

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2000—Continued

Mr. KYL. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. KYL. Mr. President, I ask unanimous consent that Senator LUGAR from Indiana be added as a cosponsor to the Kyl-Domenici-Murkowski amendment.

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

Mr. KYL. Mr. President, I will be happy to defer to Senator LEVIN. He is prepared now to report on one of his amendments.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, in the last half-hour, or hour, there have been discussions going on relative to Senator BINGAMAN's second amendment. One of them has already been accepted, as I understand, in modified form. It is now my understanding that the managers would just as soon proceed to my amendment while they are trying to work out Senator BINGAMAN's second amendment. That is fine with me.

Mr. KYL. Fine.

AMENDMENT NO. 1261 TO AMENDMENT NO. 1258

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

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 1261 to amendment No. 1258:

In section 213 of the Department of Energy Organization Act, as proposed by subsection (c) of the amendment, add at the end the following:

(u) The Secretary shall be responsible for developing and promulgating all Departmental-wide security, counterintelligence and intelligence policies, and may use his immediate staff to assist him in developing and promulgating such policies. The Director of the Agency for Nuclear Stewardship is responsible for implementation of the Secretary's security, counterintelligence, and intelligence policies within the new agency. The Director of the Agency may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I will be happy to consider a time agreement. My good friend Senator KYL suggested we try to adopt it. It is my understanding it might have been already adopted last night, so I suggest it would be perhaps an hour evenly divided.

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

Mr. LEVIN. Mr. President, it is not often an amendment is read in its entirety around here, even a short one. Usually we ask unanimous consent that further reading of the amendment be dispensed with. I do not know how many times I have used those words on this floor in the last 20 years. But in this case I decided to have this amendment—it is fairly short—read in its entirety because it may sound familiar to some people.

These are Senator Rudman's words. This amendment incorporates some very important parts of Senator Rudman's panel's recommendation that are left out of the pending amendment. That is why I wanted the entire amendment read.

The sponsors of this amendment have correctly pointed out that Senator Rudman is recommending a semi-autonomous agency, and that is the heart of Senator Rudman's proposal. It happens to be a proposal that I support. But the difference between my position and the sponsor's position, relative to Senator Rudman's recommendations, is that their amendment leaves out some very critical recommendations of the Rudman panel relative to the operation of the Department of Energy.

My amendment would insert in the pending amendment some very important recommendations of the Rudman panel the pending amendment omits.

We have heard a lot relative to the importance of the Rudman panel recommendations. Senator Rudman and his panel performed an extremely important service to this Nation in pointing out the complicated bureaucratic maze that exists at the Department of Energy and pointing out that for 20 years, report after report, recommendation after recommendation to streamline the bureaucracy the Department of Energy have been made, including made to the Congress, without action being taken by the Congress.

All of us bear responsibility for that failure. Three administrations and 20 years of Congresses have been told in a number of reports there should be some reorganization done at the Department of Energy

Finally, a year and a half ago, President Clinton issued a Presidential directive that reorganizes the Department of Energy. That directive has been mainly implemented, not yet fully apparently but mainly implemented. The Rudman panel goes beyond that Presidential directive but does give credit to President Clinton for being the first President in 20 years to direct the reorganization of the Department of Energy, even though three Presidents have been told there is significant organizational problems, and even though as early as 1990 there was a public statement about espionage being carried out by the People's Republic of China at one of these labs.

Secretary Richardson is engaged in significant reorganization of this agency, and the Rudman panel gave credit

to Secretary Richardson for beginning the important reorganizational changes.

This Congress has taken some steps to reorganize the Department of Energy. The Armed Services Committee, for instance, upon which our Presiding Officer sits with distinction, has acted on our bill, which is now in conference, to carry out some significant reorganization of the Department of Energy.

On the House side, the Armed Services Committee did the same thing. The language is different. Parts of their provision differ from ours. But the point is, there are some very important things going on in terms of reorganization in the Department of Energy, as we speak. But the Rudman panel goes beyond that. It would put into law, for instance, things which are in an Executive order. We know how much more important a law is than an Executive order because an Executive order, No. 1, can be changed by the next President but, No. 2, can be too often ignored by the bureaucracy. We had a recent example of that in another agency where an agency just almost totally ignored an Executive order.

We want to put into law a significant reorganization, and we want to—at least I do, and I think most of my colleagues want to—put into law a reorganization along the lines of the Rudman panel recommendation. I do not know that there is any disagreement on that, but apparently there is a disagreement when it comes to setting forth not just the provisions of the Rudman panel's recommendations relative to the power of this new semiautonomous agency, but when it comes to setting forth the power of the Secretary of Energy relative to directing and controlling his Department.

What is left out in this amendment is also important, according to the Rudman panel. This is not the Senator from Michigan talking; this amendment is the Rudman panel talking. I will go into what these provisions are in just one moment.

I emphasize, the security breakdown that has existed for 20 years that was highlighted in the Cox commission report must be corrected. There are a number of steps underway to correct them, but we should act. There have been some pretty important, good-faith discussions going on over the last few days as to how we might be able to come up with a bill which can become law.

We can pass a bill, and if the House does not accept the bill because they think it ought to be a freestanding bill and not on an intelligence authorization bill, or because they do not think it ought to be on a Department of Defense authorization bill—and that is their position in conference relative to the defense authorization bill—we can attach language here. But if we do not have a strong, healthy consensus, it seems to me we are in a much weaker position in getting this law actually

passed in the House and signed by the President. That should be our goal.

If we are serious about trying to tighten up and streamline the Department of Energy, if we are serious about passing a law to do that, then we ought to figure out a way we can come together, incorporate the Rudman panel recommendations, including the ones which are left out in this amendment which I will try to add in a moment, so we can go to the House of Representatives with a healthy consensus vote, a strong vote, rather than a divided vote, and the same message would then be delivered to the President.

The Rudman report calls for a semi-autonomous Agency for Nuclear Stewardship. I fully support that. That would be an agency which will oversee all nuclear-related matters in the Department of Energy, including defense programs and nuclear nonproliferation. It would also oversee all functions of the national security labs and the weapons production facilities. I strongly support that. It would streamline the new Agency's management structure by abolishing ties between the weapons labs and all DOE regional field and site offices and all contractor intermediaries. It would appoint the Director of the new Agency by the President with Senate confirmation, and it would have effective administration of safeguard security and counterintelligence at all the weapons labs and plants by creating a coherent security counterintelligence structure within the new Agency.

In making the recommendation for a semiautonomous agency, the Rudman report cites as models similar agencies within the Department of Defense, such as the National Security Agency, NSA, the Defense Advanced Research Projects Agency, DARPA, and the National Reconnaissance Office, the NRO.

