

registration in our facilities or on federal property.”

This is of concern because of the history of Native Americans being denied the right to vote in my State and perhaps in other parts of the country as well.

The history of this issue in New Mexico, very briefly, is that a returning Marine Corps veteran, someone who served in the Second World War in the Marine Corps, named Miguel Trujillo, was denied the right to vote in our State. In 1948, he had to bring suit in Federal court to obtain the right to vote. He was an Isleta Pueblo Indian member, and he was teaching at Laguna Pueblo in my State and was denied the right to vote as a Native American.

I should point out that his son Michael Trujillo went on to become the head of the Indian Health Service. His daughter Josephine Waconda was the first American Indian woman to be a rear admiral in the career Indian Health Service. So they have a tremendous part of our history in that family.

It is absolutely inexcusable that the Indian Health Service would be giving direction saying that it is inappropriate or illegal or prohibited for people to use Federal property or Indian Health Service facilities to register people to vote on a nonpartisan basis.

Yesterday, I sent a letter to Tommy Thompson, Secretary of Health and Human Services, urging that even though it is not going to affect this year's election since voter registration in our State is essentially over this week in New Mexico, even though it does not affect voter registration, it is imperative that he, as head of that Department, issue a policy and clarify that this is not the policy of the Department of Health and Human Services, this is not the policy of the Indian Health Service.

We have a very strong policy that is recognized in the Defense Department that they encourage military personnel and others who are part of the military family to participate in registering others, either on or off base, to vote. That is as it should be. That is on a nonpartisan basis. I think we all support that. We need to have the very same policy with regard to Indian Health Service facilities and Indian Health Service personnel.

I hope very much that Secretary Thompson will respond to my letter positively, will issue a directive so that it is clear from now on that Indian Health Service personnel are not in any way prohibited from participating in voter registration drives on a nonpartisan basis. This is an issue that deserves attention before it is lost in the shuffle of this campaign. I hope we can get a response from the Secretary in the near future.

Mr. President, I ask unanimous consent to print in the RECORD the letter I sent to Secretary Thompson.

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

Hon. TOMMY THOMPSON,
Secretary, Department of Health and Human Services, 200 Independence Ave. SW, Washington, DC.

DEAR SECRETARY THOMPSON: I was dismayed to read a report in the Washington Post this morning that officials at the Indian Health Service were prohibiting employees at several locations in New Mexico from using IHS facilities to register new voters. While it would certainly not be appropriate or legal under the Hatch Act for federal employees to be involved in partisan political activity on federal property, the proposed Indian Health Service (IHS) voter registration program, as described in the Washington Post article, would not be prohibited under the Hatch Act because the program is described as nonpartisan. In addition, according to the article, the activity would take place during non-working hours, which should allay the fears of anyone concerned that the IHS employees would feel coerced to take part in the activity or that the program would interfere with employees' regular duties. As long as the program were conducted in a nonpartisan way, e.g. employees leading the effort do not attempt to influence the registrants in any way, and employees were free to choose whether or not to participate, it would be perfectly legal.

It is well known that the Defense Department has undertaken efforts to make sure that as many of its employees are registered to vote and participate in next month's elections as are eligible to do so. The Defense Department's efforts, like those proposed by Indian Health Agency employees, are designed to increase citizen involvement in one of the most important elections in our history. These are admirable goals that should be encouraged, not prohibited.

While it is clearly too late to clarify the Department's policy with regard to this year's election, I would still ask that you act as expeditiously as possible to issue a directive that makes it clear that the Department of Health and Human Services will not prohibit its employees from engaging in nonpartisan voter registration on federal property. In fact, I would hope that you would encourage your Department to engage in the same active voter registration efforts that the Department of Defense does. It is the right thing to do in the service of full participation in the democratic process, a goal that I know you share with me.

Please let me know of your plans to encourage voter registration as soon as possible.

Sincerely,

JEFF BINGAMAN.

Mr. BINGAMAN. Mr. President, I yield the floor, and 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.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 1 p.m. having arrived, the Senate stands in recess until 2 p.m.

Thereupon, the Senate, at 1 p.m., recessed until 2:04 p.m. when called to

U.S. SENATE,
October 6, 2004.

order by the Presiding Officer (Mr. SESSIONS).

INTELLIGENCE COMMITTEE REORGANIZATION—Continued

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

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

The Senator from Arizona.

AMENDMENT NO. 3999 TO AMENDMENT NO. 3981

Mr. MCCAIN. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside, and I call up an amendment which is at the desk.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, and Mr. LOTT, Mr. LIEBERMAN, Ms. SNOWE, Mr. ROBERTS, and Mr. BAYH, proposes an amendment numbered 3999 to amendment No. 3981.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

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

(Purpose: To strike section 402 and vest intelligence appropriations jurisdiction in the Select Committee on Intelligence)

Strike section 402 and insert the following:

SEC. 402. JURISDICTION OVER INTELLIGENCE APPROPRIATIONS.

Notwithstanding subparagraph (b) of paragraph 1 of Rule XXV of the Standing Rules of the Senate, the Select Committee on Intelligence shall have jurisdiction over all proposed legislation, messages, petitions, memorials, and other matters relating to appropriation, rescission of appropriations, and new spending authority related to funding for intelligence matters.

Mr. MCCAIN. Mr. President, I don't expect that this amendment should require a lot of debate. It is an issue that we have all talked about a lot. It is all a question of turf and jurisdiction. It is something that would never be seriously considered by this body under any other circumstances except that we are talking about the war on terrorism and the overwhelming issue of how we are going to defend this Nation. I will be more than happy to agree to a time agreement with the appropriators who will lead the fight against this amendment which would be agreeable to them.

This Chamber can be very proud of its bipartisan work that resulted in the overwhelming passage of S. 2845, the National Intelligence Reform Act of

2004. That bill addressed 38 of the 9/11 Commission's 41 recommendations to further secure our homeland. Not only the two managers of that bill—Senator COLLINS and Senator LIEBERMAN—deserve our gratitude but the two leaders, as well, worked together to ensure the Senate acted on this important reform legislation prior to adjourning before the elections.

I ask unanimous consent that Senators LIEBERMAN, LOTT, SNOWE, ROBERTS, and BAYH be added as cosponsors.

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

Mr. MCCAIN. Mr. President, one of the Commission's two options which the Commission recommended for how best Congress can improve congressional structure over intelligence—the underlying resolution does not propose either of the Commission's two options creating either a joint committee modeled after the Joint Atomic Energy Committee or House and Senate committees with combined authorizing and appropriating powers.

Let me tell you what this is all about. The Commission report was clear that along with the need to reform the executive branch, congressional reform is needed. And I quote from the report:

The other reforms we have suggested for a national counterterrorism center and national intelligence director will not work if congressional oversight does not change too.

I want to repeat that:

The other reforms . . . will not work if congressional oversight does not change too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.

We can't leave this week with our job incomplete. We have to address the Commission's recommendations regarding the urgent need to reform congressional oversight, intelligence and homeland security. To do this in a meaningful way to carry out the important institutional reforms recommended by the Commission, each of us in Congress must sacrifice our own self-interest. We do not serve the American public well with shortsighted, parochial turf battles.

The Commission acknowledges that this won't be an easy task.

The report states:

Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need. The United States needs a strong, stable and capable congressional committee structure to give America's national intelligence agencies oversight, support and leadership.

The Commission also stated:

Tinkering with the existing structure is not sufficient.

It calls the congressional oversight "dysfunctional."

Their recommendations clearly state that we must have a committee with both authorizing and appropriating authority.

It is not any simpler nor more complicated than that.

I have a letter from the 9/11 Commission which states:

If Senator McCain offers an amendment in support of Commission recommendations on Congressional oversight, we will support it.

We urge the Senate to adopt provisions for the strongest possible reform of Congressional oversight.

I ask unanimous consent that three letters be printed in the RECORD.

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

OCTOBER 6, 2004.

Thomas H. Kean and Lee H. Hamilton, former Chair and Vice Chair of the National Commission on Terrorist Attacks Upon the United States (also known as the "9/11 Commission") today released the following statement:

"We continue to believe that reform of Congressional oversight is necessary in order for the Commission's overall recommendation to be effective."

"If Senator McCain offers an amendment in support of Commission recommendations on Congressional oversight, we will support it."

"The proposals of Senator McConnell and Reid constructive, positive and move in the right direction. They are useful and modest steps. They are not as far-reaching as those recommended by the Commission."

"We urge the Senate to adopt provisions for the strongest possible reform of Congressional oversight."

JOHN F. LEHMAN,

New York, NY, October 7, 2004.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR JOHN: I am writing to reiterate my strong support for real Congressional reform as recommended by the 9/11 Commission.

As our report makes clear, the important executive branch reforms that passed the Senate yesterday will not work if congressional oversight does not change too. Unfortunately, the McConnell/Reid proposal does not fulfill the Commission's vision for comprehensive reform. The intelligence committee needs real power and prominence, which is why the Commission strongly recommended a new committee structure combining authorizing and appropriating authority, and a simplified and functional homeland security committee structure.

I urge the Senate to make the Commission's recommendations for Congressional reform as high a priority as it made our other recommendations, which received an overwhelming bipartisan vote of 96.2. The Congressional reforms are equally important and necessary.

Sincerely,

JOHN F. LEHMAN.

October 7, 2004.

Senator JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I write to reaffirm my strong support for Congressional action to implement the recommendation of the 9/11 Commission Report to strengthen Congressional oversight of intelligence and homeland security.

As you know the bipartisan 9/11 Commission was unanimous in its recommendation that serious reform was necessary. In the language of the Commission: "Tinkering with the existing structure is not sufficient. . . . the goal should be a structure—codified

by resolution with powers expressly granted and carefully limited—allowing a relatively small group of members of Congress, given time and reason to master the subject and the agencies, to conduct oversight of the intelligence establishment and be clearly accountable for their work."

This is best implemented by establishing a single committee in each house of Congress combining authorizing and appropriating authorities. Therefore, I endorse your amendment to the current bill which will ensure this single authority.

Thank you for your work to ensure that the recommendations of the 9/11 Commission are implemented.

Sincerely,

BOB KERREY.

Mr. MCCAIN. Mr. President, Bob Kerrey writes:

I write to reaffirm my strong support for Congressional action to implement the recommendations of the 9/11 Commission Report to strengthen Congressional oversight of intelligence and homeland security.

Bob Kerrey, by the way, served here for two terms, as I recall, for 12 years. He further states in his letter:

This is best implemented by establishing a single committee in each House of Congress combining authorizing and appropriating authorities. Therefore, I endorse your amendment in the current bill which will ensure the single authority.

Thank you for your work to ensure the recommendations of the 9/11 Commission are implemented.

Sincerely, Bob Kerrey.

I would like to point out just as way of background how we got to the proposal we have on the table.

My understanding is both leaders appointed both whips—the Senator from Nevada and the Senator from Kentucky—as part of two 11-person committees to come up with recommendations.

We met a couple times, the 11 Republicans, and discussed various issues, then there was another meeting of both, and then we were told that Senator REID and Senator MCCONNELL would come up with some recommendations. That is not exactly what I had in mind when I was asked to serve as part of an 11-Senator committee. Here came these recommendations.

I don't want to digress but, for example, the Transportation Security Administration is left in the Commerce Committee. I am glad to have more discussions with the Senator from Kentucky about that.

I asked, How could the Transportation Security Administration not be made part of the new Homeland Security Committee? The Transportation Security Administration is the heart and soul of it. His answer was—maybe he will have a different answer—it was part of the negotiations. What does that mean?

I digress. The fact is, unless we give the authorizing committee the proper appropriating capability, we will continue to have, as the 9/11 Commission said, a dysfunctional oversight of intelligence. It is a good idea to make Intelligence Committee members permanent members and not have them term

limited. I think it is a good idea to have it an A committee, although that may cause significant problems if we do not give the Permanent Committee on Intelligence appropriating authority.

It is sometimes nice to have a real-world example of why we need this. I am not a member of the Intelligence Committee. I have no access to classified information. Frankly, I have never sought any because of the fear that some information I might have I might speak about in a public forum.

There was a very expensive and very controversial intelligence program, and the Intelligence Committee—this is a relatively short time ago—the Intelligence Committee, after many hearings, extensive scrutiny and a thorough scrubbing of this program, determined that the program should be canceled. We are talking about a multibillion-dollar program.

Do you know what happened? The Appropriations Committee funded it.

So if you are the bureaucrat over in Langley or at the National Security Agency or any place else, where do you go? Where do you go when you want your projects done? Do you go to the authorizing committee or do you go to the appropriating committee? The power resides in the purse. The Golden Rule prevails around here. We all know the Golden Rule.

So if we are going to have a truly effective Intelligence Committee oversight that can function with strength and power, we are going to have to give them appropriations authority. I predict after the initial attractiveness of serving on the Intelligence Committee, if they do not have appropriating authority, we will have difficulty getting people to serve on the authorizing committee because, again, the power is not there.

We know why many of the authorizing committees are not nearly as important or as powerful as they used to be. It is because the appropriations process is what drives not only the money but also the policy.

We are going to have an Omnibus appropriations bill sometime. Usually what happens, coincidentally, it is within 24 hours of when we go out of session. It always seems to work out that way. There will be numerous policy changes. There will be numerous moneys and earmarks put in. Last year there were 14,000 earmarks put in the appropriations bills, up from 4,000 in 1994.

We are going to see things that will astonish some Members. For example, I was astonished several years ago when there was a line item in an appropriations bill that called for the leasing of Boeing aircraft. We had never had a hearing in the Senate Armed Services Committee. We never looked at the issue. No one even suggested it, that I know of, and I have been on the committee for 18 years. There was a line item that appeared in an appropriations bill that said we would lease Boeing aircraft.

Do you know what happened since then? The GAO and the Office of Management and Budget determined that it was a \$5.7 billion additional cost to the taxpayer. We now ended up, with this long trail that began with a line in an appropriations bill, with one of the former employees of the Department of Defense pleading guilty and receiving a 9-month prison term, saying she had rigged the contract to the benefit of Boeing aircraft.

Now, why do I bring up that example? Because I can tell Members right now that if that had been a subject for the Armed Services Committee, we would have had hearings on it. We would have examined the leasing idea and rejected it as the ridiculous, expensive idea that it was.

I can go with many other examples. Cruise ships that cost the taxpayers \$200 million in loan guarantees that were half built at Pascagoula, MS. I can tell Members of line items in appropriations bills that say when the broadcasters reach 85 percent of high-definition television in 85 percent of the homes in America, which the Chairman of the Federal Communications Commission says will never happen—I could go over a long list of items that are not only money but also policy.

What will happen if we do not give the authorizing Intelligence Committee the appropriations power? Exactly what has happened in the past. Projects that cost a great deal of money that the Intelligence Committee either approves or disapproves of are overridden in the appropriations process. It happens time after time after time.

I usually pride myself in straight talk. I would be surprised if I win on this amendment. One of the Commissioners called me and told me, "I'm under intense pressure"—those are his words—"not to support your amendment but I will go ahead and do so."

There are Members of this Senate who are under intense pressure, as well.

If we want to tell the American people with the justified pride that we take in the actions we have achieved in the Senate in the last few days, which is remarkable—at least from my standpoint, one of the prouder moments I have experienced in the number of years I have spent here as we have gone through an incredible process, beginning with hearings before Senator COLLINS's committee back in August, which culminated in a tremendous achievement and the most significant governmental reform since 1947—then we have done about half to three-quarters of the job. If we do not give the authorizing committee either appropriating power or some kind of power, some kind of authority, then we will see a basically dysfunctional and toothless Intelligence Committee.

The Senator from Nevada came to me and said he was going to move to table. I tell the Senator from Nevada, one, I

want everyone to be able to talk, so we will just reintroduce the amendment if it is tabled, unless everyone gets to talk. But I also say to the Senator from Nevada that I would be glad to enter into a time agreement for passage of this legislation. I intend to get an up-or-down vote. I will reintroduce it unless the Senator from Nevada allows an up-or-down vote on the amendment. I think it is that important.

Mr. REID. If I could, through the Chair to my friend from Arizona, I have no problem with an up-or-down vote. I would rather he told me he wanted an up-or-down vote. I would say fine. I have no problem.

I also say to my friend, I want to make sure everyone who wants to speak will have the opportunity. I have no problem at all with an up-or-down vote on this.

Mr. MCCAIN. I ask unanimous consent that Senator BAYH not be added as a cosponsor.

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

Mr. MCCAIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. My friend from Hawaii was on the floor first. Does he wish to speak on this matter?

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, today, the Senate is considering the resolution which responds to the recommendations of the 9/11 Commission to revamp the congressional oversight process for intelligence and homeland security. I would like to take this opportunity to say a few words about this matter.

The Commission recommended two options for Congress to consider regarding intelligence oversight. First, they suggested that the Congress could create a joint bicameral committee modeled after the Joint Committee on Atomic Energy, as they said, to streamline the congressional review over intelligence functions. They supported this idea because they believe we need to have a very powerful Intelligence Committee which can stand up to the administration and speak authoritatively for the Congress. I understand there is virtually no support within the Senate for this suggestion.

The other alternative suggested by the Commission was to give the Intelligence Committees the authority to appropriate funds, and this is the matter now being discussed. The Intelligence Committee—some of the members—believes the inability to appropriate funds allows the administration to play the Intelligence Committee off against the Appropriations Committee. They argue this weakens congressional oversight. My colleagues are undoubtedly aware that granting an authorization committee such authority would be unprecedented in modern times.

Chairman STEVENS and I were surprised that neither one of us was contacted by the members of the 9/11 Commission as they conducted their review

and prepared their recommendations. We were shocked that, without even consulting us or our House counterparts on the Appropriations Committee, they would recommend that Congress eliminate our role in intelligence oversight. As such, I cannot offer any personal explanation for the Commission's recommendation.

Furthermore, their report provides scant explanation why they believe the Appropriations Committee should be excluded from its mission to fund all Federal agencies. In fact, there is not a single word in the 9/11 Commission's report to suggest that the appropriations subcommittee was at fault in its oversight of the intelligence budget. Never once were we accused of that shortfall.

I believe the Intelligence Committee's role in spending authority is already powerful enough without any new authority. Under the National Security Act of 1947, as amended by section 504, the intelligence community cannot spend appropriated funds unless the funds are specifically authorized. Now, I think this is worth repeating. The intelligence community cannot spend appropriated funds unless the funds are specifically authorized. As such, the Select Intelligence Committee already has more authority than any standing committee.

