on this very important Export Administration Act.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I think this is a very good agreement. I think we can have a good discussion about the conference report.

I know there are other Senators who may want to enter into a colloquy with the majority leader or others with regard to some of the implications of the FAA bill. This will accommodate any colloquies Senators may desire.

I also am pleased that we are able to move to the Export Administration Act. As the majority leader noted, this bill is important. We ought to finish it this week. There is no reason why we can't finish it this week, if we can get agreement. It passed out of the committee unanimously. It is long overdue. It is important for us to act on it.

I think this would be a good week for us to be able to deal not only with these nominations, not only with the FAA, but also with the Export Administration. We have an opportunity to do some real good work, and this agreement accommodates that.

I appreciate Senators' cooperation on both sides.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I indicated that I might object to the motion to proceed to the Export Administration Act. It is not my intention to do that. In checking with my other colleagues who have been concerned with this matter, I have learned they are satisfied, as I am, that there have been negotiations in good faith with regard to some of the provisions of the Export Administration Act that cause us great concern; therefore, I will be content to offer amendments tomorrow. But I would like to state for the Record that I do not intend immediately to enter into any time agreement.

The chairman of the Banking Committee has indicated that he does not intend to ask for any time agreement going in. There will be amendments. We need thorough discussion of this matter. This is not something we can hastily go into and dispense with. It is very complicated. It is very important. It has to do with our export policy with regard to our dual-use items—very sensitive items which some countries are now using to enhance their nuclear and other weapons of mass destruction capabilities. There is hardly anything more serious than that.

My own view is that we have needed to reauthorize the Export Administration Act for some time. But we need to tighten the rules, not loosen the rules. My concern is that this does, indeed, loosen some of the important rules.

While I will not object to a motion to proceed, I want it understood that we are going to need a full discussion of the issue.

I yield the floor.

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. LOTT. 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. LOTT. Mr. President, we have been able to work through an agreement on consenting to go to the Export Administration Act.

I ask unanimous consent, following an hour of morning business, that at 11:30 a.m. on Wednesday the Senate begin debate on the Export Administration Act.

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

Mr. LOTT. Thank you, Mr. President. I thank my colleagues for their cooperation on this.

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

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

MORNING BUSINESS

Mr. ENZI. Mr. President, I now ask consent there be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

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

NOMINATION OF TIMOTHY B. DYK

Mr. KENNEDY. Mr. President, Senate action on Timothy Dyk's nomination to the U.S. Court of Appeals for the Federal Circuit is long overdue. He has waited almost two years for this vote. Yet he is a nationally known and exceptionally well-regarded attorney who received a ''Qualified'' rating from the American Bar Association and was well received by the Senate Judiciary Committee. He deserves a favorable vote by the Senate here today.

Mr. Dyk is an honors graduate of both Harvard College and Harvard Law School. After graduation he served as a law clerk for Chief Justice Earl Warren, and for Justices Stanley Reed and Harold Burton. He served in the Justice Department for a year in the early 1960's and has spent the last 37 years as a distinguished and highly respected attorney in private practice in Washington, DC. He has argued cases before the Supreme Court and in numerous Federal courts of appeals, including five cases before the Federal Circuit. He clearly has the qualifications and ability to serve on the Federal Circuit with great distinction.

Mr. Dyk's nomination is supported by a variety of corporations and organizations, including the U.S. Chamber of Commerce, the National Association of Manufacturers, the National Association of Broadcasters, the Labor Policy Association, the American Trucking Association, Kodak, and IBM.

Timothy Dyk is highly qualified to serve on the Federal Circuit. He should have been confirmed long ago, and I urge my colleagues to approve his nomination today.

THE COUNTERINTELLIGENCE REFORM ACT OF 2000

Mr. LEAHY. Mr. President, I am pleased to join my colleagues Senators GRASSLEY, SPECTER and TORRICELLI, and others, in cosponsoring the Counterintelligence Reform Act of 2000, S. 2089. I look forward to working with my colleagues on making any improvements and refinements to the legislation which may become apparent as we hold hearings. This is an important issue with serious implications for the careful balance we have struck between the need to protect our national security and our obligation to defend the constitutional rights of American citizens.

This legislation was crafted in response to perceived problems in the investigation of nuclear physicist Wen Ho Lee. Our review of that matter is far from complete and, in view of the pending criminal case, must be put in abeyance to avoid any prejudice to the parties or suggest political influence on the proceedings. Based on the Subcommittee's review to date, however, I do not share the views of some of my colleagues who have harshly criticized the Justice Department's handling of this matter. Notwithstanding my disagreement, as explained below, with those criticisms of the Justice Department, I support this legislation as a constructive step towards improving the coordination and effectiveness of our counterintelligence efforts. Senators GRASSLEY, SPECTER and TORRICELLI have provided constructive leadership in crafting this bill and bringing together Members who may disagree about the conclusions to be drawn from the underlying facts of the Wen Ho Lee investigation.