Each of these three agencies is a separately organized agency run by an administrator within the Department of Defense. While the mission of each is different from the other, all three are under the authority, direction, and control of the Secretary of Defense; all three are subject to Department of Defense policies and regulations; and all three are directed by the Secretary and his deputy through an assistant.

That is the model Senator Rudman has based his recommendation on—three agencies in the Department of Defense, separately organized, each having their own staff, but where the Secretary and the Deputy Secretary direct that separately organized agency through an assistant.

That is a very important part of that model which is omitted in this bill. So Senator Rudman and his panel, on June 30, sent a "Memorandum of Clarification" relative to their report. One of those recommendations in the statement is the following: "The Secretary is still responsible," under their model, "for developing and promulgating DOE-wide policy on these matters," these matters being security, intel-

ligence, and counterintelligence, "and it makes sense to us," that is, the Rudman panel, "that a Secretary would want advisers on his/her immediate staff to assist in that vein."

So the first sentence of our amendment says:

The Secretary shall be responsible for developing and promulgating all Departmental-wide security, counterintelligence and intelligence policies, and may use his immediate staff to assist him in developing and promulgating such policies.

It is verbatim from Senator Rudman's panel's recommendation.

Senator Rudman's panel also says: ". . . The Agency Director," that is the new Agency, ". . . is responsible and held accountable for ensuring complete and faithful implementation of the Secretary's security, counterintelligence and intelligence policies within the new Agency."

The second sentence of our amendment reads:

The Director of the Agency for Nuclear Stewardship is responsible for implementation of the Secretary's security, counterintelligence, and intelligence policies within the New Agency.

Again, it is verbatim from the Rudman panel's memorandum of June 30.

The Rudman panel also said on that day that "The Director of the Agency," that is, the new Agency "may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary."

The third line in our amendment says:

The Director of the Agency may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary.

It is verbatim from the Rudman panel recommendation.

I do not think we can have it both ways. The Rudman panel's recommendations are very important. We are not obligated to adopt every one. We are not obligated to adopt any of them. But there are some of us who believe those recommendations are hugely important. As always is the case when you create a new agency within a Department, you have to figure out a balance between the power of the new Agency and the power of the Secretary to run his Department that contains that new Agency.

That is a very important balance. We are doing it on the Senate floor. Usually that kind of a complex and rather arcane effort would be made by the Governmental Affairs Committee, but in this case, for many reasons, legitimate reasons, it comes to us in this form, and we must deal with it.

But in dealing with these issues, as to that balance, we have guidance. We have guidance from the Rudman panel. The Rudman panel says: Create a semi-autonomous agency. It then goes into detail on the functions of that semi-autonomous agency and the power both of its director and the Secretary of Energy. It sets them out. It lays this out for us.

The amendment before us omits some critically important recommendations of the Rudman panel, the ones I have just read and the ones that are in my amendment. It is that omission which, it seems to me, so flaws, and unnecessarily flaws, may I say, the amendment before us.

I do not quite fathom why it is that specific recommendations of the Rudman panel, relative to what the balance and the relationship are, should be omitted when they are important.

The sponsors of the amendment will no doubt say that the Secretary reserves the right in their amendment to direct and control the Department, and that is true. But when it comes down to putting any flesh on those bones, when it comes down to saying how the Secretary will do that—that he is able, for instance, to use his staff to promulgate policies, that the agency must comply with the Department's policies that apply departmentwide—when it comes to those things, then we have a problem with this amendment.

This amendment actually suggests the opposite is true from what Rudman has suggested when it says that "The Secretary may not delegate to any Department official the duty to supervise or direct" but leaves out the critically important power that Rudman would give the Secretary to utilize his staff to assist him in developing and promulgating departmentwide policies.

So we correct this omission. The spirit of Rudman is that there be a semiautonomous agency when it comes to spelling out how that agency would function, what the balance of powers and functions would be between the Secretary of the Department, of which this agency is a part, and the new Agency Director. It is at that point that we have the omissions that Rudman recommends and the omissions in this pending amendment which my amendment would fill in.

Mr. President, I inquire how much time this Senator has left.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Michigan has 10 minutes 26 seconds.

Mr. LEVIN. I thank the Chair and reserve the remainder of my time.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. We have 30 minutes on our side?

The PRESIDING OFFICER. The Senator has 30 minutes exactly.

Mr. DOMENICI. Mr. President, the Senator from Illinois, Senator FITZGERALD, had asked, before we knew the Senator was coming up, whether he could come to the floor and speak for 5 minutes. He got here, but the Senator had started so he was cut out for an hour. I wonder if we could have consent for the Senator to speak for 5 minutes and it not be counted against either side.

Mr. LEVIN. I am happy to.

Mr. DOMENICI. I so request.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Illinois.

Mr. FITZGERALD. I thank the Chair. To the Senator from Michigan, I thank him for allowing me to speak on Senator KYL's underlying amendment.

The recent release of the Cox report and the President's Foreign Intelligence Advisory Board's report has confirmed our worst fears that lax security at our national laboratories enabled the Chinese to steal some of our nation's most guarded nuclear secrets. This appears to be among the most severe breaches of American security in our Nation's history. This issue is of particular concern to my state, Illinois, as we are the home of three labs—Argonne National Laboratory, Fermi National Accelerator Laboratory, and the New Brunswick National Laboratory.

But despite years of warnings, beginning with a detailed briefing by the Department of Energy on the issue, the administration did next to nothing to close the breach in security at our national labs, and did next to nothing to keep suspected scientists away from classified information. Instead, the administration soft-pedaled the issue, encouraged the transfer of technology to China, and even denied that any secrets were lost to China during this administration. The administration's response to report after report of security threats to our labs has been, "See no evil, hear no evil, speak no evil." In fact, the administration sought to undermine the truth and accuracy of reports of these security breaches. And when the disastrous consequences of this policy of denial and inaction were exposed, the administration played a half-hearted game of catch-up that continues to this day.

The report issued by the President's Foreign Intelligence Advisory Board presents a scathing and highly critical account of DOE's handling of, and response to, the threat posed to weapons labs by Chinese espionage. The report characterizes DOE as having a "dysfunctional management structure and culture," unable to respond to the unique challenge posed by China. Unfortunately, DOE is in the words of the report a 'dysfunctional bureaucracy that has proven it is incapable of reforming itself'.

In the coming years, the United States may pay a terrible price for this dereliction of duty. China is likely to make a great leap forward in its ability to threaten the United States with nuclear attack, thanks to stolen American nuclear weapon and missile technology. In fact, China now admits that it has neutron bomb technology. A well-known proliferator, China may sell or give this advanced technology to Iran or Pakistan, further increasing the spread of weapons of mass destruction and the missiles to deliver them.

