call the roll.

Mr. MCCONNELL. I announce that the Senator from Tennessee (Mr. ALEXANDER), the Senator from Utah (Mr. BENNETT), the Senator from Montana (Mr. BURNS), the Senator from Illinois (Mr. FITZGERALD), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that if present and voting the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Oklahoma (Mr. INHOFE) would each vote ''yea.''

Mr. REID. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

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

The result was announced—yeas 52, nays 38, as follows:

[Rollcall Vote No. 131 Leg.]

YEAS—52

Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bayh	Ensign	Nelson (NE)
Bingaman	Enzi	Nickles
Bond	Frist	Pryor
Breaux	Graham (SC)	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Campbell	Hagel	Shelby
Chafee	Hatch	Snowe
Chambliss	Hutchison	Specter
Cochran	Kyl	Stevens
Coleman	Landrieu	Sununu
Collins	Levin	Talent
Cornyn	Lincoln	Voinovich
Craig	Lott	Warner
Crapo	Lugar	
DeWine	McCain	

NAYS—38

Akaka	Carper	Durbin
Baucus	Conrad	Edwards
Biden	Corzine	Feingold
Boxer	Daschle	Feinstein
Byrd	Dayton	Graham (FL)
Cantwell	Dorgan	Harkin
Hollings	Leahy	Rockefeller
Inouye	Lieberman	Sarbanes
Jeffords	Mikulski	Schumer
Johnson	Murray	Smith
Kennedy	Nelson (FL)	Stabenow
Kohl	Reed	Wyden
Lautenberg	Reid	

NOT VOTING—10

Alexander	Dodd	Miller
Bennett	Fitzgerald	Thomas
Burns	Inhofe	
Clinton	Kerry	

The amendment (No. 3458) was agreed to.

Mr. WARNER. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3291, AS MODIFIED

Mr. WARNER. Mr. President, I understand each Senator has 2 minutes; am I correct?

The PRESIDING OFFICER. Each Senator has 1 minute.

Mr. WARNER. Mr. President, we have decided with the vote on the Warner amendment that we are going to leave it to the families to decide what they want to do when the bodies arrive at their final resting place. That has been the policy since 1991, through the gulf war and through operations of our two conflicts in Afghanistan and Iraq. I urge that it remain that way and not open up, as the Lautenberg amendment directs, the Secretary of Defense shall develop a protocol that permits the media to attend the bodies as they arrive in the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, what we have just seen is a vote on the constitutionality question which ought not be the primary point. The question is whether the American people can see pictures of those flag-draped coffins in tribute to those who gave their lives in service to their country.

President Reagan, in 1993, understood it clearly. He publicly received the bodies of 241 marines who were killed, and there were photographs galore. And during the Afghanistan war, during this administration, flag-draped coffins were filmed. And during the Kosovo conflict, President Clinton was on the tarmac to receive those dead. But this requirement, this directive requiring strict censorship issued just as the Iraq war began prevents the American people from seeing the truth about what is happening.

I urge my colleagues to face their constituents back home and tell them it was not appropriate for the media to photograph coffins, flags on top, in tribute in Dover, DE. It is an outrage to permit that to continue.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3291, as modified.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Tennessee (Mr. ALEXANDER), the Senator from Utah (Mr. BENNETT), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that if present and voting the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Oklahoma (Mr. INHOFE) would each vote ''nay.''

Mr. REID. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 39, nays 54, as follows:

The result was announced—yeas 39, nays 54, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—39

Akaka	Feingold	Lieberman
Baucus	Feinstein	McCain
Bingaman	Fitzgerald	Mikulski
Boxer	Graham (FL)	Murray
Byrd	Harkin	Nelson (FL)
Cantwell	Hollings	Reed
Conrad	Inouye	Reid
Corzine	Jeffords	Rockefeller
Daschle	Johnson	Sarbanes
Dayton	Kennedy	Schumer
Dorgan	Kohl	Snowe
Durbin	Lautenberg	Stabenow
Edwards	Leahy	Wyden

NAYS—54

Allard	Crapo	Lugar
Allen	DeWine	McConnell
Bayh	Dole	Miller
Biden	Domenici	Murkowski
Bond	Ensign	Nelson (NE)
Breaux	Enzi	Nickles
Brownback	Frist	Pryor
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Campbell	Gregg	Sessions
Carper	Hagel	Shelby
Chafee	Hatch	Smith
Chambliss	Hutchison	Specter
Cochran	Kyl	Stevens
Coleman	Landrieu	Sununu
Collins	Levin	Talent
Cornyn	Lincoln	Voinovich
Craig	Lott	Warner

NOT VOTING—7

Alexander	Dodd	Thomas
Bennett	Inhofe	
Clinton	Kerry	

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

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I think the distinguished ranking member is about to bring up his amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. Mr. President, I ask unanimous consent the Senator from Louisiana be recognized to call up her amendment, that she be recognized for 5 minutes, and then her amendment be laid aside and I be recognized to offer an amendment.

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

The Senator from Louisiana is recognized.

AMENDMENT NO. 3315

(Purpose: To amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes)

Ms. LANDRIEU. I appreciate the cooperation of the chairman and ranking member. I know we are working toward finishing this very important bill. I appreciate them giving me the opportunity to call up this amendment because it is a very important amendment among a list of very important issues we are debating.

The amendment number is 3315, and I ask it be called up.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU] proposes an amendment numbered 3315.

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

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

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

Ms. LANDRIEU. Mr. President, the focus and purpose of this amendment is very simple, it is easy to understand, and it is quite clear. In the 5 minutes I have, I will try to lay out that purpose, its cost, and the reasons it is very important for this Senate to act affirmatively on this amendment.

My amendment will fix and make clear that the Survivor Benefit Plan offered in 1972 to our men and women in uniform, of which they pay more than 80 percent of this benefit for themselves, so it is modestly subsidized by the taxpayer, my amendment will make it clear that the survivors of our veterans—in most cases they are women but, obviously, not in every case—at the age of 62 will be able to retain what they thought they signed up for, which is 55 percent of the benefit, instead of what is occurring today, which is cutting that benefit down to 33 percent.

There are all sorts of reasons people will hold out as to why this is happening, but it is clear it needs to be fixed. It is also clear there is plenty of money in this bill to fix it. We are going to spend over $400 billion this year on the Defense bill. This amendment will only cost about $400 million a year to fix. Somewhere in this bill of hundreds of billions of dollars, I am certain we can find the $400 million to live up to a promise made to our military men and women and to give them the benefit of which actually they are paying 80 percent. This is not a taxpayer giveaway; this is honoring a commitment made when we set up a program. The men and women who serve in the military not only are brave and courageous, they are also usually concerned about setting up the appropriate death benefits for their spouses and their children.

We have a system that will allow retirees to get 55 percent of their pay. The argument against this is that when this program was started by some in the Pentagon, they say it was never publicized that service members would get 55 percent, so why are people complaining today about getting 35 percent.

I ask unanimous consent to have printed in the RECORD a document related to the Survivor Benefit Plan which I believe the chairman and ranking member have read. It is important to the hundreds of organizations that support this amendment.

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

[From Section VIII—Monthly Cost and Amount of Survivor Annuity]

Spouse only (no eligible children). Cost of coverage is 2½ percent of the first $300, plus 10 percent of any designated retired pay in excess of $300. If coverage is elected for a dependent child acquired subsequent to retirement, cost of coverage will be increased. The increase in cost is effective the first day of the month following eligibility of such child. (See c below.)

Spouse and eligible children. The cost of coverage will be 2½ percent of the first $300 of the base amount plus 10 percent of the remainder plus a slight additional charge for children's coverage that will vary depending on your age, your wife's age, and the age of your youngest child. The additional charge should generally be about one-half of one percent of the amount of retired pay designated.

If your spouse becomes ineligible through divorce, annulment or death, no cost is due for any month in which there is no beneficiary. If you remarry, the cost will be reinstated the first anniversary of the date of remarriage, unless child is born of that marriage prior to the first anniversary date.

Eligible children only (no spouse). The cost of coverage will very depending on your age and the age of your youngest child but should generally be about 3 percent of the amount of retired pay designated.

Cost reduction—children. When all children cease to be eligible for an annuity, the additional cost for child coverage shall stop. The reduction in cost is effective the first day of the month following that in which the last child ceases to be eligible for an annuity.

Natural interest person. Cost of coverage is 10 percent of full retired pay, plus an additional 5 percent of full retired pay for each full 5 years that your age exceeds that of the natural interest person. The total cost may not exceed 40 percent of retired pay.

Annuity—Spouse and/or eligible children. Full coverage provides an annuity of 55 percent of retired pay. Reduced coverage provides an annuity of 55 percent of reduced amount elected.

Annuity—Natural interest person. The annuity payable is 55 percent of retired pay remaining after cost of coverage has been subtracted.

Ms. LANDRIEU. The front page of this contract says that for the spouses and/or eligible children, full coverage provides an annuity of 55 percent of retired pay.

