

get this done tomorrow or the next day, still probably a week.

So I urge my colleagues on both sides, let us work together. An example has been set, and I am proud of what the Senate has done. I am proud of what the committee has done and is willing to do. I hope the rest of us will take advantage of the opportunity to follow that leadership.

I wanted to get that on the record. I will not object, Madam President.

The PRESIDING OFFICER. Is there objection?

Mr. FEINGOLD. Madam President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. We can certainly continue these discussions, but I want to say it is certainly not the case that I have not shared the concerns I have, I would say, concerning the amendments we have talked about, the actual areas, and shared them with the leadership. We certainly could have the text of all of these amendments by 10 tomorrow morning. In other words, the language would be available before the bill even comes up. That strikes me as sufficient notice usually in the Senate.

I do not think it is a fair complaint to say we cannot agree to these reasonable requests simply because of the extra language written out at this point.

Madam President, at this point, unless other Members wish to address this issue, I will object.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, if the Senator from Mississippi seeks recognition, obviously I yield to the distinguished Senator.

Mr. LOTT. Madam President, I was hoping to have a brief opportunity to speak about the magnificent leadership of Senator Mike Mansfield, but I will be glad to withhold on that.

Mr. LEAHY. I will say to the minority leader, Mike Mansfield is a man who was my mentor and I will be speaking about him tomorrow after the memorial service. But I say to the distinguished leader, he was my leader when I came to the Senate, and I think he probably had as much involvement in teaching me how to be a Senator as anybody. I will speak further on that at another time.

I hope Senators would work with the distinguished majority leader and the distinguished Republican leader to help us schedule this legislation. I have tried to be accommodating, getting up at 3 o'clock this morning in Vermont to try to get back.

Do I love this bill? Of course I don't love this bill, Madam President. But neither does the distinguished Republican leader. Neither does the distinguished ranking member. There is nobody in here who does. It is impossible to craft a bill of this nature that everybody is going to like.

Does it protect us for all time from terrorism? Of course it does not. As I said earlier, I suspect we had information prior to September 11 in our files at the Justice Department that might have led to the apprehension and the stopping of the terrorists. That was information and intelligence that was acquired properly under the current laws. Will this protect us by itself? No. Will it give us some tools we don't have? Yes. This can be done in such a way that we ask ourselves, are we willing to try some of this for a while? Put constitutional limitations.

I think the distinguished Senator from Mississippi knows I am very truthful when I say I will have some very serious and, I would hope, bipartisan oversight hearings of abuse of the law as we go along. This is not a liberal or conservative piece of legislation. We have liberals and conservatives and moderates who have areas of concerns. We all do because we protect and respect our privacy. I come from a State where privacy is paramount to everybody. It is one thing that unites every one of us, no matter our political background.

But we cannot tell what is going to be the final bill until we consider it. We have to pass something out of the Senate. The House has to pass something. They have been working extraordinarily hard, Madam President, both Chairman SENSENBRENNER and Ranking Member CONYERS. Why not see what we can come up with? The committee of conference will be the final package. If I don't like the final package, I will be the first to vote against it. But I suspect we will come up with something. We will probably have some very late nights that will be worthwhile.

I thank my friend from Mississippi and my friend from South Dakota for trying to bring this bill up. I will stand ready. I don't have to leave at 3 o'clock anymore this week to be here. I am here. Although I might say, if anybody could know how absolutely beautiful it is in Vermont at this time of year, with the best foliage we have had in 25 years, maybe we should move the Senate up there. It depends on the good graces of my friend from Mississippi.

I yield the floor.

Mr. LOTT. I thank Senator LEAHY for his work. We have clearly come up with a superior bill to the one being moved in the House, but the House is also moving forward. I know Senator SMITH of New Hampshire has an amendment he wanted to offer, too. Every Senator has the right to object. We should not be critical of a Senator exercising that right.

But I think there is urgency on this legislation. I hope, I say to Senator LEAHY, we will continue to work to see if we can clear this bill and get it considered tomorrow. If we don't, there is a danger that the aviation security bill will tangle up the rest of the week and we might not be able to get to this bill until next week.

I think the American people have appreciated the way we have worked together, shoulder to shoulder, regardless of party. We are all feeling a great need to pull together with patriotism while protecting fundamental rights. I hope we can continue to do that. We will be glad to work with Senators LEAHY and DASCHLE to see that happens.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. I thank the Chair.

(The remarks of Mr. BROWNBACK pertaining to the introduction of S. 1521 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BROWNBACK. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that there be a period of morning business with Senators permitted to speak for up to 5 minutes each.

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

THE UNITING AND STRENGTHENING AMERICA ACT OF 2001

Mr. LEAHY. Madam President, last Thursday, October 4, I was pleased to introduce with the Majority Leader, Senator DASCHLE, and the Chairmen of the Banking and Intelligence Committees, as well as the Minority Leader, Senator LOTT, and Senator HATCH and Senator SHELBY, the United and Strengthening America, or USA Act. This is not the bill that I, or any of the sponsors, would have written if compromise was unnecessary. Nor is the bill the administration initially proposed and the Attorney General delivered to us on September 19, at a meeting in the Capitol.

We were able to refine and supplement the administration's original proposal in a number of ways. The administration accepted a number of the practical steps I had originally proposed on September 19 to improve our security on the Northern Border, assist our Federal, State and local law enforcement officers and provide compensation to the victims of terrorist acts and to the public safety officers who gave their lives to protect ours. This USA Act also provides important checks on the proposed expansion of government powers that were not contained in the Attorney General's initial proposal.

In negotiations with the administration, I have done my best to strike a

reasonable balance between the need to address the threat of terrorism, which we all keenly feel at the present time, and the need to protect our constitutional freedoms. Despite my misgivings, I have acquiesced in some of the administration's proposals because it is important to preserve national unity in this time of crisis and to move the legislative process forward.

The result of our labors still leaves room for improvement. Even after the Senate passes judgment on this bill, the debate will not be finished. We will have to consider the important judgments made by the House Judiciary Committee in the version of the legislation making its way through the House. Moreover, I predict that some of these provisions will face difficult tests in the courts and that we in Congress will have to revisit these issues at some time in the future when, as we all devoutly hope, the present crisis has passed. I also intend as Chairman of the Judiciary Committee to exercise careful oversight of how the Department of Justice, the FBI and other executive branch agencies are using the newly-expanded powers that this bill will give them.

The negotiations on this bill have not been easy. Within days of the September 11 attacks, I instructed my staff to begin work on legislation to address security needs on the Northern Border, the needs of victims and State and local law enforcement, and criminal law improvements. A week after the attack, on September 19, the Attorney General and I exchanged the outlines of the legislative proposals and pledged to work together towards our shared goal of putting tools in the hands of law enforcement that would help prevent another terrorist attack.

Let me be clear: No one can guarantee that Americans will be free from the threat of future terrorist attacks, and to suggest that this legislation—or any legislation—would or could provide such a guarantee would be a false promise. I will not engage in such false promises, and those in the administration who make such assertions do a disservice to the American people.

I have also heard claims that if certain powers had been previously authorized by the Congress, we could somehow have prevented the September 11 attacks. Given this rhetoric it may be instructive to review efforts that were made a few years ago in the Senate to provide law enforcement with greater tools to conduct surveillance of terrorists and terrorist organizations. In May 1995, Senator LIEBERMAN offered an amendment to the bill that became the Antiterrorism and Effective Death Penalty Act of 1996 that would have expanded the Government's authority to conduct emergency wiretaps to cases of domestic or international terrorism and added a definition of domestic terrorism to include violent or illegal acts apparently intended to "intimidate, or coerce the civilian population." The consensus, bi-

partisan bill that we consider today contains a very similar definition of domestic terrorism.

In 1995, however, a motion to table Senator LIEBERMAN's amendment was agreed to in a largely party-line vote, with Republicans voting against the measure. In fact, then Senator Ashcroft voted to table that amendment, and my good friend from Utah, Senator HATCH, spoke against it and opined, "I do not think we should expand the wiretap laws any further." I recall Senator HATCH's concern then that "We must ensure that in our response to recent terrorist acts, we do not destroy the freedoms that we cherish." I have worked very hard to maintain that balance in negotiations concerning the current legislation.

Following the exchange on September 19 of our legislative proposals, we have worked over the last two weeks around the clock with the administration to put together the best legislative package we could. I share the administration's goal of providing promptly the legal tools necessary to deal with the current terrorist threat. While some have complained publicly that the negotiations have gone on for too long, the issues involved are of great importance, and we will have to live with the laws we enact for a long time to come. Demands for action are irresponsible when the road-map is pointed in the wrong direction. As Ben Franklin once noted, "if we surrender our liberty in the name of security, we shall have neither."

Moreover, our ability to make rapid progress was impeded because the negotiations with the administration did not progress in a straight line. On several key issues that are of particular concern to me, we had reached an agreement with the administration on Sunday, September 30. Unfortunately, within two days, the administration announced that it was reneging on the deal. I appreciate the complex task of considering the concerns and missions of multiple federal agencies, and that sometimes agreements must be modified as their implications are scrutinized by affected agencies. When agreements made by the administration must be withdrawn and negotiations on resolved issues reopened, those in the administration who blame the Congress for delay with what the New York Times described last week as "scurrilous remarks," do not help the process move forward.

We have expedited the legislative process in the Judiciary Committee to consider the administration's proposals. In daily news conferences, the Attorney General has referred to the need for such prompt consideration. I commend him for making the time to appear before the Judiciary Committee at a hearing September 25 to respond to questions that Members from both parties have about the administration's initial legislative proposals. I also thank the Attorney General for extending the hour and a half he was

able to make in his schedule for the hearing for another fifteen minutes so that Senator FEINSTEIN and Senator SPECTER were able to ask questions before his departure. I regret that the Attorney General did not have the time to respond to questions from all the Members of the Committee either on September 25 or last week, but again thank him for the attention he promised to give to the written questions Members submitted about the legislation. We have not received answers to those written questions yet, but I will make them a part of the hearing record whenever they are sent.