For our part we, as Senators, must undertake the task of repairing the system that allowed this information to fall into the hands of China. To this end a number of my colleagues and I have co-sponsored an amendment to

the intelligence authorization bill initially offered by Senators KYL, DOMENICI, and Chairman MURKOWSKI. This amendment would create a semi-autonomous agency within DOE responsible for the nuclear weapons laboratories and their security. I ask for and encourage Senators to join me and the other cosponsors in supporting this measure. I welcome Secretary Richardson's change of mind on this issue. Although he was initially opposed to such an agency, the Secretary has joined the bipartisan group of Senators in supporting the concept of a semi-autonomous agency for nuclear stewardship.

I hope that my colleagues will join us in passing this legislation and implementing this important step in sealing the breach in security at our Nation's weapons labs.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I will take the first few minutes and reply to Senator LEVIN's amendment, and then Senator DOMENICI will add his thoughts.

I first note that this language was handed to us as this debate began, and so it has been a little difficult to correlate the provisions of this amendment with the provisions of our bill and with the recommendations of the Rudman report. I think it is fair to say the following four things about this amendment.

First of all, it is not necessary. I haven't really heard any explanation of why we need this different language. I believe that our bill, which tracks the report of the President's Foreign Intelligence Advisory Board, allows the Secretary of Energy to create policies that are applicable to the entire department and that the implementation of security and counterintelligence within this new Agency is the responsibility of the new Under Secretary that is responsible for nuclear stewardship, but that the Secretary of Energy will always have the ultimate say with respect to those security and counterintelligence policies. That is what our bill calls for. That is what the Rudman report recommends should be done. I don't see any need for this different way of saying it.

There are also at least two problems with the language itself. I am a little concerned because Senator LEVIN scores a debater point by saying one of the sentences of his three-sentence amendment comes right out of a letter that Senator Rudman wrote to us. It is not the Rudman report, but it is a letter that he sent to us. Since we have been saying that our legislation tracks the Rudman recommendation, therefore, we have to accept that sentence.

That is, of course, a dual standard. Senator LEVIN is perfectly willing to reject parts of the PFIAB report. Under his analysis, then he should accept everything the Rudman report recommends as well.

The truth of the matter is, we have tried to track it as closely as possible,

and I think we have done a good job. We haven't included the sentence from the letter that Senator Rudman wrote. It is not necessary.

I think there is a dual standard being applied here. I think all of us can appreciate the fact that we are trying to track it as closely as we can, consistent with writing this legislation.

The two primary points of objection I have to the amendment are these: As a practical matter, this whole exercise is to do things differently within this new Agency than they are done departmentwide. That is the essence of the President's Foreign Intelligence Advisory Board report. It says: You need to create a new semiautonomous agency that doesn't have to do things the way they are done all over the rest of the Department of Energy. That has been the problem—all these different people making rules and regulations and policies. It is impossible to protect the Nation's security and our foremost secrets when you have so many people, in effect, with their finger in the pie. You need to create a very specific semiautonomous agency that has control over those nuclear programs, and don't apply all of the other departmentwide policies, as good as they may be for the rest of the Department, to this new Agency.

Many of the departmentwide policies will be appropriate, but undoubtedly some of them will not be. The whole point is to do things differently than they have been done in the past and to have the flexibility to do them differently within this new Agency.

For example, suppose the Secretary says to one of his staff assistants: I want you to develop a new departmentwide policy on polygraph tests. This person goes out and does the research, comes back and says: We shouldn't have any polygraph tests. The Secretary of Energy says: Okay, that is our departmentwide policy.

Under the Levin amendment, this new Agency, this new semiautonomous Agency that is responsible for control of our nuclear secrets, wouldn't have any choice but to implement that departmentwide policy. That is exactly what this language says. I will read it, Mr. President:

The director of the agency may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary.

No flexibility to do anything different. That is the whole point. That is what the PFIAB report said: You have to do things differently. You cannot expect a different result if you keep doing them the same old way. You cannot require, for this very unique, highly technical business of making nuclear weapons, the application of all the same standards and policies that apply throughout the Agency.

The one example used frequently is the refrigerator standards. But there are so many differ examples you can point to. Agencywide policies may be fine agencywide, but they should not

necessarily be applicable to this new Agency. They may be, but they aren't necessarily. That is the approach our bill takes. It says the Secretary can develop these agencywide policies, but the Director of this new Agency has to have some flexibility to say some of the things that apply to other parts of the Department of Energy should not apply here; they are not applicable, and they may even be dangerous.

That is the whole point of what we are trying to accomplish. When the amendment says the Director of the Agency for Nuclear Stewardship is responsible for the implementation of the Secretary's security, counterintelligence, and intelligence policies within the new Agency—and he can only devise agency-specific policies as far as they are fully consistent with the departmentwide policies—you are tying his hands behind his back; he is set up for failure before he even starts.

This amendment is very dangerous. One reason it is dangerous is that the language seems to track fairly closely elements of the report. But again, what we are saying is the Secretary, of course, can develop agencywide policies. Some of those will be applicable to this new Agency, but they don't necessarily have to be. That is where we diverge. That is a critical difference here. It would be impossible for this new Agency Director to do his job if he were bound by this language.

Our whole point is to have accountability and responsibility of this person. Well, I would not take the job if I were given the responsibility to protect our Nation's nuclear secrets and then I was told: However, you cannot establish any policy within your new Agency that is inconsistent with departmentwide policies. I would not undertake that job because I would not be able to do it the way I thought best.

Mr. President, with respect for the Senator from Michigan, I have to say this is the wrong approach and we will have to oppose this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. KYL. How much time do we have on this side?

The PRESIDING OFFICER. The Senator has 22 minutes 49 seconds. Senator LEVIN has 10 minutes.

Mr. KYL. I inquire, does the Senator from Michigan want to speak next? We have more time on our side. Would he want to address the Senate?

Mr. LEVIN. No.

Mr. KYL. Mr. President, perhaps we should suggest the absence of a quorum.

Mr. LEVIN. I misheard the Senator. Did he say there were additional speakers on his side?

Mr. KYL. Yes.

Mr. LEVIN. Senator KERREY has expressed a desire to speak in support of the amendment. I will briefly yield 2 minutes to myself. Regarding the comments of the Senator from Illinois about both the President and the Secretary relative to the Secretary's ac-

tions, the PFIAB, or the Rudman report, as we call it, says the following:

We concur with and encourage many of Secretary Richardson's recent initiatives to address the security problem at the Department. And we are heartened by his aggressive approach and command of the issue. He has recognized the organizational dysfunction and cultural vagaries at the DOE and has taken strong, positive steps to try to reverse the legacy of more than 20 years of security mismanagement.

