Let us identify serious problems that the PATRIOT Act got through on a difficult time, obviously, after 9/11/2001. The PATRIOT Act that led me to vote Senate to try to fix the problems with the issue of the renewal of the so-called terrorist-farmer. I am confident we could come up with a bipartisan agreement that truly advances our shared goal of making work pay more than welfare. The bill offer tomorrow would urge conferees to give the Senate a chance to do just that, by rejecting provisions related to the reauthorization of TANF. Instead, the motion I will offer would urge that the Congress enact freestanding legislation that builds on the bipartisan Senate Finance Committee PRIDE bill. I cannot emphasize enough that the Senate bill was reported out of the Finance Committee on a bipartisan basis. The House bill, on the other hand, has consistently enjoyed the support of only one party. Further, welfare reform should not be considered in the whirlwind of budget reconciliation. Reform should be based on sound policy, and we seek to find bipartisan consensus on this most important issue, something I am confident we can do.

Tomorrow, when the motion to instruct is offered, I urge and invite my colleagues, both Democratic and Republican, to support it.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak for up to 30 minutes.

Mr. FEINGOLD. Mr. President, over the past few months, I have addressed the Senate on a number of occasions about the administration’s flawed Iraq policies. I have discussed a number of problems with those policies. But the most important problem is that they are undermining our ability to counter a wide range of transnational threats that face our country. In too many cases, these threats have been overlooked or insufficiently addressed because of this administration’s misguided emphasis on policies in Iraq. Today I will explain why we need to refocus our national security strategy on the global campaign against terrorist networks, and I will briefly identify five areas on which we need to focus. A clear, targeted strategy to strengthen our national security is not an option but a necessity in the face of the growing threats posed by jihadist terrorist networks. The President is spending a lot of time talking about counterterrorism. He has recognized that success in Iraq will not be achieved by a massive and indefinite U.S. military presence. He appears to fail to understand the limited role that the U.S. military can play in Iraq’s long-term political and economic development. And, as I am noting later, if we are not successful in Iraq, it will be impossible to re-center our priorities and reengage in the global campaign against terrorist networks.

That is why we need a flexible timeline for meeting clear benchmarks and also withdrawing U.S. troops. I am not talking about an artificial timetable, a phrase the President likes to use, or a strategy for success in Iraq as a strategy for success in the flight against global terrorism. The administration has a unique opportunity this week to set our Iraq policy on track. Iraqis will return to the polls on December 15 to choose their leaders. Spelling out a plan for the timely withdrawal of U.S. troops from Iraq will signal U.S. support for an autonomous, independent, and self-sustaining Iraqi government. There is no better way to empower the new Iraqi government and the Iraqi people than by showing that the U.S. military mission in Iraq is not indefinite. If we don’t heed the advice of a growing chorus of experts to set a timetable for withdrawal, it will be impossible to re-center our priorities and reengage in the global campaign against terrorist networks.

And that is what we need to do in order to defeat those networks. We have not kept our eye on the ball. Mr. President, we have focused on Iraq to the exclusion of these critical priorities, and we have done so at our peril. It is far past time for us to engage in a serious dialogue about the threats we face, and come up with a tough, comprehensive national security strategy to defeat them.

What are these threats and where do they come from? As we all know, the jihadist network is global in its reach, and it is showing no signs of slowing its recruitment and organization in every region of the world. Since we waged war against the Taliban in the fall of 2001—a war I supported, by the way—we have seen the network of extremist jihadist movements proliferate throughout the world. We have seen it surface in Madrid, London, Amman, Casablanca, Kabul, Jakarta, the Philippines, Algeria, Pakistan, Somalia, and Nigeria. And while it has spread throughout the world, it holds certain...
like that if we continue to think that.

cruise ship 25 miles off of the Somali

country made headlines when freely

works to recruit, train, and export

blocks for the terrorist network that

ghanistan

the world

we leave people suffering from poverty

addressing these conditions, we allow

crime to take root and grow. Failed and weak

tive and that allow terrorist networks

that make extremist ideologies attrac-

liferation efforts; and (5), finally fin-

macy; (4) strengthening our non-pro-

five major areas of concern today.