The Chairman of the Constitution Subcommittee, Senator FEINGOLD, also held an important hearing on October 3 on the civil liberties ramifications of the expanded surveillance powers requested by the administration. I thank him for his assistance in illuminating these critical issues for the Senate.

Rule 14: To accede to the administration's request for prompt consideration of this legislation, the leaders decided to hold the USA Act at the desk rather than refer the bill to the committee for markup, as is regular practice. Senator HATCH specifically urged that this occur, and I support this decision. Indeed, when the Senate considered the anti-terrorism act in 1995 after the Oklahoma City bombing, we bypassed committee in order to deal with the legislation more promptly on the floor.

Given the expedited process that we have used to move this bill, I will take more time than usual to detail its provisions.

The heart of every American aches for those who died or have been injured because of the tragic terrorist attacks in New York, Virginia, and Pennsylvania on September 11. Even now, we cannot assess the full measure of this attack in terms of human lives, but we know that the number of casualties is extraordinarily high.

Congress acted swiftly to help the victims of September 11. Within 10 days, we passed legislation to establish a Victims Compensations Program, which will provide fair compensation to those most affected by this national tragedy. I am proud of our work on that legislation, which will expedite payments to thousands of Americans whose lives were so suddenly shattered.

But now more than ever, we should remember the tens of thousands of Americans whose needs are not being met—the victims of crimes that have not made the national headlines. Just one day before the events that have so transformed our nation, I came before this body to express my concern that we were not doing more for crime victims. I noted that the pace of victims legislation had slowed, and that many opportunities for progress had been squandered. I suggested that this year, we had a golden opportunity to make significant progress in this area by passing S.783, the Leahy-Kennedy Crime Victims Assistance Act of 2001.

I am pleased, therefore, that the antiterrorism package now before the

Senate contains substantial portions of S.783 aimed at refining the Victims of Crime Act of 1984, VOCA, and improving the manner in which the Crime Victims Fund is managed and preserved. Most significantly, section 621 of the USA Act will eliminate the cap on VOCA spending, which has prevented more than \$700 million in fund deposits from reaching victims and supporting essential services.

Congress has capped spending from the fund for the last two fiscal years, and President Bush has proposed a third cap for fiscal year 2002. These limits on VOCA spending have created a growing sense of confusion and unease by many of those concerned about the future of the Fund.

We should not be imposing artificial caps on VOCA spending while substantial unmet needs continue to exist. Section 621 of the USA Act replaces the cap with a self-regulating system that will ensure stability and protection of Fund assets, while allowing more money to be distributed to the States for victim compensation and assistance.

Other provisions included from S. 783 will also make an immediate difference in the lives of victims, including victims of terrorism. Shortly after the Oklahoma City bombing, I proposed and the Congress adopted the Victims of Terrorism Act of 1995. This legislation authorized the Office for Victims of Crime (OVC) to set aside an emergency reserve of up to \$50 million as part of the Crime Victims Fund. The emergency reserve was intended to serve as a "rainy day" fund to supplement compensation and assistance grants to States to provide emergency relief in the wake of an act of terrorism or mass violence that might otherwise overwhelm the resources of a State's crime victim compensation program and crime victim assistance services. Last month's disaster created vast needs that have all but depleted the reserve. Section 621 of the USA Act authorizes OVC to replenish the reserve with up to \$50 million, and streamlines the mechanism for replenishment in future years.

Another critical provision of the USA Act will enable OVC to provide more immediate and effective assistance to victims of terrorism and mass violence occurring within the United States. I proposed this measure last year as an amendment to the Justice for Victims of Terrorism Act, but was compelled to drop it to achieve bipartisan consensus. I am pleased that we are finally getting it done this year.

These and other VOCA reforms in the USA Act are long overdue. Yet, I regret that we are not doing more. In my view, we should pass the Crime Victims Assistance Act in its entirety. In addition to the provisions that are included in today's antiterrorism package, this legislation provides for comprehensive reform of Federal law to establish enhanced rights and protections for victims of Federal crime. It also proposes

several programs to help States provide better assistance for victims of State crimes.

I also regret that we have not done more for other victims of recent terrorist attacks. While all Americans are numbered by the heinous acts of September 11, we should not forget the victims of the 1998 Embassy bombings in East Africa. Eleven Americans and many Kenyan and Tanzanian nationals employed by the United States lost their lives in that tragic incident. It is my understanding that compensation to the families of these victims has in many instances fallen short. It is my hope that OVC will use a portion of the newly replenished reserve fund to remedy any inequity in the way that these individuals have been treated.

Hate Crimes: We cannot speak of the victims of the September 11 without also noting that Arab-Americans and Muslims in this country have become the targets of hate crimes, harassment, and intimidation. I applaud the President for speaking out against and condemning such acts, and visiting a mosque to demonstrate by action that all religions are embraced in this country. I also commend the FBI Director for his periodic reports on the number of hate crime incidents against Arab-American and Muslims that the FBI is aggressively investigating and making clear that this conduct is taken seriously and will be punished.

The USA Act contains, in section 102, a sense of the Congress that crimes and discrimination against Arab and Muslim Americans are condemned. Many of us would like to do more, and finally enact effective hate crimes legislation, but the administration has asked that the debate on that legislation be postponed. One of my greatest regrets regarding the negotiations in this bill was the objections that prevented the Local Law Enforcement Enhancement Act, S. 625, from being included in the USA Act.

The administration's initial proposal was entirely focused on Federal law enforcement. Yet, we must remember that State and local law enforcement officers have critical roles to play in preventing and investigating terrorist acts. I am pleased that the USA Act we consider today recognizes this fact.

As a former State prosecutor, I know that State and local law enforcement officers are often the first responders to a crime. On September 11, the Nation saw that the first on the scene were the heroic firefighters, police officers and emergency personnel in New York City. These New York public safety officers, many of whom gave the ultimate sacrifice, remind us of how important it is to support our State and local law enforcement partners. The USA Act provides three critical measures of Federal support for our State and local law enforcement officers in the war against terrorism.

First, we streamline and expedite the Public Safety Officers' Benefits application process for family members of

fire fighters, police officers and rescue workers who perish or suffer a disabling injury in connection with prevention, investigation, rescue or recovery efforts related to a future terrorist attack.

The Public Safety Officers' Benefits Program provides benefits for each of the families of law enforcement officers, firefighters, and emergency response crew members who are killed or disabled in the line of duty. Current regulations, however, require the families of public safety officers who have fallen in the line of duty to go through a cumbersome and time-consuming application process. In the face of our national fight against terrorism, it is important that we provide a quick process to support the families of brave Americans who selflessly give their lives so that others might live before, during and after a terrorist attack.

This provision builds on the new law championed by Senator CLINTON, Senator SCHUMER and Congressman NADLER to speed the benefit payment process for families of public safety officers killed in the line of duty in New York City, Virginia, and Western Pennsylvania, on September 11.

Second, we have raised the total amount of Public Safety Officers' Benefit Program payments from approximately \$150,000 to \$250,000. This provision retroactively goes into effect to provide much-needed relief for the families of the brave men and women who sacrificed their own lives for their fellow Americans during the year. Although this increase in benefits can never replace a family's tragic loss, it is the right thing to do for the families of our fallen heroes. I want to thank Senator BIDEN and Senator HATCH for their bipartisan leadership on this provision.

Third, we expand the Department of Justice Regional Information Sharing Systems Program to promote information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities and authorize a doubling of funding for this year and next year. The RISS Secure Intranet is a nationwide law enforcement network that already allows secure communications among the more than 5,700 Federal, State and local law enforcement agencies. Effective communication is key to effective law enforcement efforts and will be essential in our national fight against terrorism.

The RISS program enables its member agencies to send secure, encrypted communications—whether within just one agency or from one agency to another. Federal agencies, such as the FBI, do not have this capability, but recognize the need for it. Indeed, on September 11, 2001, immediately after the terrorist attacks, FBI Headquarters called RISS officials to request "Smartgate" cards and readers to secure their communications systems. The FBI agency in Philadelphia called soon after to request more Smartgate cards and readers as well.

The Regional Information Sharing Systems Program is a proven success that we need to expand to improve secure information sharing among Federal, State and local law enforcement agencies to coordinate their counterterrorism efforts.

Our State and local law enforcement partners welcome the challenge to join in our national mission to combat terrorism. We cannot ask State and local law enforcement officers to assume these new national responsibilities without also providing new Federal support. The USA Act provides the necessary Federal support for our State and local law enforcement officers to serve as full partners in our fight against terrorism.

I am deeply troubled by continuing reports that information is not being shared with state local law enforcement. In particular, the testimony of Baltimore Police Chief Ed Norris before the House Government Reform Committee last week highlighted the current problem.

The unfolding facts about how the terrorists who committed the September 11 attack were able to enter this country without difficulty are chilling. Since the attacks many have pointed to our northern border as vulnerable to the entry of future terrorists. This is not surprising when a simple review of the numbers shows that the northern border has been routinely short-changed in personnel. While the number of Border Patrol agents along the southern border has increased over the last few years to over 8,000, the number at the northern border has remained the same as a decade ago at 300. This remains true despite the fact that Admad Ressay, the Algerian who planned to blow up the Los Angeles International Airport in 1999, and who has been linked to those involved in the September 11 attacks, chose to enter the United States at our northern border. It will remain an inviting target until we dramatically improve our security.

The USA Act includes my proposals to provide the substantial and long overdue assistance for our law enforcement and border control efforts along the Northern Border. My home State of Vermont has seen huge increases in Customs and INS activity since the signing of NAFTA. The number of people coming through our borders has risen steeply over the years, but our staff and our resources have not.