Now, the contrast between what the Rudman report says about Secretary Richardson and what the Senator from Illinois says the Rudman report said, relative to Secretary Richardson, is a pretty sharp contrast, indeed. This is what the Rudman panel actually said:

We concur with and encourage many of Secretary Richardson's recent initiatives to address the security problems at the Department. And we are heartened by his aggressive approach and command of the issues. He [Secretary Richardson] has recognized the organizational dysfunction and cultural vagaries at the DOE, and he [Secretary Richardson] has taken strong, positive steps to try to reverse the legacy of more than 20 years of security mismanagement.

I ask the Senator from Nebraska, the ranking Democrat, the vice chair of the committee, whether he wishes to speak at this time.

Mr. KERREY. I am pleased to.

Mr. LEVIN. I gave you both titles.

Mr. KERREY. Mr. President, I apologize to the Senator from Arizona. I did not hear all the reasons for opposing the Levin amendment because I am afraid, in my own mind, this is getting down to a point where it seems to me—I said to Senator LEVIN earlier that it seems the bill gives the Secretary the right to do all these things. I don't see a lot of reason to oppose this, I really don't.

As I understand it, the Senator from Arizona has a problem with the last sentence, which says, "The director of the agency may establish"—this is a nuclear security agency—"agency-specific policies"—that is the same autonomous objection that we have—"so long as they are fully consistent with departmental policy established by the secretary."

It seems to me we want the Secretary to be able to establish Department policies that would apply to everybody and allow the new security Agency still to be able to establish specific policies that don't relate to the rest of the Department. I don't understand the Senator's objection to that because it seems to me that is a reasonable thing to say.

The trouble I am having—and I am trying to make certain we achieve a big bipartisan vote on this because I don't want to lose the opportunity that we have been given many times in the past couple of decades, and the Senator from Arizona has been pushing hard on this thing. I would hate for us to fail as a consequence of not being able to resolve what seems to me is not that big a conflict. I would appreciate the Senator talking about this last sentence

and what he thinks seems to be wrong with it.

Mr. KYL. Mr. President, I will respond on my time, and if we need more time, we can utilize that.

Senator KERREY raises the exact right question. In many respects, we are not that far apart. I think this language creates one specific, big problem, however. In the bill, we provide the authority for the Secretary to establish not only departmentwide policies on security, counterintelligence, and other matters, but also he would have the residual authority to direct those issues within the new Agency itself if he really wanted.

Mr. KERREY. Can the Senator refer to where that is in the bill?

Mr. KYL. I will have my staff find the pages. On page 2 of the bill, there is "general authorities residual to the secretary."

I refer the Senator's attention to section 213(c):

The secretary shall be responsible for all policies of the agency.

So that is the overall general policy here. That is, of course, consistent with the recommendations of the Rudman report. It is what we have always said has to be—that ultimately the Secretary has the authority to impose his will on this new Agency in any way he should desire to do so, whether it is agency specific, or with respect to a departmentwide policy. We provide for that.

The problem with this amendment and the problem with the last sentence is that it would remove from the Under Secretary in charge of the nuclear program the ability to have policies different from general DOE-wide policies because it says:

The director of the agency may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary.

I can give an example of polygraphs. If you read the first sentence of this amendment, the Secretary may use his immediate staff to assist him in developing these departmentwide policies.

He asks a person not in this new semiautonomous Agency to go out and develop a policy regarding polygraphs. I am using this as a hypothetical. The person comes back and says we shouldn't have polygraphs. That is a departmentwide policy. And the new Under Secretary, in the second sentence, is directed to implement the Secretary's policies within the new Agency.

How might he do that? The third sentence:

The director of the agency may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary.

We need to allow enough flexibility so there can be some differences.

The whole point of the Rudman recommendation is that this new Agency may have to do some things different from the rest of the Department. There may be personnel policies. There may

be contracting policies. There may even be policies of security and counterintelligence that would be different in this new entity.

But even if they are different—this, I know, goes right to the point of the Senator from Nebraska—even if the person in charge of this new semi-autonomous Agency says, look, we have to do things differently with respect to security in our new Agency than you do them in the rest of the Departments, the Secretary of Energy still has the ultimate say as to whether he approves of that and agrees with that or not because he is ultimately in charge.

But the way this amendment is written, the new Director wouldn't have any options. He has to do it consistent with the departmentwide policy. He has no discretion to do it differently. He has to have this discretion to do it differently if he thinks it is necessary. Then if the Secretary says, no, I don't want you to, the Secretary still wins. He is still the boss.

That is my answer to the Senator from Nebraska.

Mr. KERREY. I appreciate that answer.

I am struggling. I have been in this position before, I say to my friend from Arizona, where I hear words and they mean something to me and they mean something entirely different to somebody else. I am still struggling.

It seems to me that the language of “the director of the agency may establish agency-specific policies,” which is what the Senator from Arizona wants, by the way, this amendment amends section 213(a). At the end of the following, “the secretary shall be responsible”—OK, at the end. It has a paragraph (u) to this.

Is that what the Senator from Michigan just took?

Is the Senator saying in his amendment that the Secretary shall be responsible for all policies of the Agency? The Senator is saying the Secretary still has that authority.

How is that inconsistent? I still don't understand how that undercuts. This one says:

The director of the agency may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary.

Mr. KYL. Mr. President, the point is as long as they are consistent with departmental policies established by the Secretary. In other words, the policies the Secretary establishes for all of the other Departments would control. We don't want it to.

I might add that the language that I quoted before was specifically requested by the Senator: The Secretary shall be responsible for all policies of the Agency.

We think that is important to clarify—that in the end he always has the authority. If this language says something, it is not wise to try to fix that amendment during debate. But if the language in effect says that the Direc-

tor of the Agency may establish agency-specific policies, it is obviously always subject to review by the Secretary—no problem. But when I say in the language that they have to be consistent with departmental policies, obviously that infers previously established.

Then you could have a problem.

Mr. KERREY. The Senator is saying that if this language says that the Director of the Agency may establish agency-specific policies—the Senator is quite right; I added that. I appreciate very much that change being made.

Before I get to the rest of it, let me say that one of the reasons I did that was because of the experience of dealing with agencies or situations in the executive branch where somebody has the responsibility but lacks authority. It is a heck of a problem to be in where you are held accountable for something, but you don't really have the authority to do anything about it in the first place.

