

action should be taken against every nation which sponsors, supports, or harbors terrorists in order to meet President Bush's goal. We must determine what national security and survival require in evaluating a policy on abducting or executing terrorists in foreign countries and taking tough action against these who harbor them.

Consideration should also be given to the detention of individuals where there is reason to believe they are part of al-Qaida or some other group which is actively planning terrorism against the United States. Under existing law, membership or an affiliation with such a group without more is not a basis for arrest or detention. The standard for detention should not require the level or probable cause necessary for a warrant of arrest or a search warrant but it should be more than mere surmise. It is obviously a difficult line to draw.

A case was reported after September 11 where a suspected terrorist was detained when he tried to gain entry to the United States from Canada, but was released when there was not sufficient evidence to arrest him. He was reportedly later identified as one of the pilots on a September 11 hijacking, which illustrates the point that if we let them go when we have reason to detain them, they may come back to kill us.

Twenty-first century terrorists do not wear uniforms. Study must be undertaken to determine an appropriate standard for detention on the analogy of detaining prisoners of war. The issue of detention of aliens received considerable attention during the debate on the terrorism legislation which was signed into law by President Bush on October 26. That legislation answers part of the problem but not all of it.

Poignant scenes from "Saving Private Ryan" illustrate the problem.

In the movie, U.S. forces captured a German soldier behind enemy lines as they were making their way on their mission to save Private Ryan. The German soldier pleaded for his life. The American soldiers did not have the capacity to take him with them as a prisoner, so they had the alternative of killing him or letting him go.

When he promised to move to U.S.-held territory and surrender himself, the American soldiers relented and released him.

In a later scene, that German soldier confronts the same American soldiers and kills several of them. That sequence illustrates American generosity and our natural instincts to be merciful. It is a lesson worth noting that we, as a nation, must reevaluate our level of "toughness" if we are to survive.

In this Senate floor statement, I have sought to raise issues which must be decided after congressional hearings and deliberations rather than to provide definitive answers.

Now, Mr. President, I come to the crux of what I have had to say.

In summary, these are the issues to be decided by Congress in conjunction

with the President, after hearings, deliberation, and consultation. These are some of the issues which have to be considered. I do not say they are all inclusive, but these are the ones on my mind now.

First, should the United States revise its policy against assassinations to acknowledge that war and terrorism warrant executions under some circumstances?

Second, should such executions be authorized based on a nonjudicial determination of guilt, recognizing that responses to war and terrorism have traditionally not required the level of proof to indict or convict in a U.S. court of law?

Third, what level of our national leadership should be invested with the power to make such nonjudicial determinations of guilt?

Fourth, what are the standards for the quality and quantity of proof to make such a nonjudicial determination of guilt?

Fifth, should the United States be deterred from going into another sovereign nation to abduct or take forceful action against a terrorist when the host nation fails or refuses to turn over such terrorists?

Sixth, to what extent should the United States act against foreign nations or their officials who harbor terrorists?

And seventh, should individuals be detained where there is some basis to believe that they are non-uniformed members of al-Qaida or another terrorist organization on the analogy of incarcerating prisoners of war? If so, what should be the standard for such detention, and who should make the determination?

My sense is that America will maintain its resolve in carrying on the war against terrorism regardless of how long it takes. The steadfastness and durability of the coalition is another question. In my opinion historically, "Remember Pearl Harbor" will be a mild declaration or exhortation to "Remember September 11th!"

That concludes my statement. I thank my colleague, the Senator from Alaska, for his patience, and in fact he was patient. He came in at the latter part of my statement, and I have taken considerable time until Senator STEVENS arrived, and there is no other Senator who sought recognition. I appreciate the opportunity to make the statement which has been the product of considerable work on my part.

I yield the floor.

#### IN RECOGNITION OF THE BAYER CORPORATION

Mr. SPECTER. Madam President, I have sought recognition to recognize and acknowledge the activities of one of my own very good corporate neighbors and constituents, the Bayer Corporation of Pittsburgh. Last week, on October 24, Bayer Corporation's president and chief executive officer, Mr.

Helge H. Wehmeier, and U.S. Postmaster General John E. Potter announced Bayer's donation of 2 million doses of their antibiotic Cipro, one of the FDA's drugs of choice for the treatment and cure of anthrax disease.

This medication was donated to the Federal Government and is intended for use by Federal employees who may need it. The medication will be administered by U.S. Federal health care agencies, including the Department of Health and Human Services and its Centers for Disease Control and Prevention, as well as local and State health care officials in the Washington, DC, area.

