Let us mark this anniversary—and all the sad anniversaries since September 11—with a renewed sense of community, a renewed determination to protect each other, and a renewed resolve to preserve America's strength and spirit.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## AMENDING THE FISA LAW

Mr. KYL. Mr. President, I would like to speak in morning business for as long as I might consume to discuss some legislation Senator SCHUMER and I have introduced and to discuss my intention to seek to have that legislation added to the conference of the intelligence authorization bill which, hopefully, will come before this body for our deliberation and acceptance by the end of this week—again, hopefully.

This legislation not only will reauthorize the intelligence community activities that are funded by the Congress, but also, perhaps, will include an agreement on an outside commission that will later be established to look into the events prior to September 11.

So there are some important elements to this bill. One of the items I would like to add to it also deals with the subject of terrorism, the Schumer-Kyl bill—that I will describe in just a moment—which is a very small provision in the so-called FISA law that would be appropriately added in this conference as an additional way we can help win the war on terror.

Let me begin by discussing just a little bit what this legislation is and why it is necessary, and then I will discuss a little bit further how we would like to have it considered.

The bill number is S. 2568, called the Schumer-Kyl bill. It would add three words to the FISA legislation under which we are now able to gather information that is useful in conducting our war on terror.

The Foreign Intelligence Surveillance Act, or FISA, is a law which provides a special way of gathering this evidence against terrorists, and its origins are back in the 1970s. But it deals with a different situation today in terrorism than it did back then.

Let me just go back in time. The idea was if you were working for a foreign government, we ought to have a little better ability to investigate you than through the probable cause requirements of the 4th amendment that we would ordinarily apply in a title III court situation. So the FISA law was established to say if you have evidence someone is working for a foreign government or an international terrorist organization, then you can involve the FISA Court, the special court, to ask that court for a warrant to do a wiretap or to search a home or to search a computer, or whatever the case might be.

Back in the 1970s, when this was first started, it was a fairly straightforward proposition. If you thought, for example, you might be dealing with a foreign spy, somebody working for the then-Soviet Union, you could go to the FISA Court and get a warrant for the information you were seeking, and it was a little easier to obtain than through a regular court.

Secondly, the information was all classified, secret; it did not have to be shared with anyone else, and these judges were cleared to receive that information. So we were able to keep these kinds of investigations classified, and obviously that was a key element to be able to prosecute these counterterrorism types of cases. But back then the classical FISA target would be either a Soviet agent or perhaps one of the sort of hierarchical terrorist organizations such as the Bader-Meinhof gang in West Germany or the Red Army faction or a group of that sort. Today, as you know, the situation is very different.

We have in the world today amorphous terrorist groups that have spread throughout the entire world that are very loosely affiliated, sometimes not affiliated at all. It is not even clear frequently whether individual people are directly connected to the terrorist group or actually members of the terrorist group. And when we speak of ''members of,'' I am not even sure anybody can define a member of a terrorist organization. You do not pay dues and have a card that identifies you as a member of al-Qaida or Hamas or Hezbollah or the Islamic Jihad or any of these other organizations.

Now, it is true within the group there, you would have to be accepted as someone they could trust, but I do not necessarily think they look at the people with whom they work as members of the organization.

So we wrote a statute back in the 1970s for a different type of enemy than the enemy we face today. What we are finding is sometimes it is very difficult to connect up a particular terrorist either with a foreign country or with a particular terrorist organization. We know there are state sponsors of terrorism, and I suppose if we had evidence somebody here in the United States was planning to commit an act of terror, and they were employed by the Government of, let's say, Iran, we could probably get a FISA warrant because we could connect them pretty easily to a foreign country that has been known to conduct state terrorism. But it is a lot more difficult when you have somebody such as Zacarias Moussaoui, for example, the alleged 20th hijacker. His is an actual case in point used by many to demonstrate the fact that our law enforcement agencies did not act quickly enough in order to obtain a FISA warrant against him. The reason they did not is precisely because of the difficulty of connecting him to a foreign country or a particular international terrorist organization, which is what the FISA statute requires.

Now, bear in mind one of the rationales for being able to accelerate and short circuit the procedures here with a FISA warrant, as opposed to a regular title III type warrant, is you are dealing with a foreign country. You are not dealing with an American citizen. You are dealing with a threat from without or an international terrorist organization. So that is the theory.

But in the case of someone such as Zacarias Moussaoui, even though he was a foreign person—not a United States citizen—we could not connect him with Algeria or France or any of the other countries of the world. We thought his activities looked very suspicious and that they could be terrorist-type planning, but not connected to a particular country. Nor was it possible to connect him to al-Qaida. We did not have information connecting him to al-Qaida. We had some information that in an around-about way connected him to terrorists in a particular place but not an international terrorist organization.

So here you had a situation where he was talking to some terrorists, he looked to be interested in engaging in activity that could result in terrorism here in the United States, but the two requirements to get a warrant—either that he was involved in state-sponsored terror with a particular country or a particular international terror organization—could not be proved. And as a result, either legitimately or not legitimately, the FBI did not authorize a warrant to search his computer, notwithstanding the fact there were some in our law enforcement community who wished to do that. And, of course, his computer was not searched until after September 11.

What the Schumer-Kyl bill does is to correct this one little deficiency in the statute to bring it up to date, literally from the time it was created back in the cold war days, to today's environment in which you have amorphous terrorist groups floating around with individuals freely associating amongst them, or perhaps even not at all with them but engaged in terror.

What it does is to correct this problem with the statute by adding just three words—''or foreign person''—to the targets of the warrant. So an individual would be the subject of a warrant if you could show you had probable cause to believe the individual was engaged in or planning to engage in an act of terrorism and either was doing so on behalf of another country, an international terrorist organization, or the person himself is a foreign person.

So you have the connection of two things. You have a potential act of terror and a foreign person. And that is

basically the same rationale that exists with respect to the rationale for the original FISA law and warrants authorized thereunder.

By adding to the definition of ''foreign power,'' a ''foreign person,'' ''a foreign person,'' you include the kind of case Moussaoui presented to us where we knew we wanted to look into his affairs. We could not do so under FISA because we couldn't connect him to a foreign power or terrorist organization, and yet as the facts definitely indicated, it was somebody we should have been able to, whose computer we should have been able to search prior to September 11.

Let me be a little more specific about this case because there are those who will wonder whether or not maybe we are opening the FISA statute up to potential abuse of American citizens—the answer to that is no—by our definition, or that guests of the United States, foreign persons who were here on, let's say, a nonimmigrant visa, such as Moussaoui—that maybe their rights would be violated. I want to make it clear that that would not be the case.

We are familiar with the FBI special agent from Minneapolis, Coleen Rowley, who wrote the famous memo relating to Zacarias Moussaoui. She testified before the Intelligence and Judiciary Committees that she believed this kind of additional authority not only was warranted but was necessary for people like her in the field offices to do their work and she did not believe that would raise any additional questions; that it was an essential part of the tools the individuals in her position would need.