threats against us. I want to lay out

power. We need to develop and execute

intention, and our best minds on this

long term prevailing over the ideology that

egy must match our means to two ends: dis-

the radical ideological movement inspired in

[t]he enemy goes beyond Al-Qaeda to include

is not Islam, the great world faith, but

reads:

is being proliferated throughout the

Explosive Devices, IEDs, continue to

spend billions of dollars on Cold War-

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not address our failure to prioritize

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had a devastating affect on our mili-

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that the 9/11 Commission report itself

is not Islam, the great world faith, but

s unique moral authority as a

s address the conditions that allow terrorist

networks to take root and grow. Failed and weak

states, such as Somalia, allow terror-

terrorism, narcotics trade, weapons pro-

lieration, and other forms of organized

crime to take root and grow. By not

addressing these conditions, we allow

warlords and terrorists to thrive and we leave

people suffering from poverty and in suscep-

ble to their rhetoric, promises, and pressure.

Let us not forget that three of the

poorest and most isolated countries in

the world—Somalia, Sudan, and Af-

ghanistan—served as the starting

blocks for the terrorist network that
delivered the most lethal attack ever

on the U.S. If it wasn’t clear before

September 11, 2001, it is now—we

ignore these places at our national peril.

Over 4 years after 9/11, places like

Somalia continue to be large, black holes

on our conscience that continue to create

the conditions that allow terrorist

networks to recruit, train, and export

their lethality at will. While Somalia

has remained a failed state for over a
decade now, recent examples of the

lawlessness that exist within that

country made headlines when freely

operating pirates attacked a civilian

cruise ship 25 miles off of the Somali

coast. We can expect more headlines

like that if we continue to think that

supposedly small, marginal states are

not a threat.

That is why we should be taking seri-

ously the inability of Uganda, the new
government of southern Sudan, or the

U.N. to lead the Lords Resistance

Army, which continues to commit

 atrocities around the Great Lakes re-

gion of central Africa. And we do not

always have to look far for failed

states. Right here in our backyard,

Dahls, and in places of civil vio-

lence and a festering humanitarian cri-

sis, and has served as a base for

narcoterrorists and criminal power

structures throughout the region for

over a decade. Unfortunately, this ad-

vanced policy to help Haiti lift itself

from chaos and to create livable

conditions for the citizens of Haiti.

That is a mistake because leaving a

country to suffer chaos only cre-

ates a platform for further threats to

the region and to our country.

If we fail to address weak and failed

states, the lawlessness displayed by

warlords, pirates, bandits, thugs, and

thieves there will eventually be ex-

ploited by our enemies. After all, ter-

rorists find active and passive support

among the alienated and the dis-

affected. Addressing failed and fall-

ing states is nothing more than a blind

eye to them is naive and dangerous.

My second area of concern today is

the need to prepare and equip our mili-

tary for a global campaign against ter-

rorist networks. The war in Iraq has

had a devastating affect on our mili-

tary’s readiness and capabilities. I have

voted for an increase in the military’s

end strength, but this is a long-term

strategy that must match our means to

two ends: defeating the enemy goes

beyond Al-Qaeda to include

the Iran and elsewhere. I was pleased

that Secretary Rumsfeld recently ap-

pointed an individual to focus on

preempting the use of these weapons by

terrorist networks globally.

My third area of concern is our

woefully inadequate diplomatic efforts,

public and private. As the recent 9/11

Commission report card showed, we

need to do much better in commu-

nicating our principles and goals to the

international community. In part we

are failing because this administration

has not consistently adhered to the

core American values that have made

our country unique, that helped defeat communism, and that

have inspired democracies globally.

The administration’s approach to
detainees, torture, and secret prisons, to

name a few issues, has jeopardized this

country to the world in the eyes of a

country that upholds the rights, lib-

erties, and freedoms of every indi-

vidual. I believe that we can combat

terrorism while remaining true to

those values.

Mr. President, we need a new, sus-
	ained and comprehensive public and

private diplomacy, and a concerted ef-

cfort to tell the rest of the world who we

really are and what we really believe

in. This diplomatic effort is essential if

we are going to prevail in what is in

part a battle of ideas—and one that we

cannot afford to lose. I am not talking

about giving lectures or showing vic-

eas, but about engaging in genuine dia-

logue with other peoples and countries.