Let me be clear about what that means. If the Appropriations Committee were to fund programs that were not included in the annual intelligence authorization bill, the appropriated funding for those programs cannot and will not be spent by the executive branch.

This authority is virtually unheard of in other budget functions. The authority was granted to the Intelligence Committee to ensure that the executive branch could not use the wide latitude provided in appropriations law to circumvent the will of the Congress. Appropriations acts are written with broad authority to hide the amounts for classified programs in large lump sums. This ensures that the amounts for these programs remain undisclosed. As such, the limits on spending for classified programs are very broad. The authorization requirement ensures that both committees agree on how much should be spent to provide a better check on the administration.

More important, I believe the idea of centralizing congressional oversight is not only a bad idea, it could be dangerous to the Nation. In all areas of Government, except intelligence, our system requires and allows public scrutiny. The media, nongovernment organizations, and even lobbyists all provide information and insight to Members of Congress on everything except intelligence.

Congress needs to have a system of checks and balances internal to the legislative branch because there are no other checks. We all remember Iran-Contra, which was able to go unchecked even though multiple committees had some degree of intelligence

oversight. What chance would we have of uncovering that type of abuse if only one committee were examining intelligence matters?

We know there have been other abuses by the intelligence community. I remember a former chairman of the Senate Intelligence Committee expressing outrage to discover that the National Reconnaissance Office was spending significantly more money to build a new headquarters than the chairman was aware. I recall how Chairman STEVENS uncovered a slush fund in the same agency that had been accumulating outside of the knowledge of the Congress.

Do any of my colleagues really believe that having only one committee perform oversight of the intelligence community's budget will provide more effective oversight?

In addition, a single committee overseeing intelligence for the Senate would create a powerful czar. Little opportunity would exist for meaningful debate on intelligence budgets because so few Members would be aware of the details of intelligence matters. Of equal concern, a more powerful chairman could end up being co-opted or at least overly influenced by the intelligence community and potentially lose objectivity. The Senate would be at his or her mercy with little outside scrutiny. That is not an appropriate or effective form of oversight for the Congress.

Having a few committees cleared for intelligence programs, such as Armed Services, Appropriations, and Intelligence, and each with some role in determining how resources are provided would ensure that fewer bad ideas get legislated, and it would also create more effective oversight and competitive analysis by the Congress.

I also note that maintaining the link to the Appropriations Committee is beneficial to the intelligence community. Intelligence funding is protected by inclusion under the Appropriations Committee. By combining all appropriations resources, the committee has historically solved many intelligence shortfalls.

If the Appropriations Committee is removed from intelligence matters, it will be less likely to support intelligence requirements. First, the committee will not be as knowledgeable of intelligence needs. Second, it is human nature for chairmen and ranking members to care about the programs over which they have jurisdiction. If they do not have some oversight over intelligence programs, they will not have the link to the intelligence providers or necessarily the desire to help.

The Intelligence Committee would be subject to 302 budget reductions and other general reductions levied against all committees by the Budget Committee. To believe that they would be held harmless in across-the-board cuts or other cutbacks I think is very naive. Their funding level is more likely to be decreased than increased.

Linking Defense and Intelligence is critical. DOD cannot operate without good intelligence. The Defense Subcommittee has ensured that intelligence resources support the needs of the warfighter. Today, the Defense Subcommittee reviews the recommendations of both the Armed Services and Intelligence Committees. The Appropriations Committee can minimize redundancies and make sure that the needs of both Defense and Intelligence are met. Separating Defense from Intelligence through the creation of an all-powerful Intelligence Committee would hurt oversight and hurt the community they hope to help.

In recent testimony before the House Intelligence Committee former Deputy Defense Secretary, Defense Comptroller, and staffer to the Senate Armed Services Committee, Dr. John Hamre stated that the Intelligence and Armed Services Committees worry too much about input and not enough about output.

His counsel was to let the Appropriations Committee worry about input in the budget process, to determine what we should spend money on and let the authorizing committees worry about how the agencies are performing with these resources. He noted that the authorizing committees spend far too much time on the budget and therefore had insufficient time for oversight. I am pleased that the leadership has decided to recommend creating an Intelligence subcommittee on oversight to highlight its importance.

Since the Civil War it has been the mission of the Appropriations Committee to balance needs among competing priorities. While the 9/11 tragedy exposed problems with intelligence oversight, it did not expose problems with the appropriations process for intelligence. Certainly, nothing was uncovered that would be resolved by giving the Intelligence Committee the authority to appropriate funds.

The intelligence budget should not be considered in a vacuum. It needs to be considered in conjunction with the Defense budget. While some speculate we can simply separate national intelligence from military intelligence, it is not that simple. Many programs have both national and military, strategic or tactical, components. Military personnel provide a large proportion of the intelligence community workforce. The Defense Department and Intelligence Community both need to support maintaining this relationship and benefit from doing so. It should remain the Appropriations Committee's responsibility to ensure that the needs of both defense and intelligence are met.

The Collins-Lieberman bill that the Senate adopted yesterday recognizes the need for maintaining a close working relationship between DoD and intelligence. Creating an Intelligence Committee that could separate itself from all the other actors in the intelligence support arena would be, quite simply, a colossal mistake.

Some of our colleagues think that the Congress needs to reorganize dramatically to meet the challenges of the 21st century. There are also those that believe that the Intelligence Committee needs to be stronger. The resolution that has been offered by the leadership in fact will provide some significant enhancements to the authority of the Intelligence Committee which will hopefully improve oversight. However, I believe the real key to better oversight is for our authorizing committees to focus on outputs as Dr. Hamre noted and for the Appropriations Committee to focus an allocating resources as efficiently and effectively as possible.

I was the first chairman of the Senate Intelligence Committee. I have great regard for the work of that committee and a great fondness for its chairman and vice chairman. I have also served on the Appropriations Committee for the past 30 years. I understand the critical role that this committee plays in our Nation's security both in defense and intelligence. I can say with no false modesty that the work that Chairman STEVENS and the committee does in overseeing the intelligence budget with the assistance of our very experienced professional staff is unmatched anywhere in Congress.

As powerful as the Joint Committee on Atomic Energy was, it did not control appropriations. Maintaining Appropriations Committee control over funding would preserve a check on unlimited spending by an authorizing committee and would allow at least one other committee to have some review of Intelligence matters. I for one do not think that this is sufficient oversight, but it is clearly the minimum that the Senate should accept.

This is a very important matter. Senator REID and Senator MCCONNELL have spent the past 3 weeks deliberating on this issue. They have consulted with many Members who have competing interests in this arena. The resolution they propose represents a compromise that balances these many and varied views. I cannot say I am completely happy with their recommendation, but I can say this: Their recommendation is far superior to the alternative that is being proposed by the Senator from Arizona.

I urge all my colleagues to vote to support the bipartisan leadership and defeat the McCain amendment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent that following my remarks, the Senator from Florida be recognized. He has kindly agreed to let me proceed because I am due at a conference committee meeting in 5 minutes.

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

Mr. ROBERTS. Will the Senator yield?

Mr. STEVENS. I yield to the Senator from Kansas.

Mr. ROBERTS. I ask unanimous consent that I be recognized after the distinguished Senator from Florida.

Mr. REID. Mr. President, I object. We can't do that. The Senator from Florida has been here since 2 o'clock. I think we should keep our regular order here.

Mr. MCCAIN. Reserving the right to object, and I will not object, the Senator from Florida, with all due respect, is not speaking on the amendment. Usually we go back and forth for and against the amendment.

Mr. REID. He is speaking on the amendment.

The PRESIDING OFFICER. Objection is heard.

Mr. STEVENS. Mr. President, this amendment realigns responsibility for intelligence appropriations from the Appropriations Committee to the Intelligence Committee. This includes all funding relating to intelligence, national, joint military programs, and tactical military funding and classified intelligence matters as in FBI and other Government agencies.

I think it would be a mistake to adopt this amendment. First, it ignores the history of the appropriations process and the lessons we have learned in both Houses of Congress. In 1865, the House created the Appropriations Committee. The Senate followed suit in 1867. Then from 1867 to 1885, the House and Senate Appropriations Committees were stripped of their control over appropriations as one authorization committee after another gained the authority to report appropriations.

In 1885, both Houses realized this ad hoc approach was detrimental, and by 1922 both the House and Senate had reinvested appropriations authority back into one committee in each House. History has proven that moving appropriations to authorization committees creates a decentralized appropriations process that leads to greater spending and less accountability. That would be even more so today under the Budget Act.

In 1910, Congressman James Tawney, Chairman of the House Appropriations Committee from 1905 to 1911, said:

The division of jurisdiction and responsibility in the matter of initiating appropriations has contributed more than any single cause to the enormous increase in the appropriations during recent years.

Congressman Tawney's conclusions were backed up by a 1987 study that found expenditures for rivers and harbors between 1877 and 1885 rose sharply after the authorizing committee gained the right to appropriate. A book published in 1989 by Charles Stewart III contains similar findings. Even after accounting for price changes, economics, population, and territorial growth, wars and major programmatic changes sponsored by the authorizing committee, Mr. Stewart found the greater decentralization of the appropriations between 1877 and 1885 led to greater spending.

Contrast those to the findings of a 1992 study conducted by James F.

Kogan who found that deficits are rare and nonexistent when spending jurisdiction lies within the committee.

Let me go now to the 9/11 Commission recommendations. They are not only ill informed, but they are also unfounded. Not one line in the Commission's report stated that the Senate and House Appropriations Committees were not performing effective intelligence oversight—not one line. Consolidating appropriations and authorization for intelligence matters will undermine nearly 140 years of congressional tradition and ignore our years of experience in such matters.

I have heard some grumblings about how those of us who oppose provisions in this legislation are merely protecting turf. I am not interested in turf. I am interested in function as well as effective oversight. You cannot move the responsibilities for appropriations and authorizations around without having a real impact on function. And you certainly should not make recommendations that aim to do that without even discussing those broad, sweeping changes with the Members of Congress who are familiar with and part of the appropriations process.

My colleague from Hawaii has discussed this at length. I don't want to be redundant, but Dr. Hamre, whom he quoted, is not alone in his assessment that the budget issues are overemphasized when policy and appropriations are jointly considered. Listen to this. Even the 9/11 Commission acknowledged that risk on page 421 of their report, where they write:

We also recommend that the Intelligence Committee should have a subcommittee specifically dedicated to oversight, freed from the consuming responsibility of working on the budget.

If budget issues pose such all-consuming risk to the entire oversight process, it is the view of this Senator that they should be used within a separate committee that would fully address them. This would encourage collaboration and coordination, the hallmarks of our Government system.

The legislative appropriations process works best where there is friction between the committees and bodies of Congress. That is what the Founding Fathers believed in, a system of checks and balances. It is our suggestion that the organizations of our Government are founded upon that concept, and this amendment doesn't reflect that philosophy.

The insights I offer are not an attempt to protect turf. They are recommendations I would have given to the 9/11 Commission had they talked to me or to my colleague from Hawaii. Given my 36 years in the Senate, 8 of which I have spent as chairman or ranking member of the Appropriations Committee, I think they are very important in this debate.

Mr. President, I will speak against this amendment. I have serious concerns about any effort that would move appropriations responsibilities from

the Appropriations Committee to the new Intelligence Committee.

I have spent over 30 years working on defense and intelligence matters. I have served as the Chairman of the Appropriations Committee for 6 years. Those experiences give me a unique perspective on the appropriations process, intelligence organizations, national security and defense. Based on that experience, I am very concerned about any effort that would combine appropriations and policy responsibilities and place them under the jurisdiction of a single committee.

Collapsing appropriations and policy functions and housing them in the new Intelligence Committee would be a mistake.

First, it ignores the history of the appropriations process and the lessons we have learned in both Houses of Congress.

In 1865, the House created the Appropriations Committee. The Senate followed suit in 1867. Then, from 1867 to 1885 the House and Senate Appropriations Committees were stripped of their control over appropriations as one authorization committee after another gained the authority to report appropriations. In 1885 both Houses realized that this ad hoc approach was detrimental, and by 1922, both the House and Senate had vested appropriations authority back in one committee.

History has proven that moving appropriations to authorization committees creates a decentralized appropriations process. And that leads to greater spending and less accountability.

In 1910, Congressman James Tawney, Chairman of the House Appropriations Committee from 1905 to 1911, said the "division of jurisdiction and responsibility in the matter of initiating appropriations has contributed more than any single cause to the enormous increase in appropriations during recent years."

Congressman Tawney's conclusions were backed up by a 1987 study that found that expenditures for rivers and harbors and agriculture between 1877 and 1885 "rose sharply after authorizing committees gained the right to appropriate."

A book published in 1989 by Charles H. Stewart III contained similar findings. Even after accounting for price changes; economic, population, and territorial growth; wars; and major programmatic changes sponsored by the authorizing committees, Mr. Stewart found that greater decentralization of the appropriations process between 1877 and 1885 led to greater spending.

Contrast those findings with a 1992 study conducted by John F. Cogan that found deficits are rare or nonexistent when spending jurisdiction lies within the Appropriations Committee, and I think you will agree, Mr. President, that we are better off with a centralized appropriations process.

Of course, when you look at how the 9/11 Commission conducted its inves-

tigation, it's not surprising that their recommendations ignore this history. Not one of the 9/11 commissioners or 9/11 commission staff members interviewed Senator INOUE or me about intelligence oversight. Nor did they interview the Chairmen and Ranking Members of the House Appropriations Committee.

So, I do not find it surprising that their recommendations ignore decades of "lessons learned" by the House and the Senate. But, I do find it difficult to understand how the Commission could recommend a major realignment of Congressional organization and attempt to change the process for conducting Congressional business without ever speaking to any of the Members of Congress responsible for the appropriations process.

The 9/11 Commission's recommendations are not only ill-informed, they are also unfounded. Not one line in the Commission's report stated that the Senate and House Appropriations Committees were not performing effective intelligence oversight. Not one line! And consolidating appropriations and authorization for intelligence matters would undermine nearly 140 years of Congressional tradition and would ignore our years of experience with such matters.

I have heard some grumblings about how those of us who oppose provisions in this legislation are merely protecting their "turf." I'm not interested in "turf." I am intensively interested in function as well as effective oversight. You can't move the responsibilities for appropriations and authorizations around without having a real impact on function. And you certainly shouldn't make recommendations that aim to do that without even discussing those broad and sweeping changes with the members of Congress who are familiar with and part of the appropriations process.

If the 9/11 Commission had asked me about these recommendations I would have told them that Congress has tried to place policy and appropriations functions under the jurisdiction of one committee before, with poor results. We have found that mixing policy legislation with appropriations legislation is inefficient and more importantly, not supportive of the individual processes. Those past experiences led to rules in the House and Senate that institutionalized the separation of policy and appropriations functions.

Every year, Congress needs to fulfill its appropriations responsibilities in a timely manner; if we don't, the government can't keep operating. But the appropriations timetable is completely at odds with the complex and controversial deliberations that surround most policy legislation.

History has shown that combining policy and appropriations functions leads us down one of two paths: either Congress rushes policy deliberations in order to meet fiscal year deadlines and risks adopting bad policy or we must

delay the timely passage of appropriations bills in the interest of debating policy issues and we risk disrupting government operations.

Whichever path we follow we short-change one goal in order to fulfill the other.

The 9/11 Commission hopes that if we combine policy and budget oversight in one committee, policy deliberations will guide our efforts. But my years of experience tell me it will have the opposite effect. Budget decisions will rule the committee and policy oversight will take a back seat.

Former Deputy Secretary of Defense John Hamre expressed concern about the dominance of budget issues in intelligence oversight when he testified before the Appropriations Committee a few weeks ago. He said:

Frankly, the quality of congressional oversight is not good. It is not as strong as it needs to be. I think we are confusing it by this issue of consolidating authorizations and appropriations. I have said to the Armed Service Committees—I used to work there, as you know—that they have made a huge mistake thinking that they are powerful only by trying to do what you do, shape the dollars.

There are reasons you have authorization committees. They are to set the broad trends and directions for the policy goals and to oversee the functioning of the Government. But they spend far too much time wanting to shape the way you appropriate little lines in the budget, and I think that is a mistake.

You play a crucial and indispensable role. They play a crucial and indispensable role, but they are neglecting it, in my view, by putting too much time and attention on budget detail. I would like to see them spend far more time looking at the large purposes, the large policy directions, and overseeing the true functioning of these institutions. That is what I think was intended by having separate authorization and appropriations processes. They can be complementary, but during the last 20 years, frankly, they have been in conflict with each other. And I think that needs to change, and I will be glad to amplify on that further at another time.

But Dr. Hamre is not alone in his assessment that budget issues are over-emphasized when policy and appropriations are jointly considered. Even the 9/11 Commission acknowledged this risk. On page 421 of their report they write:

We also recommend that the intelligence Committee should have a subcommittee specifically dedicated to oversight, freed from the consuming responsibility of working on the budget.

If budget issues pose such an all-consuming risk to the entire oversight process, it is the view of this Senator that they should be housed within a separate committee that can fully address them, not delegated to subcommittee. This would encourage collaboration and coordination—hallmarks of our system of government.

Those kinds of experiences suggest that the language included in this amendment is the wrong way to address the budget and policy issues facing our nation's intelligence community. Consolidating appropriations and authorization into one committee

means fewer members of Congress and staff members will be looking at these complex issues—how does that improve Congressional oversight? It seems to me we would have less oversight, not more.

The legislative and appropriations process works best when there is friction between committees and bodies of Congress. That is what the Founding Fathers believed in—a system of check and balances. Our Constitution and the organization of our government are founded on that concept, and this amendment does not reflect that philosophy.

The insights I am offering are not attempts to protect “turf.” They are the recommendations that I would have offered had the 9/11 Commission interviewed me. Given my 36 years in the Senate 8 of which have been spent as chairman or ranking member of the Appropriations Committee—I think they are an important part of this debate.

Mr. COCHRAN. Mr. President, I oppose the amendment offered by the Senator from Arizona. The Senator’s amendment would have the effect of harming the Senate’s oversight capabilities and making it ineffective.

The Senator from Arizona argues that if we don’t combine intelligence oversight and appropriations into a single committee we are wasting our time with reform efforts. I disagree. The resolution authored by the Senators from Kentucky and Nevada accomplishes all of the goals outlined by the 9/11 Commission and it does it in a way that maintains an established system of checks and balances we have had in the Senate since the Appropriations Committee was established in 1867. The appropriations and authorizing committees serve important but distinct and separate roles, and it would be unwise to combine them.

