

living for working families across America.

When Senator EDWARDS confronted Vice President CHENEY last night with those realities, what the Vice President said was, Well, we certainly hope everyone can find a job. Hope is not enough. You need a policy that does not reward the wealthiest in America with tax cuts, but that instead helps working families deal with the realities of the costs of life.

The Vice President and the President are wrong. They are wrong in their policies and some say resolute, I say perhaps too resolute, in sticking with the policy that has failed.

We are in a position where we need new leadership. We have that opportunity, and last night's debate showed the sharp contrast between the projected programs and hopes and policies of the Kerry/Edwards ticket as opposed to the harsh realities of the programs we have seen over the last 4 years.

Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, I ask unanimous consent that I have 5 minutes and the Senator from Delaware have 5 minutes.

Mr. DURBIN. I object to that request. If the Senator from Alaska is going to address me, I would like to have 5 minutes.

Mr. REID. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. STEVENS. If the Senator will not yield to me, I will not yield to him. I want 5 minutes and the Senator from Delaware wants 5 minutes. Does the Senator object?

Mr. DURBIN. I object, Mr. President.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, it is my understanding that, under the order that is now before the Senate, we on the minority side have about 3½ minutes remaining; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. REID. I ask unanimous consent that the Senator from Delaware be given 5 minutes and the Senator from Alaska be given 10 minutes.

Mr. STEVENS. I object. I only want 5 minutes, and I want to be able to respond to the Senator from Illinois. He would not yield to me. I see no reason why I should yield to him.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Senator CARPER has 3 minutes now. There is no unanimous consent request pending now, is there?

The PRESIDING OFFICER. There is not.

Mr. STEVENS. What is the time situation?

Mr. REID. I yield 3 minutes to the Senator from Delaware, Mr. CARPER.

The PRESIDING OFFICER. The Senator has 2½ minutes remaining. The Senator from Delaware is recognized for 2½ minutes.

Mr. STEVENS. Mr. President, I cannot hear.

The PRESIDING OFFICER. The Senator from Delaware has 2½ minutes.

The Senator from Delaware.

ESTABLISHING A NATIONAL PARK

Mr. CARPER. Mr. President, later this morning, I will introduce legislation, along with Senator BIDEN, calling for a feasibility study by the Department of the Interior for establishing a National Park Service unit in a State that has never had a national park.

Believe it or not, the State that started the Nation, the first State to ever ratify the Constitution, has no national park.

The State in which the first Swedes and Finns came to America and landed on what is now Wilmington, DE, calling it New Sweden, has no national park.

The State where John Dickinson grew up, who is a coauthor of the Great Compromise creating a bicameral legislature, has no national park.

I could go on.

The heritage of our State and the history of our State together create a fabric which, in a sense, is the tapestry of America. Senator BIDEN and I thus call on the Department of the Interior to conduct a feasibility study to see if maybe a wonderful idea that has evolved from a committee led by Dr. Jim Soles, a professor at the University of Delaware, might win favor with the Department of the Interior and maybe with our colleagues in the year to come.

What is being proposed is a Delaware national coastal heritage park.

It would weave together many of the elements and attractions along the coast of our State, which include the Atlantic Ocean, the Delaware Bay, and the Delaware River.

For the last year or more, a wonderful group of Delawareans has worked together with the Delaware State Division of Parks and Recreation, with the National Park Service, with the Delaware Division of Historical and Cultural Affairs to develop what we believe is a unique and innovative concept, a concept that would include four hubs. The major hub would be in Wilmington, DE, at the rocks where the first Swedes and Finns came ashore in 1638 to America to establish what is now the longest living active Episcopal church, Old Swedes Church, in North America.

That hub would be almost like the hub of a wheel, with spokes emanating to historic sites, natural areas, recreational opportunities, and other attractions in the area. There would be three other similar hubs up and down the State of Delaware as well.

Later today, when I have more time, I welcome the opportunity to share with my colleagues a bit more about this proposal. I have

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Alaska.

Mr. STEVENS. I yield myself time under the intelligence bill.

Mr. REID. Has the bill been reported?

The PRESIDING OFFICER. No.

NATIONAL INTELLIGENCE REFORM ACT OF 2004

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2845, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2845) to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

Pending:

Kyl Amendment No. 3801, to modify the privacy and civil liberties oversight.

Stevens Amendment No. 3839, to strike section 201, relating to public disclosure of intelligence funding.

Leahy/Grassley Amendment No. 3945, to require Congressional oversight of translators employed and contracted for by the Federal Bureau of Investigation.

Reid (for Harkin) Amendment No. 3821, to modify the functions of the Privacy and Civil Liberties Oversight Board.

Roberts Amendment No. 3742, to clarify the continuing applicability of section 504 of the National Security Act of 1947 to the obligation and expenditure of funds appropriated for the intelligence and intelligence-related activities of the United States.

Stevens Amendment No. 3827, to strike section 206, relating to information sharing.

Stevens Amendment No. 3840, to strike the fiscal and acquisition authorities of the National Intelligence Authority.

Stevens Amendment No. 3882, to propose an alternative section 141, relating to the Inspector General of the National Intelligence Authority.

Warner Amendment No. 3876, to preserve certain authorities and accountability in the implementation of intelligence reform.

Levin Modified Amendment No. 3809, to exempt military personnel from certain personnel transfer authorities.

Levin Amendment No. 3810, to clarify the definition of National Intelligence Program.

Stevens Amendment No. 3830, to modify certain provisions relating to the Central Intelligence Agency.

Warner Amendment No. 3875, to clarify the definition of National Intelligence Program.

Reid (for Leahy) Amendment No. 3913, to address enforcement of certain subpoenas.

Reid (for Leahy) Amendment No. 3916, to strengthen civil liberties protections.

Reid (for Leahy) Amendment No. 3915, to establish criteria for placing individuals on the consolidated screening watch list of the Terrorist Screening Center.

Collins (for Frist) Modified Amendment No. 3895, to establish the National Counterproliferation Center within the National Intelligence Authority.

Collins (for Frist) Amendment No. 3896, to include certain additional Members of Congress among the congressional intelligence committees.

The PRESIDING OFFICER. Under the previous order, the time until 11:30

a.m. will be equally divided for debate between the two managers and 15 minutes of that time will be under the control of Senator WARNER and Senator LEVIN.

The Senator from Maine.

Ms. COLLINS. Mr. President, I yield 10 minutes to the Senator from Alaska. I then hope we can proceed to four pending amendments of the Senator from Alaska.

Mr. REID. On this time, on behalf of Senator LIEBERMAN, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Alaska is recognized for 10 minutes, to be followed by the Senator from Illinois for 10 minutes.

AMENDMENTS NOS. 3830, AS MODIFIED, 3840, AS MODIFIED, AND 3882, AS MODIFIED, EN BLOC

Mr. STEVENS. I have sent three of the pending amendments to the desk in an amended form. These changes have been coordinated with the managers of the bill and I believe they are acceptable to them.

The first amendment, No. 3840, revises the acquisition authority of the national intelligence director and that is at the desk. The second amendment, No. 3830, modifies a certain provision related to the Central Intelligence Agency and that amendment is at the desk. Amendment No. 3882 revises the provisions related to the inspector general of the National Intelligence Authority. It conforms these provisions to those in the Inspector General Act and avoids duplication of the inspector general efforts across the impacted agencies. That amendment is at the desk.

I appreciate the courtesy of the managers of the bill and their staffs, and their willingness to engage in dialog on these amendments with me and my staff.

We are still working to resolve differences over amendment No. 3827 regarding the information-sharing network to address some of the concerns identified by the White House and others. We hope to reach a resolution on that language this morning, but, as I said, I thank the managers of the bill for their help in resolving these issues. It has been a matter of great concern to those of us who have worked with the intelligence community for quite some time.

I now ask unanimous consent that amendments Nos. 3840, 3830, and 3882 be amended as noted in the revised amendments that I have sent to the desk; that the amendments be considered en bloc and adopted en bloc, and that the motions to reconsider be laid upon the table.

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

The amendments, as modified, were agreed to, as follows:

AMENDMENT NO. 3830

On page 28, beginning on line 16, strike "of the National Intelligence Director".

On page 43, beginning on line 1, strike "OF THE NATIONAL INTELLIGENCE DIRECTOR".

On page 43, beginning on line 5, strike "of the National Intelligence Director" and insert "for the National Intelligence Director and the Director of the Central Intelligence Agency".

On page 43, line 14, add at the end the following: "Any use of funds from the Reserve shall be subject to the direction and approval of the National Intelligence Director and in accordance with procedures issued by the Director."

On page 43, beginning on line 17, strike "of the National Intelligence Director".

On page 141, between lines 15 and 16, insert the following:

(H) the Director of the Central Intelligence Agency or his designee;

On page 141, line 16, strike "(H)" and insert "(I)".

On page 141, line 18, strike "(I)" and insert "(J)".

On page 141, line 21, strike "(J)" and insert "(K)".

On page 194, beginning on line 23, strike "of the National Intelligence Director".

AMENDMENT NO. 3840

On page 109, line 6, insert the words "with- in the National Intelligence Program" after the words "for each intelligence program".