I proposed—and this legislation authorizes in section 402—tripling the number of Border Patrol, INS inspectors, and Customs Service employees in each of the States along the 4,000-mile Northern Border. I was gratified when 22 Senators—Democrats and Republicans—wrote to the President supporting such an increase, and I am pleased that the administration agreed that this critical law enforcement improvement should be included in the bill. Senators CANTWELL and SCHUMER in the Committee and Senators MUR-

RAY and DORGAN have been especially strong advocates of these provisions and I thank them for their leadership. In addition, the USA Act, in section 401, authorizes the Attorney General to waive the FTE cap on INS personnel in order to address the national security needs of the United States on the northern border. Now more than ever, we must patrol our border vigilantly and prevent those who wish America harm from gaining entry. At the same time, we must work with the Canadians to allow speedy crossing to legitimate visitors and foster the continued growth of trade which is beneficial to both countries.

In addition to providing for more personnel, this bill also includes, in section 402(4), my proposal to provide \$100 million in funding for both the INS and the Customs Service to improve the technology used to monitor the Northern Border and to purchase additional equipment. The bill also includes, in section 403(c), an important provision from Senator CANTWELL directing the Attorney General, in consultation with other agencies, to develop a technical standard for identifying electronically the identity of persons applying for visas or seeking to enter the United States. In short, this bill provides a comprehensive high-tech boost for the security of our nation.

This bill also includes important proposals to enhance data sharing. The bill, in section 403, directs the Attorney General and the FBI Director to give the State Department and INS access to the criminal history information in the FBI's National Crime Information Center, NCIC, database, as the administration and I both proposed. The Attorney General is directed to report back to the Congress in two years on progress in implementing this requirement. We have also adopted the administration's language, in section 413, to make it easier for the State Department to share information with foreign governments for aid in terrorist investigations.

The USA Act contains a number of provisions intended to improve and update the federal criminal code to address better the nature of terrorist activity, assist the FBI in translating foreign language information collected, and ensure that federal prosecutors are unhindered by conflicting local rules of conduct to get the job done. I will mention just a few of these provisions.

FBI Translators: The truth certainly seems self-evident that all the best surveillance techniques in the world will not help this country defend itself from terrorist attack if the information cannot be understood in a timely fashion. Indeed, within days of September 11, the FBI Director issued an employment ad on national TV by calling upon those who speak Arabic to apply for a job as an FBI translator. This is a dire situation that needs attention. I am therefore gratified that the administration accepted my proposal, in section 205, to waive any federal personnel re-

quirements and limitations imposed by any other law in order to expedite the hiring of translators at the FBI.

This bill also directs the FBI Director to establish such security requirements as are necessary for the personnel employed as translators. We know the effort to recruit translators has a high priority, and the Congress should provide all possible support. Therefore, the bill calls on the Attorney General to report to the Judiciary Committees on the number of translators employed by the Justice Department, any legal or practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

Federal Crime of Terrorism: The administration's initial proposal assembled a laundry list of more than 40 Federal crimes ranging from computer hacking to malicious mischief to the use of weapons of mass destruction, and designated them as "Federal terrorism offenses," regardless of the circumstances under which they were committed. For example, a teenager who spammed the NASA website and, as a result, recklessly caused damage, would be deemed to have committed this new "terrorism" offense. Under the administration's proposal, the consequences of this designation were severe. Crimes on the list would carry no statute of limitations. The maximum penalties would shoot up to life imprisonment, and those released earlier would be subject to a lifetime of supervised release. Moreover, anyone who harbored a person whom he had "reasonable grounds to suspect" had committed, or was about to commit, a "Federal terrorism offense"—whether it was the Taliban or the mother of my hypothetical teenage computer hacker—would be subject to stiff criminal penalties. I worked closely with the administration to ensure that the definition of "terrorism" in the USA Act fit the crime.

First, we have trimmed the list of crimes that may be considered as terrorism predicates in section 808 of the bill. This shorter, more focused list, to be codified at 18 U.S.C. §2332(g)(5)(B), more closely reflects the sorts of offenses committed by terrorists.

Second, we have provided, in section 810, that the current 8-year limitations period for this new set of offenses will remain in place, except where the commission of the offense resulted in, or created a risk of, death or serious bodily injury.

Third, rather than make an across-the-board, one-size-fits-all increase of the penalties for every offense on the list, without regard to the severity of the offense, we have made, in section 811, more measured increases in maximum penalties where appropriate, including life imprisonment or lifetime supervised release in cases in which the

offense resulted in death. We have also added, in section 812, conspiracy provisions to a few criminal statutes where appropriate, with penalties equal to the penalties for the object offense, up to life imprisonment.

Finally, we have more carefully defined the new crime of harboring terrorists in section 804, so that it applies only to those harboring people who have committed, or are about to commit, the most serious of Federal terrorism-related crimes, such as the use of weapons of mass destruction. Moreover, it is not enough that the defendant had "reasonable grounds to suspect" that the person he was harboring had committed, or was about to commit, such a crime; the Government must prove that the defendant knew or had "reasonable grounds to believe" that this was so.

McDade Fix: The massive investigation underway into who was responsible for and assisted in carrying out the September 11 attacks stretches across State and national boundaries. While the scope of the tragedy is unsurpassed, the disregard for State and national borders of this criminal conspiracy is not unusual. Federal investigative officers and prosecutors often must follow leads and conduct investigations outside their assigned jurisdictions. At the end of the 105th Congress, a legal impediment to such multi-jurisdiction investigations was slipped into the omnibus appropriations bill, over the objection at the time of every member of the Senate Judiciary Committee.

I have spoken many times over the past two years of the problems caused by the so-called McDade law, 28 U.S.C. §530B. According to the Justice Department, the McDade law has delayed important criminal investigations, prevented the use of effective and traditionally-accepted investigative techniques, and served as the basis of litigation to interfere with legitimate federal prosecutions. At a time when we need Federal law enforcement authorities to move quickly to catch those responsible for the September 11 attacks, and to prevent further attacks on our country, we can no longer tolerate the drag on Federal investigations and prosecutions caused by this ill-considered legislation.

On September 19, I introduced S. 1437, the Professional Standards for Government Attorneys Act of 2001, along with Senators HATCH and WYDEN. This bill proposes to modify the McDade law by establishing a set of rules that clarify the professional standards applicable to government attorneys. I am delighted that the administration recognized the importance of S. 1437 for improving Federal law enforcement and combating terrorism, and agreed to its inclusion as section 501 of the USA Act.

The first part of section 501 embodies the traditional understanding that when lawyers handle cases before a Federal court, they should be subject to the Federal court's standards of pro-

fessional responsibility, and not to the possibly inconsistent standards of other jurisdictions. By incorporating this ordinary choice-of-law principle, the bill preserves the Federal courts' traditional authority to oversee the professional conduct of Federal trial lawyers, including Federal prosecutors. It thus avoids the uncertainties presented by the McDade law, which potentially subjects Federal prosecutors to State laws, rules of criminal procedure, and judicial decisions which differ from existing Federal law.

Another part of section 501 specifically addresses the situation in Oregon, where a State court ruling has seriously impeded the ability of Federal agents to engage in undercover operations and other covert activities. See *In re Gatti*, 330 Or. 517 (2000). Such activities are legitimate and essential crime-fighting tools. The Professional Standards for Government Attorneys Act ensures that these tools will be available to combat terrorism.

Finally, section 501 addresses the most pressing contemporary question of government attorney ethics—namely, the question of which rule should govern government attorneys' communications with represented persons. It asks the Judicial Conference of the United States to submit to the Supreme Court a proposed uniform national rule to govern this area of professional conduct, and to study the need for additional national rules to govern other areas in which the proliferation of local rules may interfere with effective Federal law enforcement. The Rules Enabling Act process is the ideal one for developing such rules, both because the Federal judiciary traditionally is responsible for overseeing the conduct of lawyers in Federal court proceedings, and because this process would best provide the Supreme Court an opportunity fully to consider and objectively to weigh all relevant considerations.

The problems posed to Federal law enforcement investigations and prosecutions by the McDade law are real and urgent. The Professional Standards for Government Attorneys Act provides a reasonable and measured alternative: It preserves the traditional role of the State courts in regulating the conduct of attorneys licensed to practice before them, while ensuring that Federal prosecutors and law enforcement agents will be able to use traditional Federal investigative techniques. We need to pass this corrective legislation before more cases are compromised.

Terrorist Attacks Against Mass Transportation Systems: Another provision of the USA Act that was not included in the administration's initial proposal is section 801, which targets acts of terrorism and other violence against mass transportation systems. Just last week, a Greyhound bus crashed in Tennessee after a deranged passenger slit the driver's throat and then grabbed the steering wheel, forc-

ing the bus into the oncoming traffic. Six people were killed in the crash. Because there are currently no Federal laws addressing terrorism of mass transportation systems, however, there may be no Federal jurisdiction over such a case, even if it were committed by suspected terrorists. Clearly, there is an urgent need for strong criminal legislation to deter attacks against mass transportation systems. Section 801 will fill this gap.

Cybercrime: The Computer Fraud and Abuse Act, 18 U.S.C. section 1030, is the primary Federal criminal statute prohibiting computer frauds and hacking. I worked with Senator HATCH in the last Congress to make improvements to this law in the Internet Security Act, which passed the Senate as part of another bill. Our work is included in section 815 of the USA Act. This section would amend the statute to clarify the appropriate scope of federal jurisdiction. First, the bill adds a definition of "loss" to cover any reasonable cost to the victim in responding to a computer hacker. Calculation of loss is important both in determining whether the \$5,000 jurisdictional hurdle in the statute is met, and, at sentencing, in calculating the appropriate guideline range and restitution amount.

Second, the bill amends the definition of "protected computer," to include qualified computers even when they are physically located outside of the United States. This clarification will preserve the ability of the United States to assist in international hacking cases.

Finally, this section eliminates the current directive to the Sentencing Commission requiring that all violations, including misdemeanor violations, of certain provisions of the Computer Fraud and Abuse Act be punished with a term of imprisonment of at least 6 months.