Currently, intelligence funding is shared by five appropriations subcommittees, and intelligence oversight is divided among three committees. Supporters of the Senator’s amendment say that if you combine intelligence appropriations and authorization into a single committee, you will centralize and have more powerful oversight.

This is not the case. Not since the early 19th and 20th centuries did congressional committees originate both authorizing and appropriations bills. Programs back then were often authorized permanently. Oversight and appropriations functions were separated because it was determined that having joint authorizing and appropriations committees lead to greater spending and less accountability. We don’t need to repeat that mistake of the past.

Another reason for opposing this amendment is a matter of practicality. The Intelligence Committee meets several times a week. I have heard from my colleagues on the committee that it is the most demanding committee assignment they have. Under the reso-

lution their workload and responsibility will significantly increase. We would be asking the Intelligence Committee to take on even more work by adding appropriations responsibility. It would make their workload enormous.

For those who believe the Appropriations Committee divides responsibility for intelligence between too many subcommittees, this resolution addresses that complaint. The resolution would combine all intelligence appropriations into a new Intelligence Appropriations Subcommittee. While I would prefer we leave it to the Appropriations Committee to make the determination on whether this consolidation is warranted, I will support the resolution before us.

We have passed already this year, and the President has signed into law, the Defense Appropriations bill. This bill contains most of funding this year for the intelligence agencies of our government. We have not, however, been able to approve this year an Intelligence Authorization bill for the next fiscal year. I do not believe the Senator’s amendment serves us well if intelligence funding would now be held hostage to policy disputes in the Intelligence Committee that are holding up passage of an authorization bill.

The resolution Senator MCCONNELL and REID have laid before the Senate is totally consistent with the 9/11 Commission’s recommendations and we should approve it.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Florida is recognized.

Mr. GRAHAM of Florida. Mr. President, I am honored to have served 10 years on the Senate Select Committee on Intelligence, including the opportunity to serve 18 months as its chairman. Today, I will make some comments on the general context of congressional reform in support of reform of the intelligence agencies, including some specific remarks relative to the amendment that is on the floor at this time.

While some of us in Congress had recognized the problems within the Intelligence Community over the years—and we have been working on specific reforms—the tragedy of September 11, 2001, revealed systemic weaknesses that require sweeping changes. In the last few weeks, I have spoken about these issues in floor statements. We have now finished work on an excellent piece of legislation that will establish a strong national intelligence director and lay the groundwork for serious reform of our national intelligence community.

It is my hope the House of Representatives will soon follow our lead, so that we may proceed to conference and turn this legislation into law. Now it is time to turn to one final, critical component of reform: Us.

We in the Congress must be candid and admit that one of the targets of reform must be the current committee structure by which Congress has orga-

nized itself to provide oversight to the intelligence community. Our oversight has been proven to be haphazard at best. The 9/11 Commission report states:

Of all our recommendations, strengthening congressional oversight may be among the most difficult and the most important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security that they want and need. The United States needs a strong, stable, capable congressional committee structure to give America’s national intelligence agencies oversight, support, and leadership.

The 9/11 Commission goes on:

The future challenges of America’s intelligence agencies are daunting. They include the need to develop leading-edge technologies that give our policymakers and our warfighters a decisive edge in any conflict where the interests of the United States are vital. Not only does good intelligence win wars, but the best intelligence enables us to prevent them from happening altogether.

Under the terms of existing rules and resolutions, the House and Senate Intelligence Committees lack the power, influence, and sustained capability to meet this challenge.

The other reforms we have suggested—for a National counterterrorism Center and a National Intelligence Director—will not work if congressional oversight does not change, too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.

To those remarks, I say amen.

I am pleased that many of our colleagues have joined the chorus and cried amen as well. We now have many amendments before us that can accomplish the necessary changes to our Senate committee structure. I thank Senators REID and MCCONNELL, along with their staffs, for the work they have invested in this issue.

The Reid-McConnell working group has come forward with a number of wise recommendations. I want to endorse a few of those recommendations in greater detail, while explaining my reasons for opposing the amendment that is now before us. I also want to make some recommendations that go beyond the resolution, but which I suggest would give the new structure enhanced oversight and direction on the intelligence community.

The first recommendation I strongly support is the abolition of term limits for members of the Intelligence Committees. The terms of Intelligence Committee members should be made permanent so that the accumulated experience and expertise of the committee members can be retained.

When a Member joins almost any other committee in the House or the Senate, he or she typically brings some base of knowledge to the task, such as a lawyer serving on the Judiciary Committee, or a military veteran serving on Armed Services, or someone with a financial services background joining the Banking Committee.

It is a rare Member who has firsthand experience with the intelligence community. The complexity of the issues, the technologies involved in collection

analysis, means that it is a very steep learning curve when someone joins the Intelligence Committee. It is not an exaggeration to suggest that it can take as much as half of the current 8-year term before the Member feels confident in their knowledge of the intelligence community and can begin to make wise, informed judgments. That tutorial exhausts half of the time of Members currently serving.

The justification for those term limits dates back to the creation of the Intelligence Committees in the 1970s, following Senator Frank Church's investigation of abuses by the CIA. It was feared that members of the Intelligence Committee would become captives of those they were overseeing, given the general lack of public scrutiny of the workings of the committee.

However, in order to ensure that committee members have the expertise necessary to exercise effective oversight, we must give them adequate time to build up the experience they need. We must hope that their constituents will pay enough attention to their oversight of the intelligence agencies to ensure that the committee members remain independent. I expect this will be the case, given the increasing awareness of the importance of intelligence to our national security.

There is another step that I believe should be taken, and that is an increased emphasis on training of Members who will join or who currently belong to the Intelligence Committee. This is, as our President has said, hard work, serving on the Intelligence Committees. The background, organizational history, financial matters affecting the community, as well as the emerging threats the community is responsible for understanding and assisting in our defense, are difficult. Members of the committee should devote greater time to their personal and collective training so they can better discharge these responsibilities.

The second recommendation I would like to endorse is the distribution of the Intelligence Committee's responsibilities through the use of subcommittees, especially here a subcommittee on oversight that could examine adverse actions within the intelligence community which often require a detailed after-incident report.

One of my principal concerns about the Intelligence Committee during my decade of service was the inordinate amount of time that was spent looking through the rearview mirror at the problems that had already come to fruition, including several significant cases of counterespionage, which left an inadequate amount of time to look through the front windshield at the threats that were coming at us.

I believe the establishment of a subcommittee which had the specific responsibility for oversight, including these after-incident events, would contribute substantially to the committee's capability to look to the future.

Another suggestion within the committee structure, since we will now be

reorganizing the intelligence agencies around mission-based intelligence centers, should be the basis for establishing other subcommittees with oversight responsibilities within the Intelligence Committee itself. As an example, in the legislation we just passed, two intelligence centers are established by statute: one counterterrorism, the other counterproliferation of weapons of mass destruction. Clearly, the Intelligence Committee should have subcommittees with specific responsibility to oversee the action of these two critical centers to assure that the threats are being properly identified, the resources are available to respond to those threats, that the centers are accomplishing their objective, and as other centers are created by action of the national intelligence director, they, too, deserve a special focus of a subcommittee within the Intelligence Committee.

Next, I believe it is crucial that the appropriations for the intelligence community be detached from the budget of the Department of Defense so that intelligence funding can respond to intelligence needs and not simply fluctuate with the defense budget.

The reality is that while the intelligence budget is inside the defense budget, that has resulted in, over time, a percentage relationship. And so as happened in the 1990s, when the overall size of the defense budget contracts because the Cold War was over and there was a feeling that we did not need to spend the resources we had when we were face to face with the Soviet Union, the consequence was we were also constricting the size of the intelligence budget at exactly the time the intelligence community needed to be expanding.

We spent 40 years looking at the Soviet Union. We knew a lot about it. We had people who understood the language and the cultures of our adversary. But after the fall of the Berlin Wall, the world did not suddenly declare peace. Rather, a new set of threats emerged from a different part of the world, largely the Middle East and central Asia, and we were grossly deficient, particularly in our human intelligence capability, to understand and react to those new threats.

By divorcing the intelligence budget from the defense budget, we will have a greater opportunity to look specifically at the needs of both of those two important parts of our national security system, but to do so independently on their own merits.

I am familiar with the proposal Senator MCCAIN and others have put forward to give the Intelligence Committee both authorizing and appropriation authority. I respectfully disagree. Having two committees that pay attention to intelligence matters can be very helpful. I will admit that at one time, I was intrigued with the idea of permanently merging the House and Senate Intelligence Committees in the way the old Joint Atomic Energy Com-

mittee was merged and in a way for the last Congress the two committees merged for purposes of the 9/11 inquiry.

I have now disabused myself of that suggestion. I believe it is important that, particularly with intelligence where there are so few Americans who have the background to make proper judgments and so many of those do not have the information upon which to make precise judgment, and where there are few eyes outside of the Congress, the press, interest groups, citizens groups, and others who can effectively monitor the intelligence community, it is particularly important that we have a sufficient number of eyes within the Congress that are focused on intelligence issues.

During the runup to the invasion of Iraq, for instance, there were four congressional committees that had some form of oversight over the administration's push for war. Only one of those four—and I see on the floor now the chairman of the Senate Intelligence Committee who, with his colleague Senator ROCKEFELLER, was largely responsible for this—it was only the Senate Select Committee on Intelligence which asked the tough questions which submitted the findings which have accelerated the pace of reform within the intelligence community.

If there are four congressional committees with some oversight over intelligence funding—the two authorizing committees and the two appropriating subcommittees—there is less chance that all relevant congressional committees will be negligent in their oversight of administration action.

I suggest two reforms which would enhance the establishment of a separate subcommittee of appropriations for intelligence. One of those is to increase the authority of the Intelligence Committee over the authorization process. As Senator INOUE mentioned in his remarks, there is currently law that says funds cannot be appropriated to the intelligence community which have not been authorized. The problem has been that there are sources of authorization other than the intelligence community. So if the Intelligence Committee, which is now invested with the particular responsibility, decides what it believes to be the appropriate priorities, those priorities could be disrupted by authorizations which come from other sources and which, in turn, validate appropriations.

The second point I suggest is that the chair and vice chair of the Intelligence Committees serve on the appropriations subcommittee. There is precedent for this. As an example, in reverse order, the current chairman of the Senate Appropriations Committee serves on the Armed Services Committee. The rationale is that Armed Services represents such a significant part of the total appropriations that it is desirable to have the person most responsible for those appropriations be a member of the Armed Services Committee.

I would recommend that the same type of interlocking relationship

should exist between the leadership of the Intelligence Committee and the new intelligence appropriations subcommittee.

Finally, I recommend that the Intelligence Committee expand the use of advisory panels, such as the technical task force which has served the Senate Intelligence Committee extremely well over the last 5 years.

I would like to recognize my colleague, Senator SHELBY, who was very instrumental in the initial establishment of that technical committee. This advisory panel has reduced the tendency toward group think, which has afflicted the intelligence agencies themselves, as we witnessed so clearly in the report of Senator ROBERTS and the Intelligence Committee on the runup to the Iraq war.

One possibility would be to have an advisory panel for each of the subcommittees, locking the Intelligence Committee into the pattern that mirrors and supports mission-based intelligence centers.

There has been a term in the military referred to as incestuous amplification, which is a condition of warfare where one only listens to those who are already in lockstep agreement, reinforcing set beliefs, creating a situation ripe for miscalculation.

Current events have offered powerful evidence that the intelligence community has been engaged in incestuous amplification. It is therefore especially important that the oversight committees of the Congress avoid that temptation.

While I regret to say it, in many ways the Congress deserves the comments which have been made by the 9/11 Commission, but I believe the action we are considering today will go a long way toward assuring that the Congress will be a full partner in reforming the intelligence community of the United States, and the intelligence community in turn can be a fuller partner in assuring the safety of Americans.

The PRESIDING OFFICER. The Senator from Kansas.

AMENDMENT NO. 3999

Mr. ROBERTS. Mr. President, I rise to support Senator McCAIN and his amendment to the McConnell-Reid measure amending S. Res. 445.

First, I pay tribute to the former chairman of the Senate Intelligence Committee, Mr. GRAHAM. I thank him for his service to our country. He is retiring, although that certainly does not describe the Senator, but I thank him for his leadership and his suggestions as we go through this very difficult task of reforming how we do our oversight responsibilities in reference to our intelligence obligations.

Back to Senator McCAIN and his amendment, if we approve the McCain amendment, Senators will implement what is the most important recommendation of the 9/11 Commission for improvement of congressional oversight of intelligence activities—most important by the 9/11 Commission.

Now, why is JOHN McCAIN getting in the middle of what would have to be termed a sheep and cattle war, if one goes back to the history of Arizona, and taking on the challenge of suggesting that the Intelligence Committee, or any authorizing committee, have appropriations power? That is tough. I mean, that really is tough.

I think everybody knows there is more than one way to skin a cat that is sticking his head in a bootjack than simply pulling on his tail. That is hard work. That is where nobody wants to reach their hand into, but there again that is JOHN McCAIN.

JOHN is from Arizona. I used to reside in Arizona. There is a lot of cactus in Arizona. One does not have to sit on each and every one of them. Sometimes people think that Senator McCAIN does that. Why is he doing this? Why is he fighting this sometimes lonely battle? Well, on page 420 of the 9/11 report, the Commissioners wrote this:

Under the terms of existing rules and resolutions the House and Senate intelligence committees lack the power, influence and sustained capability to meet this challenge.

He is right. He is dead on. He is pulling that cat by the tail in the bootjack. And in terms of being right, there are times that one can take on tough measures and sort of let them go and slide or one can do the right thing. The truth of it is that I can tell my colleagues, as chairman of the Intelligence Committee and an 8-year veteran of that committee—and it has been a privilege—we are fractionalized when we talk to Lee Hamilton, Governor Kean, Bob Kerrey, the former Secretary of the Navy, John Lehman, and others. They came to visit before the Intelligence Committee with Senator ROCKEFELLER and myself, Senator ROCKEFELLER being the distinguished vice chairman and my bipartisan partner in trying to do what is right on behalf of our national security—and we think we have done a good job, by the way, backed up by 22 professional staffers, the most of any committee. So, consequently, what happens to us is that when we do our work as quoted by the 9/11 Commission—and after the visit by the 9/11 Commission to the Committee, they agreed with us that we are fractionalized, that our job is pretty tough, that in terms of being an authorizing committee we probably are expected to have the most obligation, independence, leadership, clout in regards to oversight in reference to intelligence and national security of any committee in the Congress, but we have the least.

Why is that? It is because we are fractionalized in terms of sequential referral on demand. I am not going to get into that speech again because I think we are trying to work it out. I think we have a compromise, or I hope we have a compromise, and I thank Senator ROCKEFELLER for being a leader in this instance.

Whatever we do, we know that we have to then first go to the Armed

Services Committee and then, of course, we have to go to the Appropriations Committee.

Now, that is not a bad thing because we have many fine people serving on the Appropriations Committee. I do not mean to perjure the Appropriations Committee. Far from it. They have many obligations. They have their constitutional authority to do this. But what happens? The intelligence community comes before us during the long session of 6 months, 8 months, 9 months when we do our authorization and make priority changes and make recommended changes and make reform changes, some of which have been very dramatic. And I think they understand that, obviously, then we are going to have to go to the Armed Services Committee and then, obviously, we are going to have to go to the Subcommittee on Defense of the Appropriations Committee where they have done, I might add, a splendid job of doing their very best in terms of their obligations to meet our national security obligations vis-a-vis the intelligence community.

Now, what would someone do if they were a member of the intelligence community? They would appear before the authorizing committee, the Senate Intelligence Committee—and I am not saying it was wink them, blink them, and nod to a committee that has no authority, but one can sort of make that case—and I do not perjure anybody who has come before the committee because they are great people. They are laying their lives on the line. They are dedicated people. That is not my point.

What they do, however, is go to the Senate Armed Services Committee and then they also go to two primary members of this Senate whom I personally call friends and admire and respect, and there have been no two people in the Congress of the United States, perhaps in the history of the United States, who have done more for the military and done more during those times where we were stretched thin and hollow and addressing the tremendous problems we have today. I am talking about the distinguished Senator from Alaska, who is chairman of the committee, TED STEVENS and his counterpart, the Senator from Hawaii, DAN INOUE. I do not know who has been the stagecoach driver and who has ridden shotgun. During these particular years, they both worked equally well.

But what happens to them is that time demands come in and the intelligence community comes in and says: Wow, we have a problem. We have just had an “Oh, my God” hearing before the Intelligence Committee. Oh, my God, how did this happen? Khobar Towers, embassy bombings, USS *Cole*, the lack of really trying to figure out what happened when we missed the India nuclear explosion, 9/11, Somalia—do you know what. It was all tied together.

So the Appropriations Committee is faced with this urgent need, and they

respond. And the intelligence community pretty well gets what they want. That is not all bad, especially when we are facing some kind of emergency, but it basically cuts out the Intelligence Committee's authorization process to some degree. It cuts out what the Armed Services Committee does as well. It is time based.

The 9/11 Commission took a look at this and said: Congressional oversight for intelligence and counterterrorism is now dysfunctional. Congress should address this problem. We have considered various alternatives. The primary suggestion: a single committee in each House of Congress combining authorizing and appropriating authorities. The McCain amendment will accomplish this alternative. The McCain amendment will accomplish this by giving appropriations authority to the Senate Intelligence Committee.

The distinguished chairman of the Appropriations Committee, a man whom I admire, a man who has been a great friend, basically cited the example between 1865 and 1885 that when they took away powers from the Appropriations Committee, storm clouds arrived, lightning struck, and it was doom and gloom time until they restored that authority.

Let me suggest another number. It is called 9/11. Let me suggest all the hearings we have held in the Intelligence Committee—I call them “Oh, my God” hearings: Oh, my God, how did this happen?—indicated the systemic failure of the global intelligence community in regard to WMD and the situation in Iraq—not just the United States, everyone, including the United Nations.

The chairman of the Appropriations Committee and his counterpart, the ranking member—when he says there is no turf battle, I believe him. I don't know of any two Members who would put turf over conscience and turf over performance and the obligations of what they have already done. I know the chairman has mentioned that he and the members and the qualified staff of the Appropriations Committee have gone the world over, and they have. I know. I have been with them on many occasions, looking at intelligence and looking to see how the money is spent on the ground, taking a hard look. I understand that.