Listening, and responding to, their

concerns is one of the most effective

ways to improve our image, and thus

our relationship, with the inter-

national community.

Diplomacy also involves looking for

opportunities to demonstrate our core

values. One such opportunity was lost

in the response to the recent tragic

earthquake in Pakistan where hun-

dreds of local religious organizations—

many of them linked to extremist or

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countries such as the Democratic Republic of the Congo, bring peace to the Darfur region in Sudan, and help counter the impact that illicit power structures and the absence of rule of law have on societies around the world, to give just a few examples. We need to work with those partners in developing strategies to isolate rogue states and to advance democracy and respect for human rights.

The fourth area we need to focus on is the proliferation of weapons, large and small. We need to do much more to stop nuclear proliferation and ensure that terrorist organizations do not obtain access to nuclear weapons. We must deal with the threats of loose nukes as an urgent priority both at home and abroad. This administration unfortunately has failed to do so. More nuclear weapons were secured in Russia in the 2 years before 9/11 than in the 2 years after. That is an alarming fact. And we should not have missed the opportunity to examine the Nuclear Non-Proliferation Treaty conference to start moving forward on a new global regime; one that does a better job of protection and punishing cheating so that states cannot take their nuclear programs right up to the line of compliance and then withdraw from the treaty when they are ready to become new nuclear weapons states.

We should also reverse the foolish decision to ease export restrictions on bomb-grade uranium that was part of the massive and misguided Energy bill signed by the President this summer. We must also focus on smaller weapons that continue to fall into the hands of terrorist networks at a cost of tens of thousands of lives each year. I applaud the recent announcement by my distinguished colleagues, Senators Lugar and Obama, of their initiative to make the certification by the Government that the Afghans themselves cannot afford or manage. At this time, annual recurring costs to maintain the U.S.-developed Afghan National Army outweigh the central Government’s revenue streams by a multiple of two or three. And this is not taking into consideration the police force and other essential public services that are in drastic disrepair or in need of further development.

Second, we need to continue burden sharing throughout the international community and encouraging a greater role for NATO, the United Nations and, most importantly, the Afghan Government, as it struggles to fight resilient terrorist and obstructionist threats.

I was glad to receive news last week that NATO will increase its presence in southern Afghanistan, but we need to ensure that long-term development and security aid is tied to measurable benchmarks for success.

Third, we need to continue to pressure countries such as Pakistan, Iran, China, Russia, Turkmenistan, Kyrgyzstan, and others to be constructive partners in the development of Afghanistan’s new and fragile government and economy. Afghanistan is suffering from porous borders which make it an ideal environment for a thriving illegal trade in narcotics and exports, and terrorists and insurgents who want to prevent the new Afghan Government from developing.

We have to succeed in Afghanistan. If we allow the new Afghan Government to become weak, feeble, and corrupt, we will risk losing everything we have invested. We will lose a partner in the campaign against terrorist networks, and we will lose the opportunity to point to Afghanistan as an accomplishment.

I have tried to identify five crucial areas in which we are not doing enough to protect our national security. We are not doing enough for a number of reasons, but foremost among them is the administration’s single-minded and self-defeating emphasis on Iraq. The President’s debilitating and misguided war policy is preventing us from focusing our attention, our resources, and our efforts on the global campaign against terrorist networks. That is why, when we move our military presence in Iraq and bring our focus back to the threat of radical jihadist-based terrorism.

While this administration talks and thinks about Iraq, our enemies are growing stronger around the globe. Those enemies are disparate, diffuse, and relentless. They operate in ungoverned spaces, on the Internet, in the deserts and mountains. Left unchecked, they will continue to plot against the United States.

Our national security policy is adrift, but we have the power to change it, to correct our course. We must tackle these challenges and build a security strategy that protects our Nation from the most dangerous threat that it faces.

Mr. President, I yield the floor.