Biological Weapons: Borrowing from a bill introduced in the last Congress by Senator BIDEN, the USA Act contains a provision in section 802 to strengthen our Federal laws relating to the threat of biological weapons. Current law prohibits the possession, development, or acquisition of biological agents or toxins "for use as a weapon." This section amends the definition of "for use as a weapon" to include all situations in which it can be proven that the defendant had any purpose other than a peaceful purpose. This will enhance the Government's ability to prosecute suspected terrorists in possession of biological agents or toxins, and conform the scope of the criminal offense in 18 U.S.C. section 175 more closely to the related forfeiture provision in 18 U.S.C. section 176. This section also contains a new statute, 18 U.S.C. section 175b, which generally makes it an offense for certain restricted persons, including non-resident aliens from countries that support international terrorism, to possess a listed biological agent or toxin.

Of greater consequence, section 802 defines another additional offense, punishable by up to 10 years in prison, of possessing a biological agent, toxin, or delivery system "of a type or in a quantity that, under the circumstances," is not reasonably justified by a peaceful purpose. As originally proposed by the administration, this provision specifically stated that knowledge of whether the type or quantity of the agent or toxin was reasonably justified was not an element of the offense. Thus, although the burden of proof is always on the government, every person who possesses a biological agent, toxin, or delivery system was at some level of risk. I am pleased that the administration agreed to drop this portion of the provision.

Nevertheless, I remain troubled by the subjectivity of the substantive standard for violation of this new criminal prohibition, and question whether it provides sufficient notice under the Constitution. I also share the concerns of the American Society for Microbiology and the Association of American Universities that this provision will have a chilling effect upon legitimate scientific inquiry that offsets any benefit in protecting against terrorism. While we have tried to prevent against this by creating an explicit exclusion for "bona fide research," this provision may yet prove unworkable, unconstitutional, or both. I urge the Justice Department and the research community to work together on substitute language that would provide prosecutors with a more workable tool.

Secret Service Jurisdiction: Two sections of the USA Act were added at the request of the United States Secret Service, with the support of the administration. I was pleased to accommodate the Secret Service by including these provisions in the bill to expand Electronic Crimes Task Forces and to clarify the authority of the Secret Service to investigate computer crimes.

The Secret Service is committed to the development of new tools to combat the growing areas of financial crime, computer fraud, and cyberterrorism. Recognizing a need for law enforcement, private industry and academia to pool their resources, skills and vision to combat criminal elements in cyberspace, the Secret Service created the New York Electronic Crimes Task Force, NYECTF. This highly successful model is comprised of over 250 individual members, including 50 different Federal, State and local law enforcement agencies, 100 private companies, and 9 universities. Since its inception in 1995, the NYECTF has successfully investigated a range of financial and electronic crimes, including credit card fraud, identity theft, bank fraud, computer systems intrusions, and e-mail threats against protectees of the Secret Service. Section 105 of the USA Act authorizes the Secret Service to develop similar task forces in cities and regions

across the country where critical infrastructure may be vulnerable to attacks from terrorists or other cyber-criminals.

Section 507 of the USA Act gives the Secret Service concurrent jurisdiction to investigate offenses under 18 U.S.C. section 1030, relating to fraud and related activity in connection with computers. Prior to the 1996 amendments to the Computer Fraud and Abuse Act, the Secret Service was authorized to investigate any and all violations of section 1030, pursuant to an agreement between the Secretary of Treasury and the Attorney General. The 1996 amendments, however, concentrated Secret Service jurisdiction on certain specified subsections of section 1030. The current amendment would return full jurisdiction to the Secret Service and would allow the Justice and Treasury Departments to decide on the appropriate work-sharing balance between the two. This will enable the Secret Service to investigate a wide range of potential White House network intrusions, as well as intrusions into remote sites, outside of the White House, that could impact the safety and security of its protectees, and to continue its missions to protect the Nation's critical infrastructure and financial payment systems.

Counter-terrorism Fund: The USA Act also authorizes, for the first time, a counter-terrorism fund in the Treasury of the United States to reimburse Justice Department for any costs incurred in connection with the fight against terrorism.

Specifically, this counter-terrorism fund will: one, reestablish an office or facility that has been damaged as the result of any domestic or international terrorism incident; two, provide support to counter, investigate, or prosecute domestic or international terrorism, including paying rewards in connection with these activities; three, conduct terrorism threat assessments of Federal agencies; and four, for costs incurred in connection with detaining individuals in foreign countries who are accused of acts of terrorism in violation of United States law.

I first authored this counter-terrorism fund in the S. 1319, the 21st Century Department of Justice Appropriations Authorization Act, which Senator HATCH and I introduced in August.

The USA Act provides enhanced surveillance procedures for the investigation of terrorism and other crimes. The challenge before us has been to strike a reasonable balance to protect both security and the liberties of our people. In some respects, the changes made are appropriate and important ones to update surveillance and investigative procedures in light of new technology and experience with current law. Yet, in other respects, I have deep concerns that we may be increasing surveillance powers and the sharing of criminal justice information without adequate checks on how information may be handled and without adequate accountability in the form of judicial review.

The bill contains a number of sensible proposals that should be not be controversial.

Wiretap Predicates: For example, sections 201 and 202 of the USA Act would add to the list of crimes that may be used as predicates for wiretaps certain offenses which are specifically tailored to the terrorist threat. In addition to crimes that relate directly to terrorism, the list would include crimes of computer fraud and abuse which are committed by terrorists to support and advance their illegal objectives.

FISA Roving Wiretaps: The bill, in section 206, would authorize the use of roving wiretaps in the course of a foreign intelligence investigation and brings FISA into line with criminal procedures that allow surveillance to follow a person, rather than requiring a separate court order identifying each telephone company or other communication common carrier whose assistance is needed. This is a matter on which the Attorney General and I reached early agreement. This is the kind of change that has a compelling justification, because it recognizes the ease with which targets of investigations can evade surveillance by changing phones. In fact, the original roving wiretap authority for use in criminal investigations was enacted as part of the Electronic Communications Privacy Act, ECPA, in 1986. I was proud to be the primary Senate sponsor of that earlier law.

Paralleling the statutory rules applicable to criminal investigations, the formulation I originally proposed made clear that this roving wiretap authority must be requested in the application before the FISA court was authorized to order such roving surveillance authority. Indeed, the administration agrees that the FISA court may not grant such authority *sua sponte*. Nevertheless, we have accepted the administration's formulation of the new roving wiretap authority, which requires the FISA court to make a finding that the actions of the person whose communications are to be intercepted could have the effect of thwarting the identification of a specified facility or place. While no amendment is made to the statutory directions for what must be included in the application for a FISA electronic surveillance order, these applications should include the necessary information to support the FISA court's finding that roving wiretap authority is warranted.

Search Warrants: The USA Act, in section 219, authorizes nationwide service of search warrants in terrorism investigations. This will allow the judge who is most familiar with the developments in a fast-breaking and complex terrorism investigation to make determinations of probable cause, no matter where the property to be searched is located. This will not only save time by avoiding having to bring up-to-speed another judge in another jurisdiction where the property is located, but also

serves privacy and fourth amendment interests in ensuring that the most knowledgeable judge makes the determination of probable cause. The bill, in section 209, also authorizes voice mail messages to be seized on the authority of a probable cause search warrant rather than through the more burdensome and time-consuming process of a wiretap.

Electronic Records: The bill updates the laws pertaining to electronic records in three primary ways. First, in section 210, the bill authorizes the nationwide service of subpoenas for subscriber information and expands the list of items subject to subpoena to include the means and source of payment for the service.

Second, in section 211, the bill equalizes the standard for law enforcement access to cable subscriber records on the same basis as other electronic records. The Cable Communications Policy Act, passed in 1984 to regulate various aspects of the cable television industry, did not take into account the changes in technology that have occurred over the last 15 years. Cable television companies now often provide Internet access and telephone service in addition to television programming. This amendment clarifies that a cable company must comply with the laws governing the interception and disclosure of wire and electronic communications just like any other telephone company or Internet service provider. The amendments would retain current standards that govern the release of customer records for television programming.

Finally, the bill, in section 212, permits, but does not require, an electronic communications service to disclose the contents of and subscriber information about communications in emergencies involving the immediate danger of death or serious physical injury. Under current law, if an ISP's customer receives an e-mail death threat from another customer of the same ISP, and the victim provides a copy of the communication to the ISP, the ISP is limited in what actions it may take. On one hand, the ISP may disclose the contents of the forwarded communication to law enforcement, or to any other third party as it sees fit. See 18 U.S.C. section 2702(b)(3). On the other hand, current law does not expressly authorize the ISP to voluntarily provide law enforcement with the identity, home address, and other subscriber information of the user making the threat. See 18 U.S.C. section 2703(c)(1)(B),(C), permitting disclosure to government entities only in response to legal process. In those cases where the risk of death or injury is imminent, the law should not require providers to sit idly by. This voluntary disclosure, however, in no way creates an affirmative obligation to review customer communications in search of such imminent dangers.

Also, under existing law, a provider even one providing services to the pub-

lic may disclose the contents of a customer's communications—to law enforcement or anyone else—in order to protect its rights or property. See 18 U.S.C. section 2702(b)(5). However, the current statute does not expressly permit a provider voluntarily to disclose non-content records, such as a subscriber's login records, to law enforcement for purposes of self-protection. See 18 U.S.C. Section 2703(c)(1)(B). Yet the right to disclose the content of communications necessarily implies the less intrusive ability to disclose non-content records. Cf. *United States v. Auler*, 539 F.2d 642, 646 n.9, 7th Cir. 1976, phone company's authority to monitor and disclose conversations to protect against fraud necessarily implies right to commit lesser invasion of using, and disclosing fruits of, pen register device, citing *United States v. Freeman*, 524 F.2d 337, 341, 7th Cir. 1975. Moreover, as a practical matter providers must have the right to disclose the facts surrounding attacks on their systems. When a telephone carrier is defrauded by a subscriber, or when an ISP's authorized user launches a network intrusion against his own ISP, the provider must have the legal ability to report the complete details of the crime to law enforcement. The bill clarifies that service providers have the statutory authority to make such disclosures.