This is the contract that service personnel sign, in plain English. Full coverage provides an annuity of 55 percent of retired pay.

What is happening now—after people signed up for this, paid into the program, and had some confidence their spouses would receive 55 percent of their retirement—is they are told they can only get 35 percent because we do not have enough money to live up to the terms of this contract.

Right now a sergeant first class, in retirement, would be making about $771 per month—not a huge sum, by any means. Compare that amount of money to the contribution of this American: 20 years of his life putting his life on the line, putting the uniform on every day, for 20 years. The grand sum for him is $771 a month.

We have money for every tax cut and drive businesses offshore, we can give tax cuts to everybody but we cannot find enough money for the spouse, who has moved every 2 years for 20 years. It is tough to hold down a job when you are moving, no matter how smart you are, no matter how high your grades were in school, or how hard you work. It is hard to keep up a career while moving to a different community, with children most of the time, every 2 years. We want to tell this spouse she is now only entitled to $491 a month, down to $5,000 a year.

Families are filing for bankruptcy.

Let me share some stories of the hardships spouses face because of the widow tax.

Marion Charles is age 78. Marion's husband Ed died in 2002. Her husband was a Navy diver in WWII. He retired in 1966, as a crew member on one of America's first nuclear subs. Mrs. Charles had no idea her first pension payment would be reduced to 35 percent. Her husband joined SBP when it began. She said:

I was so shocked, I almost fell out of the chair and wondered why God hadn't taken me, too, when he took Ed.

She was left with $21,000 in bills. She said:

Neither my husband nor I realized there would be an offset—no one ever told us. I find myself under a lot of stress getting over his death and trying to do something with the large bills facing me.

Mrs. Charles nearly lost her home and almost declared bankruptcy.

Miriam Joy Parker is from Huntsville, AL. Her husband served for 32 years. She followed her husband across the world for those 32 years. Mrs. Parker had to tighten her budget to live on the 55 percent pension she received before she turned 62. At age 62, the widow tax cut her annual income by nearly $10,000. She cannot live on the 35 percent rate and Social Security. She has had to begin working in her sixties. She never knew there was an offset.

Betty Wells is from Ocala, FL. The widow tax has cost Ms. Wells $8,400 a year. At age 67, she took a job to make ends meet.

Diane Worth is from Phoenix, AZ. The widow tax cut her annual income by $2,400. She may have to sell her home. The offset has cost her nearly $10,000.

My amendment corrects this grave injustice.

A spouse of a lieutenant colonel would see their pension cut from $1,595 a month, under our new rules, to $1,015 a month, for a grand total of $12,180 a year, after 20 years of service keeping the hearth going when their spouse was putting on that uniform and protecting us.

I think we can do better. That is what my amendment does, and about 15 Senators on both sides of the aisle agree. They are joining me, including Senator DASCHLE, Senator REID, and others. I am joined by Senator SNOWE, who is the lead sponsor of this amendment on the other side.

Mr. President, I ask unanimous consent that a piece in the Washington Times entitled ''Survivor Benefit Plan needs reform'' be printed in the RECORD.

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

[From the Washington Times, Feb. 23, 2004]

SURVIVOR BENEFIT PLAN NEEDS REFORM

(By John Fales)

DEAR SGT. SHAFT: The Fleet Reserve Association (FRA) is urging all 66 members of the House and Senate budget committees to include funding in the 2005 budget resolution for legislation (S. 1916 and H.R. 3673) that eliminates the drastic reduction in Survivor Benefit Plan (SBP) annuities that now adversely impacts survivors of military personnel who are 62 and older.

The current program provides 55 percent of SBP covered retired pay for younger spouses—however, the amount decreases to 35 percent of retired pay when survivors become eligible for Social Security. Many retirees and their spouses were not fully aware of this reduction when they enrolled in the program in the early 1970s. As a result, many believe they were betrayed by having been asked to sign an irrevocable contract to pay lifetime SBP premiums.

Sen. Mary L. Landrieu, Louisiana Democrat, introduced the Military Survivor Benefits Improvement Act of 2003 (S. 1916), which would eliminate the SBP offset over a 10-year period. Companion legislation (H.R. 3673) to do the same was introduced by Rep. Jeff Miller, Florida Republican, in the House.

The Fleet Reserve Association, the oldest and largest organization dedicated to enhancing pay and benefits for enlisted member of the U.S. Navy, Marine Corps and Coast Guard, was instrumental in the enactment of the military SBP program in 1972, which was designed to improve the Retired Servicemembers Family Protection Plan. Participants were responsible for paying 60 percent of the costs, while the government was to subsidize the remaining 40 percent.

But today's SBP program looks nothing like its FRA predecessor, and its intended value has been greatly diminished by the Social Security offset as well as decreased contributions from the federal government.

Today, military retirees pay for more than 80 percent of SBP costs, while the government picks up only about 19 percent of the costs. By way of comparison, the federal government subsidizes its civilian survivor benefit plans—Federal Employees Retirement System and Civil Service Retirement System—at 33 percent and 48 percent, respectively.

Probably the greatest disparity between the two plans is beneficiaries in the federal civilian programs do not experience the same offset incurred by military SBP beneficiaries when they reach the age of 62. It is unconscionable that the men and women of our armed forces and their families continue to sacrifice at a time when they are in their greatest need.

FRA is grateful to Rep. Miller and Mrs. Landrieu for their leadership in campaigning to restore equity and credibility to this vital program. FRA is again referencing the need for SBP reform in its testimony before Congress this year.

We urge those who wish to help reform this unfair and ebilitating law to visit the association's Action Center at http://www.fra.org/action/index.html, click on ''Urge Your Elected Official to Support funding for SBP Reform Legislation'' and send a prewritten e-mail to their congressional representatives.

JOE BARNES,
National Executive Secretary,
Fleet Reserve Association.

DEAR JOE: I echo your praise and support of S. 1916 and H.R. 3673. I also commend Mrs. Landrieu and Mr. Miller for spearheading this vital legislation.

DEAR SGT SHAFT: I agree totally that the SBP program is a huge injustice for widows of military retired persons. I had 10 years of active duty plus 14 years in the Reserves, retiring as an O–6. It has been a long time since I have seen a write-up of the actual SBP provisions, so I do not understand how it affects me and my wife. Where can I find a good description?

From the synopses I have seen so far, we would have been better off to take the dollars and put them toward an annuity policy instead of wasting them on the SBP program.

HARRY J. WANDER,
COL, AUS, Retired.

DEAR HENRY: For starters, I suggest that you visit a few of the military organization Web sites, such as the Military Officers Association of America at www.moaa.org, the Non Commissioned Officers Association, www.ncoausa/org, or the Fleet Reserve Association at www.fra.org.

DEAR SGT SHAFT: Isn't it funny: If Congress wants a pay raise, it's processed with no problems. For those of us ''who paid the price'' for our country (to keep Congress intact), there's always some delay.

MICHAEL G.
Virginia.

DEAR MICHAEL: The Defense Finance and Accounting Service (DFAS) has announced that computer reprogramming has progressed faster than expected and they have made concurrent disability payments (CDP) to about 150,000 eligible retirees on Feb. 1. Those whose CDP will be delayed another month or two include those who divide their retired pay with a former spouse, medical disability retirees who will have their offset only partially eliminated by the new law change, and a few other special situations.

DFAS officials believe that they will be able to provide payment for all these retirees no later than the April 1 paycheck.

Just like concurrent receipt, the widow tax hurts veterans but not Federal employees. A veteran with 20 years of service to the Nation and a disability could not collect both retirement pay and disability pay. However, Federal workers eligible for retirement and job-related disability can collect both. Our Federal workforce is filled with talented and dedicated people. However, it is an injustice that the men and women who put their lives on the line for our Nation's defense are treated as second-class citizens.

Federal civilian spouses don't face the widow tax. They have no offset. Under the civil service retirement system—CSRS—which was the pre-1984 retirement system, surviving spouses receive 55 percent of the deceased spouse's retirement benefits.

Under the current retirement system—the Federal Employees Retirement System of FERS—surviving spouses receive 50 percent of the retirement benefits.

Neither has an offset at any age. Widows under FERS collect 50 percent of their spouse's pensions and they collect Social Security. No Senator's spouse faces an offset. No Senate staffer's spouse faces an offset. I don't think our veterans deserves less, yet under SBP, widowers and widows must offset their pension with Social Security.

Military retirees pay more than Federal civilians and receive less. Not only do military widows receive less than their civilian counterparts, but they pay higher premiums, too. A military retiree will pay an average of $41,000 in premiums. A civilian, under FERS, will pay an average of $32,000 in premiums. It almost seems like a twisted joke: Join the service—pay more and receive less.

The Landrieu-Snowe amendment, a bipartisan amendment, has also been endorsed by the Military Coalition, and simply aims to restore equity and fairness to our military retirees and spouses. It eliminates the widow tax.