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

Mr. SPECTER. Mr. President, before the Senate from Wisconsin leaves the floor, I request that he be available to discuss some of the provisions of the PATRIOT Act. I see him remaining on the floor, so permit me at this time to take up a couple of the issues which the Senator from Wisconsin has raised, appropriately putting my question to the Chair as our rules require, and then asking for responses.

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

Mr. SPECTER. The Senator from Wisconsin has raised an issue on the national security letters with respect to the presumption which arises when a high-ranking governmental official, such as the Attorney General, Deputy Attorney General, Assistant Attorney General, head of the FBI, or head of the departments making the request, certifies that there is a national security interest or an issue of diplomatic relations.

This is an issue which, as I understand it, the ranking member, the Senator from Vermont, Mr. Leahy, raised earlier. The question I have for the Senator from Wisconsin is whether he is aware of the fact that the conclusive presumption, which is present in the conference report, is not as tight as the conclusive presumption which was present in the Senate bill which passed unanimously from the Judiciary Committee, of which the Senator from Wisconsin is a member, and by unanimous consent on the floor of the Senate, without objection by the Senator from Wisconsin.

I refer specifically to the provision in the Senate bill which says: In reviewing nondisclosure of the certification by the Government that the disclosure may endanger the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds the certification was made in bad faith.

That language is substantially repeated in the conference report, except that the conference report makes it tougher on the governmental certification by requiring the high-level official to make the certification.

Quoting from the conference report, it says: At the time of the petition
the Attorney General, the Deputy Attorney General and Assistant Attorney General or the Director of the Federal Bureau of Investigation or, in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Department of Justice, the head or entity head of such department, agency, or instrumentality—and now we come to the crucial language, continuing—certifies that disclosure may endanger the national security of the United States or international relations or national defense, such certification shall be treated as conclusive unless the court finds that the certification was made in bad faith.

My questions to the Senator from Wisconsin are the obvious ones: No. 1, I was he aware that the conference report has the identical provision, except more restrictive, and if so, why does he now object to this provision in the conference report when he approved it in committee and raised no objection on the floor?

Mr. FEINGOLD. As the Senator well knows, on the floor we passed this bill by unanimous consent, without debate, but I and others raised our concerns in the Judiciary Committee. The Senator well knows we were not pleased with the outcome on this provision in the Senate. I fought hard to get as many changes as possible, but we did not get the changes we needed with regard to national security letters, and the conference report to implement this provision as it should have done.

The Senator is correct, as I understand it, that the Senate version did not change much of existing law in this area, and the conference report is essentially the same. The conference report did not include the national security letter standard that a bipartisan group sought, three Democrats and three Republicans, as well as other cosponsors of the SAFE Act, which is that the Government can only obtain records that pertain to a terrorist, and spys.

In addition, in answer to the Senator’s question, the judicial review of the NSL gag rule in the conference report also is inadequate. In the SAFE Act, we included meaningful judicial review of national security letters and the NSL gag rule. Under the Senate version, there is judicial review of national security letters and gag rule, but there again, disappointedly, especially the Senate version of the bill failed to create a standard that was realistic. It created a standard for the gag rule that would be virtually impossible to meet. Of course, the areas that caused me to vote for the Senate bill were the improvements it contained, especially the change to Section 215, which we have lost; on sneak and peak search warrants, which was largely pulled back; and on John Doe roving wiretaps, which have been only partially preserved.

The point is that I was not happy with this portion, but in light of some of the other changes in the Senate bill, I did work, as the Chairman knows, cooperatively with him to create a document that at least had some balance. What has happened now is we have lost the positive changes we gained in the Senate bill, and we continue to have a very inadequate provision relating to the national security letter authority.

Mr. SPECTER. Mr. President, with all due respect, the Senator from Wisconsin has not answered my question. When he takes up the SAFE Act, which he cosponsored, so did this Senator. I was not satisfied with the provisions of the PATRIOT Act in effect at the present time, and I was a cosponsor of the same bill as the Senator from Wisconsin, Senator DURBIN, and others, in order to protect civil liberties, which I sought to do in the Senate bill and I sought to do, and I think successfully, in the conference report.