Pen Registers: There is consensus that the existing legal procedures for pen register and trap-and-trace authority are antiquated and need to be updated. I have been proposing ways to update the pen register and trap and trace statutes for several years, but not necessarily in the same ways as the administration initially proposed. In fact, in 1998, I introduced with then-Senator Ashcroft, the E-PRIVACY Act, S. 2067, which proposed changes in the pen register laws. In 1999, I introduced the E-RIGHTS Act, S. 934, also with proposals to update the pen register laws.

Again, in the last Congress, I introduced the Internet Security Act, S. 2430, on April 13, 2000, that proposed: one, changing the pen register and trap and trace device law to give nationwide effect to pen register and trap and trace orders obtained by Government attorneys and obviate the need to obtain identical orders in multiple Federal jurisdictions; two, clarifying that such devices can be used for computer transmissions to obtain electronic addresses, not just on telephone lines; and three, as a guard against abuse, providing for meaningful judicial review of government attorney applications for pen registers and trap and trace devices.

As the outline of my earlier legislation suggests, I have long supported modernizing the pen register and trap and trace device laws by modifying the statutory language to cover the use of these orders on computer transmissions; to remove the jurisdictional limits on service of these orders; and to

update the judicial review procedure, which, unlike any other area in criminal procedure, bars the exercise of judicial discretion in reviewing the justification for the order. The USA Act, in section 216, updates the pen register and trap and trace laws only in two out of three respects I believe are important, and without allowing meaningful judicial review. Yet, we were able to improve the administration's initial proposal, which suffered from the same problems as the provision that was hastily taken up and passed by the Senate, by voice vote, on September, 13, 2001, as an amendment to the Commerce Justice State Appropriations Act.

Nationwide Service: The existing legal procedures for pen register and trap-and-trace authority require service of individual orders for installation of pen register or trap and trace device on the service providers that carried the targeted communications. Deregulation of the telecommunications industry has had the consequence that one communication may be carried by multiple providers. For example, a telephone call may be carried by a competitive local exchange carrier, which passes it at a switch to a local Bell Operating Company, which passes it to a long distance carrier, which hands it to an incumbent local exchange carrier elsewhere in the U.S., which in turn may finally hand it to a cellular carrier. If these carriers do not pass source information with each call, identifying that source may require compelling information from a host of providers located throughout the country.

Under present law, a court may only authorize the installation of a pen register or trap device "within the jurisdiction of the court." As a result, when one provider indicates that the source of a communication is a carrier in another district, a second order may be necessary. The Department of Justice has advised, for example, that in 1996, a hacker, who later turned out to be launching his attacks from a foreign country, extensively penetrated computers belonging to the Department of Defense. This hacker was dialing into a computer at Harvard University and used this computer as an intermediate staging point in an effort to conceal his location and identity. Investigators obtained a trap and trace order instructing the phone company, Nynex, to trace these calls, but Nynex could only report that the communications were coming to it from a long-distance carrier, MCI. Investigators then applied for a court order to obtain the connection information from MCI, but since the hacker was no longer actually using the connection, MCI could not identify its source. Only if the investigators could have served MCI with a trap and trace order while the hacker was actively on-line could they have successfully traced back and located him.

In another example provided by the Department of Justice, investigators

encountered similar difficulties in attempting to track Kevin Mitnick, a criminal who continued to hack into computers attached to the Internet despite the fact that he was on supervised release for a prior computer crime conviction. The FBI attempted to trace these electronic communications while they were in progress. In order to evade arrest, however, Mitnick moved around the country and used cloned cellular phones and other evasive techniques. His hacking attacks would often pass through one of two cellular carriers, a local phone company, and then two Internet service providers. In this situation, where investigators and service providers had to act quickly to trace Mitnick in the act of hacking, only many repeated attempts—accompanied by an order to each service provider—finally produced success. Fortunately, Mitnick was such a persistent hacker that he gave law enforcement many chances to complete the trace.

This duplicative process of obtaining a separate order for each link in the communications chain can be quite time-consuming, and it serves no useful purpose since the original court has already authorized the trace. Moreover, a second or third order addressed to a particular carrier that carried part of a prior communication may prove useless during the next attack: in computer intrusion cases, for example, the target may use an entirely different path, i.e., utilize a different set of intermediate providers, for his or her subsequent activity.

The bill would modify the pen register and trap and trace statutes to allow for nationwide service of a single order for installation of these devices, without the necessity of returning to court for each new carrier. I support this change.

Second, the language of the existing statute is hopelessly out of date and speaks of a pen register or trap and trace “device” being “attached” to a telephone “line.” However, the rapid computerization of the telephone system has changed the tracing process. No longer are such functions normally accomplished by physical hardware components attached to telephone lines. Instead, these functions are typically performed by computerized collection and retention of call routing information passing through a communications system.

The statute’s definition of a “pen register” as a “device” that is “attached” to a particular “telephone line” is particularly obsolete when applied to the wireless portion of a cellular phone call, which has no line to which anything can be attached. While courts have authorized pen register orders for wireless phones based on the notion of obtaining access to a “virtual line,” updating the law to keep pace with current technology is a better course.

Moreover, the statute is ill-equipped to facilitate the tracing of communications that take place over the Internet.

For example, the pen register definition refers to telephone “numbers” rather than the broader concept of a user’s communications account. Although pen register and trap orders have been obtained for activity on computer networks, Internet service providers have challenged the application of the statute to electronic communications, frustrating legitimate investigations. I have long supported updating the statute by removing words such as “numbers . . . dialed” that do not apply to the way that pen/trap devices are used and to clarify the statute’s proper application to tracing communications in an electronic environment, but in a manner that is technology neutral and does not capture the content of communications. That being said, I have been concerned about the FBI and Justice Department’s insistence over the past few years that the pen/trap devices statutes be updated with broad, undefined terms that continue to flame concerns that these laws will be used to intercept private communications content.

The administration’s initial pen/trap device proposal added the terms “routing” and “addressing” to the definitions describing the information that was authorized for interception on the low relevance standard under these laws. The administration and the Department of Justice flatly rejected my suggestion that these terms be defined to respond to concerns that the new terms might encompass matter considered content, which may be captured only upon a showing of probable cause, not the mere relevancy of the pen/trap statute. Instead, the administration agreed that the definition should expressly exclude the use of pen/trap devices to intercept “content,” which is broadly defined in 18 U.S.C. 2510(8).

While this is an improvement, the FBI and Justice Department are shortsighted in their refusal to define these terms. We should be clear about the consequence of not providing definitions for these new terms in the pen/trap device statutes. These terms will be defined, if not by the Congress, then by the courts in the context of criminal cases where pen/trap devices have been used and challenged by defendants. If a court determines that a pen register has captured “content,” which the FBI admits such devices do, in violation of the Fourth Amendment, suppression may be ordered, not only of the pen register evidence by any other evidence derived from it. We are leaving the courts with little or no guidance of what is covered by “addressing” or “routing.”

The USA Act also requires the government to use reasonably available technology that limits the interceptions under the pen/trap device laws “so as not to include the contents of any wire or electronic communications.” This limitation on the technology used by the government to execute pen/trap orders is important since, as the FBI advised me June, 2000, pen

register devices “do capture all electronic impulses transmitted by the facility on which they are attached, including such impulses transmitted after a phone call is connected to the called party.” The impulses made after the call is connected could reflect the electronic banking transactions a caller makes, or the electronic ordering from a catalogue that a customer makes over the telephone, or the electronic ordering of a prescription drug.

This transactional data intercepted after the call is connected is “content.” As the Justice Department explained in May, 1998 in a letter to House Judiciary Committee Chairman Henry Hyde, “the retrieval of the electronic impulses that a caller necessarily generated in attempting to direct the phone call” does not constitute a “search” requiring probable cause since “no part of the substantive information transmitted after the caller had reached the called party” is obtained. But the Justice Department made clear that “all of the information transmitted after a phone call is connected to the called party . . . is substantive in nature. These electronic impulses are the ‘contents’ of the call: They are not used to direct or process the call, but instead convey certain messages to the recipient.”

When I added the direction on use of reasonably available technology, codified as 18 U.S.C. 3121(c), to the pen register statute as part of the Communications Assistance for Law Enforcement Act, CALEA, in 1994, I recognized that these devices collected content and that such collection was unconstitutional on the mere relevance standard. Nevertheless, the FBI advised me in June 2000, that pen register devices for telephone services “continue to operate as they have for decades” and that “there has been no change . . . that would better restrict the recording or decoding of electronic or other impulses to the dialing and signaling information utilized in call processing.” Perhaps, if there were meaningful judicial review and accountability, the FBI would take the statutory direction more seriously and actually implement it.

Judicial Review: Due in significant part to the fact that pen/trap devices in use today collect “content,” I have sought in legislation introduced over the past few years to update and modify the judicial review procedure for pen register and trap and trace devices. Existing law requires an attorney for the Government to certify that the information likely to be obtained by the installation of a pen register or trap and trace device will be relevant to an ongoing criminal investigation. The court is required to issue an order upon seeing the prosecutor’s certification. The court is not authorized to look behind the certification to evaluate the judgement of the prosecutor.

I have urged that government attorneys be required to include facts about their investigations in their applications for pen/trap orders and allow

courts to grant such orders only where the facts support the relevancy of the information likely to be obtained by the orders. This is not a change in the applicable standard, which would remain the very low relevancy standard. Instead, this change would simply allow the court to evaluate the facts presented by a prosecutor, and, if it finds that the facts support the Government's assertion that the information to be collected will be relevant, issue the order. Although this change will place an additional burden on law enforcement, it will allow the courts a greater ability to assure that government attorneys are using such orders properly.

Some have called this change a "roll-back" in the statute, as if the concept of allowing meaningful judicial review was an extreme position. To the contrary, this is a change that the Clinton administration supported in legislation transmitted to the Congress last year. This is a change that the House Judiciary Committee also supported last year. In the Electronic Communications Privacy Act, H.R. 5018, that Committee proposed that before a pen/trap device "could be ordered installed, the government must first demonstrate to an independent judge that 'specific and articulable facts reasonably indicate that a crime has been, is being, or will be committed, and information likely to be obtained by such installation and use . . . is relevant to an investigation of that crime.'" Report 106-932, 106th Cong. 2d Sess., Oct. 4, 2000, p. 13. Unfortunately, the Bush administration has taken a contrary position and has rejected this change in the judicial review process.