Director Mueller of the FBI, as well, indicated in testimony that he believed the current limited foreign power definition would have made it difficult for the FBI to secure a FISA warrant against any of the September 11 hijackers. And in fact he noted to the committee:

> Prior to September 11, of the 19 or 20 hijackers, we had very little information as to any one of the individuals being associated with a particular terrorist group.

So what this amendment does is deal with two situations. The first is where you literally have the lone wolf, a terrorist acting on his or her own behalf unconnected to an international terrorist organization or foreign power but who is a foreign person in this country planning to commit an act of terrorism against Americans. That is exactly what the FISA warrants are supposed to be getting at or are supposed to enable us to collect information on. Yet under the current statute that would not be possible. This solves the lone wolf problem.

It also solves the Moussaoui problem, which is the case of an individual who you think is associated with terrorists but you cannot prove that, but you definitely have the probable cause to think there is an act of terror being planned and, therefore, you seek the warrant. It would be authorized under the foreign persons provision we are adding, and you then could connect the individual to an international terrorist organization or foreign power. That is what eventually occurred with respect to Moussaoui.

The point is, we are no longer just looking at the FISA warrant to prosecute someone for a crime that has been committed. The entire effort of the Congress, the intelligence community, and the administration after September 11 was to add a mission as a superior mission to the law enforcement after-the-fact-prosecution-of-crime mission of the FBI, and that new mission was to try to prevent or preempt crimes from occurring in the first instance. So the FBI has been reorganized to go out and seek information on potential terrorists and be able to prevent the terrorist attack before it occurs.

If it occurs, they can still do the second function, which is to prosecute after the fact. But the first object of the game is to prevent it from happening in the first place. That is the way they have been reorganized.

What they are now going to try to do is, using statutes such as the FISA statute, to uncover information with respect to people about to commit acts of terror and stop it from occurring. But without the change in the Schumer-Kyl bill, we are leaving one great big loophole available to the terrorists. That is the terrorist who is either acting on his own or the terrorist who, while acting on behalf of an international terrorist organization or state, has not yet clearly signalled that to our law enforcement officials to the point that we can succeed in getting a FISA warrant.

Our change will enable us to get the warrant and then tie the individual to the international terrorist organization or foreign state, if that, in fact, is the state of information.

Let me go on with respect to the Moussaoui case to illustrate how this would work. The agent from the Minneapolis FBI office described to the Judiciary and Intelligence Committees how that office opened the investigation of Moussaoui on August 15, 2001. The dates are very important. This was a month before the attack on the World Trade Center and the Pentagon. The Minneapolis agents arrested Moussaoui on immigration charges at that time and applied for a FISA warrant to search his belongings.

But as the FBI's deputy general counsel stated before the two committees, although Moussaoui was found to have some association with Chechen terrorists, the evidence was inadequate to show that he served as an agent of that group or that he had any links whatsoever to al-Qaida.

So as the FBI deputy general counsel confirmed, it was the strength of Moussaoui's connection to the Chechens, not a misunderstanding of whether they constituted a recognized foreign power for FISA purposes, as the Washington Post originally suggested, that ultimately prevented the issuance of a warrant. As a result, for 3 weeks prior to the September 11 attack, the FBI was unable to search Moussaoui's computer or his papers.

After the trade center and Pentagon attacks, and largely because of them, the FBI received a criminal warrant to search Moussaoui. Among other things, the information in his effects linked him to two of the actual hijackers and to a high-level organizer of the attacks recently arrested in Pakistan.

Nobody can say whether this information necessarily would have allowed us to stop the September 11 conspiracy. But everyone would agree that access to this information would have been very helpful and could have enabled us to do more than we did. Once they had evidence that he was involved in international terrorism, the full FISA tools would have been available to them, regardless of whether they could be linked to a particular group. But instead, the outdated and unnecessary requirement in the statute to link him to a specific international group prevented the FBI agents from pursuing what turned out to be the very best lead they had prior to the September 11 attacks.

We have looked into this. We have had several people testify before our committee on behalf of the administration in support of this three-word change to the FISA statute. Yet it has been very difficult for us to get action.

It is true that the legislation has not been marked up in the Judiciary Committee, but, frankly, the chairman has not afforded us that opportunity. Notwithstanding the fact that we have had testimony in several different hearings of two different committees, we have not been able to get the bill as a free-standing bill to the floor for consideration by the Senate.

There is an opportunity for us to attach it as an amendment. As I said, the best opportunity is the authorization bill of the intelligence community. This is the perfect opportunity for us to do so.

There will be those who will say the bill has not gone through the regular order of the committees and, therefore, it should not be included on the authorization bill of the intelligence community.

The response to that is twofold: First of all, at this stage in the session, in these last few days, we will see hundreds of bills come through here, hotlined—the phrase we use—bills that will be put at the desk. Members will be asked whether they have any objection to these bills. If there are no objections, they will pass by unanimous consent bills that never saw a markup in committee. Some legislation will be brought over from the House of Representatives that was not even considered in a hearing in a Senate committee. That is the way at the end of the session a lot of legislation is dealt with. There would be no reason for

something such as this not to be dealt with in the same way.

The second reason I submit is, we are in a war. Certainly we should not put form above substance in these circumstances. If we all agree that it makes sense to do what the FBI and the Justice Department and the intelligence community are asking for—to add three words to the FISA statute so that we don't have another case like the Moussaoui case, so that we are able to look at the effects of someone who we believe is engaged in terrorism against Americans or is planning to be engaged in it, even though we can't connect them yet to a specific terrorist organization—if we believe that that is a good thing, then we should find the very first legislative vehicle we can to attach this amendment in order to effect that change.

Time is very short. We will have to get it over to the House of Representatives, which will have to act in the same truncated fashion in order to send the bill to the President. We can do that if it is part of the intelligence authorization conference report because both bodies can approve the legislation at the same time and have it sent to the President and signed in a matter of days. So this is the best opportunity for us to do that—unless we are going to put form over substance.

Let me make this sober point. A lot of our colleagues have pointed fingers at different people in the intelligence community. They have criticized procedures and policies of the intelligence community, and by that I mean our law enforcement community has been criticized, even by name.

It has been said there was a massive intelligence failure prior to September 11. I am part of a joint investigative committee looking into the events from an Senate Intelligence Committee standpoint—events prior to September 11—as a member of the Senate Intelligence Committee.

Almost every one of us has spoken at one time or another about what we believe were defects in the way our law enforcement and intelligence community approached events prior to September 11. There has been enough information uncovered by now to know that things could have been done better. A lot of different people could have done better than they did.

Could we have prevented September 11? Nobody has gone that far. We could have come a lot closer. The Zacarias Moussaoui case is a good example of it. Today, we are in a situation where the Moussaoui kind of case could easily be replicated tomorrow. It could be the situation that is underway right now. It could be that someone such as this plans an attack and, God forbid, even carries out an attack, and later people are going to ask the question: What could we have done about that?

If we don't find a way to make this change now, in the last very few days of this legislative session, we are going to be passing up an opportunity to save American lives. We would not be able to look at ourselves in the mirror if something similar to this happened again and we had failed to make this change. It is certainly not a preposterous thought that it could happen. It has already happened.