Over 950,000 million retirees are enrolled in SBP. The widow tax waits for them as a ''thank you'' for 20-plus years of service. Mr. President, 250,000 widows are currently receiving SBP benefits. The widow tax has been imposed on them—220,000 of them. Forty percent of retirees refuse to enroll in SBP because of the offset. The Landrieu-Snowe amendment repeals the widow tax by 2008. It gives our surviving spouses the benefits they deserve and parity with other Federal retirees.

As we prepare to celebrate Independence Day, it is hard to imagine Congress ever created the widow tax to negatively impact the families of those who served to guarantee our freedom. Let's join the House in fixing the Survivor Benefits Program. The wars in Afghanistan and Iraq will create hundreds of thousands of new veterans, and more young men and women will be needed to serve. Let's remember George Washington's words:

> The willingness with which our young people are likely to serve in any war [is] directly proportional to how they perceive the Veterans of earlier wars were treated and appreciated by their nation.

Let's fix this injustice to honor our veterans and ensure we can recruit to defend our Nation in the future.

Mr. President, I understand the chairman is going to provide us with a vote tomorrow. But that explains the amendment and what we are attempting to do. I would like to lay it aside until tomorrow at a time to be determined.

The PRESIDING OFFICER. Under the unanimous consent agreement, the amendment is already set aside.

Mr. WARNER. I thank the Senator. We shall address this amendment tomorrow.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. WARNER. Madam President, the managers of the bill, in consultation with the leaders on both sides, would now like to propose a unanimous consent request.

I ask unanimous consent that all remaining amendments in order to the Defense authorization bill be offered no later than 6:30 p.m. on Tuesday, June 22; provided further that in the final 10 minutes prior to that time the chairman and ranking member be recognized in order to offer en bloc any further amendments from the filed list; further, I ask unanimous consent that when the Senate resumes consideration of the Defense authorization bill on Tuesday, there be an additional 60 minutes of debate.

Perhaps the Chair would like to rule on paragraph 1 now.

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

Mr. WARNER. Now to the second part. I ask unanimous consent that when the Senate resumes consideration of the Defense authorization bill on Tuesday, there be an additional 60 minutes of debate equally divided in the usual form in relation to the Levin missile defense amendment. I further ask consent that following the debate, the Senate proceed to a vote in relation to the Levin amendment, with no second degrees in order to the amendment prior to the vote; provided further that following the vote the Senate resume consideration of Brownback amendment No. 3235 and that the Burns second-degree amendment then be agreed to. I further ask that Senator BROWNBACK or his designee be recognized in order to offer a further second degree and that the Senate then proceed immediately to a vote in relation to the Brownback amendment. I further ask consent that following that vote, Senator DORGAN or his designee be recognized to offer a further second-degree amendment on media ownership, and immediately on the reporting of the amendment, the amendment be agreed to, to be followed by Senator HOLLINGS or his designee to offer a children's programming amendment, and then immediately upon the reporting of the amendment the amendment be agreed to.

Finally, I ask consent that the Brownback underlying amendment be agreed to as amended.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Madam President, I ask the distinguished chairman, amend his unanimous consent request to state that Senator HOLLINGS or his designee is to offer a second-degree amendment relating to children's programming.

Mr. WARNER. No objection. I further amend it.

Mr. REID. I further ask following the last word in the proposed unanimous consent agreement, the word ''amended,'' there be added to that, ''with no intervening action or debate.''

Mr. WARNER. No objection.

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

Mr. WARNER. I thank the Presiding Officer.

Now, Mr. President, I understand Senator LEVIN will be recognized for the purpose of laying down his amendment. Shortly after his presentation, the distinguished Senator from Arizona will be recognized to present his proposal. The Senator from Virginia will reserve his comments on this very important amendment until tomorrow.

AMENDMENT NO. 3338

Mr. LEVIN. Madam President, I will reserve most of my comments until tomorrow as well because I understand under the unanimous consent agreement we have just adopted there will be an hour equally divided.

Madam President, this amendment will take $515 million of the $1.7 billion which is provided in this bill for interceptors, $515 million of the $3.2 billion which is provided in this bill for national missile defense, take that $515 million and put it into some of the most critically needed requirements that we have in this country, which is to address the threat of terrorism against this country.

Last week, my dear friend, the chairman, pointed out in his debate on the Boxer amendment that this Congress, in a conference report last year, approved 20 ground-based interceptors, and we did that for a 20-test-bed site.

In other words, what the chairman pointed out was accurate. Last year we decided there would be a test bed in Alaska and there would be 20 interceptors in that test bed.

Lo and behold, the budget request comes in this year for 40 interceptors, in a 40-silo test bed. Ten of those were removed in the committee. The issue we have to face as a Senate is whether

we want to add missiles 21 through 30 at the cost of $515 million—it was not identified last year for the test bed, not having been operationally tested, not needed for testing—or whether we are going to take that $515 million and address this money to desperately needed measures to go after the fissile material which is throughout this world and to try to secure it; to try to come up with technologies which can address the threat of explosive devices at a distance. We cannot identify explosive devices at a distance. So we face car bombers and we face other kinds of destruction such as the USS *Cole* because we cannot identify explosive devices from a distance.

Most of our ports are not yet secure. Most of the containers coming into this country are still not being identified, still not being looked at to see whether there may be material in there, either biological, chemical, or nuclear material. We still have massive insecurities in this country relative to the real, immediate threats that we face.

We have to take some resources. It seems to me the logical place to take it is where we have not had operational testing of missiles that are part of a missile defense system, which are now being produced at much higher than initial low-rate production, despite a law which says you may not go beyond initial low-rate production into full-rate production without operational testing. That is the law. Yet what we have said is, so far we are going to take this $515 million, and we are going to put this in missiles 21 through 30.

I want to emphasize to my friends, the debate over the first 20 missiles in that test bed is over in this Senate for now. The Boxer amendment was defeated. So there are going to be 20 missiles put into 20 silos. They are going to be deployed. They are going to be produced despite the fact that we have not had independent testing, operational testing, real world testing of these missiles. That debate took place on this floor last week. That is not the subject of my amendment.

My amendment has nothing to do with missiles 1 through 20. It has nothing to do with the 20-silo test bed in Alaska. It has everything to do with whether we go beyond that 20-silo test bed to missiles 21 through 30, decide to produce those missiles despite the fact that we have not had independent operational testing. My amendment would say no. No. We know what the real, most immediate threats are to this country. There may be a North Korean missile threat. For folks who believe that cannot be deterred and whether we can produce a missile that can knock down a North Korean missile, it is worth doing, fine. If that is the belief of a majority of this body, fine. North Korea cannot be deterred and we can produce missiles which can knock down a North Korean missile, so be it, if that is the decision of this body.

That is not my amendment. My amendment says hold off producing 21 through 30. Don't commit in this bill to produce 10 more missiles at a cost of $515 million. And this is just for the advanced procurement. Don't commit to that when you have not had the operational testing, when last year we said we were going to have a 20-silo test bed, when we have such major unmet needs in terms of the real, immediate, short-term threats against this country.

We had the CIA, not too long ago, that made an assessment as to what the greatest threats were against this country.

I want to read the CIA assessment as to where those greatest threats were.

> In December 2001 . . . the CIA released an unclassified document entitled ''Foreign Missile Developments and the Ballistic Missile Threat Through 2005.''

This is what it said:

> The Intelligence Community judges that U.S. territory is more likely to be attacked with WMD using nonmissile means, primarily because such means: are less expensive than developing and producing ICBMs; can be covertly developed and deployed; the source of the weapon could be masked in an attempt to evade retaliation; probably would be more reliable than ICBMs that have not completed rigorous testing and validation programs; probably would be much more accurate than emerging ICBMs over the next 15 years; probably would be more effective for disseminating biological warfare agents than a ballistic missile; [and] would avoid missile defenses.

Those are the kinds of choices we should face as a Senate.

We have, in the eyes of many, a potential North Korean threat.

We have a test bed which is going to proceed. Whether a majority of us decided we are going to proceed without that independent operational testing, so be it. That is a done deal. That is going to happen.

Now the question is, Do we go into the next 10 missiles, produced in this budget, paid for in the long leap for the next 10—21 through 30—at a cost of $515 million despite the assessment of the CIA that the greatest threat we face is weapons of mass destruction using nonmissile means and all the reasons for which that is true which they laid out? Less expensive, covertly developed unlike missiles, source of the weapon can be masked in order to evade retaliation.

When we get hit by a terrorist, we can't always identify where that terrorist comes from or whether there was a state actor behind it. When a missile is fired at us, we know from where that missile comes. Any state that sends a missile our way knows it it is going to be destroyed in return. That is not true with a terrorist attack.

According to the CIA, nonmissile means are more effective for disseminating biological warfare agents than a ballistic missile and would avoid missile defense. Despite the fact there is much greater likelihood we would be attacked with nonmissile means, here is the situation we are in right now.