There has been a claim, and justifiably so, for the heroism of our firemen, our police, and our health care workers who responded to the attacks on September 11. Now with the problems with anthrax, we appropriately add to that honor roll the U.S. postal workers. Mr. Helge H. Wehmeier had noted that the unsung heroes, less celebrated perhaps, but no less brave in their readiness to perform their duties, were the postal workers. Regrettably, we have seen problems with anthrax there. The contribution by Bayer should be of substantial help.

I also call my colleagues' attention to the comments of Department of Health and Human Services Secretary Tommy Thompson last week with respect to the negotiations with Bayer and Mr. Wehmeier. I ask unanimous consent, following these brief remarks, there be printed in the RECORD a copy of the press release which was issued following the meeting with Secretary Thompson and Mr. Wehmeier, president and CEO of the Bayer Corporation.

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

#### HHS, BAYER AGREE TO CIPRO PURCHASE

WASHINGTON, Oct. 24.—HHS Secretary Tommy G. Thompson and Mr. Helge H. Wehmeier, President and CEO of Bayer Corporation, today announced agreement for a significant new federal purchase of the antibiotic ciprofloxacin (trademarked Cipro) at a substantially lowered price. The antibiotic is expected to be available by year end. Supplementing existing emergency stockpiles, it would be available for use in the event of a bioterror event.

Under the terms of the agreement valued at \$95 million, HHS will pay 95 cents per tablet for a total initial order of 100 million tablets. This compares with a previously discounted price of \$1.77 per tablet paid by the federal government. Bayer said it will rotate the government's inventory, as part of this agreement, to assure the American public a continuously fresh supply of Cipro. This inventory rotation adds an additional value of 30 percent for the government, which is included in the agreement.

Funds for the purchase are included in the \$1.6 billion emergency proposal made by President Bush Oct. 17, which awaits Congressional action. HHS is also carrying out substantial new purchases of other antibiotics that are effective against anthrax, especially doxycycline. The purchases will fulfill Secretary Thompson's proposal to quickly increase the nation's emergency reserve of

antibiotics. Resources to be on hand by January would treat up to 12 million persons immediately for anthrax exposure. Treatment would be with a mixture of effective antibiotic products, with Cipro representing about 10 percent of the antibiotics on reserve. Currently, 18.6 million Cipro doses are available in the nation's emergency reserve, which would enable immediate treatment of about 2 million persons in combination with other antibiotics.

"This agreement means that a much larger supply of this important pharmaceutical product will be available if needed," Secretary Thompson said. "The beneficial price also means that we can have more funds available to assist state and local health responders to be ready for all eventualities. I commend the Bayer Corporation for its ongoing efforts to ensure a fully adequate supply of this valuable product."

"Bayer is fully committed to supplying America in its war on bioterrorism. This agreement between Bayer and the Department of Health and Human Services is an important security measure that will enable the nation to have in its stockpile ample supplies of Cipro to combat the threat of anthrax," said Bayer president Wehmeier. "Cipro has become standard for anthrax treatment. The men and women of Bayer are 100 percent committed to delivering this vital antibiotic to the U.S. government on schedule."

Secretary Thompson said current supplies of Cipro and other antibiotics which are effective against anthrax "are entirely adequate to meet the current need. This purchase is aimed at expanding our emergency stand-by capacity, to make us even better prepared for the possibility of massive exposure to anthrax or other biological agents."

As a further contingency, the agreement provides for the option of a second order of 100 million tablets at 85 cents, and a third order at 75 cents, if it is determined that further orders are needed. Cipro is one of many antibiotics that have been found effective in the treatment of exposure to anthrax in the incidents in recent weeks. Current treatment practice for anthrax exposure, including those possibly exposed to anthrax, is a 60-day course, involving initial use of a broad spectrum antibiotic like Cipro, for five days, followed by determination of other antibiotics to which the pathogen is susceptible.

The Cipro to be purchased would be used to expand emergency stand-by supplies in the National Pharmaceutical Stockpile (NPS), maintained by HHS' Centers for Disease Control and Prevention. The NPS includes both vendor managed inventory and 50-ton "Push Packages," designed to be able to reach any point in the continental United States within 12 hours. The current eight "Push Packages" are to be expanded to 12, under the President's proposals.

#### COMMUNITY RAIL LINE RELOCATION ASSISTANCE ACT

Mr. LOTT. Madam President, many cities and towns across our country are experiencing conflicts between railroads, motor vehicles, and people for the use of limited and increasingly congested space in downtown areas. High density highway-rail grade crossings, even properly marked and gated ones, increase the risk of fatal accidents. Many rail lines cut downtown areas in half while serving few, if any, rail customers in the downtown area. Rail traffic can cut off one side of a town to vital emergency services, in-

cluding fire, police, ambulance, and hospital services. Downtown rail corridors can hamper economic development by restricting access to bisected areas. Sadly, since September 11, we now must be concerned about freight trains carrying hazardous materials through the middle of densely populated areas being targets of terrorist actions. These problems exist in small and large cities and towns across the Nation.