Our law enforcement community and intelligence community have told us this is a problem in today's environment. It is no longer the cold war, where you were just dealing with the Soviet Union or the Red Brigade. You are dealing now with people who have very loose affiliations—if any at all—but they are still terrorists. Our law didn't contemplate that when it was written. So now we have to fix the law.

There is no reason not to make this change. Violate American civil rights? No. By its definition, it only applies to foreign persons. It cannot possibly violate the constitutional rights of any American—by its definition, it cannot.

Are we concerned about the constitutional rights of a non-American?

Now, non-Americans do have certain rights in this country, but they do not have the right of the fourth amendment search and seizure prohibitions in the context of a statute such as the FISA statute, which has been upheld as constitutional.

So as long as there is the foreign nexus there, and you are not talking about a U.S. citizen, again, it is impossible to be violating somebody's rights. The warrant request still has to be made to a judge. The judge still has to sign off on it. You still have to have the evidence backing up your belief that the individual is planning to or is in the act of engaging in an act of terror. So this isn't just some two-bit street criminal you are talking about. It has to be somebody on whom you have some evidence with respect to terrorism. It has to be a foreign person. If that person is in the United States, and if the terrorist act is focused on Americans, then you should have the right under the FISA statute to look further.

That is all this statute does. It enables you to go to a judge and say: Judge, will you please issue a warrant so that we can open up this guy's computer and see whether he really is engaged in an act of terrorism against American citizens?

That is what we are talking about, and it is all we are talking about. I just ask any Member of this body who disagrees with me to please come down here, if not tonight, then tomorrow or the next day or approach me in the hallway or call my office and tell me why they would not support us.

What I don't want to happen is that there is some anonymous objection—a so-called hold—put on the bill, so that I have to try to track down who it is who anonymously objects to what we are trying to do. This is too important for the sake of America's security.

By the way, I have no idea that any one of my colleagues necessarily objects to what I am trying to accomplish. But what I am saying is that we don't have time now to fool around with this and go through the delays that sometimes accompany the consideration of legislation toward the end of a session. I need to know who, if anyone, really does have an objection so I can meet with that individual and try to assure her or him that there is no problem with this piece of legislation.

It has been vetted by the administration. The administration supports it. It has the support of those who have testified before our committees. The Office of Legal Counsel has confirmed that the amendment is well within the Constitution. I will quote that in a moment.

So if there is any objection, we need to know what it is. We intend to include it in the Intelligence Committee authorization bill, and, obviously, that is a bill that must pass the Senate and the House. We don't want it to be held up because of somebody's concern about our particular amendment.

With regard to this question of constitutionality, I direct your attention to a July 31, 2002, letter presenting the views of the U.S. Department of Justice on S. 2586. It announces the Department's support for the bill and provides ''a detailed analysis of the relevant fourth amendment case law in support of the Department's conclusion that the bill would satisfy constitutional requirements.''

So there is no reason for anyone to object to the bill on constitutional grounds, and, obviously, I can see no other grounds on which anyone would raise any questions. The Department of Justice, in particular, emphasized that ''anybody monitored pursuant to the bill would be someone who, at the very least, is involved in terrorist acts that transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which the perpetrators operate or seek asylum''—50 U.S.C., section 1801(c)(3).

As a result, the Department says:

> A FISA warrant would still be limited to collecting forward intelligence for the international responsibilities of the United States and the duties of the Federal Government to the States in matters involving foreign terrorists.

That is the test supplied by U.S. v. Duggan, a Second Circuit case, 1984, which presents the relevant test. Therefore:

> The same interests and considerations that support the constitutionality of FISA as it now stands would provide the constitutional justification for S. 2568.

Mr. President, I think there is no question of constitutionality, there is no question of need, and there is no question about the timing requirement that we act now. Therefore, I urge my colleagues to support the Schumer-Kyl legislation to enable us to include it as part of the authorization bill for our Intelligence Committee. If there is any question about whether or not their support would be there, bring that to

my attention at the earliest moment so that we won't have an issue.

I have assured Senator GRAHAM of Florida, chairman of the Select Committee on Intelligence, of my commitment to ensure that the authorization bill is passed and not to allow anything to interfere with that. At the same time, it seems to me our proposal here is so required, so commonsense, so timely, that it is appropriate to include it in the legislation and that the burden should be on someone who objects to demonstrate to us why they object, if in fact they do.

Mr. President, I ask unanimous consent to print in the RECORD at the conclusion of my remarks two documents: One is a Dear Colleague letter dated September 26, 2002, that was sent by Senator SCHUMER and I to our colleagues that describes in some detail S. 2586; and the other document is a statement for the RECORD of Marion E. ''Spike'' Bowman, Deputy General Counsel, the Federal Bureau of Investigation, in testimony before the Senate Select Committee on Intelligence, July 31, 2002.

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

(See exhibit 1.)

Mr. KYL. Mr. President, let me note a little bit what the second document is, and then I will conclude. What the Deputy General Counsel of the FBI testified before our committee was how terrorism has changed from the time the FISA statute was first enacted to what we see today. Let me quote a little bit from his statement:

When FISA was enacted, terrorism was very different from what we see today. In the 1970s, terrorism more often targeted individuals, often carefully selected. This was the usual pattern of the Japanese Red Army, the Red Brigades and similar organizations listed by name in the legislative history of FISA. Today we see terrorism far more lethal and far more indiscriminate than could have been imagined in 1978. It takes only the events of September 11, 2001, to fully comprehend the difference of a couple of decades. But there is another difference as well. Where we once saw terrorism formed solely around organized groups, today we often see individuals willing to commit indiscriminate acts of terror. It may be that these individuals are affiliated with groups we do not see, but it may be that they are simply radicals who desire to bring about destruction.

Mr. President, he goes on then to relate that to the legislation that Senator SCHUMER and I introduced. Let me quote a little more. What he says is:

. . . we are increasingly seeing terrorist suspects who appear to operate at a distance from these organizations. In perhaps an oversimplification, but illustrative nevertheless, what we see today are (1) agents of foreign powers in the traditional sense who are associated with some organization or discernible group (2) individuals who appear to have connections with multiple terrorist organizations but who do not appear to owe allegiance to any one of them, but rather owe allegiance to the International Jihad movement——

Parenthetically, Mr. President, which is not a terrorist organization——

and (3) individuals who appear to be personally oriented toward terrorism but with whom there is no known connection to a foreign power.

Let me skip in the interest of time. Agent Bowman goes on to say:

During the decade-long Soviet/Afghan conflict, anywhere from 10,000 to 25,000 Muslim fighters representing some forty-three countries put aside substantial cultural differences to fight alongside each other in Afghanistan. The force drawing them together was the Islamic concept of ''umma'' or Muslim community. In this concept, nationalism is secondary to the Muslim community as a whole. As a result, Muslims from disparate cultures trained together, formed relationships, sometimes assembled in groups that otherwise would have been at odds with one another and acquired common ideologies. . . .

Following the withdrawal of the Soviet forces in Afghanistan, many of these fighters returned to their homelands, but they returned with new skills and dangerous ideas. They now had newly-acquired terrorist training as guerrilla warfare was the only way they could combat the more advanced Soviet forces.