On page 109, strike lines 12 and 13 and insert the following:

(B) serve as exclusive milestone decision authority, except that with respect to Department of Defense programs the Director shall serve as milestone decision authority jointly with the Secretary of Defense or the designee of the Secretary; and

On page 110, strike lines 8 through 18 and insert the following:

(4) If the National Intelligence Director and the Secretary of Defense are unable to reach agreement on a milestone decision under this subsection, the Director shall assume milestone decision authority subject to review by the President at the request of the Secretary.

AMENDMENT NO. 3882

On page 60, strike line 5 and all that follows through page 77, line 18, and insert the following:

SEC. 141. INSPECTOR GENERAL OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—There is an Inspector General of the National Intelligence Authority. The Inspector General of the National Intelligence Authority and the Office of the Inspector General of the National Intelligence Authority shall be subject to the provisions of the Inspector General Act of 1978 (5 U.S.C. App.).

(b) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978 RELATING TO INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8J as section 8K; and

(2) by inserting after section 8I the following new section:

"SPECIAL PROVISIONS CONCERNING THE NATIONAL INTELLIGENCE AUTHORITY

"SEC. 8J. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the National Intelligence Authority (in this section referred to as the 'Inspector General') shall be under the authority, direction, and control of the National Intelligence Director (in this section referred to as the 'Director') with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning intelligence or counterintelligence matters the disclosure of which would constitute a serious threat to national security.

"(2) With respect to information described in paragraph (1), the Director may prohibit

the Inspector General from initiating, carrying out, or completing any investigation, inspection, or audit, or from issuing any subpoena, if the Director determines that such prohibition is necessary to preserve the vital national security interests of the United States.

"(3) If the Director exercises the authority under paragraph (1) or (2), the Director shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of such authority within 7 days.

"(4) The Director shall advise the Inspector General at the time a report under paragraph (3) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such report.

"(5) The Inspector General may submit to the congressional intelligence committees any comments on a report of which the Inspector General has notice under paragraph (4) that the Inspector General considers appropriate.

"(b) In addition to the qualifications for the appointment of the Inspector General under section 3(a), the Inspector General shall be appointed on the basis of prior experience in the field of intelligence or national security.

"(c)(1)(A) In addition to the duties and responsibilities of the Inspector General specified elsewhere in this Act, the Inspector General shall, for the purpose stated in subparagraph (B), provide policy direction for, and conduct, supervise, and coordinate audits and investigations relating to—

"(i) the coordination and collaboration among elements of the intelligence community within the National Intelligence Program; and

"(ii) the coordination and collaboration between elements of the intelligence community within the National Intelligence Program and other elements of the intelligence community.

"(B) The Inspector General shall conduct the activities described in subparagraph (A) to ensure that the coordination and collaboration referred to in that paragraph is conducted efficiently and in accordance with applicable law and regulation.

"(C) Before undertaking any investigation, inspection, or audit under subparagraph (A), the Inspector General shall consult with any other inspector general having responsibilities regarding an element of the intelligence community whose activities are involved in the investigation, inspection, or audit for the purpose of avoiding duplication of effort and ensuring effective coordination and cooperation.

"(2) In addition to the matters of which the Inspector General is required to keep the Director and Congress fully and currently informed under section 4(a), the Inspector General shall—

"(A) keep the Director and Congress fully and currently informed concerning—

"(i) violations of civil liberties and privacy that may occur in the programs and operations of the National Intelligence Authority; and

"(ii) violations of law and regulations, violations of civil liberties and privacy, and fraud and other serious problems, abuses, and deficiencies that may occur in the coordination and collaboration referred to in clauses (i) and (ii) of paragraph (1)(A); and

"(B) report the progress made in implementing corrective action with respect to the matters referred to in subparagraph (A).

"(3) To enable the Inspector General to fully and effectively carry out the duties and responsibilities specified in this Act, the Inspector General and the inspectors general of the other elements of the intelligence community shall coordinate their internal audit,

inspection, and investigative activities to avoid duplication and ensure effective coordination and cooperation.

“(4) The Inspector General shall take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports.

“(d)(1) Each semiannual report prepared by the Inspector General under section 5(a) shall—

“(A) include an assessment of the effectiveness of all measures in place in the National Intelligence Authority for the protection of civil liberties and privacy of United States persons; and

“(B) be transmitted by the Director to the congressional intelligence committees.

“(2) In addition the duties of the Inspector General and the Director under section 5(d)—

“(A) the Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to—

“(i) the coordination and collaboration among elements of the intelligence community within the National Intelligence Program; and

“(ii) the coordination and collaboration between elements of the intelligence community within the National Intelligence Program and other elements of the intelligence community; and

“(B) the Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within 7 calendar days of receipt of such report, together with such comments as the Director considers appropriate.

“(3) Any report required to be transmitted by the Director to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified in that section, to the congressional intelligence committees.

“(4) In the event that—

“(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

“(B) an investigation, inspection, or audit carried out by the Inspector General should focus on any current or former National Intelligence Authority official who holds or held a position in the Authority that is subject to appointment by the President, by and with the advice and consent of the Senate, including such a position held on an acting basis;

“(C) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in subparagraph (B);

“(D) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in subparagraph (B); or

“(E) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, or audit,

the Inspector General shall immediately notify and submit a report on such matter to the congressional intelligence committees.

“(5) Pursuant to title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, or audit conducted by the

office which has been requested by the Chairman or Ranking Minority Member of either committee.

“(e)(1) In addition to the other authorities of the Inspector General under this Act, the Inspector General shall have access to any personnel of the National Intelligence Authority, or any employee of a contractor of the Authority, whose testimony is needed for the performance of the duties of the Inspector General. Whenever such access is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Director without delay.

“(2) Failure on the part of any employee or contractor of the National Intelligence Authority to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, including loss of employment or termination of an existing contractual relationship.

“(3) Whenever, in the judgment of the Director, an element of the intelligence community that is part of the National Intelligence Program has unreasonably refused or not provided information or assistance requested by the Inspector General under paragraph (1) or (3) of section 6(a), the Director shall so inform the head of the element, who shall promptly provide such information or assistance to the Inspector General.

“(4) The level of classification or compartmentalization of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under section 6(a).

“(f) In addition to the authorities and requirements in section 7 regarding the receipt of complaints by the Inspector General—

“(1) the Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety; and

“(2) once such complaint or information has been received from an employee of the Federal Government—

“(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

“(B) no action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

“(g) In this section, the terms ‘congressional intelligence committees’, ‘intelligence community’, and ‘National Intelligence Program’ have the meanings given such terms in section 2 of the National Intelligence Reform Act of 2004.”

(c) TECHNICAL AND CONFORMING AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—

(1)(A) Section 8H(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is further amended—

(i) by redesignating subparagraph (C) as subparagraph (D); and

(ii) by inserting after subparagraph (B) the following new subparagraph (C):

“(C) An employee of the National Intelligence Authority, of an entity other than the Authority who is assigned or detailed to the Authority, or of a contractor of the Authority who intends to report to Congress a

complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the National Intelligence Authority.”

(B) In support of this paragraph, Congress makes the findings set forth in paragraphs (1) through (6) of section 701(b) of the Intelligence Community Whistleblower Protection Act of 1998 (title VII of Public Law 105-272; 5 U.S.C. App. 8H note).

(2) The Inspector General Act of 1978 is further amended—

(A) in section 8K, as redesignated by subsection (b)(1) of this section, by striking “8F or 8H” and inserting “8F, 8H, 8I, or 8J”; and

(B) in section 11—

(i) in paragraph (1), by inserting “the National Intelligence Director;” after “the Attorney General;” and

(ii) in paragraph (2), by inserting “the National Intelligence Authority,” after “the National Aeronautics and Space Administration.”

(d) SEPARATE BUDGET ACCOUNT.—The National Intelligence Director shall, in accordance with procedures to be issued by the Director in consultation with congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of Inspector General of the National Intelligence Authority.

(e) SENSE OF CONGRESS ON ADOPTION OF STANDARDS OF REVIEW.—It is the sense of Congress that the Inspector General of the National Intelligence Authority, in consultation with other Inspectors General of the intelligence community and the President's Council on Integrity and Efficiency, should adopt standards for review and related precedent that are generally used by the intelligence community for reviewing whistleblower reprisal complaints made under sections 7 and 8J(f) of the Inspector General Act of 1978.

On page 203, strike lines 9 through 22.

On page 204, line 1, strike “312.” and insert “311.”

THE PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the senior Senator from Alaska for working with Senator LIEBERMAN and me to resolve these three amendments. I very much appreciate the good-faith suggestions that were made on both sides, and I am grateful to him for working with us to address his concerns.

I think we have come up with very good suggestions, and I am pleased that the amendments have been adopted.

THE PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. How much time do I have remaining of the 10 minutes?

THE PRESIDING OFFICER. There is 7½ minutes.

WEAPONS OF MASS DESTRUCTION

Mr. STEVENS. Mr. President, I have heard this talk about the inspectors and their conclusion that they have not found weapons of mass destruction. Seventeen times the United Nations asked Saddam Hussein to disclose where the weapons of mass destruction were. We know he used them on the Kurds. We know he used them in Iran. We know we have evidence he was trying to build additional weapons but the inspectors kept asking to return. They asked again and again to return so they could find out if there was evidence of where he had those weapons of mass destruction.