That is exactly the problem that the Senator is trying to fix with this amendment in the first place—situations where Secretaries have authority and responsibility, but they lack the authority. They lack the ability to actually be able to manage.

I appreciate that inclusion. The Senator is saying that if the language said the Director of the Agency may establish agency-specific policies subject to the approval of the Secretary, you have no problem with that?

Mr. KYL. Mr. President, obviously that is in response to the amendment. But I think that is the general idea.

I also add one other point. In the second sentence of the amendment it provides that the Director of the Agency for Nuclear Stewardship is responsible for implementation of the Secretary's security counterintelligence and intelligence policies within the new Agency.

I think, while that is true, since it follows the Secretary, the sentence previous to it, which talks about departmentwide policies, there is an implication in the second sentence, again, that he has to implement all of the departmentwide policies without exception.

I think we have to make it clear that the second sentence is what we are talking about, and the third sentence as well.

Mr. KERREY. Part of the problem I am having with this is it is very clear in the Senator's amendment that the Secretary shall be responsible for all policies of the Agency. That is very clear in the language of the amendment. That is why I am having difficulty understanding how this language undercuts that, or changes that. The Senator wants the Secretary to have the responsibility for the policies of the Agency. What the Senator is trying to do is establish a sufficient amount of independence that this new Agency for nuclear security can develop its own agency-specific policies. It doesn't undercut or eliminate the

authority of the Secretary to be able to come in and say: I don't like that. I am not going to allow you to do it. But it is going to occur in an environment where Congress knows it, and the people understand what is going on.

It seems to me that is what Senator LEVIN is trying to do, as well.

Mr. KYL. The Senator said it very well.

Obviously, the whole intention here is that there be a lot of things done differently in this new Agency than would otherwise be done within the Department.

Our problem with Senator LEVIN's amendment is it not only implies but in the last sentence actually directs that whatever is departmentwide also has to exist in this new Agency—no exceptions; “fully consistent with.”

That is just not what this whole reform is all about. There are going to be a lot of things with a new agency that are going to be different.

To the Senator's point, as I said before, I wouldn't take the job as the new Under Secretary in charge of this new Agency if I took the job knowing that I had to begin by complying with all departmentwide policies.

Mr. KERREY. We have comparable agencies.

I was very much involved with the development of the new law governing the IRS. We wanted that agency also to be semiautonomous.

In that case, we created a board with authority to evaluate the budget and make budget recommendations to the Secretary of the Treasury, and that budget has to be forwarded on. If the President wants to change it, he can change it. That budget gets forwarded on to us.

In addition, we made a change that the Internal Revenue Commissioner has a 5-year term allowing some continuity. That is one of the problems we had. We had lots of turnover.

The same problem existed with the FBI Director a number of years ago. I don't know who was involved in changing that law. We changed some independence of the FBI Director. But in both cases, if the Secretary of the Treasury decides they don't like what the IRS Commissioner is doing, or in Justice's case they don't like what the FBI Director is doing, one of the things we are not talking about is they can always go to the President. The President issues an Executive order; everybody does it. At least they are supposed to do it. Although, again, that is part of the problem that we are trying to address—eliminating a lot of that middle-level management and creating direct lines of authority so Executive orders are carried out. In this case, a Presidential directive was implemented relatively slowly. Perhaps the Senator from Michigan has some suggestions.

Does the Senator see a substantial difference between the language in his amendment that says, “the director of the agency may establish agency-specific policies so long as they are fully

consistent," and language that says, "the director of the agency may establish agency-specific policies understanding," and then reference back to section 213(c) that says the Secretary shall be responsible for all policies of the agency? If the Senator can tie it into that line, it seems that is what he is trying to do.

Mr. LEVIN. If the suggestion is that the Director of the Agency may establish agency-specific policies which are different from the policies which govern the rest of the Department with the approval of the Secretary—if that is the question, I see no difference between that and the last line because at that point those agency-specific policies are consistent with departmental policy. The departmental policy at that point is that that Agency will be governed by a different rule than the rest of the Department. I don't see any difference in terms of that concept with what is already in the last line.

The last part of that discussion I am not sure I fully follow. As far as that specific question is concerned, the Senator from Arizona is saying, as I understand it, and the Senator from Nebraska is responding in the following way: The Senator from Arizona says we want to make it possible for there to be an agency-specific policy that does differ with the departmentwide policy. My answer to that is, yes, providing it is approved by the head of the Department, at which point it is then Department policy that that separate agency have a different policy than the rest of the Department.

I have no problem with that.

Mr. KERREY. If the Senator will yield, it seems to me what we ought to try to do is work this thing a little bit longer and see if we can get agreement.

I think in the key area with the amendment, we have to reference back this very declarative and clear line the Senator from Arizona referenced, which is 213(C) that says the Secretary shall be responsible for all policies of the Agency.

The Senator is shaking his head.

Mr. LEVIN. I don't want to read too much into the Senator from Arizona nodding his head, but I think he is responding positively to how I characterized his suggestion.

I ask the Senator from Nebraska if he would, perhaps, yield to me a moment.

Mr. KERREY. I will yield the floor and let the Senator have more than a moment.

Mr. LEVIN. I want to see if both concur in this.

The Director of the Agency may establish agency-specific policies which are different from the general policy for the Department with the approval of the Secretary.

Those are not artfully perfect words, but that is the concept as I understood it that the Senator from Arizona is proposing.

I say to my dear friend from Nebraska, if that is what the Senator is

proposing and with your intermediary help, that is fine with me.

Mr. KYL. Mr. President, it appears to me that we have achieved a meeting of the minds—almost—and therefore the language could be worked out.

Let me restate the two concerns I have, both of which I think we would have to satisfy. In the second sentence of the amendment, it says that the Director of the Agency is responsible for the implementation of the Secretary's policies within the new Agency. Obviously, that has to mean to the extent that they are applicable to this new Agency and not inconsistent with any agency-specific recommendations.

If the Senator has that language following the first sentence, it doesn't mean that it means whatever the departmentwide policies are this new Director has to implement them. That is not what we intend.

Secondly, to the final sentence, the Senator is correct, this head of this new Agency should have the ability to have agency-specific policies with respect to security and counterintelligence and virtually anything else. It is always subject to the Secretary's approval.

I don't think in this one unique situation we want to say that prior to the effectiveness of any policy, the head of this new Agency has to obtain the approval of the Secretary. But since he has to report to the Secretary, the Secretary, obviously, has the ability to say no.

Clearly, we want this Agency to be running not on its own but semiautonomously. If the new person has to go get approval from people before he does things—obviously, he would have to notify the Secretary—then I think that could diminish his ability to operate the new entity.