Computer Trespasser: Currently, an owner or operator of a computer that is accessed by a hacker as a means for the hacker to reach a third computer, cannot simply consent to law enforcement monitoring of the computer. Instead, because the owner or operator is not technically a party to the communication, law enforcement needs wiretap authorization under Title III to conduct such monitoring. I have long been interested in closing this loophole. Indeed, when I asked about this problem, the FBI explained to me in June, 2000, that:

This anomaly in the law creates an untenable situation whereby providers are sometimes forced to sit idly by as they witness hackers enter and, in some situations, destroy or damage their systems and networks while law enforcement begins the detailed process of seeking court authorization to assist them. In the real world, the situation is akin to a homeowner being forced to helplessly watch a burglar or vandal while police seek a search warrant to enter the dwelling.

I therefore introduced as part of the Internet Security Act, S. 2430, in 2000, an exception to the wiretap statute that would explicitly permit such monitoring without a wiretap if prior consent is obtained from the person whose computer is being hacked through and used to send "harmful interference to a lawfully operating computer system."

The administration initially proposed a different formulation of the exception that would have allowed an owner/operator of any computer connected to the Internet to consent to FBI wiretapping of any user who violated a workplace computer use policy or online service term of service and was thereby an "unauthorized" user. The administration's proposal was not limited to computer hacking offenses under 18 U.S.C. 1030 or to conduct that caused harm to a computer or computer system. The administration rejected these refinements to their proposed wiretap exception, but did agree, in section 217 of the USA Act, to limit the authority for wiretapping with the consent of the owner/operator to communications of unauthorized users without an existing subscriber or other contractual relationship with the owner/operator.

Sharing Criminal Justice Information: The USA Act will make significant changes in the sharing of confidential criminal justice information with various Federal agencies. For those of us who have been concerned about the leaks from the FBI that can irreparably damage reputations of innocent people and frustrate investigations by alerting suspects to flee or destroy material evidence, the administration's insistence on the broadest authority to disseminate such information, without any judicial check, is disturbing. Nonetheless, I believe we have improved the administration's initial proposal in responsible ways. Only time will tell whether the improvements we were able to reach agreement on are sufficient.

At the outset, we should be clear that current law allows the sharing of confidential criminal justice information, but with close court supervision. Federal Rule of Criminal Procedure 6(e) provides that matters occurring before a grand jury may be disclosed only to an attorney for the government, such other government personnel as are necessary to assist the attorney and another grand jury. Further disclosure is also allowed as specifically authorized by a court.

Similarly, section 2517 of title 18, United States Code provides that wiretap evidence may be disclosed in testimony during official proceedings and to investigative or law enforcement officers to the extent appropriate to the proper performance of their official duties. In addition, the wiretap law allows disclosure of wiretap evidence "relating to offenses other than specified in the order" when authorized or approved by a judge. Indeed, just last year, the Justice Department assured us that "law enforcement agencies have authority under current law to share title III information regarding terrorism with intelligence agencies when the information is of overriding importance to the national security." Letter from Robert Raben, Assistant Attorney General, September 28, 2000.

For this reason, and others, the Justice Department at the time opposed

an amendment proposed by Senators KYL and FEINSTEIN to S. 2507, the "Intelligence Authorization Act for fiscal year 2001 that would have allowed the sharing of foreign intelligence and counterintelligence information collected from wiretaps with the intelligence community." I deferred to the Justice Department on this issue and sought changes in the proposed amendment to address the Department's concern that this provision was not only unnecessary but also "could have significant implications for prosecutions and the discovery process in litigation," "raises significant issues regarding the sharing with intelligence agencies of information collected about United States persons" and jeopardized "the need to protect equities relating to ongoing criminal investigations." In the end, the amendment was revised to address the Justice Department's concerns and passed the Senate as a free-standing bill, S. S. 3205, the Counterterrorism Act of 2000. The House took no action on this legislation.

Disclosure of Wiretap Information: The administration initially proposed adding a sweeping provision to the wiretap statute that broadened the definition of an "investigative or law enforcement officer" who may receive disclosures of information obtained through wiretaps to include Federal law enforcement, intelligence, national security, national defense, protective and immigration personnel and the President and Vice President. This proposal troubled me because information intercepted by a wiretap has enormous potential to infringe upon the privacy rights of innocent people, including people who are not even suspected of a crime and merely happen to speak on the telephone with the targets of an investigation. For this reason, the authority to disclose information obtained through a wiretap has always been carefully circumscribed in law.

While I recognize that appropriate officials in the executive branch of government should have access to wiretap information that is important to combating terrorism or protecting the national security, I proposed allowing such disclosures where specifically authorized by a court order. Further, with respect to information relating to terrorism, I proposed allowing the disclosure without a court order as long as the judge who authorized the wiretap was notified as soon as practicable after the fact. This would have provided a check against abuses of the disclosure authority by providing for review by a neutral judicial official. At the same time, there was a little likelihood that a judge would deny any requests for disclosure in cases where it was warranted.

On Sunday, September 30, the administration agreed to my proposal, but within two days, it backed away from its agreement. I remain concerned that the resulting provision will allow the unprecedented, widespread disclosure

of this highly sensitive information without any notification to or review by the court that authorizes and supervises the wiretap. This is clearly an area where our committee will have to exercise close oversight to make sure that the newly-minted disclosure authority is not being abused.

The administration offered three reasons for reneging on the original deal. First, they claimed that the involvement of the court would inhibit Federal investigators and attorneys from disclosing information needed by intelligence and national security officials. Second, they said the courts might not have adequate security and therefore should not be told that information was disclosed for intelligence or national security purposes. And third, they said the President's constitutional powers under Article II give him authority to get whatever foreign intelligence he needs to exercise his national security responsibilities.

I believe these concerns are unfounded. Federal investigators and attorneys will recognize the need to disclose information relevant to terrorism investigations. Courts can be trusted to keep secrets and recognize the needs of the President.

Current law requires that such information be used only for law enforcement purpose. This provides an assurance that highly intrusive invasions of privacy are confined to the purpose for which they have been approved by a court, based on probable cause, as required by the Fourth Amendment. Current law calls for minimization procedures to ensure that the surveillance does not gather information about private and personal conduct and conversations that are not relevant to the criminal investigation.

When the administration reneged on the agreement regarding court supervision, we turned to other safeguards and were more successful in changing other questionable features of the administration's bill. The administration accepted my proposal to strike the term "national security" from the description of wiretap information that may be shared throughout the executive branch and replace it with "foreign intelligence" information. This change is important in clarifying what information may be disclosed because the term "foreign intelligence" is specifically defined by statute whereas "national security" is not.

Moreover, the rubric of "national security" has been used to justify some particularly unsavory activities by the government in the past. We must have at least some assurance that we are not embarked on a course that will lead to a repetition of these abuses because the statute will now more clearly define what type of information is subject to disclosure. In addition, Federal officials who receive the information may use it only as necessary to the conduct of their official duties. Therefore, any disclosure or use outside the conduct of their official duties remains

subject to all limitations applicable to their retention and dissemination of information of the type of information received. This includes the Privacy Act, the criminal penalties for unauthorized disclosure of electronic surveillance information under chapter 119 of title 18, and the contempt penalties for unauthorized disclosure of grand jury information. In addition, the Attorney General must establish procedures for the handling of information that identifies a United States person, such as the restrictions on retention and dissemination of foreign intelligence and counterintelligence information pertaining to United States persons currently in effect under Executive Order 12333.

While these safeguards do not fully substitute for court supervision, they can provide some assurance against misuse of the private, personal, and business information about Americans that is acquired in the course of criminal investigations and that may flow more widely in the intelligence, defense, and national security worlds.

Disclosure of Grand Jury Information: The wiretap statute was not the only provision in which the administration sought broader authority to disclose highly sensitive investigative information. It also proposed broadening Rule 6(e) of the Federal Rules of Criminal Procedure to allow the disclosure of information relating to terrorism and national security obtained from grand jury proceedings to a broad range of officials in the executive branch of government. As with wiretaps, few would disagree that information learned in a criminal investigation that is necessary to combating terrorism or protecting the national security ought to be shared with the appropriate intelligence and national security officials. The question is how best to regulate and limit such disclosures so as not to compromise the important policies of secrecy and confidentiality that have long applied to grand jury proceedings.

I proposed that we require judicial review of requests to disclose terrorism and foreign intelligence information to officials in the executive branch beyond those already authorized to receive such disclosures. Once again, the administration agreed to my proposal on Sunday, September 30, but reneged within two days. As a result, the bill does not provide for any judicial supervision of the new authorization for dissemination of grand jury information throughout the executive branch. The bill does contain the safeguards that I have discussed with respect to law enforcement wiretap information. However, as with the new wiretap disclosure authority, I am troubled by this issue and plan to exercise the close oversight of the Judiciary Committee to make sure it is not being abused.

Foreign Intelligence Information Sharing: The administration also sought a provision that would allow the sharing of foreign intelligence in-

formation throughout the executive branch of the government notwithstanding any current legal prohibition that may prevent or limit its disclosure. I have resisted this proposal more strongly than anything else that still remains in the bill. What concerns me is that it is not clear what existing prohibitions this provision would affect beyond the grand jury secrecy rule and the wiretap statute, which are already covered by other provisions in the bill. Even the administration, which wrote this provision, has not been able to provide a fully satisfactory explanation of its scope.

If there are specific laws that the administration believes impede the necessary sharing of information on terrorism and foreign intelligence within the executive branch, we should address those problems through legislation that is narrowly targeted to those statutes. Tacking on a blunderbuss provision whose scope we do not fully understand can only lead to consequences that we cannot foresee. Further, I am concerned that such legislation, broadly authorizing the secret sharing of intelligence information throughout the executive branch, will fuel the unwarranted fears and dark conspiracy theories of Americans who do not trust their government. This was another provision on which the administration reneged on its agreement with me; it agreed to drop it on September 30, but resurrected it within two days, insisting that it remain in the bill. I have been able to mitigate its potential for abuse somewhat by adding the same safeguards that apply to disclosure of law enforcement wiretap and grand jury information.