While TEA-21 provides some flexibility in the use of the Highway Trust Fund to enable States to address some of these concerns, it is primarily focused on solving transportation problems by building or modifying roads, including road overpasses and underpasses, as it should be. However, in many situations, this highway-rail conflict cannot, or should not, be fixed by cutting off or modifying a roadway. The answer is often to relocate the rail line.

To address this need I introduced S. 948, the Community Rail Line Relocation Assistance Act of 2001. The bill would authorize the Secretary of Transportation to provide grants to States and communities to relocate a rail line where this solution makes the most sense. In those cases where the best solution is to build a railroad tunnel, underpass, or overpass, or even re-route the rail line around the downtown area, this bill will enable these cities and towns to afford to undertake such a significant infrastructure project. The bill does not tap the Highway Trust Fund. Instead, the rail line relocation grant program would compete for appropriations on an annual basis.

S. 948 is supported by the United States Conference of Mayors, the National Conference of State Legislatures, the National League of Cities, the Association of American Railroads, the Short Line and Regional Railroad Association, the Railway Progress Institute, the National Railroad Construction and Maintenance Association, and the Rail Supply and Service Coalition.

The Senate may soon consider other legislation to authorize funding to increase security for Amtrak, other modes of transportation, and our nation's ports. I ask my Senate colleagues to consider the needs of their own States, to cosponsor S. 948, and to support inclusion of this provision in the next transportation authorization bill to be considered by the Senate. So far, working with representatives of our Nation's cities, I have identified 40 cities in 23 States that are concerned about rail crossing problems and for which rail line relocation may be the solution, I am sure there will be several more such cities that will be identified in the weeks to come. I ask unanimous consent that the list of these cities be printed in the RECORD.

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

#### CITIES CONCERNED WITH RAIL CROSSINGS AND RAIL LINE RELOCATION

Arizona: Marana and Tucson.  
California: Fremont, Hemet, Mountain View, Paramount and Richmond.  
Colorado: Arvada.  
Georgia: Augusta.  
Iowa: Iowa City.  
Illinois: Carbondale, Elgin and Roselle.  
Indiana: Portage.  
Massachusetts: Boston.  
Minnesota: Rochester.  
Mississippi: Biloxi/Pascagoula, Greenwood, Jackson, Meridian, Tupelo and Vicksburg.  
Missouri: St. Joseph.  
North Carolina: Winston-Salem.  
North Dakota: Fargo.  
Nebraska: Grand Island and Lincoln.  
Nevada: Reno.  
New York: Hempstead.  
Ohio: Brooklyn, Lima and Mansfield.  
Oklahoma: Edmond.  
Pennsylvania: Pittsburgh.  
South Carolina: Columbia.  
Tennessee: Germantown.  
Texas: Beaumont, College Station and Laredo.  
Wisconsin: Madison.

#### AGRICULTURE APPROPRIATIONS

##### MEDICAL DEVICE TECHNOLOGY

Mr. JOHNSON. Madam President, first I thank, Chairman KOHL and Senator COCHRAN for their outstanding work in putting together an excellent bill. An important part of this legislation provides funding for the Food and Drug Administration to perform its vital mission to protect and promote the public health. That mission includes the essential work of evaluating the safety and effectiveness of promising new life-saving and life-enhancing medical device technologies so that they may be used with patients in an expeditious manner. However, we must be sure that the Center for Devices and Radiological Health (CDRH) are provided with the adequate resources to carry out their work. The number of patents issued in the medical device sector has increased by 30 percent in recent years. The private sector is committing substantial increases in funding to healthcare research and development. We are fortunate that the FDA will be faced with the task of evaluating many new technologies that will benefit all of us next year. It is my hope that we could review this issue in conference to ensure that the pre-market review function at CDRH receives an appropriate level of funding to carry out their mission.

Mr. DORGAN. I thank my colleague for raising this matter. It is my concern that the pre-market review function at the Center for Devices and Radiological Health does not have sufficient resources to keep up with the tremendous pace of innovation that is now taking place in the health sector. Despite the FDA's ongoing efforts to improve in this area, review times for breakthrough medical devices are lengthy and likely to get longer. While this bill makes important progress toward giving FDA the funds it needs to carry out its mission, I hope the chairman would work with us in conference