According to the head of the U.N.'s International Maritime Organization, fewer than 6 percent of the world's seaports and ships meet rules aimed at preventing terrorism attacks. Six percent of the world's seaports and ships now meet the rules that have been adopted to prevent terrorist attacks.

We have millions of cargo containers that enter this country's ports uninspected. I have one of the biggest ports in my home State of Michigan, by the way. But we have ports on the coast. We have ports on the Great Lakes with millions of containers coming in uninspected. We cannot identify suicide bomber strikes because we cannot identify explosives at a distance. We have to put money into technology in order to do that.

These are the most current, the most imminent, the most immediate, the most likely ways this Nation is going to be attacked. We have to put resources there.

My amendment would transfer some of those extra 10 missiles that were not projected last year. Last year we were told we had a test bed with 20 silos. This year we are asking for these 10—originally 20—extra missiles to be produced. We simply have greater priorities and greater threats.

Let me spend a couple more minutes tonight, and I will expand on this in the morning. Senator FEINSTEIN, Senator DOMENICI, and others proposed that we develop at the DOE an enhanced nuclear security program to accelerate the pace of securing and eliminating nuclear weapons and materials all over the world.

This is what the Secretary of Energy, Secretary Abraham, announced at the International Atomic Energy Agency at the end of May. The Secretary of Energy said the Department of Energy would begin such a new program called the Global Threat Reduction Initiative, and that this initiative would ensure that nuclear and radiological material and equipment did not ''fall into the hands of those with evil intentions.'' How would we do that? In his words, we would secure, relocate, and dispose of these materials and equipment.

This is an expansion of the idea of Nunn-Lugar. But this is based on the belief, which has been stated by so many outside independent groups, that fissile material in the hands of terrorists would be the greatest threat that this Nation could face.

Senator Abraham in making this announcement said, ''It has become clear that an even more comprehensive and urgently focused effort is needed to respond to emergency and evolving threats,'' and that the United States plans to devote $450 million to this effort.

We have an announcement by the Secretary of Energy that we are going to have an effort aimed at reducing the greatest single threat in the eyes of most people to this Nation and to others, which is the fissile material would fall into the hands of terrorists to produce either a nuclear weapon or a dirty bomb. That is the greatest single

threat—$450 million the Secretary of Energy says the United States is going to devote to this effort. Yet there is nothing in this budget, no funding for this President.

This is perhaps the greatest of all the terrorist threats. It is real. The fissile material is out there. Yet this new initiative announced by the administration has no funding. Instead, we have funding for missiles—21 through 30—for a test bed that was only supposed to have 21 missiles to begin with, and the additional 10 missiles are not tested by an independent testing agency.

We are not even sure they would work against a threat which may or may not occur. North Korea has never tested a missile which could reach the United States. The last test they had was 6 years ago.

So we have to weigh the threat. We have to make a decision as a Senate as to whether we are going to put some resources into addressing the most real threats, the most real terrorist threats, or whether we are going to put money into advanced procurement for the next 10 missiles—missiles 21 through 30—for a 20-bed test site.

That is the kind of decision we are forced to make. We have resources that have to be allocated. We can't just say, well, we are going to face a missile threat some day, so we are going to need an extra 10 missiles even though they haven't been independently tested. So we are going to put $515 million into that advanced procurement when we have ports that are facing huge numbers of containers which have not been inspected, and when we have fissile material around the world which has not been secured.

That is the choice which this amendment will offer to the Senate tomorrow. I reserve the remainder of my argument for the morning.

I ask that the amendment which I filed at the desk, No. 3338, be called up. I failed to do that when I started. I also ask unanimous consent that Senators JACK REED, LANDRIEU, and FEINGOLD be added as cosponsors to that amendment.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. REED, Ms. LANDRIEU, and Mr. FEINGOLD, proposes an amendment numbered 3338.

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

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

The amendment is as follows:

(Purpose: To reallocate funds for Ground-based Midcourse interceptors to homeland defense and combatting terrorism)

At the end of subtitle E of title X, add the following:

SEC. 1044. REALLOCATION OF FUNDS FOR GROUND-BASED MIDCOURSE DEFENSE PROGRAM INTERCEPTORS TO HOMELAND DEFENSE AND COMBATING TERRORISM.

(a) REDUCTION.—Notwithstanding any other provision of this Act, the total amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby reduced by $515,500,000, with the amount of the reduction to be allocated to amounts available for the Missile Defense Agency for Ground-based Midcourse interceptors.

(b) ALLOCATION OF INCREASE.—In addition to amounts otherwise authorized to be appropriated in this Act—

(1) the amount authorized to be appropriated by section 3101(a)(2) for the National Nuclear Security Administration for defense nuclear nonproliferation activities is hereby increased by $210,800,000, with the amount of the increase to be allocated to the Global Threat Reduction Initiative;

(2) the amount authorized to be appropriated by section 201(3) for research, development, test, and evaluation for the Air Force is hereby increased by $50,000,000, with the amount of the increase to be allocated to North American Aerospace Defense (NORAD) for low-altitude threat detection and response technology;

(3) the amount authorized to be appropriated by section 301(4) for operation and maintenance for the Air Force is hereby increased by $13,300,000, with the amount of the increase to be allocated to Northern Command consequence management networks to facilitate military support to civil authorities;

(4) the amount authorized to be appropriated by this Act is increased by $130,000,000 for domestic installations Antiterrorism/Force Protection and Antiterrorism/Force Protection exercises and training identified by Northern Command, with authorizations of appropriations to be increased so that—

(A) the amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is increased by $19,000,000;

(B) the amount authorized to be appropriated by section 301(6) for operation and maintenance for the Army Reserve is increased by $15,000,000; and

(C) the amount authorized to be appropriated by section 301(10) for operation and maintenance for the Army National Guard is increased by $96,000,000;

(5) the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby increased by $15,000,000, with the amount of the increase to be allocated to the Combating Terrorism Technology Support Working Group for programs to detect explosives at stand-off distances, blast mitigation, and information security; and

(6) the amount authorized to be appropriated by section 3101(a)(2) for the National Nuclear Security Administration for defense nuclear nonproliferation activities is hereby increased by $30,000,000, with the amount of the increase to be allocated to the megaports program;

(7) the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby increased by $15,000,000, with the amount of the increase to be allocated to the Defense Threat Reduction Agency for Weapons of Mass Destruction Defeat Technologies-Radiation/Nuclear Detection;

(8) the amount authorized to be appropriated by section 3101(a)(2) for the National Nuclear Security Administration for defense nuclear nonproliferation activities is hereby increased by $20,000,000, with the amount of the increase to be allocated to basic research on radiation and other standoff detection devices, and for stand-off explosive detection;

(9) the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby increased by $10,000,000, with the amount of the increase to be allocated to the Chemical-Biological Defense Program for Chemical Agent Standoff Detection; and

(10) the amount authorized to be appropriated by section 301(2) for operation and maintenance for the Navy is hereby increased by $21,400,000, with the amount of the increase to be allocated to Chemical/Biological Detection Equipment for Explosive Ordnance Disposal detachments and chemical-biological protective equipment for Navy and Marine Corps aircrews.

DEFENDING AGAINST URGENT TERRORIST THREATS

Mr. BIDEN. Madam President, Senator LEVIN'S amendment will shift funds from extra, untested interceptor missiles to programs that will detect and stop the most urgent threat facing our country: the risk posed by terrorists with weapons of mass destruction.

Not only is that the most urgent threat, it is also a much more likely threat than the possibility that a rogue state, such as North Korea, will lob a missile at the United States and risk being annihalated by us.

Who will send a missile with a return address and face sure destruction? Not a nation-state. Terrorist groups, with no return address, from no state against which the United States could retaliate, are not deterred by our massive nuclear arsenal.

Many experts believe that terrorists would be capable of creating a nuclear weapon if they took possession of fissile material. Even the simpler gun-type design, the type of bomb exploded at Hiroshima, could kill up to a million people if detonated in a large city.

Two years ago, I asked the heads of our nuclear laboratories to show us how terrorists could build an atomic weapon with parts available on the open market—other than the fissile material.

A month later, they returned to the Senate and showed us the weapon they had made, minus the fissile material. I cannot go into details, but all of us knew instantly that this was within the capabilities of a sophisticated terrorist group. You don't have to be a great power to cause great damage—if you have the fissile material.

Terrorists are also known to be interested in radiological material for a so-called dirty bomb, also known as a radiological dispersion device. An attack with a dirty bomb would not cause many fatalities, but it could render large areas uninhabitable and cause long-term economic and psychological damage. These weapons could be smuggled in a suitcase, or in a shipping container entering one of our ports.

Clearly, then, the threat of terrorist weapons of mass destruction is urgent.

But where is the sense of urgency in responding to this threat?

We have a bill before us today that proposes to spend $10 billion on missile defense—against the less likely threat.

The amendment by my colleague, Senator LEVIN, redresses the balance by taking just 5 percent of that amount—$515 million that is essentially unnecessary at this time to buy 10 more untested interceptors for the administration's scarecrow ground-based missile defense system—and applying it instead to urgent, unfunded homeland security needs.