These are the forces that after the Soviets were defeated in Afghanistan became a force that coalesced around, among others, Osama bin Laden, but not all of them associated specifically with Bin Laden. I quote further:

Information from a variety of sources repeatedly carries the theme from Islamic radicals that expresses the opinion that we just don't get it. Terrorists world-wide speak of jihad and wonder why the western world is focused on groups rather than on concepts that make them a community.

This is the way we have organized our statutes. What he is telling us is we are not seeing it the way our enemies see it. They do not organize in groups. They do not have membership cards that say they are a member of al-Qaida. They have coalesced around an idea, not a group.

The agent concludes this way:

The lesson to be taken from this is that al-Qaida is far less a large organization than a facilitator, sometimes orchestrator of Islamic militants around the globe. These militants are linked by ideas and goals, not by organizational structure.

He concludes by saying:

The United States and its allies, to include law enforcement and intelligence components world-wide have had an impact on the terrorists, but they are adapting to changing circumstances. Speaking solely from an operational perspective, investigation of these individuals who have no clear connection to organized terrorism, or tenuous ties to multiple organizations, is becoming increasingly difficult.

The current FISA statute has served the nation well, but the International Jihad Movement demonstrates the need to consider whether a different formulation is needed to address the contemporary terrorist problem.

That is the end of that quotation, Mr. President. Of course, he and others representing the Department of Justice went on to specifically endorse the Schumer-Kyl legislation to bring our current FISA statute up to date to conform to this new challenge about which Agent Bowan testified. That is the change we are trying to make.

To wrap this up, there are three words we would add to the FISA statute: ''or foreign person,'' so that if you can prove the terrorist is either a terrorist for an international terrorist organization or is a terrorist for another state, a country, or is acting for himself ''or foreign person'' are the words we use—in other words, he is a terrorist and a foreign person—any one of those three circumstances enable you to go to the judge and say: Here is our evidence that this individual is planning to engage in terrorism against people in the United States. Will you give us a warrant to search his computer, to search his personal effects, his home, or to put a wiretap on his telephone, whatever the case might be? The judge will then make a decision under the law, whether it is authorized or not.

If the court authorizes the issuance of the warrant, we can then look further to determine what this individual is seeking to do. We may find out it is an innocent situation or we may find out that the individual is just acting on his own but is a radical terrorist meaning to do harm to Americans or we may find, as in the case of Zacarias Moussaoui, that it turns out he is engaged as part of an international conspiracy with a specific organization, in this case al-Qaida, but we do not know that and cannot prove it going in. That is why the change we seek is so critical.

I ask my colleagues to support the inclusion of this amendment as part of the authorization bill for the intelligence community, and if there is any problem that anybody sees, to bring it to our attention so we can deal with that prior to that bill coming to the floor because we do not want to slow that bill down or stop it from being considered favorably on the Senate floor.

Mr. President, I urge my colleagues to support our amendment. It is for the good of the country, for our national security, and I say this in conclusion: If we fail to do this and it was our fault that someone utilized our legal system to plan an act of terror against Americans, and Americans are killed or injured as a result of our failure, then we would have nobody but ourselves to blame.

I am going to try as hard as I can to get this done, but anyone who stands in the way is going to have to stand accountable if, God forbid, something should happen and we are unable to get this accomplished before we close our session.

I urge my colleagues to please support Senator SCHUMER and me in ensuring we can get this important amendment accomplished before we adjourn for the year.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, September 26, 2002.*

DEAR COLLEAGUE: We have introduced S. 2586—the Schumer/Kyl ''Moussaoui exception'' bill—as an amendment to the Homeland Security bill. S. 2586 would amend the

Foreign Intelligence Surveillance Act (FISA) to reach any foreign visitor to the United States who is believed to be involved in international terrorism, regardless of whether that person is known to be an agent of a foreign government or terror group. The bill is designed to make it easier for the FBI to monitor suspected lone-wolf terrorists such as alleged 20th hijacker Zaccarias Moussaoui.

The Senate Select Committee on Intelligence held a hearing on S. 2586 on July 31, 2002. The Department of Justice has endorsed the bill in a Statement of Administration Policy, which we have attached for your review. Below is our explanation of the workings of the bill and an examination of those facts that we believe show that this change is necessary. We hope that you will join us in supporting this important legislation.

The Foreign Intelligence Surveillance Act requires that in order for a warrant to issue under that law, a court must find probable cause to believe that the target of the warrant is either an agent of, or is himself, a ''foreign power''—a term that is currently defined to only include foreign governments or international terrorist organizations. Requiring a link to governments or established organizations may have made sense when FISA was enacted in 1978; in that year, the prototypical FISA target was a Soviet spy or a member of one of the hierarchical, military-style terror groups of that era, such as West Germany's Baader-Meinhof gang or the Red Army Faction. Today, however, the United States faces a much different threat. We are principally confronted not by a specific group or government, but by a movement. This movement—of Islamist extremists—does not maintain a fixed structure or membership list, and its adherents do not always advertise their affiliation with this cause.

S. 2586 will help the United States to meet this threat by expanding FISA's definition of ''foreign power.'' In addition to governments and organized groups, that term, under the bill, would also include ''any person, other than a United States person, or group that is engaged in international terrorism or activities in preparation therefor.'' With this change, U.S. intelligence agents would be able to secure a FISA warrant to monitor a foreign visitor to the United States who is involved in international terrorism—even if his links to foreign government or known terror groups remain obscure.

The role of the foreign-power requirement in obstructing pre-September 11 investigations of Zaccarias Moussaoui was confirmed in dramatic testimony before the House and Senate Intelligence Committees on Tuesday of this week. An agent from the Minneapolis FBI office described to the Committees how that office opened an investigation of Moussaoui on August 15, 2001. Minneapolis agents arrested Moussaoui on immigration charges and applied for a FISA warrant to search his belongings. But as the FBI's Deputy General Counsel stated on Tuesday before the Committees, although Moussaoui was found to have some associations with Chechen terrorists, the evidence was inadequate to show that he served as an agent of that group—or that he had any links to Al Qaeda. (Thus, as the FBI's Deputy General Counsel has confirmed, it was the strength of Moussaoui's connection to the Chechens—not a ''misunderstanding'' of whether the Chechens constitute a ''recognized'' foreign power for FISA purposes, as yesterday's Washington Post story suggested—that ultimately prevented the issuance of a warrant.) As a result, for three weeks prior to the September 11 attacks, the FBI was unable to search Moussaoui's computer or his papers.

After the Trade Center and Pentagon attacks—and largely because of them—the FBI received a criminal warrant to search Moussaoui. Among other things, the information in his effects linked Moussaoui to two of the actual hijackers, and to a high-level organizer of the attacks who was recently arrested in Pakistan.