Now they are before the Armed Services Committee this morning and they are going to testify that they have found "no evidence" of the weapons of mass destruction. We had the same conclusion with regard to the Iraqi air force. We were told Saddam had destroyed a series of airplanes. Later we found them buried in the Iraqi desert—a whole series of airplanes—the whole airplane buried. It was capable of being dug up, brought out of the dirt and used.

Now, we have not found the weapons of mass destruction yet. This Senator believes he had them. We know he had them in the Kurd area. We know he used them on Iran. This idea that somehow or another the President or the Vice President have lied, I am tired of hearing this disrespect for the President and Vice President of the United States and I will be willing to debate any time what happened in Iraq.

I went to Kuwait time after time, and to Saudi Arabia, and talked to the pilots who were flying the continuous air patrol over Iraq. Since the gulf war, our pilots were up there every day, and every day they were shot at by ground-to-air weapons that Saddam was not supposed to have at all.

This idea that somehow or another the President and Vice President of the United States lied because they believed there were weapons of mass destruction there, I believe there are weapons of mass destruction there and I still believe there are weapons there somewhere. Where they have taken them, I do not know, but they have not found them. The inspectors kept finding enough reason to go back and go back. They went back 17 times.

To say the President lied, what about those inspectors who said, We have to go back; we have not found them yet but we are going to find some more? Did they lie?

I think there ought to be greater respect for the Presidency and the Vice Presidency of this country, and in this campaign. I have never heard such disrespect. I did not go out and campaign against President Clinton and say he lied, and yet we know he did. He admitted he lied about the matters that were before the grand jury. Now we did not go out and accuse the President of lying. We had a lot of discussions on the floor about that.

So if we want to compare Presidents and who lied and who did not, I am ready any time the Democrats want to do it, but I am tired of this disrespect. It is time we showed respect for the system. I do not remember in the past when a Senator asked another Senator to yield and if that Senator had time, it normally would happen. At the very least the Senator would say: Let me finish my statement now and I will yield at the end of my statement. That kind of senatorial courtesy has to come back to the Senate.

If the Senator wants me to yield, I will yield the remainder of my time.

The PRESIDING OFFICER. Has the Senator yielded the floor?

The Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding I have 10 minutes.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Mr. President, let me say that—

Mr. STEVENS. The Senator has 10 minutes on his time on the 1 hour to which the Senator is entitled.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Mr. President, if the Senator will check the record, he will find that without exception I have always yielded for a question but I was in a difficult position because the Senator from Delaware wanted to speak after me. In the entire amount of time given to me, I would have been happy to yield.

I think, frankly, dialog between two Senators is something perilously close to debate in the Senate, which we hardly ever have. I am sorry we did not have that opportunity, but I think we have the opportunity at this moment.

What I hear from the Senator from Alaska is that we should show respect for the Office of the Presidency. I could not agree more. Whether the President is of my party or any other party, he should be given respect. Even if I disagree with that President, his policy or his statements, I am hoping that I will always be viewed as a person who has that respect for the Office of the Presidency. That is the least that is expected of every single Member of Congress, and I hope the people across the United States.

Having said that, I do not believe that disagreeing with the policies of an administration is disrespectful. In fact, I think it is part of the national debate which makes America so unique.

I do not believe it is disrespectful to say that the information given by the President, the Vice President, the Secretary of Defense, and the Secretary of State was wrong and misleading. It was. I have never used the word "lie," nor would I because a lie means there was a deliberate misrepresentation. I don't have any evidence there was a deliberate misrepresentation. But there was a misrepresentation, at least in four specific elements. Let me tell you what they were.

The administration misled the American people in believing there were weapons of mass destruction—an arsenal of chemical, biological, and nuclear weapons set to strike countries in the Middle East as well as the United States—in Iraq before our invasion. We know now, based on clear and convincing evidence, there is no indication that Saddam Hussein ever had these arsenals of weapons of mass destruction. So when the President and the administration said that to justify the invasion, they were wrong. The American people were misled. That is a fact.

Point No. 2, this administration misled the American people about the capacity of Iraq to build nuclear weapons. Yesterday I came to the floor and

talked about the most recent disclosure about aluminum tubes. The American people were misled into believing Saddam Hussein was about to become a nuclear power, threatening the region and the United States. The administration was wrong. The American people were misled.

Point No. 3, the administration said there was linkage, and I quoted this morning direct quotes from Vice President CHENEY. They argued there was linkage between Saddam Hussein and the 9/11 tragedy in America; that somehow Saddam Hussein and al-Qaida were consorting to attack the United States. We have seen repeatedly through the 9/11 Commission Report, the Senate Intelligence Committee report, as well as clear statements now, today, by the Secretary of Defense, that was wrong. The American people were misled. That is a fact.

These elements are facts that cannot be denied. To say the administration misled the American people is there for the record. I have not said the President lied. But I do say he gave wrong information to the American people, and even the President has conceded that fact. When the Secretary of Defense says there is no linkage, when the President removes the offensive words from the State of the Union Address, he concedes the fact that statements made before the invasion were misleading and they were wrong.

Why in the world can't this administration accept that reality? Why do they have to cling to the fiction that was presented to the American people?

The Senator from Alaska said we should show respect for the Presidency, and I agree. But more important, we need to show respect for the American people. They are the ones we serve, the President and every Member of Congress. We need to show them respect by giving them the clear, unvarnished truth so they understand the facts before we make critical decisions.

We have now lost over 1,050 of our best and brightest and bravest American soldiers in Iraq. We lost them because we invaded that country before we let the inspectors do their job in Iraq, before we created a broad coalition of countries that would join us in this military effort, and here we stand today.

Last night, Vice President CHENEY said don't demean the coalition. Other countries stand with us. I certainly respect the fact that they would stand by the side of America. But make no mistake, when you open the morning paper, regularly, virtually every morning you learn of the death of another American soldier. It is American soldiers who are fighting and dying in Iraq in much greater numbers, even, than any other country I should say, and much greater numbers than I think should be the case.

Had this President done the same thing his father did, gone to the United Nations for approval of our invasion, put together a coalition of nations

which included Arab nations—President Bush's father understood that, in the Persian Gulf. He knew that to bring in Arab nations as part of the coalition meant there would be less resentment in Arab states for our action. This President did not wait to bring in an Arab state to help us in this coalition of the willing. As a consequence, the resentment against the actions of the United States in the Arab world has been growing apace, and we have found the recruiting efforts to find more terrorists to not only invade Iraq and kill our soldiers but to spread around the world are mushrooming. Are we safer today because of that invasion, because we didn't build the coalition? I think not.

I am glad Saddam Hussein is in prison. I am glad he is out of power. But don't diminish the cost to the United States and the fact that there is no end in sight to this war in Iraq.

There was no plan from this administration to execute this war and protect our troops with body armor, with Humvees armored, with protective equipment on helicopters, and certainly we understand today, based on Ambassador Bremer's statements just 2 days ago, that we didn't have a sufficient number of troops to bring stability to the region.

We are paying the price for those bad decisions. Statements were made by this administration that were wrong and misleading. Decisions were made that clearly evidence that we were not prepared, as we should have been. We are paying that price, and there is no end in sight.

If the Senator from Alaska suggests it is disrespectful to the President to raise these issues, I respectfully disagree with him. It is our obligation to have an open, honest, national debate about the foreign policy of this country, which involves families far and wide in Illinois, Alaska, and around the United States.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I am delighted to have an opportunity to debate with the Senator from Illinois because I listened to the comments he made before, comments I violently disagree with. For instance, in 1998, President Clinton went before the general officers of this Nation, officers from all of our units of the military, and he told them he believed Saddam Hussein had weapons of mass destruction. He laid down a just challenge to Saddam Hussein to come forward and disclose them or he believed he might have to go into Iraq himself. That seems to be forgotten.

Apparently, the Senator from Illinois didn't hear the Vice President when he mentioned Mr. Zarqawi last night, a man who was in Iraq before even the problems of Afghanistan who was operating there. He is back there now. He had operated in Afghanistan and Pakistan, was part of the bad guys there.

Now we know he is back in Iraq again. He is mentioned as being one of the senior contacts within the al-Qaida organization that was there before and came back again now. The Vice President has mentioned the contacts that existed in the al-Qaida world in Iraq.

I still believe he was right. There is no question about it. There was a portion of the terrorist organization in Iraq before, and they are back there now.

As far as the weapons of mass destruction, I believe at the time we had seen the briefings—and I am one of the eight in the Congress who received the same briefings the President of the United States got about Iraq. We got them in confidence. As a matter of fact, even the statement the Senator from Illinois made about Mr. Bremer, who is the President's representative, that is from a classified report that we should not be discussing on the floor. It ended up somehow being leaked, that one line from the report. But the report deals with the overall relationship of Mr. Bremer to the whole process.

The problem is this: When we look at the Bremer situation, what Bremer did—we were there. We talked to him. He did want more forces around Baghdad. He thought there should be more. The President relied upon our general officers. He told me personally and he told us as we went to Iraq and came back from Iraq, we are doing what our general officers request, as far as the troop strength is concerned.