Senator LEVIN's amendment will take the money saved and apply it to detecting, intercepting, and stopping the use of weapons or mass destruction by terrorists. It also shifts funds to programs to keep fissile material out of the hands of terrorists.

Just a few weeks ago, the Senate passed amendment to this bill sponsored by our colleague, Senator PETE DOMENICI.

I cosponsored the amendment, which authorizes a program to accelerate U.S. efforts to remove, secure, store, or blend down fissile and radiological material.

Senator DOMENICI's amendment complements the Global Threat Reduction Initative that the Secretary of Energy announced on May 26, to repatriate Russian and American highly enriched uranium or HEU, from research reactors around the world, to repatriate the spend fuel, and to convert those reactors to use low enriched uranium instead. Too often, HEU provided by the Soviet Union or the United States sits at poorly guarded research facilities that are a dangerous temptation to thieves or terrorists.

The Global Threat Reduction Initiative reportedly will cost $450 million. Senator LEVIN's amendment provides $211 million or it.

In addition, the Levin amendment will provide funds for nuclear weapons detectors at major seaports; technology to detect chemical, biological, and radiological materials at a distance; and technology to detect and stop low-flying aircraft, such as cropdusters, that terrorists might use to disperse weapons of mass destruction across a wide area.

The Levin amendment will help address the most urgent threats to our Nation, but it will not delete funds for the 20 untested interceptor missiles that the administration plans to field in October.

It will simply prevent the Defense Department from spending more money on 10 additional missiles before we know if the first 20 even work.

That is a sensible approach and one that is consistent with ''fly before you buy'' laws that require operational testing prior to full-rate production, as well as with recommendations of the General Accounting Office.

We need to set our funding priorities to respond to the most urgent threats we face. The Levin amendment is a step in the right direction, and I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Madam President, I simply ask my colleague, Is there some thought that he is going to amend this amendment?

Mr. LEVIN. I think it would be easier to not modify it. That is not my plan at the moment. I don't think it will be in the morning. But I would not even seek to modify it in a way which changes its character, nor would I ask for the right to do so.

Mr. WARNER. I thank my colleague.

Madam President, our distinguished colleague from Arizona has waited a very long time. Consequently, I am going to yield the manager's slot here to my good friend who will do an able job.

Mr. LEVIN. If the Senator from Arizona will yield for one inquiry, I have to leave the floor for a couple of moments.

Is it the Senator's understanding that after Senator KYL has completed there are no more speakers? After Senator KYL has completed this statement, there are no more speakers?

Mr. WARNER. That is correct.

Before the Senator leaves, perhaps to acquaint our colleagues about what we hope to achieve tomorrow morning, I hope we could include the Dayton amendment and address it in the morning. Could the Senator consider that?

Mr. LEVIN. The current unanimous consent provides after an hour debate on my amendment we would vote on my amendment with no intervening first-degree or second-degree amendments.

Mr. WARNER. A lot of those will be voice votes.

Mr. LEVIN. Where does the Senator want to include this?

Mr. WARNER. Right after the Brownback.

Mr. LEVIN. I have to check. Offhand, I don't know of a reason, but I have to see if there is a reason I don't know of.

Mr. WARNER. Could I leave that as a pending request?

Mr. LEVIN. I will do my best to clear that.

Mr. WARNER. Senator MCCAIN wishes to be active in that.

Mr. LEVIN. I don't think there is an issue on this side in terms of voting in the morning, but Senator MCCAIN wanted to speak on that.

Mr. WARNER. We will allow him time tomorrow morning to speak.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I appreciate the chairman of the committee yielding time for me to respond to the amendment of our colleague, the Senator from Michigan. I will respond directly to some of the last points the Senator made as I get further into my remarks.

I begin by simply describing first of all the essence of this amendment and why it must be opposed. It would cut $515.5 million from the Missile Defense Program. That is over $½ billion. It adds that funding to a variety of other programs, all of which are adequately funded. We have added funding to some of them, and in some cases we could not even spend the money that would be allocated. I will get into those matters later.

Let me begin by discussing the harm that would be done to the Missile Defense Program—which we have all committed to pursuing under the Clinton administration—as a result of the adoption of the Levin amendment.

Specifically, as he described it, the amendment cuts funding for additional ground-based interceptors. These are missiles that go into the ground, primarily into the State of the Presiding Officer. This is the heart of our ground-based missile defense system.

The missile defense opponents contend we are spending too much money on a system that has not yet been proven to work, and they further claim that deployment is premature because, as the Senator from Michigan argued, operationally realistic testing has not been completed, and the administration, he contends, is not complying with U.S. acquisition laws that require such operational testing and evaluation.

We are complying with the law. There is no question about that. It appears that the objective critics want to achieve in demanding the missile defense system be operationally tested before deployment is actually to halt the program altogether. I will explain why.

The bottom line is we need the interceptors that would be eliminated as a result of eliminating this spending. We need them to do the very tests our critics are demanding be done. In other words, it is a Catch-22: You have to do operational testing, but we are not going to give you the money to get the missiles to do the testing. That makes no sense.

Moreover, by adding these missiles to the first 20 that will be purchased, we have an additional capability to actually defend ourselves. I know that is troublesome to some, that we would actually be able to defend ourselves in the event that a nation accidentally launched a missile defense at us—and there are at least three or four countries today that could do that—or, God forbid, a country deliberately launched a missile defense at us.

So these missiles not only are available for testing but also would actually be able to defend the country for the first time since Ronald Reagan in 1983 announced our intention to work on a missile defense system. At that time, he said it could take decades, but I don't think he anticipated that we would research it to death; in other words, that we would be willing to spend more and more and more money but never, as they say in the military, bend metal; in other words, never actually produce the product that would

achieve the end result—in this case, a missile to defend ourselves.

Now, let me get to this question about operational testing because that is the essence of the amendment of the Senator from Michigan. The previous Director of Operational Test and Evaluation, Phillip Coyle, was quite critical of the National Missile Defense Program in the late 1990s because the NMD tests, in his opinion, lacked realism, not conducted under operational testing.

In fact, that was true. These tests are always launched from—the target is launched from Vandenberg Air Force Base in California toward the Pacific Ocean and the interceptor from the Reagan test site in the Pacific. I might add, I visited that test site last January. It is an incredible facility. They do their very best to replicate what might happen in a real world war. They are very good. But, they acknowledge, they are notified in advance that there is going to be an offensive missile launched, and, of course, they are quite prepared to launch the missile to intercept it. Naturally, they use the same geometrics. One cannot argue that this test range exactly replicates the exact circumstances under which an attack might come. That is quite obvious.

These tests that have been performed, and the most recent ones have been quite successful and confirm that all of the component parts work and it is possible to intercept a missile with a missile. Therefore, these developmental tests are very important to getting the program to the point where we can operationally test. Obviously, we do not want to deploy and test for the first time, so we go through this phase.

But there comes a time when we have to get the conditions more like they would actually be. We know that the best place to place missiles in the ground to defend against a probable attack is in the home State of the Presiding Officer—Alaska—simply because of its proximity to the locations where an offensive missile might come from and the geometrics of how we would intercept, which direction it would come from, and how we best intercept it.

It is a tad cold in the State of Alaska. In fact, the snow can get kind of high and ice can form over the top of the silos. Obviously, one thing we have to know how to do in the middle of the winter is to make sure we can blow the top off that silo and fire the missile up so it can intercept the offensive missile coming at us. That is just one example, but it makes the point that you do need to test in an operational situation, and that, of course, is precisely why we need to buy these additional missiles.

The Missile Defense Agency determined that we needed more realistic tests. It initiated an effort to develop and field an extensive missile defense test bed that would allow for operationally realistic testing. As the elements of test bed are put into place, they are tested. All of this is sequential. It is an ongoing process. Both the Director of Operational Test and Evaluation and the Commander of STRATCOM recognize the test bed will grow and mature over time as the elements of it are developed, fielded, and tested. This is the very essence of what spiral development is all about.

I have to discuss spiral development just briefly. This is the concept that we are able to evaluate and modify systems as we go along, as technology improves. The technology here is improving so rapidly and the potential enemies' technology so rapidly that it is never possible to wait until we know exactly what the enemy is going to throw at us and then begin work on a system that we can defeat it with. You have to be working right alongside what the enemy is doing and developing your program as you go along, adding the technology as it develops.

I might add, it is not the only program we do this with. The F–16 is a great fighter plane. It is trained at Luke Air Force Base in Arizona. I do not even recall which number of the F–16 we are on now. We started with the A model, and then the B model, and then the C model, and the E, and on and on, and each model improves the airplane. The F–16 flown today is a totally different airplane than the one designed over 20 years ago. As we develop new technology, we add that to the system.

Thus, the same with the missile defense system. You cannot wait until you can develop the perfect system and then begin building it and deploying it. By the time you did that, you would already be way behind the progress your potential enemy is making. So it is very natural, then, to allow this spiral development, especially in a program such as missile defense.