When the Senator from Wisconsin talks about Section 215, I am coming to that, and I know that what he wants to argue is a discussion on that specifically, but let me put it aside for a minute so as not to confuse that issue. With respect to sneak and peak, the delayed notice, I am coming to that as well because there are major, vast improvements in that section of the existing law. With respect to the roving wiretaps, I am coming to that, too. But focusing for just a minute one at a time so there can be some understanding—this is a very complicated bill. I spoke on it in the afternoon in order to acquaint my colleagues with it. I have made quite a number of calls to my colleagues, as far as I can go, to acquaint people with what is in this bill so we can understand it and vote on it with an understanding.

Coming back to the conclusive presumption in the national security letter, the question I posed to the Senator from Wisconsin was whether—well, maybe not he, but I agree that the conference report is even more protective of civil liberties than the Senate bill? The second question: Did he know about it? And if on this provision alone, putting aside the other things he referred to, 215, sneak and peak, and wiretap, and we want to come to sunset, too, which is a gigantic improvement—it was not mentioned by the Senator from Wisconsin. I think when we get to that, he will concede that we have gained a lot, and maybe he overlooked it in commenting or at least any comment that I heard him make. But coming back to the national security letter, what about my three questions, if I may pose them through the Chair to the Senator from Wisconsin?

Mr. FEINGOLD. I would say to the chairman through the Presiding Officer, I did respond to his question, and I can tell him that I was aware of the changes that occurred in the conference report different from the Senate bill. They are not adequate. We are still very far away from the SAFE Act with regard to this provision. I note that the chairman cosponsored the SAFE Act and yet did not object, apparently, to the significant withdraw from the SAFE Act provisions in this area. What we need in this provision on these national security letters to prevent potential abuses, as well as the abuses that may well be already occurring. The Washington Post suggested some 30,000 national security letters per year—is a clear standard that these provisions can only be used to obtain records that pertain to a terrorist or a spy. Neither the Senate version nor the version in the conference report achieves that. So, yes, I acknowledge there are some language differences, but I do not believe they achieve what we need to achieve with regard to national security letters.

Mr. SPECTER. Mr. President, the Senator from Wisconsin does not know what I did in conference because he was not a conference. There is no reason why he should know. But let me tell you that I fought very hard for a lot of these provisions, and I can tell him further that I was not persuasive enough to get 100 percent of what I wanted.

Mr. FEINGOLD. Mr. President, I would like to say—

Mr. SPECTER. Wait just a minute. I have the floor. I want to finish this, and I will come back to the Senator from Wisconsin and give him ample time to comment on what he wants to comment on.

We have a bicameral system. If the Senate could act alone, we would have had the Senate bill. When the Senator from Wisconsin says he was not satisfied with this provision in the Senate bill contrasted with the SAFE Act, I would not disagree with him about that. I will not disagree with him about that at all. In the Senate bill, I did not have everything that I would like. There are 17 other members of the Judiciary Committee and there are many members who thought the Senate bill went far too far on civil rights. It was necessary to balance very delicately to get 18 Senators to agree, sort of unheard of, and I will not go over the composition of the committee, but we have people from opposite ends of the political spectrum on that committee.

Mr. FEINGOLD. Mr. President, would the Senator yield so I can respond to his comment?

Mr. SPECTER. One moment, and then I will yield for the Senator’s response.

The point is, the Senate came to this conclusive presumption and the Senator from Wisconsin voted for it. The full Senate came to this conclusion. The Senator from Wisconsin did not vote for it. So they are rather late in the day—frankly, too late in the day—for the Senator from Wisconsin to say that a provision which he has approved is the basis for rejecting the conference report because the conference report achieves the Senator from Wisconsin said he wanted.
Mr. FEINGOLD. Mr. President, the first thing I want to say is that the Senator from Pennsylvania is not the only person who has helped me on this. My staff and I looked at those files and we lost some issues. I should now accept the one part we did not prevail on and give up the parts I did prevail on. That strikes me as a rather odd deal.

It was, as the Senator knows, a very difficult vote for me to support the Senator from Wisconsin because it was deep- ly flawed. I was determined, as I said at the time we passed the Senate bill, to work with the Senate to come up with a balanced package, as Senator SUNUNU and I were commenting earlier, a package we could support as a whole. The Senator is now suggesting that after we made some gains and we lost some issues, I should now accept the one part we did not prevail on and give up the parts I did prevail on. That strikes me as a rather odd deal.