My view of the Justice Department's handling of the Wen Ho Lee investigation differs in at least three significant respects from those of the Department's critics in the Senate.

First, the Justice Department's demand in the summer of 1997 for additional investigative work by the FBI has been misconstrued as a ''rejection'' of a FISA application for electronic surveillance. FBI officials first consulted attorneys at DOJ on June 30, 1997, about receiving authorization to conduct FISA surveillance against Lee. The request was assigned to a line attorney in the Office of Intelligence and Policy Review (OIPR), who, appreciating the seriousness of the matter, drafted an application for the court over the holiday weekend. A supervisor

in the OIPR unit then reviewed the draft and decided that further work by the FBI would be needed ''to complete the application and send it forward.'' Further discussions then ensued and two additional draft applications were prepared.

In August 1997, FBI agents met again with OIPR attorneys about the FISA request. The OIPR supervisor testified at a Governmental Affairs Committee hearing on June 9, 1999 that ''[f]ollowing that meeting, the case was put back to the Bureau to further the investigation in order to flesh out and eliminate some of the inconsistencies, to flesh out some of the things that had not been done.'' He testified that the primary concern with the FBI investigation ''had to do with the fact that the DOE and Bureau had [multiple] suspects, and only two were investigated. . . . That is the principal flaw which ha[d] repercussions like dominoes throughout all of the other probable cause.''

This was not a ''rejection.'' The OIPR attorneys expected the FBI to develop their case against Lee further and to return with additional information. This is normal, as most prosecutors know. Working with agents on investigations is a dynamic process, that regularly involves prosecutors pushing agents to get additional information and facts to bolster the strength of a case. Yet, nearly a year and a half passed before the attorneys at OIPR were again contacted by the FBI about Lee.

The report issued by the Governmental Affairs Committee on this issue concludes that although the OIPR attorneys did not view their request for additional investigation as a ''denial'' of the FISA request, the FBI ''took it as such.'' Notwithstanding or even mentioning these apparently differing views as to what had transpired, some have criticized the Justice Department for rejecting the FISA application in 1997. It is far from clear that any rejection took place, and I credit the perspective of the OIPR attorneys that their request to the FBI for additional investigative work was made in an effort to complete—not kill—the FISA application.

Second, the Justice Department correctly concluded that the FBI's initial FISA application failed to establish probable cause. Indeed, even the chief of the FBI's National Security Division, John Lewis, who worked on the FISA application, has admitted that he turned in the application earlier than anticipated and without as much supporting information as he would have liked.

Determining whether probable cause exists is always a matter of judgment and experience, with important individual rights, public safety and law enforcement interests at stake if a mistake is made. From the outset, prosecutors making such a determination must keep a close eye on the applicable legal standard.

Pursuant to the terms of the FISA statute, intelligence surveillance against a United States person may only be authorized upon a showing that there is probable cause to believe: (1) that the targeted United States person is an agent of a foreign power; and (2) that each of the facilities or places to be surveilled is being used, or about to be used by that target. 50 U.S.C. §§1801(b)(2), 1804(a)(4). With regard to the first prong, the statute defines several ways in which a United States person can be shown to be an agent of a foreign power. Most relevant here, a United States person is considered an agent of a foreign power if the person ''knowingly engages in clandestine intelligence gathering activities, for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States.'' 50 U.S.C. §1801(b)(2)(A).

Without dissecting all of the allegations against Lee here, there are several issues that undermined the FBI's evidence that Lee was an ''agent of a foreign power'' and, in 1997, engaged in ''clandestine intelligence gathering activities.'' In the letterhead memorandum by which the FBI first sought DOJ approval for the FISA warrant, the FBI reported that an administrative inquiry conducted by DOE and FBI investigators had identified Wen Ho Lee as a suspect in the loss of information relating to the W–88 nuclear warhead. Most critically, however, the FBI indicated that Lee was one of a group of laboratory employees who: (1) had access to W–88 information; (2) had visited China in the relevant time period; and (3) had contact with visiting Chinese delegations.

The problem with the FBI's reliance on this administrative inquiry and corresponding narrow focus on Lee and his wife as suspects was that the FBI ''did nothing to follow up on the others.'' The Attorney General testified at the June 8, 1999 Judiciary Committee hearing that ''the elimination of other logical suspects, having the same access and opportunity, did not occur.'' Similarly, the OIPR supervisor who testified at the GAC hearing confirmed that ''the DOE and Bureau had [multiple] suspects, and only two [meaning Lee and his wife] were investigated.'' According to him, as noted above, ''[t]hat is the principal flaw which ha[d] repercussions like dominoes throughout all of the other probable cause.'' Quite simply, the failure of the FBI to eliminate, or even investigate, the other potential suspects identified by the DOE administrative inquiry undermined their case for probable cause.