The general officers disagreed with Bremer as to the location of those forces. There is no question about it. We probably should have had more. In my opinion, we should have been able to come through Iraq from the north, through Turkey, and come from the south from Kuwait, and had two forces moving through Iraq and squash those people over there.

Instead, because of developments in Turkey, we could not go through Turkey. We flew our troops down to Kuwait, we took their supplies all the way around, and when the supplies reached them they then went in, and instead of having forces meet in Baghdad, particularly in Saddam Hussein's home part of Iraq, they then come back to Baghdad, and that left them spread out. My memory is that the insurrection started in the south because the forces had gone north and we couldn't spread them that thin.

People said: Send more troops. Send more troops. We heard that on the floor: Send more troops. The ability to maintain and supply those troops was a real difficult situation, particularly when all the support supplies were coming through Kuwait. We even started sending some supplies through Jordan.

But the problem really is what happened in terms of Saddam Hussein, in terms of the relationship to al-Qaida, and the relationship to weapons of mass destruction. I stood here on the floor of the Senate and called Saddam

Hussein a Hitler. I did that at least 9 months before the war started. I still believe he was a Hitler. He invaded Kuwait, and we had to kick him out. He was rebuilding his military within that area that he still maintained control of in Iraq. We had control of the south and north part of his country. Yet look at it in terms of the no-fly zone we were trying to protect.

But in terms of the part he controlled he was rebuilding his military because of the money that came into his hands through the "food-for-oil" program.

You can stand here, no matter what you say, and say we haven't found weapons of mass destruction. That is true. We haven't found them. I still believe there are some out there, whether they are in adjoining nations or buried in the ground. Whatever happened to them, he had them.

To accuse the administration of misleading the public when they relied upon the intelligence analysts that we relied on—the same intelligence analysts President Clinton relied on when he made his 1998 speech. Certainly those of us who were here supported the resolution that asked the President to send troops into Iraq; we believed it. When you look at it, if we want to get into situations when Senator KERRY voted against the 1991 war resolution in spite of what Iraq did in invading Kuwait, he voted against us going into Kuwait to liberate Kuwait.

I think my friends on the other side of the aisle have been wrong for 30 years. As a matter of fact, those on the other side of the aisle mainly opposed the Reagan buildup in the 1980s. I was chairman of the Defense Appropriations Subcommittee, and I remember those votes. Fifty times here we voted on amendments that were offered to try to strike weapons systems from the defense bill that I managed to bring to the floor to rebuild the military capacity of the United States. All of those amendments came from the other side of the aisle.

When you look at it, when you look at the trouble, why did we have a shortage of intelligence? President Clinton started degrading human intelligence in the CIA. He denuded the intelligence system as far as human intelligence is concerned because he wanted to rely on the satellites in the air and the communications systems, electrical systems.

I cannot believe we are going to get into these one-sided statements. I would like to have a full debate. I am sort of at a loss. I don't have my records. The Senator from Illinois has his records, but I don't have them.

But I have a feeling that had we not denuded the CIA in the 1990s, we would have had better intelligence. But the information we had relied upon, the American public relied upon, and this Senate relied upon when we voted to give the President the right to go into Iraq.

To say the President was wrong because he relied on the same intelligence we relied upon I think is a faulty argument, and it should not happen on the floor of the Senate in a political season where we are trying to destroy the reputation which the President deserves for having the guts to do what Clinton didn't have the guts to do.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. There are 3½ minutes remaining.

Mr. DURBIN. Mr. President, let me say in response to the Senator from Alaska before he leaves the floor—I want to let him know I want to respond to his comments so there will be no mistake about it.

First, the statement that Ambassador Bremer's comments had something to do with classified information, what I have said on the floor was based upon some front pages of the newspapers. Ambassador Bremer was reported to have said to a private organization in a speech that one of the problems we have in Iraq today stems from the fact that we had an inadequate number of troops in the field to bring stability, to stop the looting and violence immediately after the deposition of Saddam Hussein. That is not classified. It is on the front pages of the newspapers. Ambassador Bremer has now backed away from those comments. But the fact is he made them, and many believe the same thing—that we had an inadequate number of troops at the right and appropriate moment and are paying the price today because the insurgency has grown.

Second, last night Vice President CHENEY, and this morning the Senator from Alaska, make a great deal about the so-called Ayman al-Zawahiri link, a ruthless terrorist who is affiliated with al-Qaida. The Vice President made the statement last night that the Senator made today—that there was a linkage between Ayman al-Zawahiri and Saddam Hussein and, therefore, proof positive al-Qaida and Saddam Hussein were working together justifying the invasion.

I commend to my colleagues and those following the debate this morning's report from MSNBC.com from Washington:

A CIA report has found no conclusive evidence that former Iraqi President Saddam Hussein harbored Ayman al-Zawahiri which the Bush administration asserted before the invasion of Iraq.

This is a fact. It comes from the President's own CIA. They continue to build these straw men to justify an invasion when the facts don't back them up—no weapons of mass destruction, no nuclear arsenal, no evidence of bringing in yellowcake from Niger, no evidence of linkage with al-Qaida. And they cling tenaciously and stubbornly to these assertions even though the facts defeat them.

How can you trust an administration that will not accept the facts and reality to prepare a defense for America? Shouldn't the defense of our Nation be based on reality rather than theory? Shouldn't it be based on sound intelligence instead of political ideology? I would think so.

Any President who comes to this office with a predetermined set of ideas on what we need to do to protect America regardless of the facts is not serving our country well. I hope both political parties would acknowledge that.

AMENDMENT NO. 3801

Let me also say we are about to consider in the early parts of the debate this morning an amendment by Senator KYL to the underlying bill on intelligence reform. I oppose this amendment. I hope my colleagues will join me in opposing it.

We have come together with a bipartisan agreement on the civil liberties board. It is a board which has been created by both sides of the aisle working to implement the recommendations in the 9/11 Commission report. What Senator KYL is trying to do is take away some important powers and responsibilities of this board.

For example, he wants to eliminate the board's standard of review. This is the standard that the board uses to take a look at proposed expansions of the government's power and make sure they don't infringe on rights. What Senator KYL suggests is we take away the standard of review from the civil liberties board. That would frankly create a ship above water.

We need to make sure this board has a standard of review so they can look at government actions and decide whether they go too far. That is what the 9/11 Commission suggested and that is what we should stick to.

Senator KYL's amendment also would remove the Board's subpoena power. He said he would be concerned that this civil liberties board would be subpoenaing members of our Government, agents of our Government, to come in from all over the world and give them evidence. I hope the Senator from Arizona will read this provision more carefully and more closely because the subpoena authority in this bill is very narrow. It only applies to people outside of the Government.

The Kyl amendment would also eliminate the requirement of the board to inform the public about its activities in a manner consistent with protecting classified information. This directly contradicts the recommendation of the 9/11 Commission. We are talking about protecting the American public's rights, liberties, and freedoms. It is essential that the work of the civil liberties board be made public so the American people can understand what they are doing and whether our Government has gone too far. Why the Senator from Arizona would want to keep secrecy and a veil over this activity, I don't understand.

I certainly hope we reject the Kyl amendment which would demolish the

Collins-Lieberman civil liberties board, a bipartisan creation. It would upset the delicate balance between government powers and civil liberties this bill strikes. I urge my colleagues to oppose the amendment.

I yield the floor and 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. REID. I ask unanimous consent that the time for the quorum call be charged equally to both sides.

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

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

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

Mr. REID. Is there still time on both sides under the order that has been entered?

The PRESIDING OFFICER. There is 20 minutes on each side.

Mr. REID. The Senator from Delaware gets 5 minutes.

Mr. CARPER. I thank the minority leader for yielding to me.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. I thank the Chair.

(The remarks of Mr. CARPER pertaining to the introduction of S. 2899 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. REID. I suggest the absence of a quorum and I ask the time be charged equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. REID pertaining to the submission of S. Res. 448 are printed in today's RECORD under "Submitted Resolutions.")

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Parliamentary inquiry: Was there time reserved for the Senator from Vermont prior to the vote?

The PRESIDING OFFICER. No.

Mr. LEAHY. Mr. President, I seek recognition in my own right.

Ms. COLLINS. Mr. President, how much time does the Senator need? I believe 30 minutes has been reserved for

Senator WARNER and Senator LEVIN of the hour and a half of debate that was available this morning.

Mr. LEAHY. Mr. President, am I correct that we are planning to vote at 11:30 on the Kyl amendment?

The PRESIDING OFFICER. That is the order.

Mr. LEAHY. Mr. President, I will speak for 3 to 4 minutes on the Kyl amendment.

Mr. REID. Mr. President, if I may say to my distinguished friend, the Senator from Vermont, time was evenly divided, and the minority's time is gone. We were not aware of the Senator from Vermont needing time.

I ask the Senator from Maine, does she wish to make a statement? All the time left is hers.

Ms. COLLINS. Mr. President, I do intend to speak, so we need to reserve time. I am also concerned that the two Senators who specifically requested time have not had an opportunity to speak.