Where are we now? This fall we will field an initial operational missile defense capability at Fort Greeley, AK, and Vandenberg Air Force Base which will include just 20 interceptors. That is all. By the time this system is ready for operational alert, the Missile Defense Agency will have tested the operational configuration of the interceptor, the command, the control, the battle management and communications systems, as well as the interoperability and the performance of the needed sensors. Operational Test and Evaluation personnel from the Office of the Director of Operational Test and Evaluation have been fully engaged in the testing, along with the warfighters who will operate the system. So this is not just contractors going out there and seeing if they can make the system work. We are beyond that. That was done earlier. We are now at the stage of interoperability where Operational Test and Evaluation personnel and actual combat operators will be engaged in the testing.

So what is the alleged problem here? What Missile Defense wanted to do is stop the administration from acquiring the 20 interceptors it needs to complement the first 20 that, as has been noted, have been funded. Specifically, the request for fiscal year 2005 makes a downpayment on additional ground-based interceptors, interceptors Nos. 21 through 40. I would note, however, that the Senate Armed Services Committee-passed Defense authorization bill already cut long-lead procurement funding for interceptors Nos. 31 through 40. So we have already delayed the second 10 of this next 20 and made it more expensive, undoubtedly, to acquire by the action we have taken here.

So it is not as if we have not evaluated this and tried to figure out if we could save some money in the acquisition of these additional interceptors. We have done that. The Armed Services Committee did it, and it should be applauded for doing it.

What would this downpayment on this next 20—of which already the lead time has been cut by half, so we are now talking 10—what would it provide?

The first thing it would provide is additional test articles necessary, in the view of the Department of Defense, to conduct planned future integrated flight tests. So it is not as if we have already bought everything we need to conduct our testing.

Secondly, it would provide an expanded interceptor inventory to address the estimated growth in foreign ballistic missile threats from adversaries, such as North Korea and, perhaps, Iran.

Three, it would maintain a more steady industrial-base production line for the interceptors and the kill vehicles in case an expanded inventory is determined necessary.

And, four, it would provide ground site preparation activities for interceptors 21 through 30.

These things take time. It has been a couple of years since the people have been at work in the State of Alaska preparing these sites to accept the missiles that will be put in the silos, to put the radar and the other equipment up that is necessary to make this whole system work.

The additional cuts or restrictions that have been proposed here would cripple the effective deployment of the initial test bed system. That system, as I said, is absolutely essential if we are to conduct the more realistic testing everyone is calling for.

What does the head of Operational Test and Evaluation today say about this program? The Director, Thomas Christie, recently testified at a Senate Armed Services Committee hearing on missile defense, as the distinguished ranking member knows. Here is what he said:

> . . . I think the issue we're talking about here is the building of missiles that will be put into silos that are part of the test bed, and we will have to have this test bed in order to do some of the testing that will become more realistic engagements, geometries, for example, than we've been able to do before. And some of these attributes of this test bed are in response to criticism that

came from my office and my predecessor in previous administrations. . . .

In other words, making the point earlier that: Well, we have not gotten realistic enough in our testing yet. We are trying to respond to that. Yet this amendment would cut the funding for the missiles that are precisely necessary to do that.

The purchase of additional ground-based interceptors, which the critics of the system would like to prevent, will provide a rotatable pool of operational and test assets, and this, in turn, will allow the United States to field the most current interceptor improvements.

Now, the missile defense is a capabilities-based development program. The system under development is a spiral development program, as I described. There is, at this present time, no mature operational capability against which traditional or formal operational test and evaluation can be completed.

This is a key point General Kadish has made over and over. This is not like building another Navy destroyer or another Air Force fighter jet where we already have generations of previous such weapons and all we are doing is now developing the most recent technology. There is no missile defense. I know some Americans may not realize this, but if a missile were fired at us today, we could not stop it. We do not have a ballistic missile defense system—not one missile. So we are doing this for the first time. That is why we want to do it in this spiral development mode I have been describing.

Moreover, fielding a system before operational test and evaluation is not unprecedented. It has been done before in other cases where there was no similar capability as I have just described and also where an urgent need existed.

Let me give you some examples. One that is most recent, probably, is the Joint Surveillance and Target Attack Radar System aircraft. It is called JSTARS. It played an important role in the 1991 Persian Gulf war by providing warning to our forces on the ground when the Iraqi military was on the move.

Now, JSTARS was not an operational system. We did not have any of these aircraft at the time. It was in preproduction. We were just beginning to build the aircraft. We had not even begun the operational test and evaluation. Yet we realized we were in a war in which we needed to know where the enemy was going. I know something about this particular system because parts of it actually were produced by a company in my own State. Our military said: We have a system here. It has not gone through preproduction operational test and evaluation, but we might be able to get it configured and put together quickly enough to bring it over to the gulf and do you some good. And they did, and it did. It was invaluable. It had not gone through all this testing, but we were in an emergency situation, and it did its job. It did very well.

Other examples include the Predator and the Global Hawk unmanned aerial vehicles. Both have been very valuable assets in the war on terrorism. Yet they were deployed—into areas that we cannot discuss—before there had been any operational test and evaluation. These were almost brandnew ideas. In fact, each vehicle was, in effect, a prototype. Yet our commanders figured out: We need some surveillance. Do you have anything that can help us out here? And sure enough, the contractor said: We do, but they're not ready to go. They haven't gone through all the testing.

The commanders in the field said: Bring them over. We need them. And they have done a terrific job.

A third example is the Patriot missile battery. This is an anti-aircraft missile battery. We found ourselves in the middle of the Persian Gulf war, and the Iraqis were firing scud missiles at us. There was no defense against scud missiles. Commanders said: Is there anything we can do?

The answer came: Well, we have these Patriot missiles. They are designed to shoot down aircraft. Maybe we can configure some radar to operate with the system and do some other things and possibly shoot down some of these scud missiles.

Literally, as they were bringing them across from America to Saudi Arabia and Kuwait, they were putting in fixes in the Patriot anti-aircraft system. You know the rest of the story. We began shooting down scud missiles with this system.

It wasn't perfect. It was not designed for this. We were constantly upgrading it. But I think estimates finally concluded we shot down maybe about a third—I have forgotten the exact number—of the Iraqi Scuds being fired against us. We needed it in an emergency. Nobody could have predicted necessarily that we needed that system at that time. You can't wait until you know that you have the threat sometimes. That is the same thing with missile defense.

I sometimes wonder if my colleagues would allow us to use one of these test missiles against—let's just say North Korea accidentally launched a missile at Alaska. Would they say, Sorry, this has not been operationally tested and evaluated? It hasn't gone through all the checks and balances, therefore, you can't use it?

No, of course not. We would use it to defend ourselves. So let's don't get into this argument that somehow you have to check all of these boxes in some certain order before you can even put the missile in the ground, A, to test it, and, B—God forbid if we had to—to use it. There is nothing wrong, there is nothing illegal about this. It has been done before. In fact, it has been proven necessary before.

I said it is in accord with acquisition laws. The Director of the Operational Test and Evaluation Program, Mr. Christie, has already testified that the program is, and this is a direct quote, ''living within the law.''

The Missile Defense Agency has not sought nor has it received any waiver for any acquisition statutes here. The missile defense authority is conducting tests that are increasingly operationally realistic, appropriate to the maturity of a system that is still under development. So there is nothing wrong with what is being done. But what has been set up is a catch-22. You can't deploy until you test, but the catch-22 is, you can't test without deploying.

Well, we are going to deploy, and hopefully we will buy enough missiles so we have the capability of doing the tests the way they need to be done.

I made the point that it would be nonsensical to argue this theory of operational testing being required to be completed before you could actually deploy a system and noted that no one would deny us the right to use such a system in self-defense if we had to do that. It is, in fact, true that there are countries that have this capability today. It is also true that maybe this isn't today the threat that is most likely to occur, but we know—without getting into a lot of detail—there are countries that have had systems for some time. We are not certain necessarily of the safety and reliability of those systems, the ability for those systems to not be accidentally launched or for somebody else to intentionally launch them notwithstanding the custody and the state in which they are located. If there were such an accident, we would need to have the capability against it.

We face that threat today because, as I said, there are countries in this world that have operational systems that can reach the United States. Some of them are not friendly to the United States either. I repeat, today we have no defense against a ballistic missile attack. That is why President Bush, when he came into office, decided to pursue this spiral development, this notion that we will try to get the best we can out there as quickly as we can.

That will serve three purposes. First, it will enable us to defend ourselves if we had to as quickly as possible. And he set this fall as the target date for that deployment. In fact, we are going to be able to meet that date. I hope the Presiding Officer is able to be in her State because she and the other Senator from the great State of Alaska have been indefatigable in their efforts to make sure the program goes forward. We will actually be able to defend ourselves if there were an accidental or, as I said, an intentional launch against us.

Secondly, it enables us to do this operational testing under realistic conditions.