But this idea that when you get the package back and it only includes the things you don’t like and it doesn’t include the things you did like, that you should keep your mouth shut and you should not oppose it, that to me is ridiculous.

Mr. President, I say to the Senator, and I mean it absolutely sincerely, he has been a tremendous chairman. He has been one of the real keys to us having any chance at all to fix this legislation. But I am very disappointed with what we got back from the conference committee. I know very well that the chairman did not want this document to look like this. He wanted it, I assume, to look like the very document he crafted in the Senate Judiciary Committee.

I yield back to the Senator from Pennsylvania.

Mr. SENATUR. Mr. President, I do not disagree with everything the Senator from Wisconsin has said. In fact, I like part of it where he said I was a tremendous chairman, but there were other parts with which I disagree as to what he said. A little levity will not hurt this debate any.

I focus only on national security letters at the outset, to establish the point that the conference report is more protective of civil liberties on that point than the Senate bill. I want to go on to the other points. I have already favored the Senator from Wisconsin to support the conference report, but I do think it is very useful to have this discussion because he is, appropriately, very deeply involved in this bill and there is no better way to acquaint our colleagues and the staffs—perhaps two or three people watching on C-SPAN2—to acquaint America, to the extent we can, with what we are doing here.

On to section 215. Section 215 involves library records and the highly controversial point on library records. The Senator from Wisconsin is correct that the existing law is deeply flawed. Bear in mind, we are living under that law until we pass a new law. That is the law we are operating under today.

The Senate bill established three criteria for the relevant standard. First, there are reasonable grounds to believe that the connection that the Senator from Wisconsin is, No. 1, if he has had an opportunity to get that briefing; No. 2, if so, what he thought of it with respect to the weightiness of what the Department of Justice supposed; No. 3, if this modest addition is so significant as to sink—or in conjunction with other similarly unweighty matters—sink the bill?

Mr. FEINGOLD. In response to the Senator from Pennsylvania, the Senator knows very well I am familiar with what went on in that briefing. You and I spoke here outside this Senate Chamber about these very provisions. I indicated to the Senator that I had my staff, who received this briefing, go over with me, in a secure setting, exactly the hypotheticals that those who wanted this additional provision in the conference report raised. My staff and I looked at those hypotheticals and we were very unpersuaded.

Here is the significance. What the Senator from Pennsylvania is suggesting is that it is not a major change to add, on top of the three-part test of the Senate, an additional provision that merely requires relevance. This is a big deal, because the other three provisions require that the records pertain to a terrorist or spy, or records of people in contact with or known to a terrorist or spy, and relevant to the activities of a terrorist or spy. All three of those tests require something closer to the connection that the Senator from Pennsylvania and I demanded in the SAFE Act.

The additional item put in the conference report is the loophole, the exception, that swallows that three-part test. It does not require the connection to the terrorist or spy, even though this legislation, from the very outset, was supposed to be the response to what happened on 9/11, to terrorism. This does gut the changes to section 215 that are in the Senate bill. This does render meaningless the efforts you and I and
others made to get a good provision in the Senate. And, yes, it is a sufficient reason not to go forward.

The feelings the American people have about this poorly drafted section 215 cannot be answered by a provision that empowers the ends general, and does not require a connection to terrorism or espionage. It is unacceptable.

And on that ground alone, although there are other grounds, it is very disturbing. I want to say that the Senator, my colleague and friend, did try hard. He said earlier that if he had his druthers he would have preferred a better provision. This isn’t about druthers. This is about a devastating power of the Government to be able to go and take your library records on some general notion of relevance that has nothing to do with any connection to terrorism or espionage. That is unacceptable in America, and under our Bill of Rights.

Mr. SPECTER. Mr. President, I did not acquiesce in this matter simply as a matter of druthers or nondruthers. I-acquiesced in this matter because it was, as a total scheme of things, acceptable. There was adequate protection. It is not, as the Senator from Wisconsin was arguing, the conclusive presumption in the national security letter that you should be able to go and take your library records. That is unacceptable in America, and under our Bill of Rights.