However, if the principle is agreed to that there can be, and indeed should be in some cases, different policies within this new Agency than departmentwide, and if we understand that the Secretary always has the ability to say no or to say do it differently, then I will say positively that I think we have a meeting of the minds and it is simply a matter of drafting the language in a way to achieve that.

I thought our bill did that. If the Senator thinks we need to modify it somewhat, clearly we can talk about it.

Mr. KERREY. If I can respond, the Senator from Michigan has a lot of respect on this side of the aisle and I know a lot of respect on that side of the aisle as well, not just because of this particular issue but because of his longstanding interest in the operations of government and his understanding of how statutes need to be written in order to get government to function properly.

If the goal is to produce a big bipartisan vote so we can seize this opportunity, as the Senator from Arizona has pressed so relentlessly to get done, it is my hope that there could be a

meeting of the minds leading to an agreement of language.

If we can get that done, we are one step closer to getting a very large bipartisan vote. That sends a very important signal to the House. That increases the chances to successfully conference this in the Intelligence Committee and bring it back to the full Senate for approval.

Mr. REID. Mr. President, I believe that we are all in agreement that the weapons program should remain within the Department of Energy, with clear lines of authority, responsibility, and accountability.

The sponsors of this amendment agree that the Secretary of Energy must have the ultimate authority for Department functions because he carries the ultimate responsibility.

The question is how does the Secretary exercise his authority in a way that allows him to meet his Cabinet-level responsibilities and still remain consistent with the restrictions in this bill.

The bill's prohibition against delegation of any supervisory or directive authority over the Under Secretary for Nuclear Stewardship means that only the Secretary may intervene in Agency matters that may be inconsistent with Department policy.

That is backwards.

The provision for non-Agency review of Agency programs permits the Secretary to understand the compliance status of the Agency, but the prohibition against delegation requires the Secretary to appeal to the Under Secretary to respond to noncompliance findings.

That is a reveal of normal management flow of authority.

The Under Secretary should be the one making the appeal to the Secretary if the Agency is found to be noncompliant in a review.

Under the provisions of the amendment, the Secretary is likely to spend far too much of his valuable time ensuring that the Agency is complying with the Department policy.

A simple change in the bill would effectively accommodate this concern.

The amendment should specifically acknowledge that the Secretary is endowed with equivalent authority to meet his Department-wide responsibilities; and those include the Agency for Nuclear Stewardship.

Instead of prohibiting delegation of authority, the bill should provide direct appeal authority for the Under Secretary to the Secretary.

I understand the reluctance of the sponsors to encourage broad delegation of authority to non-Agency Department employees.

Nevertheless, compliance reviews of the Agency should be communicated to the Under Secretary and to the Secretary, with the presumption that any corrective actions would be implemented by the Under Secretary unless he determines to appeal to the Secretary.

This would encourage the Under Secretary to consider the merits of review findings and consider changes before involving the Secretary.

The PRESIDING OFFICER. The Chair informs the Senator from Nebraska all of his time has expired. There are 9 minutes 30 seconds remaining to the Senator from Arizona.

Mr. KYL. Certainly, Senator DOMENICI wants to speak to this issue. To the extent we need any further discussion, I am sure we will agree to provide the time for that.

I agree with Senator KERREY; the more bipartisan this is the better. I say the first goal is security. Frankly, I detect a flaw in the exact wording of this amendment. If we can eliminate that flaw and thereby achieve bipartisan consensus on this point, obviously, that is a twofer. It not only achieves our policy objective but the political objective of the bipartisan approach as well.

Mr. KERREY. I ask unanimous consent for 2 minutes to speak on this and to respond on our side.

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

Mr. KERREY. Mr. President, I wonder if there is a chance, rather than going to a motion to table, we can work this out. If we can work it out, it increases the chances of getting a big affirmative vote on this bill, which all of us want.

The Senator from Michigan sees a flaw in the bill and is concerned about national security and concerned about good science. He has a lot of experience in this.

I ask the Senator from Arizona if it is possible we could get the two sides to see if the meeting of the minds we apparently have could lead to an agreement on specific language and acceptance of this amendment, rather than having to get a vote to table or a vote up or down on the amendment with disagreement.

Mr. KYL. We will have to defer. I am advised the majority leader is concerned about the amount of time and is desirous of having a vote as soon as possible. I think perhaps after Senator DOMENICI has spoken, we should confer and attempt to resolve this very quickly along the lines the leader has requested.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I hope this issue does not in any firm manner split the Senate. It seems to me that need not be the case.

I want to read from the original Rudman report and then I will try to put quickly into a framework why we think we have complied with what the distinguished Senator, the ranking member of the Department of the defense authorization committee, Senator LEVIN, is concerned about.

I am reading from page 46 of the report:

The panel is convinced that real and lasting security and counterintelligence reform

of the weapons lab is simply unworkable within DOE's current structure and culture. To achieve the kind of protection that these sensitive labs must have, they and their functions must have their own autonomous operational structure free of all the other obligations imposed by DOE management.

Actually, when you read that and you read the letter that came some 3 or 4 weeks after the report from the panel, talking about clarification, the best you can conclude is that it is not absolutely clear how we should do this. I submit that when you read the clarifications that were proposed with reference to the issue before us, we have solved that issue in this bill. I hope those who are thinking they can vote against the bill if we do not do this will understand.

On page 2 of the bill, as said a number of times, we have made it eminently clear that the Secretary is the ultimate authority; the Secretary, not the new Under Secretary. We have said:

There shall be within the department a separately organized agency under the direction, authority and control of the Secretary.

...

I do not read the rest of the sentence, but that is what it says. Then it says, at the request of the distinguished Senator from Nebraska, Senator BOB KERREY, paragraph C:

The Secretary shall be responsible for all the policies of the agency.

Then, at the request of others because they wanted to make sure the Secretary could use other Department people to help him—that is, the big Secretary—we said:

The Secretary may direct other officials of the Department who are not within the agency to review agency programs and make recommendations to the Secretary regarding the administration of such programs . . .

And then—I read the next part very slowly:

... including consistency with similar programs and activities in the Department.

I read that, and other things in this bill, to say that those who are putting this bill before us to straighten up the Department and give us some security and counterintelligence that is reliable have, to the best of our ability, provided the Secretary and the new Agency with precisely what the Rudman board recommended. First, they wanted autonomy. I read that: It should be a structure free of all other obligations of the DOE. Yet it goes on in the supplemental report, or the letter of transmittal, saying here is our final interpretation of conflicts. It talks about some policies that ought to be consistent across the Department.