And there is a third point. This is very important. It is a deterrent. We want other countries to do what Muammar Qadhafi did. We want these

other countries to say: It is costing us a lot of money to try to develop this nuclear program. At the end of the day, the United States is probably going to be able to beat us. We might as well not go through the cost and the effort to try to develop it. Deterrence.

Let me read what very recently, just before the Reagan funeral, Genadi Garasimov, spokesman for the former Soviet leader Mikhail Gorbachev, had to say:

I see President Reagan as a grave digger of the Soviet Union and the spade that he used to prepare this grave was SDI, the Strategic Defense Initiative, so-called Star Wars. The trick was that the Soviet leadership believed that this SDI defense is possible and then, because it is possible, that also we must catch up with the Americans. And this was an invitation to the arms race and the Soviet economy could not really afford it. In this way Reagan really contributed to the demise of the Soviet Union.

It worked. President Reagan was not bluffing. He meant to deploy this system. At Reykjavik, when Gorbachev said: We can make this arms deal we have been talking about, if you will do one more thing. If you will stop development of your SDI program, we have a deal.

President Reagan thought about it overnight, came back the next morning and said: I am sorry. The United States is going to proceed with missile defense.

Gorbachev knew at that moment it was over. They could not compete with us, and it wasn't obviously worth the effort to try to do so because they knew the technology of the United States could produce a defense against the only real weapon that the Soviet Union had that could defeat us, and that was the ballistic missile.

The point of telling the story is that we need to let others like Muammar Qadhafi understand the fact that we are not bluffing. We mean it. We are going to deploy the system and it is going to work and defeat them and they might as well not go through all the time and effort and expense to develop offensive missiles to try to reach the United States because it won't work. We are going to be able to shoot them down. So don't bother to do it.

This is a nonproliferation or antiproliferation program. By moving forward in a robust way with the expenditure of this money and letting them know that we mean business, that we are not bluffing, I believe we will deter countries from continuing the development of their programs or putting more money into their programs. We don't need to get into all of the countries that we might be talking about today. Some are perhaps, if not allies, at least not enemies of the United States today. Others are potential enemies.

The point is, we don't want to encourage anyone to believe that we are not serious about moving forward with this program. With all due respect, this amendment would send that signal. We have cut the money for the long lead funding on the third tranche of missiles. This would say: Let's just totally eliminate the funding, a half a billion dollars, for these 10 missiles. It begins to send the message that we are going to research forever but build never. That is a message we cannot afford to send.

What we are doing is consistent with the 1999 Missile Defense Act which declared, and I quote, that ''it is the policy of the United States to deploy as soon as is technologically possible an effective national missile defense system capable of defending the territory of the United States against limited ballistic missile attack.''

That is the law. That is what we need to do. If we have the technology to do it, it would be more than negligent; it would be criminal for our government not to do so. If you have the ability to do it, it is the moral thing to do as well.

As Ronald Reagan said many times: I would much rather be able to defeat an enemy missile than to have to rely upon a nuclear deterrent and mutually destroy each other.

It is unthinkable in today's world that we would have to do that when we have the technological option of missile defense. Given the nature of the threat posed, given our technological capability at this point and each year our increasing ability to improve, this is the only responsible course of action.

We have already defeated, in effect, this same amendment before, the Reid amendment, based on the same argument about operational testing. But it only fenced the funding for these missiles. The Levin amendment virtually eliminates the funding and would spend it on other things.

I suggest if we were willing to reject the Reid amendment, which merely fenced the funding, it would logically follow that we would even more likely reject the Levin amendment, which does away with all of the funding. What he has done is to distinguish from the Reid amendment by taking this half billion dollars and spreading it around to some other programs. That is the essential difference. I will turn to that next. His argument is that we need to look at priorities, and that right now it might be easier for some terrorists to bring a weapon of mass destruction into this country than to launch it on a ballistic missile.

In the first place, that is wrong. There are countries today that have the perfect capability of launching a ballistic missile with a nuclear warhead at the United States, and we have no defense against it whatsoever. So the argument is incorrect.

Now, it is true that a terrorist organization may want to do it in a different way. But if it could get hold of a missile, I suggest it would do it. Take the case of Pakistan, which is a very great ally of the U.S. today but a country with ballistic missiles. I hope that country will always have control over those missiles and have a leader of the quality of President Musharraf. But what would happen if it didn't? Terrorists can do things in lots of different ways, that is true, and that is a point the Senator from Michigan made. My subcommittee on terrorism technology held hearings on container security, and it is true that we don't have perfect security at our ports and we need to spend more money and we need to do better at looking at the different ways in which terrorism can strike the United States. That is all very true. The question is whether our priorities are right.

The Defense bill we are debating on the Senate floor tonight spends approximately $420 billion for next year. The Senator from Michigan would almost make it seem as if the only thing we are doing is spending money on missile defense, and that we have to get off of that priority because there are other higher priorities. How much are we spending on that? It is $10 billion. Out of a $420 billion Defense bill, we are spending $10.2 billion on missile defense, and only a half billion of that is on the program we are talking about.

So it is hardly a matter of taking all our defense money and putting it on a program that we should not be spending it on. Out of $420 billion, we are spending a half billion dollars on what the Senator from Michigan would strike. What are the higher priorities? The Senator says homeland security. Indeed, if you add the money in this bill and the other homeland security money on homeland security that is being authorized for this next year, it is more than $47 billion. That is 15 percent over last year and 130 percent over fiscal year 2002.

If you want to make the argument that as a matter of priority we should be spending more on homeland security than these 10 missiles, well, we are. It is $47 billion-plus versus a half billion dollars. I will repeat it. It is more than $47 billion versus the half billion dollars that the Senator from Michigan would strike from this program.

So I don't think we need to worry about priorities. In fact, I think the money that would be taken from the Missile Defense Program, and could literally cripple it, is already covered; that is to say, each of the programs to which the funding is added are already covered. We have already increased spending on 6 of the 10 programs to which the money would go. The bill has already added to the President's requested levels only the following programs: cruise missile defense, $80 million; blast mitigation R&D, $10 million added; radiation and nuclear detection, $5 million; modeling and simulation efforts to increase capability of fielded chemical-biological standoff detection systems, adding $2 million; nonproliferation verification R&D, $25 million; aircrew masks, a half-million-dollar procurement in the chem-bio defense program.

In all of the other programs and funding areas addressed in the Levin

amendment, the committee provided the requested level of funding. So what the administration requested, the committee gave them. So they added to the request in six, and in all of the others they are getting exactly what they had requested. In one area, the NORTHCOM military assistance to civil authorities, NORTHCOM indicates that it has no responsibility in the area.

For two potential adds, the execution of additional funding would be problematic. They probably could not spend the money. One is the Global Threat Reduction Initiative. It is a new NNSA nonproliferation initiative that was announced in May. They expect to fund it out of existing funds from the $87 million in fiscal 2005. An additional $211 million, as proposed in this amendment, would not be executable in fiscal 2005. They could not spend it.

On radiation detection and training in megaports, additional funds cannot be executed until agreements are negotiated with other nations. NNSA doesn't expect that these agreements could be in place in time to use additional funds in fiscal 2005.

The Department of Defense already has the flexibility with the funds requested within the budget to meet the high-priorities needs: antiterrorism/force protection training and exercises for the National Guard. These activities are funded through operation and maintenance, and the Department can already align the requested O&M funds to meet their needs.

The bottom line is that the additional funding taken away from missile defense is not needed. The arguments for taking it away have already been rejected by the Senate in the Reed amendment. This is just another attempt to research missile defense to death and never build it.

I encourage my colleagues to follow the good instinct that they followed with respect to the Reed amendment and reject this notion that we should not have more than the 20 missiles; that we don't need the additional 10 we are talking about here for operational testing because we do need to test against realistic conditions, and that is why we need to obtain the missiles and put them in these silos, and also because they just might be needed.

For once, it would be nice for us to say that on our watch the missile defense that was announced 20 years ago has actually become a reality. It is not a perfect system yet by any means, and that is the whole point of this particular program—to begin the development and deployment and spiral that technology as it continues to evolve. That is a great idea. It is a great protection for the American people. Why would we not want to do it?

With respect to the prioritization argument, I have already made it clear what we are spending on this. I didn't calculate the fraction, but it is a minor fraction of what we are spending on homeland security and on defense generally.

I urge my colleagues, as with the Reed amendment, to reject the argument behind this amendment; reject the Levin amendment and support the committee, which worked very hard to put together a product of which I think the Senate can be proud, that the administration will support, that we can get passed in conference committee and sent to the President for his signature, so we can move forward this year and, for the first time, this fall actually have the beginnings of a missile defense system for the people of this country. They deserve no less. It is our obligation to see to it that it comes to pass.

That is the conclusion of my remarks. I don't know if the Senator from Michigan wants to make further remarks at this time. I am going to want to proffer a unanimous consent request.

At this time, I yield to the Senator from Michigan.