No one can say whether this information would have allowed the FBI to stop the September 11 conspiracy. But all must agree that the FBI should have access to this information. Once U.S. agents had evidence that Moussaoui was involved in international terrorism, the full tools of FISA should have been available to them—*regardless* of whether Moussaoui could be linked to a particular group. Instead, this outdated and unnecessary requirement blocked U.S. intelligence agents from pursuing their best lead on the eve of the September 11 attacks. Indeed, according to FBI Director Mueller, the current standard probably would have prevented the FBI from using FISA against *any* of the September 11 hijackers. As the Director noted in his testimony before the Judiciary Committee earlier this year, ''prior to September 11, [of] the 19 or 20 hijackers, * * * we had very little information as to any one of the individuals being associated with * * * * a particular terrorist group.''

Several congressional Committees have now conducted investigations and held hearings examining why our intelligence services failed to prevent the September attacks. Those hearings and investigations uncovered a substantial defect in the current law—a defect that may have prevented the United States from stopping that conspiracy, and is likely to hinder future investigations. Simply put, our laws are no longer suited to the type of threat that we face. It is now incumbent on Congress to act on what it has learned.

We hope that you will join us in supporting our ''Moussaoui fix'' amendment to the Homeland Security bill, should a roll call vote on that amendment be required.

If you have any questions, please contact Jim Flood in Senator Schumer's office at 4–7425 or Joe Matal in Senator Kyl's office at 4–6791.

Sincerely,

CHARLES SCHUMER.
JON KYL.

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U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
*Washington, DC, July 31, 2002.*

Hon. BOB GRAHAM,
*Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.*

Hon. RICHARD C. SHELBY,
*Vice-Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN AND MR. VICE CHAIRMAN: The letter presents the views of the Justice Department on S. 2586, a bill ''[t]o exclude United States persons from the definition of 'foreign power' under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism.'' The bill would extend the coverage of the Foreign Intelligence Surveillance Act (''FISA'') to individuals who engage in international terrorism or activities in preparation therefor without a showing of membership in or affiliation with an international terrorist group. The bill would limit this type of coverage to non-United States persons. The Department of Justice supports S. 2586.

We note that the proposed title of the bill is potentially misleading. The current title is ''To exclude United States persons from the definition of 'foreign power' under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism.'' A better title, in keeping with the function of the bill, would be something along the following lines: ''To expand the Foreign Intelligence Surveillance Act of 1978 ('FISA') to reach individuals other than United States persons who engage in international terrorism without affiliation with an international terrorist group.''

Additionally, we understand that a question has arisen as to whether S. 2586 would satisfy constitutional requirements. We believe that it would.

FISA allows a specially designated court to issue an order approving an electronic surveillance or physical search, where a significant purpose of the surveillance or search is ''to obtain foreign intelligence information.'' Id §§1804(a)(7)(B), 1805(a). Given this purpose, the court makes a determination about probable cause that differs in some respects from the determination ordinarily underlying a search warrant. The court need not find that there is probable cause to believe that the surveillance or search, in fact, will lead to foreign intelligence information, let alone evidence of a crime, and in many instances need not find probable cause to believe that the target has committed a criminal act. The court instead determines, in the case of electronic surveillance, whether there is probable cause to believe that ''the target of the electronic surveillance is a foreign power or an agent of a foreign power,'' id. §1805(a)(3)(A), and that each of the places at which the surveillance is directed ''is being used, or about to be used, by a foreign power or an agent of a foreign power,'' id. §1805(a)(3)(B). The court makes parallel determinations in the case of a physical search. Id. §1824(a)(3) (A), (B).

The terms ''foreign power'' and ''agent of a foreign power'' are defined at some length, id. §1801(a), (b), and specific parts of the definitions are especially applicable to surveillances or searches aimed at collecting intelligence about terrorism. As currently defined, ''foreign power'' includes ''a *group* engaged in international terrorism or activities in preparation therefor,'' id. §1801(a)(4) (emphasis added), and an ''agent of a foreign power'' includes any person who ''knowingly engages in sabotage or international terrorism or activities that are in preparation therefor, for or on behalf of a foreign power,'' id. §1801(b)(2)(C). ''International terrorism'' is defined to mean activities that

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the justification of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

Id. §1801(c).

S. 2586 would expand the definition of ''foreign power'' to reach persons who are involved in activities defined as ''international terrorism,'' even if these persons cannot be shown to be agents of a ''group'' engaged in international terrorism. To achieve this expansion, the bill would add the following italicized words to the current definition of ''foreign power'': ''*any person other than a United States person who is, or a group that is,* engaged in international terrorism or activities in preparation therefor.''

The courts repeatedly have upheld the constitutionality, under the Fourth Amendment, of the FISA provisions that permit

issuance of an order based on probable cause to believe that the target of a surveillance or search is a foreign power or agent of a foreign power. The question posed by S. 2586 would be whether the reasoning of those cases precludes expansion of the term ''foreign power'' to include individual international terrorists who are unconnected to a terrorist group.

The Second Circuit's decision in *United States* v. *Duggan,* 743 F. 2d 59 (2d Cir. 1984), sets out the fullest explanation of the ''governmental concerns'' that had led to the enactment of the procedures in FISA. To identify these concerns, the court first quoted from the Supreme Court's decision in *United States* v. *United States District Court*, 407 U.S. 297, 308 (1972) (''Keith''), which addressed ''domestic national security surveillance'' rather than surveillance of foreign powers and their agents, but which specified the particular difficulties in gathering ''security intelligence'' that might justify departures from the usual standards for warrants: ''[Such intelligence gathering] is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crime specified in Title III [dealing with electronic surveillance in ordinary criminal cases]. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the government's preparedness for some possible future crisis or emergency. Thus the focus of domestic surveillance may be less precise than that directed against more conventional types of crime.'' *Duggan*, 743 F.2d at 72 (quoting *Keith,* 407 U.S. at 322). The Second Circuit then quoted a portion of the Senate Committee Report on FISA. ''[The] reasonableness [of FISA procedures] depends, in part, upon an assessment of the difficulties of investigating activities planned, directed, and supported from abroad by foreign intelligence services and foreign-based terrorist groups. . . Other factors include the international responsibilities of the United States, the duties of the Federal Government to the States in matters involving foreign terrorism, and the need to maintain the secrecy of lawful counterintelligence sources and methods.'' Id. at 73 (quoting S. Rep. No. 95–701, at 14–15, reprinted in 1978 (U.S.C.C.A.N. 3973, 3983) (''Senate Report''). The court concluded:

''Against this background, [FISA] requires that the FISA Judge find probable cause to believe that the target is a foreign power or an agent of a foreign power, and that the place at which the surveillance is to be directed is being used or is about to be used by a foreign power or an agent of a foreign power; and it requires him to find that the application meets the requirements of [FISA]. These requirements make it reasonable to dispense with a requirement that the FISA Judge find probable cause to believe that surveillance will in fact lead to the gathering of foreign intelligence information.''

*Id*. at 73. The court added that, a *fortiori*, it ''reject[ed] defendants' argument that a FISA order may not be issued consisted with the requirements of the Fourth Amendment unless there is a showing of probable cause to believe the target has committed a crime.'' *Id*. at n.5. See also, e.g., *United States* v. *Pelton*, 835 F.2d 1067, 1075 (4th Cir. 1987); *United States* v. *Cavanagh*, 807 F.2d 787, 790–91 (9th Cir. 1987) (per then-Circuit Judge Kennedy); *United States* v. *Nicholson*, 955 F. Supp. 588, 590-91 (E.D. Va. 1997).