I do not believe we need to put language in that charges the Secretary with putting these policies that are departmentwide in place and then saying this new Agency is bound by them. I think the room ought to be there for the new Agency to prepare its programs in this regard, be it on the environment, be it on management, be it on safety, be it on whatever. The Secretary still has the overriding author-

ity, if he chooses, to say: I have selected some members of the staff of the Department, we have reviewed it carefully, and we recommend that you change something because we want you to be more in harmony with the Department.

But to create a structure that is semiautonomous and then say whatever policies the Secretary pronounces that are departmentwide are binding on this Agency is to deny the Agency the autonomy right up front and to set the presumption in the wrong place. So I hope we do not do that. I am willing to clarify it, if it needs to be clarified further, but I do not think we need this provision ripping at the autonomy at the very outset, waiting around to see what the departmentwide rules are before you can implement this. I just think that is the wrong way to go.

Having said that, I want to recapitulate where we are going for just a moment. The amendments that have been offered so far have been offered on the Democrat side. Senator BINGAMAN and I have one we are going to offer together, that we have resolved and the Senate is going to accept, with reference to work for others within the laboratory, which has been an issue of concern. Then I understand there are a couple more amendments.

I want to say to my friend, Senator BINGAMAN, I know he has an amendment with reference to the environment. Since I have not offered an amendment, I am going to offer an amendment on the environment before he offers his. I am hopeful it will clarify the situation and he may not offer his. But if he chooses to, we will have one on the environment, safety, and others, so as to make it eminently clear we do not intend to exculpate this new Agency from any of the national environmental laws or the national laws with reference to safety. We never intended to. We will make it clear.

Beyond that, we have a little bit of time left. I, myself, am going to run out of time to be able to be down here working on this, but if the Senator thinks another 10 minutes of effort together will help—might I do it this way? Might I ask, how much time do we have left?

The PRESIDING OFFICER. The Senator has 1 minute 20 seconds remaining. The Senator from Michigan has 52 seconds remaining.

Mr. DOMENICI. 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. DOMENICI. 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. DOMENICI. Mr. President, I ask unanimous consent, if we have not reached conclusion of this amendment, that we vote on or in reference to this amendment at 1 o'clock.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. Mr. President, reserving the right to object, Senator KERREY has said he would be gone 30 minutes. I indicated to him I would reserve his right to get here before we voted. That will probably be, say, 1:15.

Mr. DOMENICI. I modify my request and make it 1:15.

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

Mr. DOMENICI. 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. ALLARD. 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. ALLARD. Mr. President, I ask unanimous consent to lay the pending amendment aside and that I be able to speak for 10 minutes on the bill.

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

Mr. ALLARD. Mr. President, I rise in strong support of the Intelligence Authorization Act.

While we cannot discuss the details of the bill, I can say that as a member of the Intelligence Committee, we have provided the necessary funds to the intelligence community to do their job.

One matter of controversy for some is the Kyl-Domenici-Murkowski DOE reorganization amendment. I strongly support this amendment.

In the last year, the Cox report has shown us why we need to improve the security structure at DOE, and the President's Foreign Intelligence Advisory Board, headed by Senator RUDMAN, shows us the way. The Kyl amendment before us is nearly identical to the President's own Advisory Board recommendation.

The President's Advisory Board report states that the problems at DOE are worse than most people could have ever imagined. Quoting from the report:

In response to these problems, the Department has been the subject of a nearly unbroken history of dire warnings and attempted but aborted reforms . . . Second only to its world-class intellectual feats has been its ability to fend off systematic change.

I know that Secretary Richardson has put forward a reorganization plan, and I commend him for taking the initiative. I have known him for some time and I know he is doing what he believes is right for the Department. However, my concern is that he will not be the Secretary forever, and I am worried that the Department's "ability to fend off systematic change" will prevail once he leaves.

The only way to fix the security problems are to make radical changes at the Department, as recommended in the DOE study headed by then chairman of Motorola, Bob Galvin.

The amendment before us is not the most "radical" idea which could have

been presented. In many ways, I believe that a separate agency for the nuclear programs could be the best way to enhance security, but I am a realist and know that if the amendment before us causes such heartache, I can only imagine the reaction to a separate agency amendment.

Basically, the Kyl-Domenici-Murkowski amendment would establish a separate entity, the Agency for Nuclear Stewardship, within the Department of Energy. The Agency will have clear lines of authority, accountability, and an independent budget. The new Agency will be headed by an Under Secretary of Nuclear Stewardship who reports directly to the Secretary. The Directors of the 3 national labs and the nuclear labs will report to the Under Secretary.

First, I understand the amendment creates a "security czar," for the lack of a better term, who will be in charge of security for all the nuclear lab programs under the Under Secretary. While I understand why this position would be placed under the Under Secretary, I also understand how bureaucracies work and the perception they hold for their hierarchy of authority. That is why I believe the security czar position should be placed directly under the Secretary, if for no other reason than to show that he is in charge and will be held accountable. However, I have also heard the concern that if this person is placed under the Secretary then his attention may be diverted to the other matters outside of the nuclear programs. For this reason, I hope that it will be understood that the security czar has the authority, both real and perceived, and will be solely focused on the real security concerns of the nuclear programs but also with the flexibility to not be tied to nonnuclear concerns.

Second, Secretary Richardson believes that this amendment would only divide the Department into more fiefdoms. I do not agree with this assessment. We must break the nuclear stewardship programs out of the main programs of DOE. This new Agency for Nuclear Stewardship is too important and sensitive to treat it like the power marketing administrations, fossil energy, or any other area of the Department. The reports from the last year show that we need to break the nuclear programs out and the approach in this amendment will raise the stature of the programs and will improve the security for our nation.

Let me end by stating that after five internal DOE reviews, four outside studies, six GAO reports, and three blue ribbon commissions, it is time to make these much needed changes at the Department. I ask that all my colleagues support the Kyl-Domenici-Murkowski amendment and the Intelligence Authorization Act.

I yield back the remainder of my time. 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. DOMENICI. 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. DOMENICI. Mr. President, Senator BINGAMAN is in the Chamber. I assume the Bingaman-Domenici amendment with reference to work for others is available and ready; is that correct, I ask the Senator?

Mr. BINGAMAN. Mr. President, it is ready. We have it written up in amendment form. We just got it on a sheet of paper. We can easily do that and take another minute or two.

Mr. DOMENICI. I would like to get it done before this vote.

Mr. BINGAMAN. We will put it on the right paper and go with it.

Mr. DOMENICI. I will use the remaining 10, 15, 20 seconds to say we have been looking through the amendments to see if we can see daylight in dealing with the agency for nuclear weapons development. I believe Senator CARL LEVIN has another amendment. We are going to submit to him some language on reporting, the deputy to the Secretary being available for the Secretary to accomplish some of the responsibilities that the Secretary has. We will get with him on that. Hopefully, we can work that out.