Mr. REID. They have had an opportunity but have not taken it. We need to get this vote off near the time. The Senator from Vermont needs 3 or 4 minutes.

I ask unanimous consent that the Senator from Vermont be recognized for 4 minutes and that time also be added to that of the majority, so there would be an extra 8 minutes. We cannot extend it past that time because there are things people need to do.

Ms. COLLINS. Mr. President, I have no objection.

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

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the Senator from Nevada and the Senator from Maine.

Mr. President, I rise today to discuss the provisions in the Collins-Lieberman bill establishing a privacy and civil liberties oversight board and to respond to some of the disturbing discourse and efforts to undermine those provisions.

It is unquestioned that one of the key recommendations of the 9/11 Commission was the creation of a civil liberties board to fill a clear void in government structure for addressing these concerns. The Commission discovered that there was "no office within the government whose job it is to look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered." In response to this vacuum, the Commission explicitly recommended that "at this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties." The 9/11 Commission concluded: "We must find ways of reconciling security with liberty, since the success of one helps protect the other."

The Commission was certainly right. There is no doubt that such a board is needed given the heightened civil liberty tensions created by the realities of terrorism and modern warfare. The tools of the information age include precise data-gathering, networked databases, and tracking and sensing technologies impervious to the common eye. The legal tools are similarly powerful, ranging from substantial capabilities under the USA PATRIOT Act and under our immigration laws. As the Commission noted, "[e]ven without the changes we recommend, the American public has vested enormous authority in the U.S. government." In an even more pointed and ominous assessment of these powers, Vice Chairman Hamilton noted, in a recent Judiciary Committee hearing, these developments are "an astounding intrusion in the lives of ordinary Americans that (are) routine today in government."

One of my colleagues suggested that this bill is solely to strengthen our intelligence tools and "not a bill regarding our civil liberties." But this is a myopic view. You cannot divorce one from the other. Security and liberty are always in tension in a free society, and that is readily apparent today. It is our vigilant duty to work hard at striking the right balance. We must enhance our capabilities, but with such powerful tools comes heightened responsibility, and the Commission has challenged us to take up those reins: "This shift of power and authority to the government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life."

We have an obligation to ensure that there are mechanisms in place that will see to it that this power is subject to appropriate checks and balances and congressional oversight. An effective civil liberties board can help provide those checks and contribute to preserving both liberty and security.

We need a civil liberties board whose members collectively can think critically and independently about the policies we implement as a nation and about how they affect our fundamental rights. The board must be able to participate in the policymaking process, review technology choices and options, peer into various agencies and assess actions, review classified materials and investigate concerns. This board must have the versatility to work closely with government officials, but at the same time it must be sufficiently independent to assess those government policies without fear, favor or compromise. Given these significant responsibilities, it is equally important that the board be accountable to Congress and the American people.

The civil liberties board outlined in the Collins-Lieberman bill makes great strides toward meeting these goals. It represents a true bipartisan effort from conception to introduction. I was pleased to work with these Senators along with Senator DURBIN to make

this civil liberties board the kind of board that would honor the 9/11 Commission's intent. It should not go without notice that Commissioners Slade Gorton and Richard Ben-Veniste issued a bipartisan statement that, "A civil liberties board of the kind we recommend can be found in the Collins-Lieberman bill in the Senate."

This legislation establishes a bipartisan board that would have access to the documents and information needed to assess our counterterrorism policies that affect the vital civil liberties of the American people. It provides a mechanism for them to work closely with administration officials, including working with a network of newly created department-level privacy and civil liberty officers, whose proximity to decision makers will ensure that these concerns are considered from the earliest stages of policy formation. It requires the board to report to Congress on a regular basis, and—without compromising classified information—to inform the public about policies that affect their vital liberties.

Unfortunately, Senator KYL's amendment 3801 attempts to gut the carefully crafted, bipartisan civil liberty and privacy provisions that are the hallmark of the Collins-Lieberman bill. It is inconsistent with the recommendations of the 9/11 Commission and would undermine the civil liberties that we cherish.

First, Senator KYL's amendment attempts to cut off the information flow that would ensure that the board could accurately, reliably and effectively advise on the impact of policies on privacy and civil liberties. It would also eliminate the board's ability to subpoena people outside of the government who may have important information, such as private sector data collectors working on behalf of the government. It would also eliminate the privacy officers, as well as public hearings and reports to the public.

It is clear that the Commission intended for the board to have access to the information that it needed in order to effectively assess policy. In a recent House Judiciary Committee hearing, Vice Chairman Hamilton said, "The key requirement is that government agencies must be required to respond to the board." He went on to note that the Commission itself had subpoena power, and "if we had not had it, our job would have been much, much more difficult." I would note that the Collins-Lieberman bill does not go as far as to mandate subpoena power over government officials, but rather only over relevant non-government persons.

Given the secrecy and civil liberty concerns that have been pervasive in this administration, we should be enhancing information flow and dialogue, not eliminating it. It is ironic that at the same time that the administration has been making it more difficult for the public to learn what government agencies are up to, the government and its private sector partners have been

quietly building more and more databases to learn and store more information about the American people themselves.

Second, Senator KYL's amendment would eliminate a provision that gives the board important guidance on how to review requests by the government for new and enhanced powers. This is a critical omission. In order to balance liberty and security, we need to ensure that the board will be looking at policies through a prism that would allow for heightened security protection, while also ensuring that intrusions are not disproportionate to benefits, or that they would unduly undermine privacy and civil liberties. This guidance would also keep the board focused on the right priorities and prevent the mission creep that some fear.

Contrary to assertions that this would be a "citizen board" gone wild that would "haul any agent in anywhere in the world and grill him," this board would consist of highly accomplished members who have the appropriate clearance to access classified information, who have extensive professional expertise on civil liberty and privacy issues, and who have the knowledge of how to view these concerns in the context of important anti-terrorism objectives. Again, its subpoena power would be limited to non-government persons, and so could not used willy-nilly to drag in agents from the field.

It simply cannot be that the government can create and implement policies that impinge on our liberties without having to account to anyone. While that may make things convenient or easy, it certainly does not preserve the ideals of the country we are fighting to protect. As the Commission reminded us, "if our liberties are curtailed, we lose the values that we are struggling to defend."

Some have suggested that we leave this responsibility to "federal agencies that are already equipped and designed for that function." But this misses precisely the point raised in the report. There is currently no such suitable entity that can look across government and offer an independent, uncompromised assessment of the impact of government powers on civil liberties. And I emphasize look, because some would suggest that we do not need a board with an affirmative obligation to go out and review policy. To the contrary, what we do not need is passivity. We need to be as vigilant about protecting our fundamental rights as we are in hunting down and capturing terrorists. It is what Commissioner Gorton, a former Republican Senator from Washington, described as a "watchdog to assure maximum protection of individual rights and liberties in those programs." Similarly, Commissioner Hamilton has said that "it ought to have a very tough investigative staff and it ought to be a very active board and agency."

Others have suggested that the administration's recent efforts are a suit-

able substitute. I strongly disagree. Rather, the Executive Order attempted to foist upon us an anemic civil liberties board. I and several of my colleagues noted in a letter to the President that the board was not a bipartisan or independent entity. It had no authority to access information and it had no accountability. It was housed in the Department of Justice, and it was comprised solely of administration officials from the law enforcement and intelligence communities, precisely the communities that the board would have an obligation to oversee. It was the proverbial case of the fox guarding the henhouse. This would not have resulted in a vigorous consideration of policy that the Commission intended.

As the Commission noted, the "burden of proof for retaining a particular governmental power should be on the Executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the Executive's use of the powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use."

We should be looking for ways to ensure that this burden of proof will be met, rather than weakening oversight and accountability.

As the 9/11 Commission noted, when it comes to security and civil liberties, "while protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right."

Senator KYL's amendment fails to "keep it right," and I urge that the Senate honor the spirit of the recommendations of the 9/11 Commission, and reject it.

Senators COLLINS and LIEBERMAN have it right in their bill and we should not allow that to be gutted.

I ask unanimous consent that a letter to the President from myself and others on this subject be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 21, 2004.

Hon. GEORGE W. BUSH,
President of the United States,
The White House, Washington, DC.

DEAR PRESIDENT BUSH: We are writing in response to the recent creation and activities of the Administration's Board on Safeguarding Americans' Civil Liberties.

One of the key recommendations of the 9/11 Commission was the creation of a civil liberties board to balance the enormous powers granted by the people to the government for protection against terrorism. Critically, it concluded: "We must find ways of reconciling security with liberty, since the success of one helps protect the other."

There is no doubt that such a board is needed given heightened civil liberty tensions created by the realities of terrorism and modern warfare. The tools of the information age include precise data-gathering, networked databases, and tracking and sensing technologies impervious to the common

eye. With such powerful tools comes heightened responsibility.

But the civil liberties board established by the August 27, 2004, Executive Order and the manner in which it is proceeding do little to further the goal of balancing liberty and security. The board resembles a presidential advisory team, and not an independent, bipartisan entity. Housed in the Department of Justice, the board will be comprised solely of Administration officials from the law enforcement and intelligence communities, precisely the communities that the board will need to oversee. In essence, this board's responsibility would be to oversee itself; it is the proverbial case of the fox guarding the hen house. Further, the board has no meaningful investigative authority, and there is no apparent role for Congress.