Mr. LEVIN. Madam President, I will be very brief, given the hour. First, as to our friend's comment that this amendment suggests that we never build, only research, this amendment doesn't touch the 20 missiles slated to go into those silos in Alaska. It is my understanding, by the way, that those missiles in the Alaskan silos are not going to be launched as part of a test. I wonder if the Senator from Arizona would disagree with that. He talked about the necessity of those missiles being placed in silos in Alaska in order that they be realistically tested. I am wondering if the Senator from Arizona would agree that the DOD has determined, due to safety considerations, that no tests are currently planned to launch interceptors from the operational missile fields; is that his understanding also?

Mr. KYL. Madam President—

Mr. LEVIN. To launch. There is no decision currently made.

Mr. KYL. Madam President, I have not checked to see what the current plan is with respect to the timing of the tests and with respect to the missiles that are included within the program, which I think the Senator is talking about, which are the first 20 missiles.

Mr. LEVIN. That is correct. It is my understanding there are no tests planned to launch interceptors from those missile fields. If there is any change in that, I think we will find out tomorrow morning.

This amendment does not touch those 20 missiles. I want to reiterate that point. It does not touch the money. It does not cut the missiles. Those missiles will be there. They are not going to be launched from there.

Nonetheless, they are going to be there. How that leads to realistic testing beats me, but nonetheless that debate is passed.

What has not passed is the most unmet emergency threat to the United States. This is according to the Russia task force of the Secretary of Energy advisory:

> The most unmet national security threat to the United States today is that the danger of weapons of mass destruction or weapons usable material in Russia could be stolen and sold to terrorists or hostile nation states and used against American troops abroad or citizens at home.

That task force was cochaired by Senator Baker, our former colleague, and a former White House counsel, Lloyd Cutler. The Baker-Cutler task force also concluded that the limited mandate and funding falls short for what is required to address adequately the threat.

Looking at those nonproliferation programs in the Department of Energy, that task force concluded that the funding falls short of what is required to address adequately the threat.

Then we have the Department of Energy making an announcement that it has become clear, the Secretary of Energy said, that even more comprehensive and urgently focused effort is needed to respond to emerging and evolving threats, referring here to the Russian fissile material, saying the Global Threat Reduction Initiative announced by Secretary Abraham at the International Atomic Energy Agency at the end of May would ensure that nuclear and radiological material and equipment did not ''fall into the hands of those with evil intentions'' by ''securing, relocating, or disposing of these materials or equipment.'' There is supposed to be $450 million that would go into this effort. There is nothing, or virtually nothing, in the 2005 budget to address that threat.

The Senator from Arizona is correct that we have given the administration what they asked for in their budget request. Despite the words saying this is a major threat to this country, they have asked for nothing. We should correct that deficiency and address the most serious threat we face in terms of terrorism by using some of the money for these extra 10 missiles—not the first 20 but the extra 10 that are now being requested—in order to address the most real, the most dangerous threat we face.

Madam President, I yield the floor. I do not know if that unanimous consent request relates to this matter or not.

Mr. KYL. Let me first correct one thing I had said earlier. There were two Reed amendments, both of which were based on the same proposition with respect to operational testing. One regarding fencing we have not yet voted on, and the other one was rejected. To that extent I misspoke.

Secondly, before I propound the unanimous consent requests, let me make clear to the Senator from Michigan, I am not yet aware of plans, as I answered my colleague. I think the Director of the Ballistic Missile Defense Organization is working on the plans. So I do not think any of us are yet aware of what plans there may be with respect to testing of these missiles. I do not think the plan is completed.

Mr. LEVIN. In terms of launching interceptors from that test bed in Alaska, that would be a stunning change in

terms of the safety of the people of Alaska. I am sure if that plan has been made, there is a plan to launch missiles from that test site as part of a test, not in response to some accidental launch—and I could not agree more with the Senator from Arizona, if we had missiles in the ground and if we saw a launch come at us, we would use them in the hope that they might work. I have no doubt about that. I would hope they would work. It would be useful to take the time, expend the energy and the money to make sure they work.

Nevertheless, I have no doubt if we thought they would work 1 in 10, 1 in 1,000, or 1 in 2, we would try.

Mr. KYL. Madam President, I knew if we stood here long enough, the Senator from Michigan and I would find something on which to agree.

Mr. LEVIN. We agree on many things, and that would surely be one of them. I think we would also agree that it would be nice if we could expect they would work. I think the Senator from Arizona would agree with that. The greater likelihood they would work, the greater good it is for our Nation.

Mr. KYL. Madam President, of course that is true. I would like to propound some unanimous consent requests on behalf of the leader, if there is no other Senator wishing to speak to this matter.

MORNING BUSINESS

Mr. KYL. Madam President, I ask unanimous consent that the Senate now proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

CONGRATULATING TOM LESHENDOK

Mr. REID. Madam President, I rise today to congratulate Mr. Tom Leshendok of Sparks, MV, on his selection by the Department of Interior for the Meritorious Service Award. It is my honor to recognize the contributions of this dedicated public servant.

Mr. Leshendok's career has spanned more than three decades and several Federal agencies, including the U.S. Geological Survey, the Minerals Management Service, the Environmental Protection Agency, and the Bureau of Land Management. In each of these positions, he has contributed tremendously to the effective and responsible management of our public lands and natural resources.

Mr. Leshendok's work as Deputy State Director of Minerals for the Nevada BLM was particularly important to the economy and welfare of my State. Not only does the BLM administer almost 48 million acres of public land in Nevada, it also overseas the production of 72 percent of our Nation's gold and silver.

As the leader of the BLM's largest mining law administration program, Mr. Leshendok was responsible for the leasing and development of geothermal, oil, and gas resources, the Abandoned Mine Lands program, and hazardous material detection and remediation. His ability to craft effective collaborative approaches to these important issues was a hallmark of his leadership at the Nevada BLM.

Please join me in thanking Tom Leshendok for his strong commitment to public service and congratulating him on his selection for the Department of Interior's Meritorious Service Award.

DAVID A. CHRISTIANSEN—NATIONAL DISTINGUISHED PRINCIPAL

Mr. REID. Madam President, I rise today to congratulate David A. Christiansen, the principal at Huffaker Elementary School in Washoe County, who was selected as Nevada's 2004 National Distinguished Principal.

The National Distinguished Principals Program, jointly sponsored by the U.S. Department of Education and the National Association of Elementary School Principals, was established in 1984 to honor exemplary elementary and middle schools from each of the 50 States and the District of Columbia.

This honor highlights the importance of school principals in building excellent schools, and recognizes their accomplishments and leadership in helping children develop a lifelong love of learning.

Mr. Christiansen has been a principal in the Washoe County School District since 1989, and has served at Huffaker Elementary School since July 2001.

His talent and leadership skills speak volumes. For the last 3 years, Huffaker Elementary School has received awards for academic excellence from the Nevada Department of Education. He also has implemented and enhanced programs in art, science, reading, and physical education.

Mr. Christiansen is the third principal from the Washoe County School District to be named a National Distinguished Principal.

I salute David Christiansen for his service and dedication to the children of Washoe County and extend him my best wishes for a successful future.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Madam President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On January 25, 1999, Derek Glacken, 27, was convicted of first-degree murder and sentenced to life without the possibility of parole for the fatal 1996 stabbing of a man whom he believed to be gay.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

JUNETEENTH

Mr. PRYOR. Madam President, I rise today to bring attention to the celebration of Juneteenth. Juneteenth is the oldest known celebration commemorating the abolition of slavery in the United States. This day celebrates African American freedom while encouraging self-development and respect for all cultures.

Throughout our history, African Americans have struggled to achieve equality and freedom. They have endured a legacy of slavery and segregation. Through their belief in the American dream, they fought for equal rights and taught the Nation to look past outward appearances and judge a person by their character. Their undying quest to achieve freedom and equality is why I am here today: To honor the day where slaves in some southern States learned of their emancipation.

On June 19, 1865, Major General Gordon Granger went to Texas to proclaim emancipation to Texas slaves. This was the first time that slaves in Texas and other surrounding States found out about their emancipation. He stated, ''The people of Texas are informed that in accordance with a Proclamation from the Executive of the United States, all slaves are free. This involves an absolute equality of rights and rights of property between former masters and slaves, and the connection heretofore existing between them becomes that between employer and free laborer.''

Following emancipation, ex-slaves entered freedom under the most difficult conditions, penniless and homeless with only the clothes on their back. They began to migrate to the north and to southern States like Arkansas, Louisiana, and Oklahoma in search of better lives and a better future for their families. The descendants of these former slaves passed down a tradition of celebrating the emancipation announcement at the end of June because of it's significance for African Americans. The term ''Juneteenth'' reflects the inability of history to identify the exact date all slaves became free in this country. However, the importance of the event is memorialized in this celebration and is often observed as a time to remember the past and look to the future.

The first Juneteenth celebrations were political rallies used to teach freedmen about voting. Cakewalks,