But we have 22 staffers, 22 professional staffers who have background and experience in regard to being an analyst at the DIA, being an analyst at the CIA with at least 10 years' experience. We have the staffers who put together the 521-page WMD report, where the chips fell where they may. Guess what happened. The intelligence was wrong. Some people try to put that at the foot of the President. He made very declarative and aggressive comments. Others in this Congress received the same intelligence and made the same statements. Now, of course, a lot of that has changed because it is an even-numbered year, and you know what kind of situation we are in.

But I am trying to say your Intelligence Committee stands ready to do a professional job in regard to budget authority, should we be granted that privilege, with 22 professional staffers. We have done that. There have been occasions where we have been granted access. I don't mean that in a cynical way because the Appropriations Committee usually is in a big hurry with what they have to do, meeting obligations that are emergencies—where we have made our suggestions. Some of them, not all of them—as a matter of fact, not very many of them—were accepted by the Appropriations Committee or, for that matter, the Armed Services Committee. Some of them, a lot of them, ended up on the cutting-room floor.

In some cases we were not granted access because of the time equation, and wouldn't you know that many of the recommendations of the 9/11 Commission and many of the problems we have experienced that nobody wants to see that we have had hearings on are the same kinds of things we have tried to fix in the Intelligence Committee and maybe could have had we not had this fractionalized process that the 9/11 Commission has talked about.

I have talked about what a hard job this is. I talked about the courage Senator MCCAIN has had to approach this topic. It is a tough topic. Really, this is not hard. Members have a choice. They have a choice to make. A vote for the McCain amendment enhances the congressional oversight by addressing the findings of the 9/11 Commission, period. The amendment will enhance the power, influence, and sustained capability of the Senate Intelligence Committee; that is, to conduct oversight of this Nation's intelligence activities. It couldn't be any more simple.

Members, you should vote for the measure if you want to enhance the Senate Intelligence Committee's ability to conduct congressional oversight as recommended by the 9/11 Commission and, by the way, virtually every other commission that has studied this. So the McCain amendment is in harmony with the 9/11 Commission's major recommendation for improving congressional oversight and intelligence activities.

I am not saying the appropriators or the Armed Services Committee has done anything wrong, egregious, dysfunctional, whatever. They have done a great job under the circumstances with the setup of the Congress as it has been. But we stand ready with 22 professional staffers to do the job. I believe we can do the job.

I am voting for the McCain amendment. In behalf of our national security, I urge my colleagues to do the same.

I yield the floor.

Mr. BYRD. Mr. President, Senator MCCAIN has introduced an amendment to address the 9/11 Commission's recommendation for the creation of a committee on intelligence with appropriations powers.

I have a great respect for the 9/11 Commission. They are dedicated members who have the Nation's best interests in heart and mind, and, for the most part, they have done an excellent job. Like the Commission members, I want our Government to take steps that will help ensure that our Nation will never again suffer a catastrophe like 9/11. But, I fail to comprehend how giving a legislative committee its own checkbook will help avoid another such disaster. Legislative committees have their plates quite full with evaluating policy. They should not take on the heavy lifting of appropriating public monies as well.

The fact that the Commission made this recommendation left me wondering just how it came up with such a proposal.

First, I looked at the Commission's report to see what evidence they cited for making this recommendation. I was startled to find that the Commission provides no specifics in its report to substantiate or justify this revolutionary proposal. The Commission offers no examples, no rationales, no justifications, no explanations. In short, the Commission provides no evidence that the appropriations process is flawed when it comes to intelligence matters. There simply is no substantive rationale for the need for this kind of drastic recommendation.

According to the Commission, this recommendation was garnered from interviews with “numerous members of Congress from both parties, as well as congressional staff members. . . . We found that dissatisfaction with congressional oversight remains widespread.” But curiously the report never mentions any specific member or any staffer by name or position. Who are these phantom critics? Why were they especially qualified to comment? The point is, unspecified dissatisfaction from unidentified Members of Congress and unidentified congressional staff offers very little basis for embracing such a precedent-setting proposal.

While I do not know who the Commission interviewed to reach this determination, I do know who they did not interview. They did not speak to Senator STEVENS, the chairman of the Senate Appropriations Committee and chairman of its Defense Subcommittee. I know they did not talk to Senator INOUE, the ranking member of the Defense Subcommittee. Both Senators STEVENS and INOUE are long experienced legislators and appropriators in the field of intelligence. Why weren't they interviewed? Nor did they talk to me, and I am the ranking Democrat on the Appropriations Committee and the former chairman of the committee.

Knowing just whom the Commission did and did not interview is important because of the makeup of the Commission. While undoubtedly sincere, well-meaning, and honorable, only 4 of the members of the 10 individuals on the 9/11 Commission had ever served in Congress, and only 2 of them had experience with the appropriations process.

This recommendation, to grant both appropriation and authorization powers to a legislative committee, in my judgment reflects this lack of experience. Moreover, it belies a lack of familiarity with the history of the appropriations process.

This particular recommendation would blur the existing oversight process which tends to ensure a more thorough examination of intelligence matters because of a focus on policy matters which is separate from the focus on budgetary matters. In other words, the commission wants to increase oversight of intelligence matters by paradoxically lessening and collapsing oversight on intelligence operations.

The Commission's recommendation would limit the watchdog duties over secret intelligence functions to a tiny group of Senators, thereby fomenting an environment that would probably promote "group think," and secrecy. In other words, the Commission wants to end, or, at the least, reduce "group think" and incestuous oversight in intelligence matters, but it is making a recommendation that would create an environment that would likely promote both.

Most importantly, the historian in me marvels at the degree to which the Commission's recommendation flies in the face of history. The current Appropriations Committee just happens to be the carefully considered antidote to several past failures of the same sort of decentralized appropriation's fixes which the 9/11 Commission now incredibly recommends. There is nothing new or innovative in this Commission recommendation. It has been tried before, and it has failed miserably.

In 1816 the Senate established the Committee on Finance and assigned it appropriations responsibilities in an effort to enhance congressional fiscal control. But as the country grew, the problems did too.

The War with Mexico, 1846-1848, for example, caused Federal spending to nearly triple, and this dramatic explosion placed great pressures on Congress to revamp its appropriations process. In 1850, the Senate adopted its first rule governing appropriations. It banned amendments for additional appropriations not previously authorized by law.

The Civil War, 1861-1865, as one might expect, vastly expanded and complicated Federal spending. Congress abruptly learned how the lack of centralized control in the Senate played to the strong advantage of the President. Congressional control of the power of the purse went out the window as President Lincoln spent millions of dollars without even bothering to secure formal congressional appropriations. He could be forgiven because he was trying to hold the union together, but the Constitution was circumvented and congressional power of the purse was, for a time, effectively seized.

Following the Civil War on March 6, 1867, the Senate established a Com-

mittee on Appropriations in an effort to bring unity, authority, conformity, and order to the Federal spending process.

As soon as the Appropriations Committee was established, however, authorizing committees began a vigorous struggle to regain their lost appropriations authority. Several House committees first grabbed appropriations authority. Soon, Senate committees were demanding the same. Everybody wanted a piece of the action. What kind of Pandora's box are we opening if we grant appropriations power to the Intelligence Committee? Why not also the Department of Homeland Security? Once the box is opened, the grabbing begins. In the late nineteenth century the grabbing gathered steam even amid stern warnings.

Congressman Samuel Randall, D-Pa., the chairman of the House Appropriations Committee at the time, warned that combining authorizing and appropriating authorities under one committee's jurisdiction would lead to greater Federal spending. "Experience and observation," he pointed out, "demonstrate such distribution leads to continually increasing appropriations, and renders it more difficult to keep expenditures within the limits of receipts." In other words, blending authority and appropriating leads to deficits.

When the Senate debated granting the Committee on the District of Columbia the right to make appropriations in 1883, members of the Appropriations Committee argued against the move. Pointing out that the Appropriations Committee serves as a necessary, coordinating agent with the legislative committees, Senator Beck of Kentucky argued, "it is not wise legislation to vest any committee with absolute power as to the amount of money necessary to carry those laws into effect. . . . We ought to have one committee as a check upon another, one guard placed upon another, so that no body of men sitting as a committee of Congress should have absolute power over the money of the people."

Again, that is another important lesson for us today. The Appropriations Committee is a needed, important partner with Congress's legislative committees. When the 9/11 Commission argues for more supervision of intelligence matters, it is bogus to suggest that we start by decreasing oversight.

But, in the late 19th century, these members of the Appropriations Committee were ignored. After the DC Committee had sought appropriations powers, more and more authorizing committees began seeking appropriations authority. Responding to pressure, the Senate returned appropriations authority to most Senate committees. The result, a repetition of all of the past problems. Without central authority, oversight and a central controlling mechanism, Federal finances again fell into disarray. Legislative committees were off pursuing their

own individual agendas. Budget requests were submitted piecemeal. The practice known as "coercive deficiencies," wherein executive agencies went through their year's appropriation within a matter of months, and then appealed to Congress for additional funds to get them through the year, again became common. Most importantly, the decentralized system of appropriations was simply not capable of managing the expenditures of a Federal Government that was growing large in size and in expense. No one was minding the fiscal store.

I would urge any Senator who thinks that giving appropriation power to an authorizing committee will help restrain spending or increase discipline to study Congressional history. Congressman James Tawney, the chairman of the House Appropriations Committee from 1905 to 1911, concluded that "division of jurisdiction and responsibility in the matter of initiating appropriations has contributed more than any other single cause to the enormous increase in appropriations during recent years." Everyone always wants to get an oar in the water.

A number of scholarly studies support Congressman Tawney's observation, including the 1987 study by David Brady and Mark Morgan, *Reforming the Structure of the House Appropriations Process*, and the book by Charles Stewart, *Budget Reform Politics*. These works document that without a central authority to impose overall budgetary discipline on the legislative committees, accountability all but vanished, and the public's money was spent with abandon.

World War I, like both the Mexican and Civil Wars, forced the Congress to confront the financial mess that decentralized funding had created, and to establish a supervisory control over the appropriations process. In 1922, the Senate returned jurisdiction over all appropriations measures to the Appropriations Committee. Thus, they created the system that has now served us well for more than 80 years.

Now, the 9/11 Commission proposes to return to the failed system of the past, and I adamantly oppose it. It is a formula for less accountability over public funds and for even larger deficits.

The lessons of history must not be brushed aside.

Most of us probably know the historical truism that those who do not remember the past are condemned to repeat it. History really does repeat itself because human nature does not change. In our desire to correct the reasons for our intelligence failures, let us avoid past mistakes. In our understandable desire to improve our intelligence system following 9/11, at least, we can try to avoid so-called solutions which have a proven track record of disaster.

While it also endeavors to preserve its Constitutional purpose and traditions the U.S. Senate has an obligation to adapt to new challenges.

I know that Senators REID and MCCONNELL examined the recommendations of the 9/11 Commission with those thoughts in mind. I know that the Working Group they co-chaired has proposed changes that will implement many of the reforms of the 9/11 Commission, while respecting the rights of Senators and the institution of the Senate.

I cannot say the same about this amendment.

Authorization committees and appropriation committees have very different mandates, one to oversee policy, the other to oversee budgets. Different authorization and appropriations committees ensure checks and balances and better oversight.

The amendment would result in fewer Senators looking into intelligence matters. It would eliminate the double punch of oversight with an authorization committee focused on policy matters and the Appropriations Committee focused on budget matters.

The message of the 9/11 Commission was to increase, not decrease, the role of the Congress in intelligence matters. It asked the Congress to pursue more vigorous oversight and to ask tougher questions. This amendment would take us in the opposite direction.

I urge the defeat of this amendment.

Mr. LEVIN. Mr. President, I do not support the McCain amendment to grant appropriation powers, in addition to oversight powers, on intelligence matters to the Senate Intelligence Committee.

I am a member of the Intelligence Committee and I support the effort in this resolution to strengthen the oversight capabilities of the Senate Intelligence Committee. However, I cannot support this amendment. Because much of the work done by the Intelligence Committee is necessarily done in closed session, it is all the more important to have the checks and balances of additional committees involved in the review and funding decisions concerning intelligence activities. Intelligence matters, by their nature, require secrecy. However, democracy works best with active and open debate. For this reason, it is critical that this process, while secret, involve more than a small number of Senators.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, after conversation with the managers, I believe we have other issues to address. I think everybody is familiar with this issue. If it is agreeable to the managers, perhaps we could have an agreement.

How much time does the Senator from Connecticut want?

Mr. LIEBERMAN. Five minutes.

Mr. MCCAIN. Five minutes. The Senator from Pennsylvania wants 5 minutes; the Senator from Missouri, 5 minutes; and I be allowed 5 minutes.

Mr. REID. I would like to be able to speak for a few minutes.

Mr. MCCAIN. Two minutes?

Mr. REID. A few minutes. I will do it as quickly as I can.

Mr. MCCAIN. The Senator from Nevada, 5 minutes?

Mr. REID. I may need 10.

Mr. MCCAIN. The Senator from Nevada, 10 minutes, and that followed by a rollcall vote?

Mr. REID. The Senator from Arizona should be the last speaker?

Mr. MCCAIN. Yes. Part of that unanimous consent request is that I be the last speaker, for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, there would be no amendments in order prior to the vote up or down as the sponsor of the amendment wants.

Mr. MCCAIN. For the benefit of Members, Mr. President, would you repeat the terms of the unanimous consent agreement?

The PRESIDING OFFICER. Under the unanimous consent agreement, the Senator from Connecticut will have 5 minutes, the Senator from Pennsylvania will have 5 minutes, the Senator from Missouri will have 5 minutes, the Senator from Nevada will have 10 minutes, the Senator from Arizona will be the concluding speaker with 5 minutes, and there will be no amendments allowed before the final vote on this amendment.

Mr. MCCAIN. Followed by a rollcall vote?

The PRESIDING OFFICER. There will be a rollcall vote.

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to support the McCain amendment. The McCain amendment is part of the package of legislation Senator MCCAIN and I and others introduced on September 7 to implement all of the recommendations of the 9/11 Commission. That is why I am pleased to be a co-sponsor of the amendment.

Governor Kean, Congressman Hamilton, members of the Commission made clear to Congress that they had three major and most urgent recommendations. The first was to create a national intelligence director, the second was to create a National Counterterrorism Center, and the third was to reform the way in which Congress oversees intelligence.

The first two, the national intelligence director and counterterrorism center, we accomplished yesterday in passing the bill that came out of our Governmental Affairs Committee. Senator COLLINS and I joked along the way that maybe we got the easier assignment than Senator REID and Senator MCCONNELL, who had to deal with Congress's own internal organization. I believe they have done well.

I do want to say a few things, and I will have more to say about this in a bit.

With regard to homeland security, the legislation Senator MCCAIN and I introduced embracing the 9/11 Commission said that Congress should either

establish a new committee with sole jurisdiction over homeland security or give that jurisdiction to another existing committee.

Senator REID and Senator MCCONNELL and the working group chose to give that jurisdiction to the Governmental Affairs Committee on which I am privileged to serve. At the same time, it is significant to note that it is now going to be called the Committee on Homeland Security but at same time large chunks of the homeland security jurisdiction—the Coast Guard and Transportation Security Administration, now part of the Immigration and Naturalization Service—have been taken back by the other committees. That is the kind of action that encourages those who are cynical about this Chamber, and I hope we can try to do better on that.

With regard to the oversight of intelligence, the working group made a significant reform proposal which sponsors have described. But the McCain amendment embraces the recommendation of the 9/11 Commission, which I still respectfully believe is the better course to follow, which is to combine the expertise of the intelligence community and their considerable staff in authorizing with the power to appropriate and in that sense to make sure that this most critical aspect of the war on terrorism, intelligence, has the most active and informed and aggressive oversight from Congress.

The enormous achievement that the legislation we adopted yesterday represents in reforming our intelligence and homeland security apparatus will not fully be realized, or may go astray, unless there is the strongest possible congressional involvement in oversight. I believe this amendment will provide for that. That is why I rise to support it.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have sought recognition to speak in opposition to the amendment offered by the Senator from Arizona for a number of reasons.

First, the Intelligence Committee, with its current responsibilities, has a very heavy workload. I was on the Intelligence Committee for 8 years and chaired the Intelligence Committee in the 104th Congress. It is a very time-consuming job. I think it would be unwise to give them the additional burden of deciding appropriations.

As a member of the Appropriations Committee—and I do not make this argument on a turf basis—we spend a lot of time making the allocations among the 13 subcommittees which we have. We have a budget resolution. We have a specific amount of money and we have to make the allocations.

If we have a committee such as the Intelligence Committee not a part of

the appropriations process, to evaluate intelligence appropriations in contrast to the other appropriations functions, it simply does not give the full picture.

We, obviously, never have as much money as the individual members would like to have for their respective subcommittees, but when the committee makes a decision as to allocations, it is keeping the entire budget in mind. That would be lost if you had the Intelligence Committee with the authority simply to carve out whatever amount of money they chose without regard to the other appropriations processes.

In addition, the experience as detailed by the chairman of the Appropriations Committee, the Senator from Alaska, has been that when authorization and appropriations were combined, there were enormous appropriations. At a time of deficits and at a time of large national debt, we ought not create another structure which would add to the burden of additional funding.

The separateness of an intelligence appropriations subcommittee from the intelligence authorizing committee also lends for more congressional Senate oversight. With all of the work we have to do, there is insufficient time to give appropriate oversight to the intelligence functions. A separate appropriations subcommittee would have an opportunity to add to that oversight and would have an opportunity to add as a check and balance to what the authorizers may do.

We are proposing some very far-reaching changes here. I believe the resolution is a sound one in that it strengthens the hand of the intelligence authorizing committee by taking away term limits so the members of that committee will develop real expertise. But we should not abandon the traditional division of responsibility between authorizers and appropriators.

I have great respect for what the Senator from Arizona seeks to do. He has made very cogent critiques of the Appropriations Committee from time to time when the Appropriations Committee seeks to take on the authorizing role. There are not supposed to be authorizations on the appropriations bill.

We know, as a practical matter, that happens on occasion. Really, it happens with excessive frequency. But just as the separateness ought to be maintained with appropriators not authorizing; so, too, the separators ought to be made with authorizers not appropriating.