While such an entity may help inform the White House of the impact of Administration policies on civil liberties, it is no substitute for the sort of civil liberties board that would meet the 9/11 Commission's call for an "enhanced system of checks and balances to protect the precious liberties that are vital to our way of life." Simply put, the Executive Order does not establish an entity with the authority, independence and accountability necessary to protect civil liberties.

Further, the board's hasty meeting, with no discussion of these matters, and with no advance notice to the public, is inherently inconsistent with the very characteristics of openness and accountability necessary to protect civil liberties. A post-meeting press release is simply not the kind of open communication that will foster any trust and confidence in this board's ability to protect the liberties we hold dear.

It is important that we have a civil liberties board that can think critically and independently about the policies we implement as a nation and how they impact our fundamental rights. Choices about its composition, powers and accountability should serve that goal and will need to be openly discussed and carefully weighed. The board must be able to participate in the policy-making process, review technology choices, peer into various agencies and assess actions, review classified materials, and investigate concerns. In particular, the board will need to be sufficiently independent of the Department of Justice to assess its actions without compromise.

Accountability is essential. We cannot assign a board such significant responsibilities without periodically reviewing its progress to ensure that its mandates are being met. Regular reports to Congress and the public provide such checks.

As the 9/11 Commission noted, when it comes to security and civil liberties, the "balancing is no easy task, but we must constantly strive to keep it right." We agree. We must do this right and we must do it together. Congress is currently considering various proposals to create an effective civil liberties board that can achieve these goals, and we hope that the Administration and its civil liberties advisors will support and cooperate with Congress in its development.

Sincerely,

PATRICK LEAHY,
EDWARD M. KENNEDY,
RUSSELL D. FEINGOLD,
U.S. Senators.

Mr. LEAHY. Mr. President, I retain the remainder of my time.

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Will the Senator suspend? Is time yielded to the Senator from West Virginia?

Ms. COLLINS. Mr. President, I yield 5 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 5 minutes.

Mr. ROCKEFELLER. Mr. President, I rise to speak in opposition to the amendment of my good friend from Virginia, Senator WARNER. The Warner amendment would effectively undermine the ability of the national intelligence director to manage the intelligence programs by changing the definition in the bill of what constitutes a national intelligence program.

Under the Collins-Lieberman bill, the national intelligence program includes all programs—all programs—projects, and activities of a number of national intelligence agencies, including the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office.

The Collins-Lieberman bill has been carefully crafted to provide the new intelligence director with the consolidated budget, personnel, and tasking authority necessary to manage the newly defined national intelligence program. The Warner amendment seeks to unravel this. It is a major “undoing” amendment. It unravels these unified authorities under the intelligence director by giving the Secretary of Defense significant control over the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office.

I specifically mention this troika of national intelligence agencies—NSA, NGA, and the NRO—because each agency is partially funded through the Joint Military Intelligence Program budget, known as JMIP.

For instance, in the President’s fiscal year 2005 budget request, 30 percent of the National Geospatial-Intelligence Agency’s budget comes from the JMIP. Similarly, hundreds of millions of dollars in the NRO and NSA budgets are funded through JMIP.

The Warner amendment would eliminate these programs from the definition of the national intelligence program, thereby splitting the management of these national intelligence agencies between the national intelligence director and the Secretary of Defense.

It is very important to note that these programs are not—repeat not—tactical military intelligence programs. The Secretary of Defense would retain control over these tactical military programs under the pending bill. So under the Collins-Lieberman bill, the national intelligence director, consistent with the 9/11 Commission man-

date, is given authority over the programs and activities of these three basic programs.

But now the Warner amendment would have the Senate say: Hold on, we do not want the director to have complete authority over these agencies. We want a sizable portion of their activities to be jointly shared, jointly managed, jointly tasked by the national intelligence director and the Secretary of Defense.

That is exactly what the situation is today and why we are trying to change all of this. It is exactly the type of bifurcated arrangement the 9/11 Commission highlighted as fundamentally dysfunctional. This is exactly the type of crossways organizational setup that inhibits our intelligence community from achieving efficiency and effectiveness of management that we need to protect our national security. This is exactly the type of problem the Collins-Lieberman bill would correct.

Adoption of the Warner amendment would strip away from the national intelligence director an essential ability to manage what is now an intelligence community in name but not in reality.

I urge my colleagues to oppose this amendment. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the Senator from West Virginia for his comments.

Mr. President, I ask unanimous consent that it be in order for the Senator from Arizona and the Senator from Georgia to each have 2 minutes to discuss their amendment.

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

The Senator from Arizona is recognized for 2 minutes.

AMENDMENT NO. 3801

Mr. KYL. Mr. President, we are going to be asking unanimous consent to withdraw amendment No. 3801, which is an amendment Senator CHAMBLISS and I offered to deal with the problem of overlapping and redundant civil rights and privacy investigations, entities, or individuals that would be added to those that already exist to protect civil rights and privacy in the national intelligence director office and other offices of the intelligence community.

The head of the 9/11 Commission, Philip Zelikow, the Executive Director, noted one of the biggest problems we have with our intelligence collection and analysis when he said:

We also found—

“We” meaning the 9/11 Commission—

that the 9/11 story illustrated the danger of risk aversion from constant worry of being investigated. We gave several important examples of officials who overinterpreted existing legal constraints for fear of exceeding their authority. We were also astonished by the extent to which CIA officials, beyond any others in the Government, already conduct their work in a manner that anticipates and guards themselves for the prospect of future investigations.

We found this in the Intelligence Committee, and the 9/11 Commission found the same thing—a profound aversion to taking risks because of all the people looking over the shoulders of these agents, ready to pounce on them if they do anything wrong or make a mistake.

What does the underlying legislation do? It exacerbates the problem because it requires that existing agencies of the Government either designate an existing officer or create a new position for privacy and civil liberties. Notwithstanding the fact that each Department—Homeland Security, Health and Human Services, CIA, and others—already have officers with the responsibility, including an inspector general, chief privacy officer, and the officer for civil rights and civil liberties.

In each one of these agencies, those officers currently exist. There is a new mandate placed on all of them, in addition to which the President, following the 9/11 Commission recommendation, appointed his own board on Safeguarding American’s Civil Liberties, and the bill creates a privacy and civil liberties oversight board with subpoena power and puts under the National Intelligence Authority an officer for civil rights and liberties and a privacy officer, in addition to the already existing inspector general.

The PRESIDING OFFICER. The Senator’s time has expired.

Mr. KYL. Mr. President, I ask unanimous consent for an additional 30 seconds.

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

Mr. KYL. And the creation of an ombudsman. This is overkill. It is going to exacerbate the problem of risk aversion with having too many people looking over the shoulder of too many people we tasked with the difficult job of collecting and analyzing intelligence.

Mr. President, 9/11 did not happen because we had too many people with privacy being violated or civil rights being violated. It happened because our intelligence was not good enough. Too many of these are going to impede our intelligence, and that is why we offered this amendment. I regret we are going to have to withdraw it, but I appreciate the fact that the sponsors of the legislation are committed to working with us in the conference to try to bring a better balance to the bill.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank my colleague from Arizona for his tremendous leadership on this particular issue.

I voted yesterday with our leadership to invoke cloture on this bill, but, frankly, I did so reluctantly because I sympathize with the comments that the Senator from Alaska, Mr. STEVENS, made just yesterday and the day before relative to the fact that we are rushing into an issue that is so complex that we really need to take the time to do this right. But I understand we are at

the end of this session and that we need to get this bill done and get it to conference. That is the only reason that Senator KYL and I are willing to withdraw this amendment. Let's get it to conference and try to clean this up there.

Once again, I have been reminded about the problems we have at the CIA under the leadership now of a new CIA Director whose hands are going to be tied by this particular provision that we are seeking to modify in this bill. We are concentrating, from an overall intelligence reform standpoint, on building up our collection of intelligence through human assets. But now with the creation of the civil liberties board in this bill, a political bureaucracy is being established that is going to be looking over the shoulder of every CIA agent around the world and is going to have the ability to determine whether that CIA agent violated the civil liberties of somebody in the prosecution of gathering intelligence. I think this is a very harmful provision in this bill.

The Senator from Arizona has provided strong leadership on this issue, and I thank him for that. We need to clean up the provision of the bill as it relates to the civil liberties board before we destroy the morale of our agents in the field. While I regret we are going to have to withdraw the amendment at this point in time, I also am encouraged by the comments of the chairman, as well as Senator LIEBERMAN, that they are willing to work with us as we move into conference. It is critical to make the necessary modifications in conference to ensure that our intelligence community has a free hand in trying to gather intelligence to protect the lives of our citizens without violating civil liberties, and without violating privacy rights. Our intelligence professionals have and will conduct their dangerous and important work within the framework of our laws.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

AMENDMENT NO. 3801, WITHDRAWN

Mr. KYL. Mr. President, I ask unanimous consent that the amendment be withdrawn.