We can conceive of a possible argument for distinguishing, under the Fourth Amendment, the proposed definition of ''foreign power'' from the definition approved by the courts as the basis for a determination of probable cause under FISA as now written. According to this argument, because the proposed definition would require no tie to a terrorist group, it would improperly allow the use of FISA where an ordinary probable cause determination would be feasible and appropriate—where a court could look at the activities of a single individual without having to assess ''the interrelation of various sources and types of information,'' see *Keith*, 407 U.S. at 322, or relationships with foreign-based groups, see *Duggan*, 743 F.2d at 73; where there need to be no inexactitude in the target or focus of the surveillance, see *Keith*, 407 U.S. at 322; and where the international activities of the United States are less likely to be implicated, see *Duggan*, 743 F.2d at 73. However, we believe that this argument would not be well-founded.

The expanded definition shall would be limited to collecting foreign intelligence for the ''international responsibilities of the United States, [and] the duties of the Federal Government to the States in matters involving foreign terrorism.'' *Id*. at 73 (quoting Senate Report at 14). The individuals covered by S. 2586 would not be United States persons, and the ''international terrorism'' in which they would be involved would continue to ''occur totally outside the United States, to transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.'' 50 U.S.C. §1801(c)(3). These circumstances would implicate the ''difficulties of investigating activities planned, directed, and supported from abroad,'' just as current law implicates such difficulties in the case of foreign intelligence services and foreign-based terrorist groups. *Duggan*, 743 F.2d at 73 (quoting Senate Report at 14). To overcome those difficulties, a foreign intelligence investigation ''often [will be] long range and involved[] the interrelation of various sources and types of information.'' *Id*. at 72 (quoting *Keith*, 407 U.S. at 322). This information frequently will require special handling, as under the procedures of the FISA court, because of ''the need to maintain the secrecy of lawful counterintelligence sources and methods.'' *Id*. at 73 (quoting *Keith*, 407 U.S. at 322). Furthermore, because in foreign intelligence investigations under the expanded definition ''[o]ften . . . the emphasis . . . [will be] on the prevention of unlawful activity or the enhancement of the government's preparedness for some possible future crisis or emergency,'' the ''focus of . . . surveillance may be less precise than that directed against more conventional types of crime.'' *Id*. at 73 (quoting *Keith*, 407 U.S. at 322). Therefore, the same interests and considerations that support the constitutionality of FISA as it now stands would provide the constitutional justification for the S. 2586.

Indeed, S. 2586 would add only a modest increment to the existing coverage of the statute. As the House Committee Report on FISA suggested, a ''group' of terrorist covered by current law might be as small as two or three persons. H.R. Rep. No. 95–1283, at pt. 1, 74 and n. 38 (1978). The interest that the courts have found to justify the procedures of FISA are not likely to differ appreciably as between a case involving such a group of two or three persons and a case involving a single terrorist.

The events of the past few months point to one other consideration on which courts have not relied previously in upholding FISA procedures—the extraordinary level of harm that an international terrorist can do to our Nation. The touchstone for the constitutionality of searches under the Fourth Amendment is whether they are ''reasonable.'' As the Supreme Court has discussed in the context of ''special needs cases,'' whether a search is reasonable depends on whether the government's interests outweigh any intrusion into individual privacy interests. In light of the efforts of international terrorists to obtain weapons of mass destruction, it does not seem debatable that we could suffer terrible injury at the hands of a terrorist whose ties to an identified ''group'' remained obscure. Even in the criminal context, the Court has recognized the need for flexibility is cases of terrorism. See *Indianapolis* v. *Edmond,* 531 U.S. 32, 44 (2000) (''the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack''). Congress could legitimately judge that even a single international terrorist, who intends ''to intimidate or coerce a civilian population'' or ''to influence the policy of a government by intimidation or coercion'' or ''to affect the conduct of a government by assassination or kidnapping,'' 50 U.S.C. §1801(c)(2), acts with the power of a full terrorist group or foreign nation and should be treated as a ''foreign power'' subject to the procedures of FISA rather than those applicable to warrants in criminal cases.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

DANIEL J. BRYANT,
*Assistant Attorney General.*

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STATEMENT FOR THE RECORD OF MARION E. (SPIKE) BOWMAN, DEPUTY GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION, BEFORE THE SENATE SELECT COMMITTEE ON INTELLIGENCE, JULY 31, 2002

Mr. Chairman and members of the Committee, thank you for inviting me here today to testify on the legislative proposals concerning the Foreign Intelligence Surveillance Act (FISA). Holding this hearing demonstrates your collective and individual commitment to improving the security of our Nation. The Federal Bureau of Investigation greatly appreciates your leadership, and that of your colleagues in other committees on this very important topic.

The Foreign Intelligence Surveillance Act was written more than two decades ago. When adopted, the Act brought a degree of closure to fifty years of discussion concerning constitutional limits on the President's power to order electronic surveillance for national security purposes. A subsequent amendment brought physical search under the Act. In keeping with our standards of public governance, the proposals for the Act were publicly debated over a substantial period of time, compromises were reached and a statute eventually adopted. In the final analysis the standards governing when and how foreign intelligence surveillance or search would be conducted was a political one because it involved weighting of important public policy concerns surrounding both personal liberty and national security. That is how it should be.

In the intervening years FISA has proved its worth on countless occasions in preventing the occurrence or the continuation of harm to the national security. It has been a very effective tool and time has proved that this cooperative effort of the three branches of government can serve to protect the public without eroding civil liberties. Indeed, the legislative history shows that Congress intended that the Executive Branch

keep a focus on civil liberties by giving great care and scrutiny every application before it is presented to a judge. We believe that intent has been fulfilled. The fact that an Article III judge is the final arbiter of compliance serves to give additional confidence to the public that the intent of the statute is fulfilled.

When FISA was enacted, terrorism was very different from what we see today. In the 1970s, terrorism more often targeted individuals, often carefully selected. This was the usual pattern of the Japanese Red Army, the Red Brigades and similar organizations listed by name in the legislative history of FISA. Today we see terrorism as far more lethal and far more indiscriminate than could have been imagined in 1978. It takes only the events of September 11, 2001 to fully comprehend the difference of a couple of decades. But there is another difference as well. Where we once saw terrorism formed solely around organized groups, today we often see individuals willing to commit indiscriminate acts of terror. It may be that these individuals are affiliated with groups we do not see, but it may be that they are simply radicals who desire to bring about destruction. That brings us to the legislation being considered today.