It is for these reasons that I oppose the amendment offered by the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I rise in opposition to the McCain amendment.

I joined the Senate Select Committee on Intelligence knowing full well that our system needed reform. Since that time, I have worked very hard with our distinguished chairman and members

on both sides to try to bring about real reform that will enhance our Nation's ability to fight the war on terror by assuring we have the most accurate, actionable, and timely intelligence available.

I applaud the provisions of the Collins-Lieberman bill, and commend my colleagues for coming together on that important piece of legislation. It is now time, however, for Congress to get into the really difficult battle; that is, reorganizing and reforming ourselves. That is necessary so long as such reform makes sense. The 9/11 Commission concluded:

The House and Senate intelligence committees lack the power, influence and sustained capability to meet the challenge of overseeing the United States intelligence community, and executive branch reform will not work if congressional oversight does not change too.

That doesn't mean that a commission to investigate the facts and circumstances relating to the terrorist attacks of September 11, 2001, should become the only basis for intelligence reform and we must adopt every recommendation. We have spent a good bit of time in this body—I have personally and I know my other members on the Intelligence Committee have worked on these issues far longer than the 9/11 Commission worked on them. I know from my experience on the Appropriations Committee how important that responsibility is, and I daresay that those of us on the Appropriations Committee have lots of experience on how the appropriations process works.

I feel very strongly in the case of this amendment and the Commissions's recommendation to combine authorization and appropriations powers that we need to reject it.

A longstanding lesson in the Congress that we have observed, I think wisely, is that it is inefficient and undesirable to mix policy legislation with appropriations legislation. Appropriations are required on a timely basis to keep the Government operating with as little disruption as possible, particularly funds for the intelligence community which are paramount to the day-to-day operations in continuity of our national security. It should not get stalled or held up as a result of potential policy disagreements.

Every year on the appropriations bills which we process, we work hard to get the appropriations out on time and try to focus on those issues that need to be resolved in appropriating.

Combining this legislation with appropriations can result in undesirable situations such as a rush job on policy deliberations in order to meet fiscal year deadlines, and thus potentially shortchanging the policy changes we need to make as a result of our oversight, or delays in appropriations, thus disrupting Government operations as we get involved in controversial policy debates.

The longstanding lesson and separation has been institutionalized in rules

for both the House and Senate. Over the years, various attempts have been made in history to mix policy and appropriations functions into a single committee. In the past, this has been judged as undesirable.

If we want to get rid of the Appropriations Committees and spread appropriations throughout all the authorizing committees, that is a long and much more extended debate than we are having here. I do not think we can or should single out intelligence and say in intelligence alone they will have the appropriations functions along with the authorizing functions.

Congress already has a mixed policy budget oversight model adopted in the 1980s for intelligence, the past legislation that provides the Intelligence Committees with powerful control over the budget. Section 504 says no funds may be obligated unless authorized, and over time the Intelligence Committee began to authorize at the level of detail of appropriations.

I was very happy to support our chairman's position in Collins-Lieberman that protects our jurisdiction and enhances the power of the Intelligence Committee. The Intelligence Committee as an authorizing committee ought to have greater powers. The need to authorize funding at the detailed budgetary levels would compel the Intelligence Committee to behave like an Appropriations Committee.

I am familiar with how they work. It is better that the Intelligence Committee not get into this field. It is undesirable if our intent is to make our Intelligence Committee more effective. The Senate Intelligence Committee potentially becomes dominated and consumed by budget review and arguing over specific appropriations items.

The question we have before the Senate is, should Congress reorganize. That would be a bad idea. We heard, as the Senator from Pennsylvania has discussed, objections to legislating on an appropriations bill. I object to appropriating on an authorizing bill. I hope my colleagues support that point of view.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before my friend leaves, we have served together for many years. We do things in that committee that are so important for the State of Nevada. We authorize programs dealing with flood control, which Nevada has tremendous problems with, with the growth taking place. We do things there to help flood control in Las Vegas and the Appropriations Committee will not give us the money we feel we need.

Superfund is a program I believe in, but we authorize things in that committee and the Appropriations Committee lets us down almost every time. We do it with the Corps of Engineers. We do it with the endangered species.

I say, why shouldn't we have the Environment and Public Works Committee do their own appropriating?

Then we would not have to worry about Las Vegas flooding. We would take care of it. I would go each year as quickly as I could to get the first bill passed and get all the money so there is none left for the rest of the committees.

The fact is programs that are within that jurisdiction—FEMA is an example—these are programs that are essential. I get upset at the Appropriations Committee, even though I am a member, for not getting money to the things I support, as someone who has been chairman of that committee on two separate occasions.

I know the good intentions of my friend from Arizona. He and I came to the House together. We came to the Senate together. I never like to get involved in a legislative battle with Senator MCCAIN because of his passion with legislative battles and life in general. The fact is, even though I don't like to get involved, and I rarely do, he is wrong this time. He is wrong.

What would happen if this amendment is passed? There would be more secrecy. There would be too much power consolidated, as the former chairman who served on the committee 10 years, BOB GRAHAM, has said. He has served as chairman and wrote a book on the Intelligence Committee. He said it would be the wrong thing to do. It would reduce the number of people and staff looking at the critical matters.

The appropriations and authorization process has been separate for 170 years. Why? This is not by accident. It is because there has to be some control, ultimately, of money. That is why we do not allow Senator REID of the Environment and Public Works Committee, Senator REID and others who serve on authorizing committees to have a free hand in the money.

Now, the authorizers look at matters of policy. That is the way it should be. The appropriators are spending the people's money the way the law states.

The solution we have come up with is a better solution that strengthens the Intelligence Committee and creates a new intelligence appropriations subcommittee.

Governor Kean, the cochair of the 9/11 Commission, said:

I think [an intelligence appropriations subcommittee] would be very much in my mind within the spirit of our recommendations.

I know my friend from Arizona wrote a letter saying this is fine, maybe, but what we want is better. I don't want to get in a nitpicking "he said, they said," but I am reading from page 421 of the 9/11 Commission:

We also recommend that the intelligence committee should have a subcommittee specifically dedicated to oversight, freed from the consuming responsibility of working on the budget.

I don't know if it was an oversight, but I wrote a book once and they sent it to an editor, someone who worked at the University of Texas. She was a professional editor. This is my book, a history book, and she came back with all of the contradictions that I had made

myself right in my book. I was so stunned how good she was.

Whoever was doing the editing of this report made a mistake, because you cannot have it both ways. You cannot have limited budget authority and have them do the appropriation and the authorizing all at one time.

This is something that is very important. Senator MCCAIN is wrong. It would not be hard, for example, to find someone to serve on the Intelligence Committee. He said we cannot find people to serve on the Intelligence Committee and this will make it worse.

Walk through those doors and through another set of doors and you wind up in Senator DASCHLE's office. The most sought-after committee by Democrats in the Senate is the Intelligence Committee. There is a long line of people wanting to serve on that committee. Why? Because it deals with the most important aspects of what goes on in this country. It deals with the intelligence aspects of our Federal Government. They deal with what no one else deals with. Senator ROBERTS and Senator ROCKEFELLER have done a wonderful job with very few tools to do it with. What we did yesterday and what we are doing here today is creating an Intelligence Committee that has the tools to do work that they have done in a very difficult way. We are giving the Intelligence Committee superpower authority.

I suggest to my friend Senator MCCAIN, it is going to be easy to find people to serve on this committee. It has been easy in the past and it will be easier now because the committee is better than ever.

He describes the lack of oversight in the current intelligence process, but his process is to give only a handful of Senators unprecedented power. We propose more checks and balances. That is what we need—more, not less.

This amendment is an amendment that is offered in good faith. I know my friend from Arizona feels he is doing the right thing, but it is the wrong thing to do. It would be bad; it would consolidate power. This is exactly what we do not need.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my colleague from Nevada, and especially I thank Senator ROBERTS who brings great expertise to this issue, given his position as chairman of the Committee on Intelligence.

I mention again the families and the Commission fully support this amendment. I have no doubt when we take this vote, my friends, that the Commission unanimously, and the families of September 11 support this amendment.

I will quote from Jim Thompson, former Governor of Illinois, a member of the Commission, who says:

... I urge the Senate to make the Commission's recommendations for Congressional reform as high a priority as it made our other recommendations. The congressional reforms are important and necessary.

That is why the Commission was unanimously strongly recommending a new committee structure combining authorizing and appropriating authority in a simplified and functional Homeland Security committee structure.

Mr. Richard Ben-Veniste:

I urge the Senate to make the Commission's recommendations for Congressional reform as high a priority as it made our other recommendations.

The Commission strongly recommended new committee structure combining authorizing and appropriating authority in a simplified and functional Homeland Security committee structure.

There is no doubt how the Commission stands or how the families stand. What this is all about is contained on page 419 of the 9/11 Commission report, the bestselling report:

Of all our recommendations—

“Of all our recommendations”—

strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need.

This is really what this amendment is all about.

... the American people will not get the security they want and need.

So we are not talking about a turf battle here. We are not talking about who is going to do what and who is going to have the power of the purse. We are talking about the security that the American people want and need, according to the 9/11 Commission.

Mr. President, I am a bit of a realist. I think it is going to be very difficult to win this vote. “Intense pressure” has been put on Members of the Senate as well as members of the Commission.

I thank the members of the Commission who have stood up to that pressure, but I have no doubt that if this amendment goes down, we will perform two-thirds of our duties, and one-third, which, as the Commission pointed out, is the most difficult and most important, we will have failed that. And that is congressional oversight. That is really what this vote is all about.

Mr. President, I yield the floor and ask for the vote.

The PRESIDING OFFICER. Under the previous order, the vote will now be held on the amendment of the Senator from Arizona. The question is on agreeing to the amendment.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS) is necessarily absent.

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 (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 23, nays 74, as follows:

[Rollcall Vote No. 200 Leg.]

YEAS—23

Alexander	Feingold	Nickles
Bayh	Fitzgerald	Roberts
Biden	Graham (SC)	Santorum
Cantwell	Kyl	Sessions
Collins	Lieberman	Snowe
Crapo	Lott	Sununu
DeWine	Lugar	Voinovich
Ensign	McCain	

NAYS—74

Akaka	Dodd	Levin
Allard	Dole	Lincoln
Allen	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bennett	Durbin	Miller
Bingaman	Enzi	Murkowski
Bond	Feinstein	Murray
Boxer	Frist	Nelson (FL)
Breaux	Graham (FL)	Nelson (NE)
Brownback	Grassley	Pryor
Bunning	Gregg	Reed
Burns	Hagel	Reid
Byrd	Harkin	Rockefeller
Campbell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Specter
Coleman	Jeffords	Stabenow
Conrad	Johnson	Stevens
Cornyn	Kennedy	Talent
Corzine	Kohl	Thomas
Craig	Landrieu	Warner
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NOT VOTING—3

Chambliss	Edwards	Kerry
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The amendment (No. 3999) was rejected.

Mr. STEVENS. I move to reconsider the vote, and 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 Arizona.

Mr. MCCAIN. Mr. President, I think it may be important that we pause for a minute and figure out what we have done. I would like to have a colloquy with the Senator from Maine. We are now at a position where we are supposed to be consolidating authority in the homeland security committee. In fact, the distinguished Senator from Kentucky said last night:

The most sweeping change we recommend is to consolidate congressional jurisdiction over the Department of Homeland Security. If you don't think this is major reform, ask the roughly 25 Senate committee or subcommittee chairmen who currently have jurisdiction over Homeland Security agencies or programs.

Truth in advertising: The homeland security committee has 38 percent of the Department's budget and 8 percent of the Department's employees. That is the great consolidation. Why don't we just stop, why don't we call it a night and say the heck with this farce. This is crazy. This is stupid.

The amendment I am about to propose does, what? Something shocking. It takes the Transportation Security Administration, which is the heart and soul of homeland security, and moves it to, guess what. The homeland secu-

rity committee from the committee on which I have been proud to serve for 18 years.

Guess where the Coast Guard remains. The Coast Guard remains, guess where. In the Commerce Committee. This is a joke. This is a joke, I say to my dear friends.

Mr. President, I ask unanimous consent to engage in a colloquy with the Senator from Maine.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, can this Senator be part of that colloquy?

Mr. MCCAIN. Sure.

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

The Senator from Maine.

Ms. COLLINS. Mr. President, if we are going to create jurisdiction in one committee for homeland security, let's do it. Let's not pretend that we are doing it. Let's not do it in name only. As a result of the proposal put before the Senate with its exclusions and the amendment adopted this morning, as the Senator from Arizona indicated, the homeland security committee would have exclusive jurisdiction over less than 38 percent of the Department's budget.

It would have exclusive jurisdiction over fewer than 8 percent of the Department's employees. That is 13,000 employees out of 175,000 employees. There are more amendments filed that would take still more agencies away from the committee's jurisdiction.

Mr. MCCAIN. If the Senator will yield for a question, it is my memory, if my memory serves me correctly, after 9/11, the first major step that we took was the creation of what agency? The Transportation Security Administration? Is that true?

Ms. COLLINS. The Senator is correct.

Mr. MCCAIN. So what are we doing with the TSA, may I ask the Senator from Maine? Are we moving it into her committee so she has jurisdiction over it?

Ms. COLLINS. No.

Mr. MCCAIN. Ah, I can hardly believe that. I mean, after all, that is what homeland security is really all about, I thought.

Ms. COLLINS. The fact is that Congress has held 312 hearings over the past 2 years on homeland security. The Department has conducted 2,200 briefings. There are 25 Senate committees and subcommittees with jurisdiction over the Department of Homeland Security. This is an intolerable situation for the Department. It is why the Department and the President are pleading with us to consolidate all of the Department under one authorizing committee.

Mr. MCCAIN. If the Senator will yield for a further question, if Secretary Ridge or Deputy Secretary Hutchinson had to testify before Congress as far as the activities of the TSA, to whom would they testify?

Ms. COLLINS. They would testify all over. They testified before 88—

Mr. MCCAIN. But what about now?

Ms. COLLINS. Well, that is a good question. I have had hearings. Other hearings have been held. Twenty-five Senate committees and subcommittees have a claim over DHS. It is why Secretary Ridge called up in desperation and said: Please give us some relief from this. This is intolerable. We are supposed to be running the Department. Instead, we are constantly testifying.

Mr. STEVENS. Will the Senator yield to me on that?

Mr. MCCAIN. Sure.

Mr. STEVENS. I have a chart of the Department of Homeland Security summary of appropriations, and it shows the total amount is \$38,840,000,000. The two items that are not in that jurisdiction that would come out total \$11 billion. The total amount the homeland security committee will have is \$22,945,000,000.

Now, Mr. Ridge appeared before the Commerce Committee under the chairmanship of the Senator from Arizona only twice.

Mr. MCCAIN. Secretary Ridge—

Mr. STEVENS. I am reliably informed the reason it went to the Commerce Committee in the first place was the Senator from Arizona wrote a memorandum for the Parliamentarian saying that is where it should be, in the Commerce Committee, because we have jurisdiction over all the means of transportation and all of the entities TSA deals with.

Now, the Senator's committee—I am a member of that committee—will not have jurisdiction over railroads, trains, buses, boats, all of the entities that TSA affects. TSA has moved into the facilities owned by those entities. They have not built their own buildings; they have moved into those occupied by the airlines, buses, wherever. The conflict we have to resolve is between TSA and entities that provide the transportation.

Now, if we are going to have a consolidation of jurisdiction, that is why we have done this, that is why the Senator from Arizona wrote the memorandum in the first place, because we have the jurisdiction over the means of transportation.

Mr. MCCAIN. The Senator from Alaska is probably correct that I asserted jurisdiction over transportation at the time that TSA was created. That was before the 9/11 Commission was formed and made their recommendations and their decision was made. At least we told the American people that we would give those responsibilities to that committee.

Now, maybe Ridge only testified before us twice; Hutchinson, many times. There were a multitude of hearings where we called upon TSA, exercising our oversight responsibilities, to provide us with information, briefings, and hearings.

The TSA belongs under homeland security, I say to the Senator from Alaska, whether they go by bicycle,

skateboard, or bus. The fact is that this is a joke when we leave the heart and soul of homeland security in the Commerce Committee, of which I am proud, and I know, according to the recommendations of the 9/11 Commission, must be consolidated.

I do not know what budget the Senator is looking at, but the facts that the Senator from Maine and I have is that it is 38 percent of the homeland security budget and 8 percent of the Department's employees.

My response is, fine, if the Senator from Alaska feels that it belongs in the Commerce Committee, he is entitled to that opinion. Let us just not tell people we are consolidating. Let us tell them the truth. Let us tell them it is business as usual in the Senate, as the last vote just proved. It is business as usual, and let us not waste the time of our colleagues and try to fool the American people that somehow we are making any significant changes when as it stands 8 percent of the Department's employees fall under the committee on homeland security and 38 percent of the budget.

Mr. STEVENS. I asked the Senator from Maine a question. I have not received a response. I am not a part of this dialog. I will make my statement later. I really take offense at the attitude of the Senator from Arizona.

Mr. MCCAIN. The Senator usually does.

Mr. STEVENS. Let's keep the personalities out of it.

Mr. MCCAIN. The Senator from Alaska asked to join in the colloquy and he was welcome to join the colloquy. If he chooses not to stay in the colloquy, then please do not remain in the colloquy.

Mr. STEVENS. I do not shout as loud as the Senator from Arizona and then interrupt people.

Mr. MCCAIN. The Senator is welcome to join in the colloquy. I thought the colloquy was an exchange of views, ideas, and thoughts. I certainly would look forward to engaging in any colloquy with the Senator from Alaska. I have the greatest respect for him and the power and authority that we just saw exercised in the last vote.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I want to clarify the issue. It is not just TSA and the homeland security functions of the Coast Guard that are not transferred to the new homeland security committee. It is the immigration functions of the bureaus of Customs and Border Protection, Immigration and Customs Enforcement, and the Citizenship and Immigration Services stay now in the Judiciary Committee. Certain functions of the bureaus of Customs and Border Protection and Immigration and Customs Enforcement stay in Finance. So I think if we add in all of the exclusions, then we get to the percentages that I quoted.

I say to my colleagues, my point is this: Are we going to do this or not? If

we are not going to consolidate all of the functions of the Department of Homeland Security under one authorizing committee, as they are under one appropriations subcommittee, appropriately so, then let us not pretend that we are.