I have taken up the two principal considerations which the Senator from Wisconsin was arguing, but to tell my colleagues why he is objecting to this provision, and to invite my colleagues, the other 98 Senators, if they want the briefing, to see why there were sensible reasons for the Department of Justice and the details of this provision not going that far, not impinging on civil liberties because I wouldn’t support a bill which impinged on civil liberties. I simply wouldn’t do it. But there are others who have contentions, and we have had a great many concessions from the House of Representatives.

I have taken up the two principal considerations which the Senator from Wisconsin was arguing, the conclusive presumption in the national security letter and this additional protection. It is not, as the Senator from Wisconsin defines it, broad-ranging authority of a judge. The impartial judicial official has to agree that it is a terrorism investigation, and that these records are crucial and important to the investigation, that they are relevant to the investigation, and it is not something that is extraneous but it is a terrorism investigation.

I focus on this matter again not with any expectation of persuading the Senator from Wisconsin but to tell my colleagues why he is objecting to this provision, and to invite my colleagues, the other 98 Senators, if they want the briefing, to see why there were sensible reasons for the Department of Justice and the details of this provision not going that far, not impinging on civil liberties because I wouldn’t support a bill which impinged on civil liberties. I simply wouldn’t do it. But there are others who have contentions, and we have had a great many concessions from the House of Representatives.

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Mr. FEINGOLD. Mr. President, I am thoroughly enjoying this, and I came out here and described the Senator again in generally favorable terms. But I am getting a little worried as we start reviewing each of these provisions. The Senate from Pennsylvania voted for every single one of these provisions that I have talked about as part of the Senate version. There was a reason we drafted it that way.

When the Senator properly puts me through my paces on each of these issues and I identify my remaining objections and he minimizes the objections—keep in mind he already voted for the House provisions; he voted for exactly these provisions in the Senate bill. So when I point out on section 215 that a general relevance standard is not a sufficient protection and he agrees on the record that was troubling to him, it seems to me that is a valid issue to be concerned about.

With regard to the sneak-and-peek provision, the Senator did not vote, when he voted in the Senate, for 30 days' permission for a sneak and peek provision and a 90-day extension after that; he voted for 7 days, because the Senator from Pennsylvania knows as well as any Member in this Senate that the idea of a sneak-and-peek search in the first place is a very troubling exception to the fourth amendment protection that every American has against unreasonable searches and seizures. This is a very narrow exception. When the Senate voted in the Senate, he did not vote for 30 days. He did not vote for a period of time that is over four times longer than the House. The Senate made a concession at 4 years. I thank the Senator for agreeing to 30 days when I voted for 7 days but the House bill has 180 days. That is a reason to vote against the bill, He has made my case. When you take a look at what is fair and appropriate and adequately protective of civil rights as to when the target should be notified as to a surreptitious or secret search of his apartment, and you have an existing provision which says a reasonable period of time—which could be anything—and the Senate comes in at 7 days and the House comes in at 180 days, there is no real concession on civil liberties. The House made a concession of 150 days, from 180 to 30. The Senate made a concession of 23 days, from 7 to 30.

I ask the other 98 Senators whether this is a meritorious argument, a weighty argument, or more of scintilla. That is an expression we use in the law when the item has virtually no weight. In the common law, they talk about a peppercorn being adequate for consideration. But this is a scintilla. Maybe this is not even a scintilla, to say a concession from 7 to 30 days is meaningless.

I am glad the Senator from Wisconsin made that as his final, persuasive, overwhelming argument because that illustrates the filmyness of the considerations.

Mr. FEINGOLD. Mr. President, because of the last exchange, that will not be.