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

The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the two Senators. I understand their concern. This issue is going to be the subject of much discussion, I am sure, in the Senate-House conference. I very much appreciate the issues they have raised. I take them seriously, and I appreciate their cooperation in withdrawing the amendment. I thank my colleagues.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I join Senator COLLINS in thanking the Senator from Georgia and the Senator from Arizona for their support of the

bill, for their deep commitment to national security, for raising the questions they have raised, which are good questions, and, frankly, for being willing, as we approach the final passage of this bill, to not press this particular concern and to allow us to go forward.

I look forward to working with them on matters of intelligence and national security in the years ahead.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3742, AS MODIFIED

Ms. COLLINS. Mr. President, I ask unanimous consent that we proceed to the consideration of the Roberts amendment, No. 3742, as modified.

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

The Senator from Kansas.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

Mr. ROBERTS. I ask unanimous consent to call up amendment No. 3742, with a modification.

The PRESIDING OFFICER. The amendment is pending.

The amendment (No. 3742), as modified, is as follows:

AMENDMENT NO. 3742, AS MODIFIED

On page 33, between lines 2 and 3, insert the following:

SEC. 114. FUNDING OF INTELLIGENCE ACTIVITIES.

(a) FUNDING OF ACTIVITIES.—(1) Notwithstanding any other provision of this Act, appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(A) those funds were specifically authorized by the Congress for use for such activities;

(B) in the case of funds from the Reserve for Contingencies of the National Intelligence Director, and consistent with the provisions of section 503 of the National Security Act of 1947 (50 U.S.C. 413b) concerning any significant anticipated intelligence activity, the National Intelligence Director has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(C) in the case of funds specifically authorized by the Congress for a different activity—

(i) the activity to be funded is a higher priority intelligence or intelligence-related activity; and

(ii) the National Intelligence Director, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity.

(2) Nothing in this subsection prohibits the obligation or expenditure of funds available

to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

(b) APPLICABILITY OF OTHER AUTHORITIES.—Notwithstanding any other provision of this Act, appropriated funds available to an intelligence agency may be obligated or expended for an intelligence, intelligence-related, or other activity only if such obligation or expenditure is consistent with subsections (b), (c), and (d) of section 504 of the National Security Act of 1947 (50 U.S.C. 414).

(c) DEFINITIONS.—In this section:

(1) The term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities.

(2) The term "appropriate congressional committees" means—

(A)(i) the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives; and

(ii) the Select Committee on Intelligence and the Committee on Appropriations of the Senate;

(B) in the case of a transfer of funds to or from, or a reprogramming within, the Department of Defense—

(i) the committees and select committees referred to in subparagraph (A);

(ii) the Committee on Armed Services of the House of Representatives; and

(iii) the Committee on Armed Services of the Senate; and

(C) in the case of a transfer of funds to or from, or a reprogramming within, the Federal Bureau of Investigation—

(i) the committees and select committees referred to in subparagraph (A);

(ii) the Committee on the Judiciary of the House of Representatives; and

(iii) the Committee on the Judiciary of the Senate.

(3) The term "specifically authorized by the Congress" means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

On page 33, line 3, strike "114." and insert "115."

On page 35, line 1, strike "115." and insert "116."

On page 38, line 21, strike "116." and insert "117."

On page 40, line 10, strike "117." and insert "118."

On page 43, line 1, strike "118." and insert "119."

On page 200, between line 18 and 19, insert the following:

SEC. 309. CONFORMING AMENDMENTS ON FUNDING OF INTELLIGENCE ACTIVITIES.

Section 504 of the National Security Act of 1947 (50 U.S.C. 414) is amended—

(1) in subsection (a)(3)—

(A) in subparagraph (A), by adding "and" at the end;

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B); and

(2) in subsection (e), by striking paragraph (2) and inserting the following new paragraph (2):

"(2) the term 'appropriate congressional committees' means—

“(A)(i) the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives; and

“(ii) the Select Committee on Intelligence and the Committee on Appropriations of the Senate;

“(B) in the case of a transfer of funds to or from, or a reprogramming within, the Department of Defense—

“(i) the committees and select committees referred to in subparagraph (A);

“(ii) the Committee on Armed Services of the House of Representatives; and

“(iii) the Committee on Armed Services of the Senate; and

“(C) in the case of a transfer of funds to or from, or a reprogramming within, the Federal Bureau of Investigation—

“(i) the committees and select committees referred to in subparagraph (A);

“(ii) the Committee on the Judiciary of the House of Representatives; and

“(iii) the Committee on the Judiciary of the Senate; and”.

On page 200, line 19, strike “309.” and insert “310.”.

On page 201, line 11, strike “310.” and insert “311.”.

On page 203, line 9, strike “311.” and insert “312.”.

On page 204, line 1, strike “312.” and insert “313.”.

Mr. ROBERTS. Mr. President, I thank Chairman COLLINS and Senator LIEBERMAN for working with me to include this provision in the act. It preserves an important requirement from section 504 of the National Security Act of 1947. It is very simple: That funds appropriated for an intelligence activity must be specifically authorized.

I appreciate your cooperation on this matter. It is a very simple amendment.

I yield to the distinguished chairman of the Governmental Affairs Committee.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank Senator ROBERTS for offering this amendment. As chairman of the Senate Intelligence Committee, his expertise and advice on this bill have been invaluable. As he indicates, this preserves a requirement in section 504 of the National Security Act of 1947 that funds appropriated for an intelligence activity must also be specifically authorized before being obligated or expended.

It is my understanding that other committees with interest in this matter have been consulted and there is no objection. I will ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I strongly support this amendment and thank Senator ROBERTS for offering it. I thank him generally for the many ways in which he has strengthened this bill.

The bottom line here is this amendment will ensure that intelligence activities, which by their nature are classified and not subject to public scrutiny, receive specific review and authorization by the Senate and House of Representatives Intelligence Commit-

tees. It is another way to make clear that what we have said all along, that this bill does not represent an alteration of power and authority between the Congress and the executive branch, is in fact what happens. I thank the Senator and I am glad to support the amendment.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment, as modified.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Ms. MURKOWSKI). Are there any Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 198 Leg.]

YEAS—98

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
DeWine	Lincoln	

NOT VOTING—2

Edwards Kerry

The amendment (No. 3742), as modified, was agreed to.

Ms. COLLINS. Madam President, I move to reconsider the vote.

Mr. LIEBERMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, for the information of my colleagues, I am going to ask unanimous consent that we go to Senator LEAHY's amendment No. 3945. I anticipate that being accepted on a voice vote. Therefore, there will be no further rollcalls until 2 o'clock, for the information of my colleagues.

Mr. REID. Could we make that 2:15?

Ms. COLLINS. Madam President, I would be glad to amend the request to

make it 2:15. I ask unanimous consent that be the order.

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

The Senator from Vermont.

AMENDMENT NO. 3945

Mr. LEAHY. Madam President, I understand my amendment regarding translators, No. 3945, is now before the Senate.

The PRESIDING OFFICER. It is pending.

Mr. LEAHY. Madam President, this is an amendment on behalf of myself and Senator GRASSLEY. We did this because 3 years ago, a law was passed requiring the Attorney General to report on the FBI translators program, why it was failing, and how he is going to fix it. The Attorney General has never followed the law and submitted that report.

Our amendment requires the Attorney General to submit a report on FBI translators within 30 days of enactment of this act.

Senator GRASSLEY, of course, is well known as being one of the most vigilant people on FBI oversight issues.

Last week the Justice Department's Office of Inspector General released an unclassified version of its Audit of the FBI's Foreign Language Program. The report shows that despite concerns expressed for years by some of us in Congress and by former FBI contractors, among others, and despite an influx of tens of millions of dollars to hire new linguists, the FBI foreign language translation unit continues to be saddled with growing backlogs, systemic difficulties, security problems, too few qualified staff, and an astounding lack of organization.

What is the use of taping thousands of hours of conversations of intelligence targets in foreign languages if we cannot translate the material promptly, securely, accurately and efficiently? The administration owes Congress and the American public an explanation as to why it has repeatedly failed to take the necessary steps to fix these serious intelligence failings.

Almost 3 years ago, Congress required the Attorney General to report upon where the FBI translators program was failing and how he was going to fix it. The Attorney General has never submitted that report.

To make sure that report is delayed no more, and to respond to the Inspector General's recommendations, Senator GRASSLEY and I have offered the Translator Reports Act of 2004 as an amendment. I am proud to be joined in this effort by my friend from Iowa, who has been ever-vigilant on FBI oversight issues.

Our amendment requires the Attorney General to submit a report on FBI translators within 30 days of enactment of the National Intelligence Reform Act. It also adds further reporting requirements that will be crucial to understanding whether or not the FBI is capable of fixing, and has fixed, the problems outlined by the Inspector General.

This report will allow Congress to meet the 9/11 Commission's directive that Congress exercise greater oversight over the counterintelligence and counterterrorism needs of the executive branch. I urge my colleagues to vote in favor of the amendment.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I appreciate the Senator from Vermont working with Senator LIEBERMAN and me. His amendment would require the Attorney General to submit annual reports to the House and Senate Judiciary Committees on the number of translators employed or contracted for by the FBI and other components of the Department of Justice, the needs of the FBI for translation services, a description of the implementation of quality control procedures, among other provisions.