"Sneak and Peek" Search Warrants: Another issue that has caused me serious concern relates to the administration's proposal for so-called "sneak and peek" search warrants. The House Judiciary Committee dropped this proposal entirely from its version of the legislation. Normally, when law enforcement officers execute a search warrant, they must leave a copy of the warrant and a receipt for all property seized at the premises searched. Thus, even if the search occurs when the owner of the premises is not present, the owner will receive notice that the premises have been lawfully searched pursuant to a warrant rather than, for example, burglarized.

Two circuit courts of appeal, the Second and the Ninth Circuits, have recognized a limited exception to this requirement. When specifically authorized by the issuing judge or magistrate, the officers may delay providing notice of the search to avoid compromising an ongoing investigation or for some other good reason. However, this authority has been carefully circumscribed.

First, the Second and Ninth Circuit cases have dealt only with situations where the officers search a premises without seizing any tangible property. As the Second Circuit explained, such

searches are "less intrusive than a conventional search with physical seizure because the latter deprives the owner not only of privacy but also of the use of his property." *United States v. Villegas*, 899 F.2d 1324, 1337 (2d Cir. 1990).

Second, the cases have required that the officers seeking the warrant must show good reason for the delay. Finally, while the courts have allowed notice of the search may be delayed, it must be provided within a reasonable period thereafter, which should generally be no more than seven days. The reasons for these careful limitations were spelled out succinctly by Judge Sneed of the Ninth Circuit: "The mere thought of strangers walking through and visually examining the center of our privacy interest, our home, arouses our passion for freedom as does nothing else. That passion, the true source of the Fourth Amendment, demands that surreptitious entries be closely circumscribed." See *United States v. Freitas*, 800 F.2d 1451, 1456 (9th Cir. 1986).

The administration's original proposal would have ignored some of the key limitations created by the caselaw for sneak and peek search warrants. First, it would have broadly authorized officers not only to conduct surreptitious searches, but also to secretly seize any type of property without any additional showing of necessity. This type of warrant, which has never been addressed by a published decision of a federal appellate court, has been referred to in a law review article written by an FBI agent as a "sneak and steal" warrant. See K. Corr, "Sneaky But Lawful: The Use of Sneak and Peek Search Warrants," 43 U. Kan. L. Rev. 1103, 1113 (1995). Second, the proposal would simply have adopted the procedural requirements of 18 U.S.C. section 2705 for providing delayed notice of a wiretap. Among other things, this would have extended the permissible period of delay to a maximum of 90 days, instead of the presumptive seven-day period provided by the caselaw on sneak and peek warrants.

I was able to make significant improvements in the administration's original proposal that will help to ensure that the government's authority to obtain sneak and peek warrants is not abused. First, the provision that is now in section 213 of the bill prohibits the government from seizing any tangible property or any wire or electronic communication or stored electronic information unless it makes a showing of reasonable necessity for the seizure. Thus, in contrast to the administration's original proposal, the presumption is that the warrant will authorize only a search unless the government can make a specific showing of additional need for a seizure. Second, the provision now requires that notice be given within a reasonable time of the execution of the warrant rather than giving a blanket authorization for up to a 90-day delay. What constitutes a

reasonable time, of course, will depend upon the circumstances of the particular case. But I would expect courts to be guided by the teachings of the Second and the Ninth Circuits that, in the ordinary case, a reasonable time is no more than seven days.

Several changes in the Foreign Intelligence Surveillance Act, FISA, are designed to clarify technical aspects of the statutory framework and take account of experience in practical implementation. These changes are not controversial, and they will facilitate the collection of intelligence for counterterrorism and counterintelligence purposes. Other changes are more significant and required careful evaluation and revision of the administration's proposals.

The USA Act, in section 207, changes the duration of electronic surveillance under FISA in cases of an agent of a foreign power, other than a United States person, who acts in the United States as an officer or employee of a foreign power or as a member of an international terrorist group. Current law limits court orders in these cases to 90 days, the same duration as for United States persons. Experience indicates, however, that after the initial period has confirmed probable cause that the foreign national meets the statutory standard, court orders are renewed repeatedly and the 90-day renewal becomes an unnecessary procedural for investigators taxed with far more pressing duties.

The administration proposed that the period of electronic surveillance be changed from 90 days to one year in these cases. This proposal did not ensure adequate review after the initial stage to ensure that the probable cause determination remained justified over time. Therefore, the bill changes the initial period of the surveillance 90 to 120 days and changes the period for extensions from 90 days to one year. The initial 120-day period provides for a review of the results of the surveillance or search directed at an individual before one-year extensions are requested. These changes do not affect surveillance of a United States person.

The bill also changes the period for execution of an order for physical search under FISA from 45 to 90 days. This change applies to United States persons as well as foreign nationals. Experience since physical search authority was added to FISA in 1994 indicates that 45 days is frequently not long enough to plan and carry out a covert physical search. There is no change in the restrictions which provide that United States persons may not be the targets of search or surveillance under FISA unless a judge finds probable cause to believe that they are agents of foreign powers who engage in specified international terrorist, sabotage, or clandestine intelligence activities that may involve a violation of the criminal statutes of the United States.

The bill, in section 208, seeks to ensure that the special court established

under FISA has sufficient judges to handle the workload. While changing the duration of orders and extensions will reduce the number of cases in some categories, the bill retains the court's role in pen register and trap and trace cases and expands the court's responsibility for issuing orders for records and other tangible items needed for counterintelligence and counterterrorism investigations. Upon reviewing the court's requirements, the administration requested an increase in the number of Federal district judges designated for the court from seven to 11 of whom no less than 3 shall reside within 20 miles of the District of Columbia. The latter provision ensures that more than one judge is available to handle cases on short notice and reduces the need to invoke the alternative of Attorney General approval under the emergency authorities in FISA.

Other changes in FISA and related national security laws are more controversial. In several areas, the bill reflects a serious effort to accommodate the requests for expanded surveillance authority with the need for safeguards against misuse, especially the gathering of intelligence about the lawful political or commercial activities of Americans. One of the most difficult issues was whether to eliminate the existing statutory "agent of a foreign power" standards for surveillance and investigative techniques that raise important privacy concerns, but not at the level that the Supreme Court has held to require a court order and a probable cause finding under the fourth amendment. These include pen register and trap and trace devices, access to business records and other tangible items held by third parties, and access to records that have statutory privacy protection. The latter include telephone, bank, and credit records.

The "agent of a foreign power" standard in existing law was designed to ensure that the FBI and other intelligence agencies do not use these surveillance and investigative methods to investigate the lawful activities of Americans in the name of an undefined authority to collect foreign intelligence or counterintelligence information. The law has required a showing of reasonable suspicion, less than probable cause, to believe that a United States person is an "agent of a foreign power" engaged in international terrorism or clandestine intelligence activities.

However, the "agent of a foreign power" standard is more stringent than the standard under comparable criminal law enforcement procedures which require only a showing of relevance to a criminal investigation. The FBI's experience under existing laws since they were enacted at various time over the past 15 years has been that, in practice, the requirement to show reasonable suspicion that a person is an "agent of a foreign power" has been almost as burdensome as the

requirement to show probable cause required by the fourth amendment for more intrusive techniques. The FBI has made a clear case that a relevance standard is appropriate for counterintelligence and counterterrorism investigations, as well as for criminal investigations.

The challenge, then, was to define those investigations. The alternative proposed by the administration was to cover any investigation to obtain foreign intelligence information. This was extremely broad, because the definition includes any information with respect to a foreign power that relates to, and if concerning a United States person is necessary to, the national defense or the security of the United States or the conduct of the foreign affairs of the United States. This goes far beyond FBI counterintelligence and counterterrorism requirements. Instead, the bill requires that use of the surveillance technique or access to the records be relevant to an investigation to protect against international terrorism or clandestine intelligence activities.

In addition, an investigation of a United States person may not be based solely on activities protected by the first amendment. This framework applies to pen registers and trap and trace under section 215, access to records and other items under section 215, and the national security authorities for access to telephone, bank, and credit records under section 506. Lawful political dissent and protest by American citizens against the government may not be the basis for FBI counterintelligence and counterterrorism investigations under these provisions.

A separate issue for pen registers and trap and trace under FISA is whether the court should have the discretion to make the decision on relevance. The administration has insisted on a certification process. I discussed this issue as it comes up in the criminal procedures for pen registers and trap and trace under title 18, and my concerns apply to the FISA procedures as well.

The most controversial change in FISA requested by the administration was the proposal to allow surveillance and search when "a purpose" is to obtain foreign intelligence information. Current law requires that the secret procedures and different probable cause standards under FISA be used only if a high-level executive official certifies that "the purpose" is to obtain foreign intelligence formation. The administration's aim was to allow FISA surveillance and search for law enforcement purposes, so long as there was at least some element of a foreign intelligence purpose. This proposal raised constitutional concerns, which were addressed in a legal opinion provided by the Justice Department, which I insert in the record at the end of my statement.

The Justice Department opinion did not defend the constitutionality of the original proposal. Instead, it addressed

a suggestion made by Senator FEINSTEIN to the Attorney General at the Judiciary Committee hearing to change "the purpose" to "a significant purpose." No matter what statutory change is made even the Department concedes that the court's may impose a constitutional requirement of "primary purpose" based on the appellate court decisions upholding FISA against constitutional challenges over the past 20 years.

Section 218 of the bill adopts "significant purpose," and it will be up to the courts to determine how far law enforcement agencies may use FISA for criminal investigation and prosecution beyond the scope of the statutory definition of "foreign intelligence information."