Mr. MCCAIN. Would the Senator yield for a question?

Ms. COLLINS. I would be happy to yield.

Mr. MCCAIN. What is the view of the Senator as to the primary role of the U.S. Coast Guard today?

Ms. COLLINS. The primary role of the Coast Guard today is port security. It has in some ways taken away from its many other important functions in fisheries enforcement and regulation, for example.

Mr. MCCAIN. Under this proposal that we are contemplating, where does the Coast Guard remain?

Ms. COLLINS. The Coast Guard would remain in the Commerce Committee.

The point is this: The administration has called for this consolidation. Let us either do it or not do it, but let us not pretend we are doing it by changing the name of a committee but only transferring to its exclusive jurisdiction 38 percent of the budget and 8 percent of the people.

If some of the pending amendments are approved, such as one to no longer have the Secret Service transferred, then we are just going to end up with jurisdiction over Tom Ridge's personal staff. That is about what is going to be left.

Mr. MCCAIN. If the Senator will yield for another question, I would like to mention as part of this colloquy a recommendation of the 9/11 Commission: Congress should create a single principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over the Department's duties, but we believe that Congress does have the obligation to choose one in the House and one in the Senate.

Now, is it true that under an amendment that has just been adopted by voice vote earlier, more responsibilities have been taken from the Senator's committee?

Ms. COLLINS. The Senator is correct. The underlying resolution as amended this morning now leaves the vast majority of the homeland security jurisdiction in committees other than in the new homeland security committee. I think that is a mistake. I think, if we are going to take that route, then we have not done the consolidation that the administration has called for.

Perhaps that is the will of this body. I understand these issues are difficult, that committees think they have a special relationship with these agencies. But let's not pretend we are consolidating agencies to parallel the consolidation that we undertook when we created the Department of Homeland Security.

Mr. MCCAIN. I ask the Senator from Maine, I am sure she is aware but I think our colleagues should know, that the legislation creating the Transportation Security Administration, under the title "Functions," reads:

The Under Secretary shall be responsible for security in all modes of transportation including carrying out chapter 449 relating to civil aviation security, related research and development activities, security responsibilities over other modes of transportation, be responsible for day-to-day Federal security screen operations, for passenger air transportation, interstate transportation.

It goes on and on. It is all security. That is the job of the Transportation Security Administration. That is one of the reasons why it is so named.

So rather than take the Transportation Security Administration and put it under the committee on homeland security and governmental affairs, we leave it in the Commerce Committee.

Ms. COLLINS. The Senator is correct. That is the effect of the underlying resolution.

AMENDMENT NO. 4000 TO AMENDMENT NO. 3981

Mr. MCCAIN. Mr. President, I perhaps foolishly have an amendment at the desk. I ask for its immediate consideration.

Mr. STEVENS. I object. What was the request?

Mr. MCCAIN. No, I didn't make a request. I said I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection setting aside the pending amendment?

Hearing none, it is so ordered.

Mr. STEVENS. I still don't understand. Is the Senator now calling up the amendment on Commerce?

The PRESIDING OFFICER. At the present time, yes.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 4000 to amendment No. 3981.)

Mr. MCCAIN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To ensure that the Committee has jurisdiction over the Transportation Security Administration)

On page 2, beginning in line 13, strike "to the Transportation Security Administration."

Mr. MCCAIN. I pretty well described this amendment just as we were discussing in this colloquy. Basically, it moves the Transportation Security Administration from the Commerce Committee to the new committee on homeland security and governmental affairs. I pretty well described it. I think it is clear, given the responsibilities of the Transportation Security Administration which I read a few minutes ago. They all have to do with transportation security. Obviously, homeland

security is the appropriate place for it to be.

I ask consideration of the amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, this is an important amendment for the Senate. I hope Members will listen because the Transportation Security Agency is the one that manages basically the entities at the airports, the bus stations, wherever they may be where people enter into forms of transportation.

All of those transportation means are under the jurisdiction of Commerce. I don't know about the rest of you, but I went to Nome one time and I found the Transportation Security Administration had moved into the Alaska Airlines terminal, owned by that airline, and said: Move out of the way. We have to put in these security devices. And they did that. They built a wall through that terminal and they proceeded to take it over.

I have had more complaints about the Transportation Security Administration than I have any other entity since I have been in the Senate because of the way they impact the traveling public.

I remind the Senate, there is a provision in the bill that authorized the Transportation Security Agency to transition to private enterprise when the time came that private enterprise could handle it. This is not a permanent Government entity. We sincerely believe that those involved in the transportation mechanisms should transition to the point where they, working with private enterprise, provide these functions. Right now these are temporary functions. We have provided Government employees to do it temporarily, not permanently. So this whole premise is that it should go over to the Governmental Affairs Committee—on which I am proud to serve and was once chairman—and they should oversee this entity, which we in Commerce want to see transition to become a part of the systems of transportation and not something maintained by Government forever.

This is not something that really ought to be done this way at all. I do not disagree with the Senator from Maine. There are a substantial number of entities that are under the jurisdiction of various committees that should come to the governmental affairs and homeland security committee, as it is now to be renamed. But in terms of that transition, those things do not impact the overall commerce of the United States the way this one does.

The Coast Guard, by the way—the Coast Guard's primary mission is not port security. It is to maintain the jurisdiction in the United States in peacetime over the waters that are essential to our commerce and in wartime to become part of the Department of Defense.

What sense does it make to split it up? By the way, a portion of the Coast

Guard is already under Homeland Security. It is already there. We agreed to it in the bill that created the Homeland Security Department. This takes the rest of it, the part that deals with fishing, that deals with boat inspection, that deals with the various aspects of using the Coast Guard around the world as it did off Iraq when it had the job of handling interdicting shipping that violated the sanctions against Iraq importing certain goods. That was done by the Coast Guard. This isn't homeland security, either.

Its primary function up my way is to patrol the fisheries, to maintain the maritime border. That has nothing to do with the security of the United States. It has to do with the protection of the basic resources of our oceans.

If anyone has worked with the Coast Guard, they know they are part of the drug interdiction job. Maybe DEA ought to be transferred to homeland security. I am not sure. But it is certainly not the kind of thing we are talking about now.

The Coast Guard has missions beyond ports. It has waterways, coastal security, drug interdiction, migrant interdiction, defense readiness, maritime safety, search and rescue. Search and rescue is absolutely essential to our State, to have the Coast Guard deal with those souls who are at sea, in danger. They do a marvelous job. They do environmental protection. What does environmental protection have to do with homeland security? That is a different matter—oil spills, contamination of the water, ice protections, and whether we can have transit of the vessels that are capable of going through ice. We now have a considerable number of icebreakers up our way. That is what they deal with.

There is an enormous number of categories that have nothing to do with homeland security and those that deal with homeland security we already transferred to homeland security. The idea the Coast Guard is taking now, the rest of it—the amendment would say, take the rest of it and put it over there. I don't know if it is in this one, but that is the proposal, as I understand it.

Admiral Collins, the Commandant of the Coast Guard, when asked about the future asset acquisition of the Commerce Committee this last April, stated:

To enhanced mission performance, The Coast Guard must optimize its unique authorities and capabilities, accomplishing partnerships while gaining capacity it needs to complete the full range of our missions. New assets will be used to conduct fishery patrols, search and rescue cases, as well as protecting the Nation against terrorist attacks.

We have no problem putting the terrorist activities in. They are already in Homeland Security. You don't need this process to go through to split that jurisdiction up again.

The problem right now is that Commerce Committee, having jurisdiction over all forms of transportation, would

be faced with the problem of how to deal with this Transportation Security Agency. I think the committee under the chairmanship of the Senator from Arizona has a great record in dealing with this. As a matter of fact, they approved nine bills this year alone related to transportation security in this Congress and none of them dealt with security. One did—the Aviation Security Improvement Act was enhancement of security with regard to airlines themselves.

I think if one examines the record of this Commerce Committee, it has conducted its jurisdiction under the Senator from Arizona. I look forward to continuing that as chairman in the next Congress.

I want to give my friend from Hawaii time to speak on this.

With regard to the nominations on the TSA and Coast Guard, they have been done in record time in Commerce. As compared to the rest of the Congress, nominations before our committee are expedited, and necessarily so. The impact of this matter obviously is that the confirmations of the Coast Guard will be taken over to homeland security. Those Coast Guard people do a lot more than just port security.

I am getting redundant.

But the difficulty with this is the transportation infrastructure itself should not be broken up. We should aim for the goal that this problem which is handled by TSA will be taken over by private enterprise. It should be. We envisioned that at the time we passed the original bill.

We have jurisdiction, as I said, over aircraft, rail, and highways. There is no question when we look at it that putting those concepts that affect our livelihoods right now and dragging them down is the considerable impact of TSA on their operations—not only on this operation as passengers, but the whole spectrum of the relationship with TSA to the transportation entities, I think, needs to be considered.

The McCain amendment would transfer jurisdiction over there to the homeland security and governmental affairs agency.

We had a hearing this morning about the plight of the airline industry. There is no industry that has been affected as much by TSA as the airline industry. TSA is examining how to counter the threat posed by shoulder-launched missiles. The FAA has that jurisdiction.

We have jurisdiction in Commerce over the FAA. Why should we transfer to Governmental Affairs the jurisdiction over an entity that is dealing with this type of equipment? They also have jurisdiction ultimately over some of the aspects of the transportation mechanisms themselves—design of airplanes, design of buses, design of trucks, cars; the whole thing. I believe all of that ought to stay where it is, with Commerce.

The FAA currently governs baggage weight and rules for lost and damaged

baggage. TSA only deals with baggage security. We are going to take baggage security and put a whole entity over there when the problem is the problem of the industry which has the responsibility legally for the baggage no matter who handles it. I think this is absolutely wrong.

Currently, the airline industry pays \$14 billion in user fees, according to the air transportation testimony. Those fees have to be reduced. The only way to reduce them is to get TSA's function into the hands of private enterprise related to the entity they serve—not the whole transportation system but the system they are working with. TSA is designed almost as a "one size fits all" for everything. That should not be. We should have a security system that is related to the responsibility of those providing the transportation and let the users of that transportation pay for it and not the taxpayers. This is where in the long run we are going to go, and I believe it is the right thing to do.

I cannot believe we should have two committees dealing with the airline industry. Governmental Affairs has no competence in this area in terms of the impact of entities like TSA on the airline industry. We do. We assert it in the committee under the chairmanship of the Senator from Arizona. It has been a good relationship. I believe it should be continued.

I have talked a little bit about the Coast Guard. I don't think that is covered by this amendment. The current amendment covers only Commerce, as I understand it. Is that correct? I have not seen the amendment yet. Parliamentary inquiry: Does this amendment currently only apply to the Commerce Department? Is it under TSA and the Commerce Committee jurisdiction?

Mr. MCCAIN. It only applies to TSA.

Mr. STEVENS. I thank the Senator.

Does the Senator from Hawaii wish to be recognized?

Mr. MCCAIN. Mr. President, I don't want to take a lot of time. I wonder if we could get an agreement that perhaps Senator INOUE be recognized for—how much time would he need?

Mr. INOUE. Twenty minutes.

Mr. MCCAIN. Twenty minutes; followed by Senator LIEBERMAN for 5 minutes; Senator LOTT for 5 minutes; whatever time Senator STEVENS would need; and then 5 minutes for me to wrap up, followed by a rollcall vote.

Mr. REID. Mr. President, I don't know whether I will use any time, but I would like to be included to speak for up to 5 minutes.

Mr. MCCAIN. I ask unanimous consent for that agreement.

How much time does the Senator from Alaska need? Five minutes as well.

Let me repeat: I ask unanimous consent that the Senator from Hawaii be allowed 20 minutes; the Senator from Connecticut 5 minutes; the Senator from Mississippi 5 minutes; the Senator from Alaska 5 minutes; if needed,

the Senator from Nevada 5 minutes; and the Senator from Arizona for 5 minutes, followed by a rollcall vote.

Mr. REID. Mr. President, I ask unanimous consent that the request be modified: that there be no amendments in order prior to final passage on this amendment.

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

Mr. MCCAIN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, I wish to join my colleague from Alaska in opposition to this amendment to transfer jurisdiction over the TSA to the soon-to-be renamed Governmental Affairs Committee.

As noted by Senator STEVENS, this amendment would effectively strip the Commerce Committee of its ability to oversee and coordinate the safety and security needs of our Nation's transportation system. To consider security in a vacuum, without understanding the impacts of security policy on the safety and operations of the mode of transportation, could give rise to unrealistic, contradictory, and counterproductive policies.

The McCain amendment would sever issues and responsibilities that have enabled the Commerce Committee to craft and enact two of the most significant transportation security measures this body has adopted since the 9/11, 2001 attack on our Nation.

The Aviation and Transportation Security Act created the TSA, the Transportation Security Administration, mandated the Federal takeover of aviation security functions, and created a fee to pay for the new responsibilities.

The Maritime Transportation Security Act created a new regime for maritime security within the TSA and the U.S. Coast Guard.

The Commerce Committee also successfully completed a conference with the House earlier this year on a second port security bill, the Coast Guard and Maritime Security Act.

These efforts were successful because of the Commerce Committee's understanding of the transportation industry, and the integral link between security, safety, and operations.

The committee has worked for more than a decade to improve transportation security and has had to deal with the inertia of the Federal Government as well as fight entrenched interests to change the way we secure the transportation system.

As far back as 1996, attempts were made to transfer security functions from the airlines to the Federal Government. Similarly, the port security act was initiated prior to the terrorist attacks of 9/11. The 9/11 attacks created sufficient public pressure to fundamentally change the way the Federal Government secured our aviation system and the ports.

The problems we are having in improving security are not the result of

an outdated committee system; they are the result of "growing pains" of a newly created department with insufficient resources to fulfill its responsibilities.

The 9/11 Commission made many recommendations. However, the recommendations with respect to the transportation sector were very general, with no specifics. An effective approach would require taking operational needs of transportation systems, the funding streams for these systems, the economics of the industries, and the safety regulatory framework that is so crucial to protecting our citizens.

In setting transportation security policy, all of these aspects come into play: safety regulations imposed by the Department of Transportation, safety regulations and recommendations by the National Transportation Safety Board, and the need to efficiently move passengers and cargo.

For example, the Commerce Committee developed legislation to strengthen cockpit doors based on its jurisdictional aviation funding programs, the FAA's certification approval process, and aviation system safety. We had working knowledge of aircraft structure and the carrier maintenance schedules.

The Commerce Committee was able to develop funding streams for the installation of another explosive detection system because of the committee's jurisdiction over airport funding programs and the use of the airport and airways trust fund.

Similarly, the authorization for pilots to carry guns required an understanding of a wide variety of issues, including structural integrity of the aircraft, training programs, and the pilot licensing process.

For example, if you left it up to a gun merchant or gun expert, he might say, give the pilots a .45. If you fired a .45 in one of those aircraft, it will blow the plane apart under the pressure of the atmosphere. So we have some sort of background and knowledge about aircraft structure. So the pilots would be carrying a smaller caliber pistol, something that will not put the aircraft into an explosive position.

You cannot separate safety considerations, security considerations, and the operational theory. Keep in mind that when we passed the Airport Security Act, we initiated a user fee system, a system where the beneficiaries, if you want to call them that, the airlines, pay a fee for the metal detectors, pay a fee for the x ray machines, pay a fee for the personnel. They have been paying \$14 million per year.

If you separate this function to another organization that will have no knowledge about the economics involved in the airlines, not realizing that the airlines are now on the verge of bankruptcy, who knows, we may really put them out of business. And the major mission of our airlines is to

carry passengers, to carry on the mobility of the citizens of the United States.

Transportation security decisions cannot be separated from the safety and operational concerns. The Senate leadership, tasked with the mission of developing a reorganization plan, recognized this vital link. That is why the leadership amendment keeps matters relating to the Coast Guard and the transportation security within the jurisdiction of the Commerce Committee.

Even the Department of Homeland Security recognizes that security decisions can have safety and operational ramifications. This link is embodied in a recent memorandum of understanding between the Department of Homeland Security and the Department of Transportation.

Transportation security and safety are so intertwined that separating them, as the McCain amendment would do, could do harm rather than benefit our transportation system.

After we created the Transportation Security Administration, long before we had a Department of Homeland Security, the President put in charge a tough law enforcement official who knew little about transportation. He did not last long because he knew only one side of the equation. He was succeeded by Admiral Loy who understood not only the balance between safety and security but the need to support policies and positions to maintain our safety needs while meeting our security challenges.

Those tasked with the responsibilities of securing our transportation system must take into account the intricacy of the operations of the system, from safety standards to mock in place realities. The two cannot be separated. Without such context, security decisions will be made in a vacuum that at best might produce misguidance and extraneous efforts and at worst could triple the transportation modes that ensure the free flow of commerce and traffic upon which our Nation has been built.

Competition, safety, and security are interrelated and inseparable aspects of interstate transportation, and each element significantly impacts a carrier's operation.

I realize this amendment does not discuss the Coast Guard, so I will not discuss that matter at this moment.

This is not a debate about protecting turf. It is a debate about the best way to do the job our Nation has entrusted to us. It is about our role in transportation safety and security and our ability to craft effective and timely solutions.

Although the report said Congress should create a single board of review for homeland security, I feel certain the commission did not intend that such a consolidation would result in more harm than good. Each of us must look at what is in the best interest of our Nation. Senators REID and MCCONNELL have done that. Therefore, I urge

my colleagues to vote against the McCain amendment.

Finally, it has been said the homeland security proposal submitted by the leadership of the Senate did not change the status quo. It recommends, as this resolution will point out, that the new homeland security and governmental affairs committee have sole jurisdiction of three of the four directorates in the Department of Homeland Security: directorate of information analysis, science and technology programs under the under secretary, and emergency preparedness and response director.

Yes, we have tried our best to make a change but not at the expense of a good, efficient, safe, and profitable transportation system.

Mr. REID. Mr. President, as we were listening to Senator MCCAIN and the unanimous consent request for time, the cloakroom had a call from Senator LAUTENBERG. I ask unanimous consent that the order now before the Senate be amended to allow Senator LAUTENBERG 10 minutes. I am hopeful I will not have to use my 5 minutes, so it would not extend things for more than 5 minutes, 10 at the most. I ask Senator LAUTENBERG be allowed 10 minutes prior to Senator MCCAIN speaking.