As we know, there is a serious backlog of translation in the FBI, and this sends a very strong message that Congress is going to be carefully monitoring the progress of this program.

I urge support for the amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank the Senator from Vermont for this amendment. It responds to a direct call, a conclusion of the 9/11 Commission report that the FBI did not dedicate sufficient resources to the surveillance and translation needs of counterterrorism agents and lacks sufficient translators proficient in Arabic and other key languages.

The reporting requirement contained in this amendment will obviously help and force Congress to determine the scope of the problem and develop possible fixes. I thank the Senator from Vermont for his initiative and accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 3945.

The amendment (No. 3945) was agreed to.

Mr. LEAHY. Madam President, I move to reconsider the vote.

Mr. LIEBERMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. COLLINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3821, AS MODIFIED

Mr. LIEBERMAN. Madam President, I call up among the pending amendments amendment No. 3821 offered by the Senator from Iowa, Mr. HARKIN.

The PRESIDING OFFICER. The amendment is pending.

Mr. LIEBERMAN. I ask unanimous consent on behalf of Senator HARKIN to send a modification of the amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 158, between lines 9 and 10 insert the following:

(C) the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d).

Mr. LIEBERMAN. Madam President, I urge adoption of the amendment, as modified.

The PRESIDING OFFICER. Is there further debate on the modified amendment?

Mr. LIEBERMAN. Very briefly, the Harkin amendment is focused on a requirement relative to the new board we are creating in this proposal. The new board, to watch out for the privacy and civil liberties rights of American citizens and others, is required to make periodic reports to Congress. This amendment now simply says that in those reports, there should be an opportunity for minority views to be recorded as well. It is a good amendment, as modified, having eliminated some more controversial provisions. I urge its adoption.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I very much appreciate the fact that the Senator from Iowa has worked with us on it. The revised amendment, unlike the original, is one I support and I, too, urge adoption of the modified amendment.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 3821), as modified was agreed to.

Mr. LIEBERMAN. Madam President, I move to reconsider the vote.

Ms. COLLINS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. COLLINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3809, AS MODIFIED

Ms. COLLINS. Madam President, I ask unanimous consent to proceed to the consideration of Levin amendment No. 3809, as modified.

The PRESIDING OFFICER. Without objection, the amendment is pending.

AMENDMENT NO. 3962 TO AMENDMENT NO. 3809, AS MODIFIED

Ms. COLLINS. Madam President, I call up a second-degree amendment to

that amendment. The second degree is numbered 3962. I ask unanimous consent that it be considered.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for herself and Mr. LIEBERMAN, proposes an amendment numbered 3962 to amendment No. 3809, as modified.

Ms. COLLINS. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 1, line 3, strike "military" and all that follows through page 2, line 9, and insert the following:

uniformed services personnel, except that the Director may transfer military positions or billets if such transfer is for a period not to exceed three years; and

(E) nothing in section 143(i) or 144(f) shall be construed to authorize the Director to specify or require the head of a department, agency, or element of the United States Government to approve a request for the transfer, assignment, or detail of uniformed services personnel, except that the Director may take such action with regard to military positions or billets if such transfer is for a period not to exceed three years.

Ms. COLLINS. Madam President, I am going to have Senator LEVIN first discuss this issue, and then Senator LIEBERMAN and I will respond.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Madam President, military personnel comprise an important part of the national intelligence community. Managing military personnel is the appropriate function of the Secretary of Defense and the military departments.

The bill, as drafted, would permit the transfer of military personnel within the national intelligence program. This amendment strikes that language and does not permit the transfer of the military personnel within the national intelligence program.

The second-degree amendment makes it clear that the positions, of course, cannot be transferred. In other words, providing that the people who are in those positions are not transferred by the national intelligence director, if it is just the money for the positions, which providing it falls within the scope of reprogramming, for instance, and can be done in any event; providing it is the positions or the money attached to the positions that are transferred from one part of the intelligence community to another, that we do not prevent. It is the transfer of uniformed people that cannot be accepted, and this amendment would prevent that from happening.

So if we are in a situation, for instance, where the national intelligence director says, I want those five people from a particular agency, and if these are uniform military personnel, that would not be possible when my amendment is adopted. The national intelligence director would be able to transfer positions, or the money, and say

\$400,000 or \$1 million or whatever, providing, again, it is within or below the limit that is established, which would require programming approval by the Congress; providing it is below that limit, the NID continues to have that authority, which he would have in any event, to transfer funds or positions from one place to another. So we don't touch the money or the positions.

However, we maintain a chain of command. We maintain military careers. These are uniform military careers, and we do not have an outside civilian person changing that career by transferring a uniform military person from one place to another.

I thank my colleagues, the managers of the bill, for working out this language with us. It is a very important change in terms of military careers, in terms of military personnel, in terms of the management of military personnel, in terms of morale. But it does not disturb, again, the budgetary power or the shifting around of budgets—or billets, as we call them—or positions, providing, again, they are underneath and within the limits established by the reprogramming procedures that have been established, where individual agency heads are allowed to transfer money from one place to another. If it is above that limit, it is established by the reprogramming procedures, then, of course, they have to go through the normal reprogramming process before money can be transferred from one place to another.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, the Collins-Lieberman bill grants the national intelligence director the authority to transfer personnel within the national intelligence program to meet higher priorities. This is extremely important authority because we want to make sure the NID can, for example, staff up the National Counterterrorism Center with individuals from a variety of agencies, including military personnel who may be at the Defense Intelligence Agency, for example.

But the compromise that we have reached addresses two important concerns. One, it puts a 3-year limit on the length of time for this personnel. That is important because we don't want to disrupt the military careers of individuals who are temporarily transferred. Second, it makes clear that we are talking about slots, or billets, and not individual members of the military.

In other words, the NID cannot say: I want "Colonel Murkowski" to go to the National Counterterrorism Center. Instead, the NID would say: I want a linguist to go to the National Counterterrorism Center, or describe what the slot may be.

I think this is a good compromise on this issue, and it leaves intact the strong authority of the national intelligence director, while addressing the legitimate concerns raised by Senator LEVIN.

Mr. LIEBERMAN. Madam President, I rise to support this modification of

the amendment. Here, again, we have reasoned together about the significant changes that will come about as a result of the underlying proposal in the creation of an NID. I think it will come out with a result that is fair and will be effective.

As I have said before, our intelligence forces today are like an army without a general. The whole idea of creating an NID is to put somebody in charge. Part of being in charge has to mean the ability to transfer the forces to places where the director thinks they are needed.

Senator LEVIN was understandably concerned about the impact that might have on the military chain of command. In an initial proposal he said these transfers could not occur without the approval of the Secretary of Defense. We thought that would frustrate the authority that we are trying to give to the national intelligence director. So we have come to a very reasonable compromise, which is, as Senator COLLINS and Senator LEVIN said, with regard to uniform military personnel working within the intelligence community. If the NID believes he needs three, four, or five positions from military intelligence, the slots can be moved. But the NID, with regard to uniformed military personnel, cannot go in and say, I want—as Senator COLLINS said—"Colonel Murkowski" to be transferred to the national intelligence center, or some other subdivision of the intelligence community. That is quite reasonable. But it would allow the position, the slot, to be transferred. And then, presumably, for a process of negotiation, it would allow a process of negotiation to go on for the Secretary of Defense or the NID, or their designees, as to who actually filled that slot. With regard to nonuniformed personnel, including military personnel, those within the Department of Defense, they can be transferred by the national intelligence director, acting on his own.

I think this is a very good, balanced compromise. I thank Senator LEVIN for his characteristic thoughtfulness. I even thank him for his persistence, which I think has brought about a good result. I am happy to support this amendment, as modified.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, my thanks to the managers, not just for their work on this amendment, but their work generally on this bill. It has been exemplary and a model to all of us in this Senate as to how we can achieve things on a bipartisan basis. They worked together beautifully, and I commend them for it.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3962 to amendment No. 3809, as modified.

The amendment (No. 3962) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3809, as modified, as amended.

The amendment (No. 3809), as modified, as amended, was agreed to.

Mr. LEVIN. I move to reconsider the vote.

Mr. LIEBERMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. COLLINS. Madam 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.

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

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

AMENDING THE TRADEMARK ACT OF 1946

Ms. COLLINS. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2796 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2796) to clarify that service marks, collective marks, and certification marks are entitled to the same protections, rights, and privileges as trademarks.

There being no objection, the Senate proceeded to consider the bill.

Ms. COLLINS. Madam President, I ask unanimous consent that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 2796) was read the third time and passed, as follows:

S. 2796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTIONS, RIGHTS, AND PRIVILEGES OF SERVICE MARKS, COLLECTIVE MARKS, AND CERTIFICATION MARKS.

The Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (commonly referred to as the Trademark Act of 1946) is amended—

(1) in section 3 (15 U.S.C. 1053) in the first sentence, by striking "protection" and inserting "protections, rights, and privileges"; and

(2) in section 4 (15 U.S.C. 1054) in the first sentence, by striking "protection" and inserting "protections, rights, and privileges".

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Ms. COLLINS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 744, H.R. 1417.