Indeed, this failure to investigate all potential leads identified in the DOE administrative inquiry has prompted the FBI to conduct a thorough re-examination, which is currently underway, of the factual assumptions and investigative conclusions of that initial inquiry.

The other evidence that the FBI had gathered about Lee was stale, inconclusive or speculative, at best and certainly did not tie him to the loss of the W–88 nuclear warhead information. For example, the FBI proffered evidence pertaining to a fifteen-year-old contact between Lee and Taiwanese officials. The FBI's earlier investigation boiled down to this: after the FBI learned in 1983 that Lee had been in contact with a scientist at another nuclear laboratory who was under investigation for espionage, Lee was questioned. He explained, eventually, that he had contacted this scientist because he had thought the scientist had been in trouble for doing similar unclassified consulting work that Lee volunteered that he had been doing for Taiwan. To confirm his veracity, the FBI gave Lee a polygraph examination in January 1984, and he passed. This polygraph included questions as to whether he had ever given classified information to any foreign government. Shortly thereafter, the FBI closed its investigation into Lee and this incident.

Even if viewed as suspicious, Lee's contacts fifteen years earlier with Taiwanese officials did not give rise to probable cause to believe that in 1997 he was currently engaged in intelligence gathering for China.

As a further example, the FBI also relied on evidence that during a trip by Lee to Hong Kong in 1992, there was an unexplained charge incurred by Lee that the FBI speculated could be consistent with Lee having taken a side trip to Beijing. As Attorney General Reno testified at the hearing, the fact that Lee incurred an unexplained travel charge in Hong Kong did not standing alone support an inference that he went to Beijing. It therefore did nothing to support the FBI's claim that Lee was an agent for China.

The OIPR attorneys who pushed the FBI for additional investigative work to bolster the FISA application for electronic surveillance of Wen Ho Lee were right—the evidence of probable cause proffered by the FBI was simply insufficient for the warrant.

Third, the Justice Department was right not to forward a flawed and insufficient FISA application to the FISA court. Some have suggested that the Lee FISA application should have been forwarded to the court even though the Attorney General (through her attorneys) did not believe there was probable cause. To have done so would have violated the law.

The FISA statute specifically states that ''[e]ach application shall require the approval of the Attorney General based upon [her] finding that it satisfies the criteria and requirements. . . .'' 50 U.S.C. §1804 (a). The Attorney General is statutorily required to find that the various requirements of the FISA statute have been met before approving an application and submitting it to the court.

As a former prosecutor, I know that this screening function is very important. Every day we rely on the sound judgement of experienced prosecutors.

They help protect against encroachments on our civil liberties and constitutional rights. Any claim that the Attorney General should submit a FISA application to the court when in her view the statutory requirements have not been satisfied undermines completely the FISA safeguards deliberately included in the statute in the first place.

I appreciate that those who disagree with me that the evidence for the Lee FISA application was insufficient to meet the FISA standard for surveillance against a United States person may urge that this standard be weakened. This would be wrong.

The handling of the Wen Ho Lee FISA application does not suggest a flaw in the definition of probable cause in the FISA statute. Instead, it is an example of how the probable cause standard is applied and demonstrates that effective and complete investigative work is and should be required before extremely invasive surveillance techniques will be authorized against a United States person. The experienced Justice Department prosecutors who reviewed the Lee FISA application understood the law correctly and applied it effectively. They insisted that the FBI do its job of investigating and uncovering evidence sufficient to meet the governing legal standard.

The Counterintelligence Reform Act of 2000 correctly avoids changing this governing probable cause standard. Instead, the bill simply makes clear what is already the case—that a judge can consider evidence of past activities if they are relevant to a finding that the target currently ''engages'' in suspicious behavior. Indeed, the problem in the Lee case was not any failure to consider evidence of past acts. Rather, it was that the evidence of past acts presented regarding Lee's connections to Taiwan did not persuasively bear on whether Lee, in 1997, was engaging in clandestine intelligence gathering activities for another country, China.

Finally, some reforms are needed. The review of the Lee matter so far suggests that internal procedures within the FBI, and between the FBI and the Office of Intelligence Policy and Review, to ensure that follow-up investigation is done to develop probable cause do not always work. I share the concern that it took the FBI an inordinately long time to relay the Justice Department's request for further investigation and to then follow up.