The FBI uses investigative tools to try to prevent acts of terrorism wherever we can, but particularly to prevent terrorism directed at Americans or American interests. Most of our investigations occur within the United States and, for the most part, focus on individuals. Historically, terrorism subjects of FBI investigation have been associated with terrorist organizations. As a result, FBI has usually been able to associate an individual with a terrorist organization pled, for FISA purposes, as a foreign power. To a substantial extent, that remains true today. However, we are increasingly seeing terrorist suspects who appear to operate at a distance from these organizations. In perhaps an oversimplification, but illustrative nevertheless, what we see today are (1) agents of foreign powers in the traditional sense who are associated with some organization or discernible group, (2) individuals who appear to have connections with multiple terrorist organizations but who do not appear to owe allegiance to any one of them, but rather owe allegiance to the international Jihad movement and (3) individuals who appear to be personally oriented toward terrorism but with whom there is no known connection to a foreign power.

This phenomenon, which we have seen to be growing for the past two or three years, appears to stem from a social movement that began at some imprecise time, but certainly more than a decade ago. It is a global phenomenon which the FBI refers to as the International Jihad Movement. By way of background we believe we can see the contemporary development of this movement, and its focus on terrorism, rooted in the Soviet invasion of Afghanistan.

BACKGROUND

During the decade-long Soviet/Afghan conflict, anywhere from 10,000 to 25,000 Muslim fighters representing some forty-three countries put aside substantial cultural differences to fight alongside each other in Afghanistan. The force drawing them together was the Islamic concept of ''umma'' or Muslim community. In this concept, nationalism is secondary to the Muslim community as a whole. As a result, Muslims from disparate cultures trained together, formed relationships, sometimes assembled in groups that otherwise would have been at odds with one another and acquired common ideologies. They were also influenced by radical spiritual and temporal leaders, one of whom has gained prominence on a global scale—Usama Bin Liden.

Following the withdrawal of the Soviet forces from Afghanistan, many of these fighters returned to their homelands, but they returned with new skills and dangerous ideas. They now had newly-acquired terrorist training as guerrilla warfare was the only way they could combat the more advanced Soviet forces. They also returned with new concepts of community that had little to do with nationalism. Those concepts of community fed naturally into opposition to the adoption, and toleration, of western culture. As a result, many of the Arab-Afghan returnees united, or reunited, with indigenous radical Islamic groups they had left behind when they went to Afghanistan. These Arab-Afghan mujahedin, equipped with extensive weapons and explosives training, infused radicals and already established terrorist groups, resulting in the creation of significantly better trained and more highly motivated cells dedicated to jihad.

Feeding the radical element was the social fact that this occurred in nations where there was widespread poverty and unemployment. The success of the Arab intervention in Afghanistan was readily apparent, so when the Arab-Afghan returnees came home they discovered populations of young Muslims who increasingly were ready and even eager to view radical Islam as the only viable means of improving conditions in their countries. Seizing on widespread dissatisfaction with regimes that were brimming with un-Islamic ways, regimes that hosted foreign business and foreign military, many young Muslim males became eager to adopt the successful terrorist-related activities that had been successfully used in Afghanistan in the name of Islam. It was only a matter of time before these young Muslin males began to seek out the military and explosives training that the Arab-Afghan returnees possessed.

USAMA BIN LADEN

Usama bin Laden gained prominence during the Afghan war in large measure for his logistical support to the resistance. He financed recruitment, transportation and training of Arab nations who volunteered to fight alongside the Afghan mujahedin. The Afghan war was clearly a defining experience in his life. In a May, 1996 interview with Time Magazine, UBL stated: ''in our religion there is a special place in the hereafter for those who participate in jihad. One day in Afghanistan was like 1,000 days in an ordinary mosque.''

Although bin Laden was merely one leader among many during the Soviet-Afghan conflict, he was a wealthy Saudi who fought alongside the mujahedin. In consequence, his statute with the fighters was high during the war and he continued to rise in prominence such that, by 1998, he was able to announce a ''fatwa'' (religious ruling) that would be respected by far-flung Islamic radicals. In short, he stated that it is the duty of all Muslims to kill Americans: ''in compliance with God's order, we issue the following fatwa to all Muslims: the ruling to kill the Americans and their allies, including civilians and military, is the individual duty for every Muslim who can do it in any country in which it is possible to do it.''

Bin Laden was not alone in issuing this fatwa. It was signed as well by a coalition of leading Islamic militants to include Ayman Al-Zawahiri (at the time the leader of the Egyptian Islamic Jihad), Abu Yasr Rifa'i Ahmad Taha (Islamic Group leader) and Sheikh Fazl Ur Rahman (Harakat Ul Ansar leader). The fawa was issued under the name of the International Islamic Front for Jihad on the Jews and Christians. This fawa was significant as it was the first public call for attacks on Americans, both civilian and military, and because it reflected a unified position among recognized leaders in the radical Sunni Islamic community. In essence, the fatwa reflected the globalization of radical Islam.

There is a terrorist network of extremists that has been evolving in the murky terrain of Southwest Asia that uses its extremist views of Islam to justify terrorism. His organization, al Qaeda is but one example of this network.

AL QAEDA

Although Al-Qaeda functions independent of other terrorist organizations, it also functions through some of the terrorist organizations that operate under its umbrella or with its support, including: the Al-Jihad, the Al-Gamma Al-Islamiyya (Islamic Group—led by Sheik Omar Abdel Rahman and later by Ahmed Refai Taha, a/k/a ''Abu Yasser al Masri,''), Egyptian Islamic Jihad, and a number of jihad groups in other countries, including the Sudan, Egypt, Saudi Arabia, Yemen, Somalia, Eritrea, Djibouti, Afghanistan, Pakistan, Bosnia, Croatia, Albania, Algeria, Tunisia, Lebanon, the Philippines, Tajikistan, Azerbaijan, the Kashmiri region of India, and the Chechen region of Russia. Al-Qaeda also maintained cells and personnel in a number of countries to facilitate its activities, including in Kenya, Tanzania, the United Kingdom, Canada, and the United States. By banding together, Al-Qaeda proposed to work together against the perceived common enemies in the West—particularly the United States which Al-Qaeda regards as an ''infidel'' state which provides essential support for other ''infidel'' governments. Al-Qaeda responded to the presence of United States armed forces in the Gulf and the arrest, conviction and imprisonment in the United States of persons belonging to Al-Qaeda by issuing fatwas indicating that attacks against U.S. interests, domestic and foreign, civilian and military, were both proper and necessary. Those fatwas resulted in attacks against U.S. nationals in locations around the world including Somalia, Kenya, Tanzania, Yemen, and now in the United States. Since 1993, thousands of people have died in those attacks.

THE TRAINING CAMPS

With the globalization of radical Islam now well begun, the next task was gain adherents and promote international jihad. A major tool selected for this purpose was the promotion of terrorism training camps that had long been established in Afghanistan. It is important to note, that while terrorist adherents to what we have come to know as al Qaeda trained in the camps, many others did as well. For example, according to the convicted terrorist Ahmed Ressam, representatives of the Algerian Armed Islamic Group (GIA) and its off-shoot the Salafi Groups for Call and Combat (GSPC), HAMAS, Hizballah, the Egyptian Islamic Jihad (EIJ) and various other terrorists trained at the camps.