Mr. SPECTER. I have the floor, but I will yield to the Senator from Wisconsin on an unanimous consent, I saw Senator Byrd on one side—and I am I will not make a mistake of yielding without reserving the right to the floor.
Mr. FEINGOLD. I have no desire—the PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. I have no desire to take the floor away from the Senator from Pennsylvania, but back where I live, the Senate considers your home and you do not know they have been rummaging around in your house and you find out 7 days later that they did this, you are upset. If you do not find out for 30 days, where it came from, there is no scintilla; that is a big deal. The U.S. Government coming into your house without giving you notice, as people expect under the fourth amendment, is not a triviality. It is at the very core of one of the most important provisions of the Bill of Rights. I am not sure I am, in the end, even comfortable with this concept of a sneak and peek search. I think it has been demonstrated it may be needed in some cases, but why in the world can’t a judge have to renew that every 7 days?

It is not a matter of trivia to the people of my State that the Government can come into their house without notice under the fourth amendment. And I reject the idea that it is a minor difference—7 days or 30 days.

Mr. SPECTER. Mr. President, the problem with the renewed argument by the Senator from Wisconsin is not on 7 days or 30 days, it is on 1 day. It is on any sneak and peek. It is on any delayed notification. Law enforcement has that latitude because they need to continue the investigation. If a disclosure is made, it will impede an investigation. A short period of time enables them to continue the investigation without alerting the target.

One day would be too long for the argument which is made by the Senator from Wisconsin. We are conducting this debate as if we have a law enforcement community in this country made up totally of bad actors who have no regard for the rights of the individual. And when they get a delayed notice warrant, bear in mind, my colleagues and the Senator from Wisconsin, they have gotten judicial review on this sneak-and-peek warrant. On this delayed notification warrant, they have gone to a judge and have gotten leeway on standards which have gotten latitude in the past where the World Trade Organization has our practices violated their laws, and our executive branch has gone to fight them to make a change. I think that is what they should do here.

This compensates the companies and the workers who have been victimized by these unfair trade practices. As a matter of basic and fundamental fairness, this money ought to continue disbursements.

In the interest of brevity, I ask unanimous consent that the complete text of my statement be printed in the RECORD following my oral remarks.

CONTINUED DUMPING AND SUBSIDY OFFSET ACT

Mr. SPECTER. Mr. President, I want to take an additional moment or two, because I have a brief in support of the motion which is going to be offered by Senator DeWine and Senator BYRD to instruct the budget conference to drop the repeal of the Continued Dumping and Subsidy Offset Act.

This legislation was passed in the year 2000 under a program which allows the Bureau of Customs and Border Protection to distribute duties collected on unfairly traded imports to those U.S. businesses and their workers who have operated at a disadvantage because of dumped or unfairly subsidized imports.

Over 700 companies in almost every State of the Union, including many small- and medium-sized companies, have received distributions under this act, benefitting producers and workers in lumber, crawfish, shrimp, honey, garlic, cement, mushrooms, steel, bearings, raspberries, furniture, semiconductor chips and a broad range of other industries across the Nation hurt by continued unfair trade.

In Pennsylvania, companies in a variety of industries, including steel, cement, agriculture, and food products have benefited from these distributions by investing in research and development, infrastructure improvements, and improvements to pension programs. In doing so, companies have been able to continue to operate and, in some situations, increased capacity.

Overall, disbursements have totaled $1.261 billion since its inception in 2000, $250 million in fiscal year 2005. Pennsylvania companies, alone, have received over $111 million in disbursements since 2000.

Repealing or modifying this act would negate the impact U.S. workers and businesses, leading to the loss of the U.S. jobs to foreign competition, which would cost thousands of American workers their health insurance and pension benefits and contribute to the further outsourcing of Americans jobs.

This provision has had broad support in this body, where some 75 Senators have sided with me to the retention of this vital provision in the face of an adverse WTO decision allowing countries to retaliate by imposing tariff surcharges on U.S. products.

Congress directed the administration to resolve the WTO issue in ongoing trade negotiations in the fiscal year 2004 and fiscal year 2005 continuing appropriations bills, and the fiscal year 2006 CJS appropriations bill that became law last month. That language requires the administration to hold negotiations to recognize the right of countries to distribute duties collected from unfair trade as they deem appropriate.

I urge my colleagues to support the motion.

Mr. SPECTER. Mr. President, I ask unanimous consent that a letter dated November 4, 2005, and a letter which I signed along with some 69 other Senators, dated February 4, 2003, be printed in the RECORD.

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