Mr. LEVIN. I thank the Senator from New Mexico.

Mr. DOMENICI. Senator BINGAMAN has an environment and safety amendment. I will have one I will offer ahead of that. Perhaps it can be accepted and Senator BINGAMAN can offer his after it. We will work on that. It seems to me, other than the alleged, talked-about substitute, which I know nothing about, which I assume will be ready—is that correct, I ask Senator LEVIN? It will not cause us a long delay to have that available?

Mr. LEVIN. That is correct, depending on the actions of the Senate prior to that. It should not take more than perhaps 10, 15 minutes to prepare after we are done with all the amendments.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent Katy Lampron, of my staff, have privileges of the floor throughout today, including all votes today.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

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

Mr. BYRD. Mr. President, I have some rather brief remarks that will probably take me 15 minutes. Is this a time when I might speak out of order?

The PRESIDING OFFICER. The vote is scheduled to occur at 1:15.

Mr. BYRD. Mr. President, if there is no objection, I would like to proceed. I ask unanimous consent that the vote be delayed for an additional 5 minutes or whatever.

Mr. LOTT. Mr. President, certainly I do not object for such a reasonable request from the Senator. But I would hope there would be no further delay. We had intended to vote at 12; then we were told 12:30, 12:40, 1:15, and now it is 1:20. I know there is an effort being made to work it out, and that is very commendable, but I think we need to have a recorded vote. I will not object, but I plead with Senators, let's vote at 1:20.

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

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

I do not take the time of the Senate very often. I try not to impose upon other Senators or upon the Senate. But I noted a series of quorum calls, so I felt this might be a good time for me to speak.

EULOGY FOR JFK, JR.

Mr. BYRD. Mr. President, the small, serious, tousled-hair lad seemed, even at the tender age of 3, to know just the right thing to do. With a straight back and a smart, entirely proper, military salute, John F. Kennedy, Jr. expressed the grief of an entire nation with a dignity far beyond his years. He was only 3, yet he gave the Nation a lasting, memorable, indelible image, an image that is remembered by millions and captured on videotape for generations to come.

Now John F. Kennedy, Jr. has, himself, been lost at an age far too young for easy acceptance by a country which had affectionately watched him grow to manhood. His untimely death feels as heavy and oppressive as the too hot, too dry summer in which he lived his final days.

Words fail to express the special deprivation that the human spirit feels when the young, the beautiful, the handsome, the vital among us are suddenly taken from our midst before they have fulfilled their potential promise. Especially, in this case, the mind reels at the spectre of yet another Kennedy, taken too soon, yet another unbearable sorrow for this family which has had so much sorrow to bear. Yet this incred-

ible American family will undoubtedly once again demonstrate to the Nation that they will endure, and that it is how one lives, and not how one dies, that ultimately matters.

John Kennedy, Jr., his wife, Carolyn, and his sister-in-law, Lauren Bessette have vanished in the summer night in the springtime of their years, and our hearts go out to the Bessette and the Kennedy families. I am particularly saddened for my good friend, Senator TED KENNEDY. He is a great Senator. He is a great figure on the American political stage. I know that his heart must be broken by this latest family tragedy, yet I am confident that his expansive spirit and his deep faith in God will see him safely to a harbor of peace and of comfort.

My wife, Erma, and I offer our prayers and our deepest sympathies to him and to the families at this saddest of sad times.

TED KENNEDY, in July of 1996—3 years ago—presented to me a book titled “American Poetry.”

I have chosen a bit of poetry by Nathaniel Hawthorne from that book for the RECORD today. It seems to me that it is most appropriate for this occasion.

The title of this poem is “The Ocean.”

The Ocean has its silent caves,
Deep, quiet and alone;
Though there be fury on the waves,
Beneath them there is none.
The awful spirits of the deep
Hold their communion there;
And there are those for whom we weep,
The young, the bright, the fair.
Calmly the wearied seamen rest
Beneath their own blue sea.
The ocean solitudes are blest,
For there is purity.
The earth has guilt, the earth has care,
Unquiet are its graves;
But peaceful sleep is ever there,
Beneath the dark blue waves.

Mr. President, what is the scheduled time for the vote?

The PRESIDING OFFICER. At 1:15.

Mr. BYRD. I thank the Chair.

Mr. President, I am going to honor the request by the distinguished majority leader, and I am going to yield the floor now. But I will ask unanimous consent that immediately after the vote, I may be recognized to make a second speech, to which I had alluded earlier, which will probably require no longer than 15 minutes at that time.

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2000—Continued

AMENDMENT NO. 1262 TO AMENDMENT NO. 1258

Mr. BINGAMAN. Mr. President, there is an amendment that Senator DOMENICI, Senator REID, and I have agreed to, which I offer at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, Senator DOMENICI and Senator REID, proposes an amendment numbered 1262 to amendment No. 1258.

Mr. BINGAMAN. 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 section 213 of the Department of Energy Organization Act, as proposed by subsection (c) of the amendment, strike subsection (o) and insert the following new subsection (o):

(o)(1) The Secretary shall ensure that other programs of the Department, other federal agencies, and other appropriate entities continue to use the capabilities of the national security laboratories.

(2) The Under Secretary, under the direction, authority, and control of the Secretary, shall, consistent with the effective discharge of the Agency's responsibilities, make the capabilities of the national security laboratories available to the entities in paragraph (1) in a manner that continues to provide direct programmatic control by such entities.

Mr. BINGAMAN. Mr. President, I am very pleased that we could get agreement to offer this amendment. It is a joint amendment that Senator DOMENICI, Senator REID, and I have participated in drafting. It tries to ensure that our national laboratories, particularly those that are focused on defense-related activities and our nuclear weapons capability, are open to do other work, work for other parts of the Department of Energy, work for other agencies of the Government, and work with industry, where appropriate.

We provide what the Secretary needs to ensure that this is the case, and that the Under Secretary, working under the direction of the Secretary, shall make the capabilities of the national laboratories available to these other entities that want to perform work there, and that these entities shall be able to do so in a manner that continues to provide them with direct programmatic control of the activities they are sponsoring at the laboratories.

Mr. President, this concern has been for the future of civilian research and development at the DOE laboratories that carry out defense-related research. I was concerned that the Kyl amendment was setting up an architecture for these laboratories that well may make it more difficult to carry out civilian-related research. We don't want to wake up, 5 years from now, and discover that this architecture dictated the destiny of those laboratories in unfortunate ways.