Ressam also reports that cells were formed, dependent, in part, on the timing of the arrival of the trainees, rather than on any cohesive or pre-existing organizational structure. As part of the training, cleric and other authority figures advised the cells of the targets that are deemed valid and proper. The training they received included placing bombs in airports, attacks against U.S. military installations, U.S. warships, embassies and business interests of the United States and Israel. Specifically included were hotels holding conferences of VIPs, military barracks, petroleum targets and information/technology centers. As part of the training, scenarios were developed that included all of these targets.

Ressam, who a not a member of al Qaeda, has stated that the cells were independent, but were given lists of the types of targets that were approved and were initiated into the doctrine of the international Jihad. Ressam explicitly noted that his own terrorism attack did not have bin Laden's blessing or his money, but he believed it would have been given had he asked for it. He did state that bin Laden urged more operations within the United States.

THE INTERNATIONAL JIHAD

We believe the suicide hijackers of September 11, 2001 acted in support of the 1998 fatwa which, in turn describes what we believe is the international jihad. During 1997 UBL described the ''international jihad'' as follows:

''The influence of the Afghan jihad on the Islamic world was so great and it necessitates that people should rise above many of their differences and unite their efforts against their enemy. Today, the nation is interacting well by uniting their efforts through jihad against the U.S. which has in collaboration with the Israeli government led the ferocious campaign against the Islamic world in occupying the holy sites of the Muslims. . . . [A]ny act of aggression against any of this land of a span of the hand measure makes it a duty for Muslims to send a sufficient number of their sons to fight off that aggression.''

In May of 1988, UBL gave an interview in which he stated ''God willing, you will see our work on the news. . . .'' The following August the East African embassy bombings occurred. That was bin Laden speaking, but it should be remembered that the call to harm America is not limited to al Qaeda. Shortly after September 11 Mullah Omar said ''the plan [to destroy America] is going ahead and God willing it is being implemented. . . .'' Sheikh Ikrama Sabri, a Palestinian Mufti, said in a radio sermon in 1997, ''Oh Allah, destroy America, her agents, and her allies! Cast them into their own traps, and cover the White House with black!'' Ali Khameine'i, in 1998, said ''The American regime is the enemy of [Iran's] Islamic government and our revolution.'' There are many other examples, but the lesson to be drawn is that al Qaeda is but one faction of a larger and very amorphous radical anti-western network that uses al Qaeda members as well as others sympathetic to al Qaeda's ideas or that share common hatreds.

Information from a variety of sources repeatedly carries the theme from Islamic radicals that expresses the opinion that we just don't get it. Terrorists world-wide speak of jihad and wonder why the western world is focused on groups rather than on the concepts that make them a community. One place to look at the phenomenon of the ''international jihad'' is the web. Like many other groups, Muslim extremists have found the Internet to be a convenient tool for spreading propaganda and helpful hints for their followers around the world. Web sites calling for jihad, or holy war, against the West are not uncommon.

One of the larger jihad-related Internet offers primers including ''How Can I Train Myself for Jihad.'' Traffic on this site, which is available in more than a dozen languages, increased 10-fold following the attacks, according to a spokesman for the site.

The lesson to be taken from this is that al Qaeda is far less a large organization than a facilitator, sometimes orchestrator, of Islamic militants around the globe. These militants are linked by ideas and goals, not be organizational structure. The intent is establishment of a state, or states ruled by Islamic law and free of western influence. Bin Laden's contribution to the Islamic jihad is a creature of the modern world. He has spawned a global network of individuals with common, radical ideas, kept alive through modern communications and sustained through forged documents and money laundering activities on a global scale. While some may consider extremist Islam to be in retreat at the moment, its roots run deep and exceedingly wide. Those roots take many forms, one of which is the focus of this hearing.

In the final analysis, the International Jihad movement is comprised of dedicated individuals committed to establishing the umma through terrorist means. Many of these are persons who attended university together, trained in the camps together, traveled together. Al Qaeda and the international terrorists remain focused on the United States as their primary target. The United States and its allies, to include law enforcement and intelligence components worldwide have had an impact on the terrorists, but they are adapting to changing circumstances. Speaking solely from an operational perspective, investigation of these individuals who have no clear connection to organized terrorism, or tenuous ties to multiple organizations, is becoming increasingly difficult.

The current FISA statute has served the nation well, but the International Jihad Movement demonstrates the need to consider whether a different formulation is needed to address the contemporary terrorism problem. While I cannot discuss specific cases in a public hearing, the FBI has encountered individuals who cannot be sufficiently linked to a terrorist group or organization as required by FISA. The FBI greatly appreciates the Committee's consideration of this issue and looks forward to working with the Committee to find the best approach for appropriate investigation of such individuals.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## MORNING BUSINESS

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes.

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

## TRIBUTE TO SHEILA C. JOY

Mr. THURMOND. Mr. President, I rise today to pay tribute to my good friend Sheila C. Joy for her devoted service to the United States Department of Justice.

Sheila C. Joy was born in Springfield, MA, and graduated from the University of Massachusetts. After two years of civilian service in the United States Air Force, Mrs. Joy began her career with the United States Department of Justice. Beginning as a Staff Assistant, she successfully worked through the ranks and is presently a program manager responsible for reviewing judicial appointments in the Office of Policy Development. she has made great strides to ensure United States judges are fairly appointed to the bench, and I am honored to have had the opportunity to work so closely with here.

The Department of Justice is a better organization because of Mrs. Joy's hard work, and she can take great pride in all she has accomplished during her tenure. She is to be commended for her integrity, dedication, and fairness in reviewing judicial appointments. Mrs. Joy has been an outstanding model of excellence to the numerous men and women she has worked with during her thirty five years with the Department of Justice, and I am certain she will continue to set a fine example for others to follow as she continues her career. She is an excellent asset to the American justice system, and I applaud her for the positive impact she had made.

It has been a privilege to have worked with such an outstanding lady. Again, I want to thank Mrs. Joy for all of her tireless efforts and for the friendship she has provided me during our many years of working together. I wish Mrs. Joy and her three lovely children the best of luck in all future endeavors, and may the years to come bring good health and happiness.

## MASSACHUSETTS MEMORIAL SERVICE

Mr. KENNEDY. Mr. President, I am honored to join all of you, the families of loved ones from across our Commonwealth who lost their lives last September 11.

We come to this birthplace of liberty to remember, to give honor, and to express our resolve.

All around us in this historic place are the images of famous leaders who brought life and nationhood to the ideals that were attacked a year ago, on a day whose dawn had seemed almost uniquely American in its sunny optimism.

Etched on the wall around this stage are the names of heroes who gave their lives for our country on September 11, 2001. The list is heartbreaking, and it goes on and on. These heroes were famous in a different way, famous to their friends for their fabled jumpshot in a neighborhood park, or prized in their firms for a brilliance tempered by laughter, or celebrated by their young children as super-heroes, able to launch them into the air with an easy toss, and always there to catch them. They expected to pass the ball again, to make another trade or tell another joke, to come home that night and read a bedtime story.

Then they were gone, in the darkness at mid-morning which succeeded that sunny dawn. We mourn them for the years that were too few and the hopes that were unfulfilled. We praise them for the way they lived, and in so many cases for the bravery in the way they