The FBI and the OIPR section within DOJ have already taken important steps to ensure better communication, coordination and follow-up investigation in counterintelligence investigations.

The FBI announced on November 11, 1999, that it has reorganized its intelligence-related divisions to facilitate the sharing of appropriate information and to coordinate international activities, the gathering of its own intelligence and its work with the counterespionage agencies of other nations.

In addition, I understand that OIPR and the FBI are working to implement a policy under which OIPR attorneys will work directly with FBI field offices to develop probable cause and will maintain relationships with investigating agents. This should ensure better and more direct communication between the attorneys drafting the FISA warrants and the agents conducting the investigation and avoid information bottlenecks that apparently can occur when FBI Headquarters stands in the way of such direct information flow. I encourage the development of such a policy. It should prevent the type of delay in communication that occurred within the FBI from happening again. In addition, the Attorney General advised us at the June 8, 1999 hearing that she has instituted new procedures within DOJ to ensure that she is personally advised if a FISA application is denied or if there is disagreement with the FBI.

Notwithstanding all of these wise changes, the FISA legislation will require formal coordination between the Attorney General and the Director of the FBI, or other head of agency, in those rare cases where disagreements like those in the Lee case arise. I am confident that the Directors of the FBI and CIA and the Secretaries of Defense and State, and the Attorney General, are capable of communicating directly on matters when they so choose, even without legislation. I am concerned that certain of these new requirements will be unduly burdensome on our high-ranking officials due to the clauses that prevent the delegation of certain duties.

For instance, the bill requires that upon the written request of the Director of the FBI or other head of agency, the Attorney General ''shall personally review'' a FISA application. If, upon this review, the Attorney General declines to approve the application, she must personally provide written notice to the head of agency and ''set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application.'' The head of agency then has the option of adopting the proposed modifications, but should he choose to do so he must ''supervise the making of any modification'' personally.

I appreciate that these provisions of this bill are simply designed to ensure that our highest ranking officials are involved when disputes arise over the adequacy of a FISA application. However, we should consider, as we hold hearings on the bill, whether imposing statutory requirements personally on the Attorney General and others is the way to go.

I also support provisions in this bill that require information sharing and consultation between intelligence agencies, so that counterintelligence investigations will be coordinated more effectively in the future. In an area of such national importance, it is critical that our law enforcement and intelligence agencies work together as efficiently and cooperatively as possible. Certain provisions of this bill will facilitate this result.

In addition, Section 5 of the bill would require the adoption of regulations to govern when and under what circumstances information secured pursuant to FISA authority ''shall be disclosed for law enforcement purposes.'' I welcome attention to this important matter, since OIPR attorneys had concerns in April 1999 about the FBI efforts to use the FISA secret search and surveillance procedures as a proxy for criminal search authority.

Whatever our views about who is responsible for the miscommunications and missteps that marred the Wen Ho Lee investigation, S. 2089, the Counterintelligence Reform Act of 2000, stands on its own merits and I commend Senators GRASSLEY, SPECTER, and TORRICELLI for their leadership and hard work in crafting this legislation.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, March 6, 2000, the Federal debt stood at $5,745,099,557,759.64 (Five trillion, seven hundred forty-five billion, ninety-nine million, five hundred fifty-seven thousand, seven hundred fifty-nine dollars and sixty-four cents).

Five years ago, March 6, 1995, the Federal debt stood at $4,840,905,000,000 (Four trillion, eight hundred forty billion, nine hundred five million).

Ten years ago, March 6, 1990, the Federal debt stood at $3,028,453,000,000 (Three trillion, twenty-eight billion, four hundred fifty-three million).

Fifteen years ago, March 6, 1985, the Federal debt stood at $1,713,220,000,000 (One trillion, seven hundred thirteen billion, two hundred twenty million).

Twenty-five years ago, March 6, 1975, the Federal debt stood at $499,255,000,000 (Four hundred ninety-nine billion, two hundred fifty-five million) which reflects a debt increase of more than $5 trillion—$5,245,844,557,759.64 (Five trillion, two hundred forty-five billion, eight hundred forty-four million, five hundred fifty-seven thousand, seven hundred fifty-nine dollars and sixty-four cents) during the past 25 years.

OPEN-MARKET REORGANIZATION FOR THE BETTERMENT OF INTERNATIONAL TELECOMMUNICATIONS ACT

Mr. CLELAND. Mr. President, one of the first issues to come before me as a new member of the Commerce Committee was INTELSAT privatization. Although this was a challenging issue that required balancing the international role of the U.S. in communications technology with the needs of the signatories to INTELSAT, I chose to become an original co-sponsor of the Open-market Reorganization for the Betterment of International Telecommunications Act ''ORBIT'' because