In addition, I proposed and the administration agreed to an additional provision in Section 505 that clarifies the boundaries for consultation and coordination between officials who conduct FISA search and surveillance and Federal law enforcement officials including prosecutors. Such consultation and coordination is authorized for the enforcement of laws that protect against international terrorism, clandestine intelligence activities of foreign agents, and other grave foreign threats to the nation. Protection against these foreign-based threats by any lawful means is within the scope of the definition of "foreign intelligence information," and the use of FISA to gather evidence for the enforcement of these laws was contemplated in the enactment of FISA. The Justice Department's opinion cites relevant legislative history from the Senate Intelligence Committee's report in 1978, and there is comparable language in the House report.

The administration initially proposed that the Attorney General be authorized to detain any alien indefinitely upon certification of suspicion to links to terrorist activities or organizations. Under close questioning by both Senator KENNEDY and Senator SPECTER at the Committee hearing on September 25, the Attorney General said that his proposal was intended only to allow the Government to hold an alien suspected of terrorist activity while deportation proceedings were ongoing. In response to a question by Sen. SPECTER, the Attorney General said: "Our intention is to be able to detain individuals who are the subject of deportation proceedings on other grounds, to detain them as if they were the subject of deportation proceedings on terrorism." The Justice Department however continued to insist on broader authority, including the power to detain even if the alien was found not to be deportable.

I remain concerned about the provision, in section 412, but I believe that it is has been improved from the original proposal offered by the administration. Specifically, the Justice Department must now charge an alien with an immigration or criminal violation within

seven days of taking custody, and the merits of the Attorney General's certification of an alien under this section is subject to judicial review. Moreover, the Attorney General can only delegate this power to the Commissioner of the INS, ensuring greater accountability and preventing the certification decision from being made by low-level officials. Nonetheless, I would have preferred that this provision not be included, and I would urge the Attorney General and his successors to employ great discretion in using this new power.

In addition, the administration initially proposed a sweeping definition of terrorist activity and new powers for the Secretary of State to certify an organization as a terrorist organization for purposes of immigration law. We were able to work with the administration to refine this definition to limit its application to individuals with innocent contacts to non-certified organizations. We also limited the retroactive effect of these new definitions. If an alien solicited funds or membership, or provided material support for an organization that was not certified at that time by the Secretary of State, the alien will have the opportunity to show that he did not know and should have known that his action would further the organizations terrorist activity. This is a substantially more protective than the administration's proposal, which by its terms, would have empowered INS to deport someone who raised money for the African National Congress. Throughout our negotiations on these issues, Senator KENNEDY provided steadfast help. Although neither of us are pleased with the final product, it is far better than it would have been without his leadership.

I was disappointed that the administration's initial proposal authorizing the President to impose unilateral food and medical sanctions would have undermined a law we passed last year with overwhelming bipartisan support.

Under that law, the President already has full authority to impose unilateral food and medicine sanctions during this crisis because of two exceptions built into the law that apply to our current situation. Nevertheless, the administration sought to undo this law and obtain virtually unlimited authority in the future to impose food and medicine embargoes, without making any effort for a multi-lateral approach in cooperation with other nations. Absent such a multi-lateral approach, other nations would be free to step in immediately and take over business from American firms and farmers that they are unilaterally barred from pursuing.

Over 30 farm and export groups, including the American Farm Bureau Federation, the Grocery Manufacturers of America, the National Farmers Union, and the U.S. Dairy Export Council, wrote to me and explained that the administration proposal would "not achieve its intended policy goal."

I worked with Senator ENZI, and other Senators, on substitute language to give the administration the tools it needs in this crisis. This substitute has been carefully crafted to avoid needlessly hurting American farmers in the future, yet it will assure that the United States can engage in effective multilateral sanctions.

This bipartisan agreement limits the authority in the bill to existing laws and executive orders, which give the President full authority regarding this conflict, and grants authority for the President to restrict exports of agricultural products, medicine or medical devices. I continue to agree with then-Senator Ashcroft, who argued in 1999 that unilateral U.S. food and medicine sanctions simply do not work when he introduced the "Food and Medicine for the World Act." As recently as October 2000, then-Senator Ashcroft pointed out how broad, unilateral embargoes of food or medicine are often counterproductive. Many Republican and Democratic Senators made it clear just last year that the U.S. should work with other countries on food and medical sanctions so that the sanctions will be effective in hurting our enemies, instead of just hurting the U.S. I am glad that with Senator ENZI's help, we were able to make changes in the trade sanctions provision to both protect our farmers and help the President during this crisis.

I have done my best under the circumstances to confine the amendment demands to those matters that are consensus legal improvements. I concede that my efforts have not been completely successful and there are a number of provisions on which the administration has insisted with which I disagree. Frankly, the agreement that was made September 30, 2001 would have led to a better balanced bill. I could not stop the administration from renegeing on the agreement any more than I could have sped the process to reconstitute this bill in the aftermath of those breaches.

In these times we need to work together to face the challenges of international terrorism. I have sought to do so in good faith.

THE WHEELING, WEST VIRGINIA RENAISSANCE

Mr. BYRD. Madam President, there is a renaissance occurring in West Virginia's Northern Panhandle. In the city of Wheeling, through the Wheeling National Heritage Area initiative, local leaders are revitalizing areas of cultural and historic significance in order to create a brighter future for their community.

On August 15, I had the opportunity to attend the dedication of the latest milestone in these revitalization efforts—the Wheeling Heritage Port, which is nestled on a bank of the magnificent Ohio River. Wheeling, the Mountain State's first capital, is not only rich in natural resources, but also in history.

In its beginnings, Wheeling was a small outpost that represented the westernmost point of eastern settlement in a young country. Because of its location, Wheeling became the window of the West and a gateway to the unknown. Travelers flocked to this new epicenter of commerce and transportation in pursuit of fortune and adventure. After the Civil War, Wheeling, and much of the Northern Panhandle, experienced a postwar industrial expansion that brought to the area great prosperity that would last well into the 20th century. A booming economy, combined with a natural beauty and a genteel society, ushered in an era of Victorian splendor.

However, as market demands changed, Wheeling—along with most industrial regions throughout this nation and across West Virginia—repositioned itself, transitioning from an industrial base to a more diverse, high-tech economy. While it has focused on economic development, the city also has kept an eye on preserving its rich cultural and historic areas.

I have supported Wheeling's efforts to redevelop its historic downtown by winning congressional approval for legislation that established the Wheeling National Heritage Area. The mission of a heritage area is to preserve the lessons of history for future generations so that they can better lead tomorrow. The Wheeling Port is just one of the many components of the heritage area, which includes the Wheeling Visitors Center and the Artisan Center. I am very fortunate to have had the opportunity to assist the city of Wheeling in these initiatives, but the man who first exhibited the vision for renewal of this city was my friend, the late Harry Hamm.

It was Harry, more than anyone, who recognized that Wheeling, like other industrial regions in America, would need to transform its economy. In his own words, Harry said that Wheeling would have to "take the old, idle, and abandoned factories . . . and create in them . . . a public place where people can feel at home. . . ." In an effort to accomplish this task, Harry laid out a plan that would promote the city's heritage and, once again, establish it as a national center of commerce and trade. Harry envisioned Wheeling as a hub of high-technology and as a new port of entry to the heartland of our country.

For those of us who knew Harry, we know that he was not an unrealistic dreamer, but that he was a man who worked hard and tirelessly to propel Wheeling toward a brighter future. It was his foresight and leadership that brought about the establishment of the Wheeling National Heritage Area. Although Harry passed away several years ago, if you ever have the opportunity to travel to Wheeling, you will undoubtedly see the imprint that he left on this wonderful city.

Among Harry's ideas for revitalizing the downtown area of Wheeling was the resurrection of the vibrant heart of the

city—the waterfront. The port once served as a main destination point for steamboats traveling down the Ohio River. Now, with its restoration complete, the port will recreate the bustle of the steamboat port that it once was. It will serve as a civic "open space"—a community meeting place enlivened by festivals and concerts.

The port's restoration is another step to ensure that Wheeling's legacy to America is preserved for generations to come. The community's efforts to embrace its cultural and historic heritage, while also investing in its future, provide us with a glimpse into the ongoing restoration and redevelopment of our nation's industrial regions. The activities undertaken in Wheeling could serve as a blueprint for post-industrial America and the communities in pursuit of a revitalized economy. As the Wheeling of old served as a guidepost in America's westward expansion, the new Wheeling can serve as a model for a 21st century economy and a 21st century community that has not forgotten its past.

At the dedication of the port, Rabbi Ronald H. Bernstein-Goff of Temple Shalom and Dr. D.W. Cummings of Bethlehem Apostolic Temple, both of Wheeling, offered the invocation and the benediction, respectively. Madam President, I ask unanimous consent to have these prayers printed in the RECORD.

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

PRAYER BY RABBI RONALD H. BERNSTEIN- GOFF, D.D.

Master of the universe—Creator of Earth and sky, fire and water, and author of time, flowing like a great river, carrying us down the days and years of our lives.

We gather here today with gratitude for the rich history, the vitality, and prosperity, which those who came before us worked and labored to create, we were proud in the past, because we were prosperous; we had dignity, because we were successful; we had hope, because we seemed to be in control of our destinies.

It seems to us like yesterday, although the river has carried us very far from that past. We acknowledge that it has taken us too long to deal with the realities of decline and decay; too long to deal with our feelings of guilt and shame, as buildings were boarded up and the joyful noise of life faded into uneasy silence; too long to face our fear of change—our fear of the unknown. And just because we have had faith in you, does not mean we had faith in ourselves or in each other.

Yet, you have taught us that out of suffering and struggle, distress and despair, comes the capacity for renewal and self-transformation.

"Out of the depths have I called you, O God"—Psalm 130:1.

"Revive my spirit, lest I sleep the sleep of death."—Psalms: 13:4:16.

How can we thank You then, for giving us the wisdom and the courage to stand before You this day, as we dedicate ourselves to a new hopefulness and a new reality? How can we thank You for bringing us beyond nostalgia to a waking vision of the future; to a renewed sense of solidarity and purpose in our community—our hopeful city; how can