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

Mr. LIEBERMAN. I rise to support this amendment. When the 9/11 Commission Report came out—and the Commissioners said the top three priorities were the creation of a national intelligence director; second, national counterterrorism center; and, third, reform of congressional oversight of intelligence and homeland security functions—a lot of cynics said none of this is going to be easy; maybe they will be able to reorganize the administrative branch of our Government, but they will never do the job themselves on themselves.

I am afraid the Senate is in the process of proving the cynics right, and it is a shame. We are creating a shell here. This is like a shell game. We are calling a committee a homeland security committee, but if you pick up the shell, there is not much homeland security under it.

I remember when the Department of Homeland Security legislation, in the aftermath of September 11, was brought before our committee and before the Congress. This was originally a recommendation of the Hart-Rudman Commission which some of us picked up and advocated here in the Congress.

During the legislative consideration of the Homeland Security Department, almost every agency that is now a part of the Department came to us and said: We can't go to this Department; it is too big; we can't work together. We appealed to them that they had to put their own interests aside, and in the aftermath of September 11, a national crisis which proved we were not organized to protect our homeland, they had to get together in one department

and make it work for the public's benefit. We accomplished that in the Department, and they are now. It has not all been smooth, but I don't think there is anybody who would say we are not safer today than we were before the creation of the Department of Homeland Security because they are all working together.

That is why the 9/11 Commission said, if you want to do effective oversight of homeland security, if you want to make sure the Secretary of Homeland Security is not spending so much time jumping around from committee to committee up here in Congress but actually protecting the homeland, then create one homeland security committee of the Senate and the House.

I have no particular argument to be made about which committee that should be. In the legislation Senator MCCAIN and I put in, we mirrored the report of the 9/11 Commission: Either give one existing committee all of the homeland security oversight legislatively or create a whole new committee on homeland security. The Senate is on a path to do neither and, therefore, not meet the challenge of the 9/11 Commission and the challenge of our current circumstances in the war on terrorism to create such a committee.

Here in this amendment, Senator MCCAIN is trying to restore to the Governmental Affairs Committee, or being renamed the homeland security committee, the Transportation Security Administration. The total Department of Homeland Security has 175,000 employees. TSA has more than 51,000. Its functions are totally with regard to homeland security. Incidentally, the Coast Guard is totally within the Homeland Security Department. There may have been some misunderstanding about that here. Some of its functions are clearly not directed to homeland security. But TSA is totally homeland security. It belongs in the Department of Homeland Security, and it belongs in the committee designated here in the Senate to do oversight and authorization of homeland security.

So I appeal to my colleagues, if you want to give this title to the Governmental Affairs Committee, fine. Senator COLLINS and I and members of our committee will do the best job we can. But if you are giving us the title, give us the responsibility to do the job right. If not, give it all to another committee or create a new committee. But right now, remembering the famous old saying about "if it walks like a duck and quacks like a duck and looks like a duck, it must be a duck," we are creating a committee that does not have the budgetary authorization for most of the Department of Homeland Security, does not oversee most of the employees of the Department of Homeland Security, and we are calling it the committee on homeland security. It is not. And I do not see a good reason for doing it other than business as usual here in the Senate.

So I appeal to my colleagues, let's do what is right for the country and put all of this in one committee. You can decide which one you want it to be. It does not have to be the one I happen to be ranking Democrat on. But let's do what is right and put it in one committee.

I thank the Chair and yield the floor.

Mr. McCAIN. Mr. President, what is the order?

The PRESIDING OFFICER. The Senator from Mississippi is the next Senator to be recognized.

Mr. McCAIN. When is the Senator from New Jersey to speak?

The PRESIDING OFFICER. The Senator from New Jersey is to speak just before the Senator from Arizona is to close.

Mr. McCAIN. Mr. President, may I be recognized before the Senator from Mississippi? I think it is appropriate for the Senator from Alaska to speak, as the main opponent of the amendment, before I speak, which would be after the Senator from New Jersey. I ask unanimous consent that the Senator from Alaska be allowed to speak prior to me speaking, which would then wrap it up, since the Senator from Alaska is the primary opponent of the amendment and I am the sponsor of the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, I don't know what that does to the other order.

Mr. McCAIN. It puts the Senator from New Jersey, Mr. LAUTENBERG, prior to you rather than after you.

Mr. STEVENS. That is fine. I have no objection. Senator LOTT precedes that?

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

Mr. STEVENS. Mr. President, there is not a quorum call in effect, is there?

The PRESIDING OFFICER. There is not.

Mr. STEVENS. I am informed Senator LAUTENBERG will not be returning to the floor to speak. Next will be Senator LOTT, right?

Mr. McCAIN. Yes, Senator LOTT.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, under the time agreement, is this the time that I will have to speak on the amendment?

The PRESIDING OFFICER. That is correct.

Mr. LOTT. Mr. President, first I want to speak on the broader subject, and with only 5 minutes, I don't have much time. But I am really worried that what we are doing here is not enough. I understand that the whips, who have been designated to carry out this task

by our leaders, Senator MCCONNELL and Senator REID, have worked very hard to try to accommodate everybody's interests and concerns, but there is something bigger here than just individual interests and concerns or turf or jurisdiction, and I feel a lot of that is still at play.

If we do not do anything more to this resolution than what is already in it, it is worth having. I do not want to complain about that. At least we are making the Intelligence Committee permanent.

There are a number of things that are in this resolution that are worth having, but I am worried it is not enough. I don't like going against my friends and colleagues on the Appropriations Committee, Senator STEVENS, Senator COCHRAN. I have faith in both of them. But I don't have faith in the way the system is set up now. The way things are spread out all over this institution, both on intelligence and homeland security, it is a prescription not to be able to do our job. That really does bother me. I didn't feel this way until I went on the Intelligence Committee.

But I say to my colleagues, after a year and a half on the Intelligence Committee, I am really scared. I am worried that our intelligence community has not done its job and that it is not organized properly. We are trying to do something about that with the legislation we passed yesterday. I don't think we did enough. I still think there are a lot of people trying to protect the status quo. The Pentagon doesn't want to give up 80 percent of the budget. They want to make sure that everything is done the way it has been being done. The Pentagon wants to make sure the Secretary of Defense still controls certain nominations. Again, too many people are worried about trying to keep what they have now when what we ought to be worrying about is how do we do a better job of getting better intelligence, not only for the men and women in the military but across the board in intelligence.

And this is the thing that really bothers me: part of it is our fault. We have not been doing our job. What is the proof? Look at 9/11. Look at the other things that we have found that the intelligence community did not know were about to happen or gave us information that was not accurate. If they failed, we failed.

When these two pieces of legislation are finished, both the intelligence reform in the administration and the congressional reform, are we going to be better off? Are we going to have somebody we can hold accountable? Are we going to be able to make sure the Pentagon is doing its job, the CIA is doing its job? I don't believe so. The intelligence authorization committee is not set up to do the job. Even with this arrangement we are working on now, it is all going to be controlled by appropriations and the black budget.

I want to emphasize, I trust Senator STEVENS, and I know he wants the se-

curity of this country to be looked after. But if we are not going to have an Intelligence Committee with the authority to do the job and without the knowledge of what is happening on appropriations, I would recommend we all get off because we are going to be held responsible and we are not going to be able to do the oversight that is necessary.

We are working at it. That is good. I commend everybody. On the homeland security, I debated on this particular point. I am on the Commerce Committee. I want all the jurisdiction we can possibly get. I am very concerned about the Coast Guard. The Coast Guard should be more than port security. The Coast Guard is about search and rescue. The Coast Guard should be about drug interdiction, which it is. It has a big agenda. I think you can make a strong case that it ought to stay in the Commerce Committee, and under the amendment, as I understand it, it would. That is a critical point.

But if we are going to have a separate homeland security committee, or if we are going to put that issue under the Governmental Affairs Committee, we ought to do it in a way where we do cut down this duplication. I, again, am worried that we are talking about doing more than we are really doing.

I have debated about whether we need a separate homeland security committee. But I think if we are going to do it, to only put 38 percent of the homeland security matters before the committee is not accomplishing the job, just like I am worried that on intelligence authorization, we still have not solved the problem with sequential referral to the Armed Services Committee. We still have not solved the problem about how do the authorizers know what the appropriators are doing, and how do the appropriators know what the authorizers are doing. We are not doing enough.

I urge my colleagues, as we to go conference on the other bill, more work needs to be done. As we work toward completion on this legislation, I hope we will strengthen the hand of those who have negotiated on it and those who are going to be held responsible for what is the end result.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, under the order, Senator LAUTENBERG has 10 minutes. He will not need that time so that can be stricken. What is the order of the speaking now?

The PRESIDING OFFICER. The Senator from Nevada has 5 minutes, followed by the Senator from Alaska, followed by the Senator from Arizona, each for 5 minutes.

Mr. REID. Mr. President, I don't have a dog in this fight other than the fact that I have worked for a month to the point where we are now. I don't want anyone here to think the new committee on homeland security-governmental affairs does not have a lot of

work to do and a lot of jurisdiction. They are totally responsible for three directorates. The new homeland security-governmental affairs committee will have sole jurisdiction over three of the four primary directorates in the Department of Homeland Security: science and technology directorate, emergency preparedness and response directorate, information analysis and infrastructure protection, and share parts of the directorate of border and transportation security.

For my good friend, the Senator from Maine, to stand and say, We don't have anything to do, basically, is simply not factual.

I would also say we have transferred jurisdiction from 10 standing committees and given jurisdiction to this committee. This is not a numbers game as to how many employees are involved. It is the number of functions they have been asked to take a look at. And if it is any indication that we haven't given them anything, you should understand that every chairman of the 10 committees has been telling us we gave them too much. You can't have it both ways.

I would also say, even though I don't have a dog in this fight, no one should ever suggest that Senator INOUE and Senator STEVENS are not equipped to handle what has been left with them in Commerce. Remember, Senator INOUE is a Medal of Honor winner. Senator STEVENS is a World War II veteran. That may not make them better Senators, but it certainly doesn't make them worse Senators.

The only reason I am standing, people can vote however they believe they should, but they should not vote based on the fact that we have given this new homeland security subcommittee no jurisdiction. They have lots of work to do, including all the work they did before. It is not as if they don't have anything to do. They have all they had to do before plus all the other things they have been given as a result of this legislation that we hope will pass soon.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I think the Senate should realize that when you are talking about the Transportation Security Agency, we are talking about 45,000 screeners in the current system. Passenger screening takes about \$1.8 billion; baggage screening,

\$1.3 billion. Security and enforcement takes \$703 million. The security part of TSA is very small compared to the manpower looking at passengers and baggage. That is their primary function now. And of this \$2 billion, \$70 million comes from aviation user fees, and \$95 million comes from transfer from carryover for the fiscal year 2003.

This is a function, in terms of this part of the homeland security agency, that is directly related to the transportation mechanisms. We urged and have continued to urge that the aviation industry pay the vast portion of this now because the major portion of TSA affects the airports and airways. We believe, and I sincerely believe, that we should find a way to have airlines collecting these user fees, have them provide the kind of screening that is necessary for the passengers and for their baggage.

As a matter of fact, we have placed in this bill—this is the Homeland Security appropriations bill, of which I am a member of the conference, and they are meeting right now—a substantial amount of taxpayer money to continue this process of getting all of the baggage screening and all the passenger screening done. But the bulk of the money, two-thirds of the money each year is coming from the aviation industry itself, which is currently terribly hampered. They are hiring people still. In the small airports, it is very unique because they still have the people who are handling the passengers, but they have these people hired by TSA who are using a third or more of their buildings. That has to stop. That has to transition to a private enterprise.

If we do this, and we put it in Governmental Affairs, that is not going to happen. They don't have the pressure from the entities that are carrying these passengers. We do in Commerce, and we have tried our best so far to meet the process and to be fair to both the Governmental agencies that have the temporary job and the transportation agencies that are paying the bulk of the cost of that job.

But there has to be a transition. We cannot keep it up. In fact, very soon the airlines are going to be unable to pay those charges. They are going to have to be paid by the taxpayers. We heard this morning they are not even going to be able to make their con-

tribution to the retirement funds. This must be changed.

I will use the remainder of my time to say I agree with Senator LOTT. We had a conversation at noon today about the whole system. It hasn't been since 1977 that we reorganized the Senate. We should do that. We should recognize the changes in the economy, changes in our people, changes in the whole global concept. But we have not done that. This is attempting now—because Homeland Security agencies have come upon us—by the way, it has been on us for a while; we didn't need the 9/11 Commission to tell us what to do. We created Homeland Security before they were created. They took it upon themselves to tell us how to do our own laundry. We can do this ourselves.

By January, we will have to see what the House has done. We have the problem of dealing with 100 people, but they have 435 in the House. We are going to have to change to meet the reorganization they are going to bring about. They have a reorganization group going. We should have a reorganization group. With this group, the two whips have done a marvelous job trying to meet the demands of the 9/11 Commission, which is piecemeal as far as the Senate is concerned.

We should have another reorganization. Whose job is that? That is the job of Rules and the Governmental Affairs Committees to reorganize and find a way to deal with the reorganization that is required for the Senate to meet current and future needs. This isn't the way to do it.

The Senator keeps mentioning that two-thirds somehow or another is in Commerce. That is not so. We have one-third of this budget. We have one-third of the burden from the financing of Homeland Security, which is in TSA. I have the figures.

I have table 3 from the Department of Homeland Security summary of appropriations for fiscal 2004 and 2005. This is prepared by the CRS. I ask unanimous consent that it be printed in the RECORD.

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

TABLE 3.—DEPARTMENT OF HOMELAND SECURITY: SUMMARY OF APPROPRIATIONS
(In millions of dollars)

Operational component	FY 2004 enacted	FY 2005 request	FY 2005 House	FY 2005 Senate	FY 2005 conf.
Title I: Departmental Management and Operations:					
Subtotal: Title I	453	713	584	562	
Title II: Security, Enforcement, and Investigations:					
Office of the Undersecretary for Border and Transportation Security	8	10	10	9	
Visitor and Immigrant Status Indicator project (US VISIT)	328	340	340	340	
Customs and Border Protection	4,899	5,122	5,154	5,158	
Immigration and Customs Enforcement	3,407	3,307	3,363	3,760	
Transportation Security Administration	2,508	3,152	3,225	3,412	
U.S. Coast Guard	6,764	7,335	7,307	7,469	
U.S. Secret Service	1,134	1,163	1,183	1,163	
Subtotal: Title II	19,048	20,430	20,583	21,311	
Title III: Preparedness and Recovery:					
Office of Domestic Preparedness/Office of State and Local Government Coordination and Preparedness	4,013	3,561	4,115	4,034	
Counter terrorism fund	10	20	10	10	
Emergency Preparedness and Response	9,351	5,625	5,425	5,648	

TABLE 3.—DEPARTMENT OF HOMELAND SECURITY: SUMMARY OF APPROPRIATIONS—Continued

(In millions of dollars)

Operational component	FY 2004 enacted	FY 2005 request	FY 2005 House	FY 2005 Senate	FY 2005 conf.
Subtotal: Title III (current year, net)	13,374	9,206	9,550	9,692	
Title IV: Research and Development, Training, Assessments, and Services:					
Citizenship and Immigration Services	235	140	160	140	
Information analysis and infrastructure protection	834	865	855	856	
Federal Law Enforcement Training Center	192	196	221	224	
Science and technology	913	1,039	1,132	1,059	
Subtotal: Title IV	2,173	2,240	2,368	2,279	
Amount in this bill, for any year	35,048	32,590	33,085	33,085	
Scorekeeping adjustments (rescissions; airline relief) (net)	(-4,786)				
Total, Dept. of Homeland Security	30,262	32,590	33,085	33,844	
Discretionary (current year, this bill)	29,242	31,504	32,000	32,000	
Mandatory	1,020	1,085	1,085	1,085	
Section 302(b) allocation	29,242		32,000	32,000	
Difference, bill and allocation	0		0	0	

Source: H.R. 4567 passed by the House June 18, 2004; S. 2537 introduced by the Senate June 17, 2004; and unofficial House Appropriations Committee tables, April 8, 2004.

Mr. STEVENS. Mr. President, it is very clear. We are talking about one-third, not two-thirds.

The other part of this is the other agencies spread throughout this maze of jurisdiction we have. When we reorganized in 1997, someone used a mixing bowl, and the committees spilled out first. It wasn't a good, sound reorganization. We need a good, sound reorganization. This is not the way to do it.

Mr. MCCAIN. Mr. President, I want to quote from the 9/11 Commission report so we can put this into the perspective that I think this amendment deserves:

Of all of the recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need.

The underlying resolution, as amended, leaves the vast majority of homeland security jurisdiction in committees other than the new homeland security committee. TSA and the Coast Guard stay in Commerce. By the way, the Coast Guard is under the Department of Homeland Security. The revenue functions of the Bureau of Customs and Border Protection and Immigration and Customs Enforcement stay in Finance. The revenue functions of the Bureau of Customs and Border Protection and Immigration and Customs Enforcement and Citizenship and Immigration Services stay in Judiciary. It goes on and on.

Screeners are responsible for security. The Coast Guard's primary responsibility is our Nation's security. I wish they could return primarily to their old line of work.

So what do we end up with? We end up with a homeland security committee with jurisdiction over less than 38 percent of the Department's budget and fewer than 8 percent of the Department's employees. TSA employs 51,000 people. Those remain under the Commerce Committee. Not only that, but it is clear that what we have done here is essentially nothing. What we ought to do, perhaps, is just say we failed. I am not going to rant and rave anymore about how unfortunate it is that the

Appropriations Committee is able to, as they have in the past, fund programs that the Intelligence Committee has thoroughly scrutinized and say should be canceled, at a cost of billions of dollars.

I think we all know what the job of the Transportation Security Administration is. It is security. It is fighting the war on terrorism. Where should it be? It should, obviously, be under our new committee on homeland security and governmental affairs. So I won't bring up an amendment on the Coast Guard. The Coast Guard should be also under this committee because it is under the Department of Homeland Security. It is just logical.

So as I say to my colleagues, if this amendment fails, why don't we just call it a day and say it is business as usual. We have had great success on executive reorganization and I am proud of the work the committee has done. Unfortunately, we have failed to act in any significant manner as far as the reorganization of the Senate is concerned, and that was recognized by the 9/11 Commission.

I yield the remainder of my time, and I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Mr. MCCONNELL. Before the vote, Mr. President—

Mr. MCCAIN. Mr. President, what is the regular order?

The PRESIDING OFFICER. The regular order is to proceed to a vote.

Mr. MCCAIN. I don't object, Mr. President. I wish the Senator from Kentucky had asked for time during the normal unanimous consent agreement. I don't object.

Mr. REID. He is not going to speak on the amendment.

Mr. MCCONNELL. Mr. President, I was going to say to our colleagues that it is the intention of Senator REID and myself to continue to process amendments into the evening, with the goal of finishing tonight. We still have 30-some-odd amendments. There is certainly no requirement that they all be offered. We intend to keep plowing ahead and try to reach the finish line tonight.

Mr. REID. Mr. President, the two leaders are emphatic that they want to move forward. We have a lot of stuff to do. Tomorrow is the scheduled day for departure. That will be difficult. I wish people would follow the example of the Senator from Arizona, and I say that seriously. He never takes a lot of time. He doesn't waste a lot of time. He sets a tone for how we should move forward. I appreciate his cooperation on these two very important amendments. These are the two most important amendments we will have on this bill now before the body. I appreciate his cooperation.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS) and the Senator from New Mexico (Mr. DOMENICI) are necessarily absent.

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 (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 33, nays 63, as follows:

[Rollcall Vote No. 201 Leg.]

YEAS—33

Alexander	Feingold	Lincoln
Bayh	Feinstein	Lott
Biden	Fitzgerald	Lugar
Bingaman	Graham (FL)	McCain
Carper	Graham (SC)	Nickles
Chafee	Hagel	Pryor
Coleman	Inhofe	Santorum
Collins	Jeffords	Specter
Cornyn	Kyl	Sununu
Crapo	Levin	Talent
Enzi	Lieberman	Voinovich

NAYS—63

Akaka	Brownback	Conrad
Allard	Bunning	Corzine
Allen	Burns	Craig
Baucus	Byrd	Daschle
Bennett	Campbell	Dayton
Bond	Cantwell	DeWine
Boxer	Clinton	Dodd
Breaux	Cochran	Dole

Dorgan	Kohl	Roberts
Durbin	Landrieu	Rockefeller
Ensign	Lautenberg	Sarbanes
Frist	Leahy	Schumer
Grassley	McConnell	Sessions
Gregg	Mikulski	Shelby
Harkin	Miller	Smith
Hatch	Murkowski	Snowe
Hollings	Murray	Stabenow
Hutchinson	Nelson (FL)	Stevens
Inouye	Nelson (NE)	Thomas
Johnson	Reed	Warner
Kennedy	Reid	Wyden

NOT VOTING—4

Chambliss	Edwards
Domenici	Kerry

The amendment (No. 4000) was rejected.

Mr. MCCONNELL. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, I know Senator HATCH has an amendment. I do not see him on the floor at the moment.

I do see him on the floor. I am hopeful that Senator HATCH will shortly be prepared to send his amendment to the desk.

Mr. DURBIN. Will the Senator from Kentucky yield for a question?

Mr. MCCONNELL. I yield the floor.

Mr. DURBIN. I ask the Senator from Kentucky, I have a pending amendment which has been agreed to with a modification by Senator ROBERTS. I am prepared to offer it whenever appropriate so we can take care of it.

Mr. MCCONNELL. It appears as if Senator HATCH may not be quite ready, so why don't we have Senator DURBIN go ahead and offer his amendment.

AMENDMENT NO. 4036 TO AMENDMENT NO. 3981

Mr. DURBIN. Mr. President, I send an amendment to the desk

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 4036 to Amendment No. 3981.

Mr. DURBIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the provisions relating to the staffing and budget of the select Committee)

In section 201, at the end of subsection (g), add the following:

“(d) Of the funds made available to the select Committee for personnel—

“(1) not more than 55 percent shall be under the control of the Chairman; and

“(2) not less than 45 percent shall be under the control of the Vice Chairman.”.

Mr. DURBIN. Mr. President, I have good news for the Chamber. I believe we have reached an agreement on this amendment which will help us move this important resolution along.

I saw Senator ROBERTS on the floor a moment ago. I have had a conversation with Senator ROBERTS and Senator ROCKEFELLER. The purpose of this amendment is to move us closer to the

bipartisan model which we want to establish for this important intelligence committee. Yesterday, with an overwhelming vote of 96 to 2, the Members of this Chamber adopted the intelligence reform suggested by the 9/11 Commission, and it is a product of the fine bipartisan cooperation of Senator SUSAN COLLINS of Maine and Senator JOE LIEBERMAN of Connecticut.

I believe in the time I have been fortunate enough to represent Illinois in the Senate, it was one of our finer moments because we responded to a national crisis. We did it in a timely fashion. We did it in an orderly way. We brought together amendments which were substantive and numerous and voted in nonpartisan rollcalls. We came to the floor, and after a week and a half of debate brought this bill out with a vote of 96 to 2 to reform the executive branch. I think the message of the process and the message of the reform bill is that we want to take partisanship out of the intelligence operations of the executive branch.

I believe by the joint effort of the Senator from Nevada, Mr. REID, and the Senator from Kentucky, Mr. MCCONNELL, we are seeing that same thing today about the legislative branch.

This amendment which I propose is an effort to move us closer to parity in staffing. I believe that establishing this by rule is a good thing for the future of the Intelligence Committee. What it says is that regardless of the partisan split of the committee, which is now a split of eight to seven, if I am not mistaken, we are going to divide staff by a 55-45 proportion, 55 percent to the chairman representing the majority of the committee, and 45 percent to the ranking member representing the minority on the committee.

Along with Senator ROBERTS, who is on the majority side of this committee, and Senator ROCKEFELLER, the ranking member, we had a conversation and we have agreed to a new number which I will present as a modification to this amendment shortly. It is a number of 60 percent for the chairman with the majority membership of the committee, 60 percent of the staffing funds in control of the chairman, and 40 percent of the funds in the control of the minority ranking member.

I think this is a fair compromise. I believe it is offered by both sides in the spirit of moving us toward this bipartisanship on the Intelligence Committee. I believe it will have the net effect of improving the product of the committee.

Let me quickly add that I don't believe there are necessarily Democratic or Republican answers to the tough issues we face on the Intelligence Committee. But I believe both sides should be adequately staffed so they can rise to the occasion when we face challenges for investigations and hearings that are held with witnesses being brought before us. By establishing 40 percent of the personnel funds to the

ranking member and 60 percent to the chairman, I think we are moving closer to that model.

For those who have been involved, Senator MCCONNELL and Senator REID, let me make it clear this would apply to the committee staff and not to individual member staffs. The effort in the preparation of this resolution was made so that every member of the Intelligence Committee who has personal staff would not be affected by this amendment. The 60-40 would apply strictly to the other committee staff over and above the personal staff of the committee.

Mr. MCCONNELL. Mr. President, will the Senator yield for a question?

Mr. DURBIN. Yes.

Mr. MCCONNELL. I believe the amendment at the desk is 55-45. Is the Senator going to modify the amendment?

Mr. DURBIN. Yes. At this point I will be happy to yield for any other questions or comments.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I would like to verify what the Senator from Illinois has said.

Senator ROBERTS can't be here at this particular time, but he authorized me to say he is in agreement with this. It is a sensible approach. It is bipartisan in nature. As far as we are concerned, there is agreement on both sides. What the managers decide is up to them.

AMENDMENT NO. 4036, AS MODIFIED

Mr. DURBIN. Mr. President, if there are no further comments or questions, I ask unanimous consent that the amendment now pending before the Senate be modified on its face, and in paragraph (d), subparagraph (1), the number 55 be changed to 60; and in paragraph (d), subparagraph (2), the number 45 be changed to 40.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4036), as modified, is as follows:

In section 201, at the end of subsection (g), add the following:

“(d) Of the funds made available to the select Committee for personnel—

“(1) not more than 60 percent shall be under the control of the Chairman; and

“(2) not less than 40 percent shall be under the control of the Vice Chairman.”.

Mr. DURBIN. Mr. President, I urge adoption of the amendment.

Mr. MCCONNELL. Mr. President, I believe we are prepared to move forward.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4036), as modified, was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, Senator HATCH is here and ready to offer an amendment.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 4037 TO AMENDMENT NO. 3981

Mr. HATCH. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. LEAHY, and Mr. SPECTER, proposes an amendment numbered 4037 to amendment No. 3981.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To retain jurisdiction over the Secret Service in the Committee on the Judiciary)

In section 101(b)(1), after "Service" insert ", and the Secret Service".

Mr. HATCH. Mr. President, I rise to offer a Leahy-Specter-Hatch amendment that would preserve the Judiciary Committee's oversight jurisdiction over the U.S. Secret Service.

The reason for the amendment is not simply the committee's longstanding relationship with the Secret Service, although that relationship is strong and healthy. It is a very good reason why we should retain the status. The Judiciary Committee has had jurisdiction over the Secret Service's title 18 authority since June 25, 1948. I was astonished to hear one of my colleagues say on the floor earlier today that the Judiciary Committee was trying to move jurisdiction to the Judiciary Committee. The committee has had jurisdiction over the Secret Service for the last 56 years.

The more important reason is that a huge percentage of Secret Service operations are authorized by title 18 of the criminal code. That will obviously and appropriately remain under the Judiciary Committee's jurisdiction. If the point of this bill is to reform congressional oversight, then it would make no sense to reduce the Judiciary Committee's ability to examine how title 18 of the criminal code authority is used while continuing to rely upon the Judiciary Committee to make sure that title 18 provides appropriate authority to the Secret Service.

A little bit of history may be helpful. The Secret Service was established as a law enforcement agency in 1865. While most people associate the Secret Service with Presidential protection, its original mandate was to investigate counterfeiting of U.S. currency. Today, the primary investigative mission of the Secret Service is to safeguard the payment and financial systems of the United States.

The Secret Service has exclusive jurisdiction for investigations involving the counterfeiting of U.S. obligations and securities. That authority to investigate counterfeiting is derived from title 18 of the United States Code, section 3056. Some of the counterfeited U.S. obligations and securities com-

monly dealt with by the Secret Service include U.S. currency and coins, U.S. Treasury checks, Department of Agriculture food coupons, and U.S. postage stamps.

The Secret Service combats counterfeiting by working closely with Federal, State and local law enforcement agencies, as well as foreign law enforcement agencies, to aggressively pursue counterfeiters. Secret Service agents commonly work with Federal prosecutors—employees of the Department of Justice, over which the Judiciary Committee retains jurisdiction.

It is important for Congress to keep up with the times when determining the scope of Title 18. Since 1984, the Secret Service's investigative responsibilities under Title 18 have expanded to include crimes that involve financial institution fraud, computer and telecommunications fraud, false identification documents, access device fraud, advance fee fraud, electronic funds transfers, and money laundering.

People who counterfeit things are creative, and so are those who invent new products that are susceptible to being counterfeited. It is important that Title 18 provide the Secret Service with appropriately updated authority, and therefore it is crucial that the Judiciary Committee have the ability to require the Secret Service to report on its use of authority.

Listen to some of the types of criminal investigations that the Financial Crimes Division of the Secret Service plans and coordinates:

Financial Systems Crimes, including bank fraud; access device fraud; telemarketing; telecommunications fraud; computer fraud; the Federal Deposit Insurance Corporation and Farm Credit Administration violations.

These are all traditional criminal investigations and they are all governed by Title 18. They are at the core of Judiciary Committee jurisdiction and expertise.

Another division of the Secret Service, Forensic Services Division, FSD, is almost entirely focused on providing analysis for questioned documents, fingerprints, false identification, credit cards, and other related forensic science areas. A main purpose of this division is to investigate crimes and provide evidence for prosecutors to use in court. FSD also manages the Secret Service's polygraph program and coordinates photographic, graphic, video, and audio enhancement.

Here's an example of how the Judiciary Committee's relationship with the Secret Service works: As part of the 1994 Crime Bill, Congress mandated the Secret Service to provide forensic/technical assistance in matters involving missing and sexually exploited children. The Forensic Service Division offers this assistance to Federal, State, and local law enforcement agencies, the Morgan P. Hardiman Task Force and the National Center for Missing and Exploited Children. It is important for the Judiciary Committee to con-

tinue its relationship with the Secret Service to make sure that its capabilities are utilized in important areas of law enforcement such as these.

For these reasons, I urge my colleagues to vote for keeping the jurisdiction where it belongs, with the people who have to deal with these criminal laws all the time. Frankly, it is a tough process. We should not move the Secret Service out of the Judiciary Committee jurisdiction because that is where this very tough anticrime approach has to occur and has to take place.

I hope my colleagues will listen to me. I have no axes to grind here. I am not just trying to preserve jurisdiction; it doesn't make sense to take it out of the hands of the Judiciary Committee as much as some think it may. I don't think it can make a good case that it should be taken out of the Judiciary Committee.

I ask unanimous consent to have printed in the RECORD what looks like 50 or more jurisdictional aspects of the Secret Service investigational approaches.

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

TITLE 18 USC 3056

Secret Service has jurisdiction to investigate the following:

- 213—Acceptance of loan or gratuity by financial institution examiner
- 216—Punishments for 213
- 471—Counterfeiting US obligations
- 472—Uttering Counterfeiting securities
- 473—Dealing in Counterfeiting obligations or securities
- 474—Possession of device to counterfeit obligations
- 476—Theft of tools used to counterfeiting obligations
- 477—Selling of tools for counterfeiting obligations
- 478—Counterfeiting of foreign obligations
- 479—Uttering Counterfeit foreign obligations
- 480—Possessing counterfeit foreign obligations
- 481—Possession of electronic images for counterfeiting foreign obligations
- 482—Forgery or Counterfeiting Bank Notes
- 483—Uttering counterfeit foreign bank notes
- 484—Fraudulently combining multiple United States Instruments
- 485—Counterfeiting United States coins
- 486—Unauthorized passing of United States coins
- 487—Making or possessing counterfeit dies for coins
- 488—Making or possessing counterfeit dies for foreign coins
- 489—Making or possessing likeness of United States or foreign coins
- 492—Forfeiture of counterfeit paraphernalia
- 493—Bonds and obligations of certain lending agencies
- 508—Forging United States Transportation Documents
- 509—Unlawful Possession of Government transportation plates
- 510—Forging Treasury Check endorsements
- 657—Misapplication of funds from a Credit Institution
- 709—False advertising or misuse of names of indicate Federal agency

- 871—Threats against the President
- 879—Threats against former Presidents
- 912—Impersonation of Officer of the United States
- 981—Civil forfeitures
- 982—Criminal forfeitures
- 1001—False statements
- 1006—False statements to credit entries
- 1007—Forged/Counterfeit statements to influence the FDIC
- 1011—False statements to Federal Land Bank
- 1013—Use of forged securities or bonds to defraud Federal Land Bank
- 1014—False Statement to influence Farm Credit Administration
- 1028—Identity Theft
- 1029—credit card fraud
- 1030—Computer fraud
- 1344—Bank Fraud
- 1752—Entering the temporary offices of the President
- 1907—Disclosure of private information by a farm credit examiner
- 1909—Conflicts of interest for National Bank Examiner
- 1956—Money Laundering
- 1957—Engaging in Monetary Transactions from specified Unlawful Activities

Mr. HATCH. When you look at these, you cannot conclude anything but this should stick with the Judiciary Committee. I don't have any ax to grind. Everyone knows that. The fact is, this is the right thing to do or I would not be standing here trying to do it. We have had a great relationship with the Secret Service and have done a great deal of work together over my 28 years on the Senate Judiciary Committee. I know this is right, and we have to do this.

I yield the floor.

Mr. LEAHY. Mr. President, I totally agree with the Senior Senator from Utah in this battle. Senator HATCH and I have worked very closely on this issue. This is an amendment cosponsored principally by Senator HATCH and myself and Senators SESSIONS, SPECTER, and BIDEN. It is not a partisan amendment by any means. It is not ideological. It just makes good sense.

In the resolution before the Senate we look at the new committee, the homeland committee and governmental affairs committee, but we have four exceptions for good reasons. Section 101, we take the Coast Guard out of that. We take the Transportation Security Administration, we take the Federal law enforcement training sector, and we take the revenue functions of the Customs Service. But we have to make one other exception, and that exception is the U.S. Secret Service.

The Secret Service operates under Title 18 of the United States Code, that title of the United States Code of criminal law. Every one of these yellow tabs in the criminal code is one more area under criminal law, criminal code, where the Secret Service operates. The distinguished Senator from Utah said it is not just the protection service by any means, even though that is what we see in the news. They enforce many of the criminal laws, many of the laws related to the counterfeiting of U.S. currency and other financial instru-

ments. They carry out criminal investigations. Criminal law enforcement function is the cornerstone of what the Secret Service does.

I first got involved with the Secret Service when I was a State's attorney of Chittenden County in Vermont. That was over 38 years ago. We had a counterfeiting case we were prosecuting under State law. For the expertise, for help in the investigation, we called in the Secret Service. The Secret Service was involved immediately. Even though it was a State case, a State prosecutor, the Vermont State police, the Burlington City Police, the expertise came at a moment's notice from the U.S. Secret Service. They stayed throughout that case. They made sure we had the expertise. They made sure they gave us all their knowledge of how one of these cases would be tried. Incidentally, we won that case.

Years later, when I was a new Member of the Senate, I was walking down the hall and I see the Secretary of State coming down the hall, people from the State Department, and also a couple of Secret Service agents. There was the Secret Service agent, David Lee—I remember his name—standing right there doing the dual things they do. His primary role had been in counterfeiting cases. We talked briefly about the number of counterfeiting cases he went to. I told him how much it meant to my little State of Vermont, which could not handle counterfeiting cases. A lot of crimes had been committed, and the Secret Service came in.

Now, they enforce criminal law. They have full Federal arrest authority, full authority to carry any needed firearms, full authority to use deadly force. We should continue our oversight, and the Judiciary Committee should continue its role. Their dual criminal law enforcement of financial institution investigations and protective operations is inseparable from the proper jurisdictional oversight of the Judiciary Committee. Again, I point to the Federal criminal code rules.

Now, the Coast Guard has been made exempt. It, like the Secret Service, is a distinct entity. Both should be exempted, not just the Coast Guard. The Secret Service has even more reason to be exempt. The success of the Secret Service mission depends on the criminal laws of the United States.

An example of that is that all the criminal fraud law enforcement investigations which the Secret Service handles are within Title 18. Where do they handle it? Within the Department of Justice through the Attorney General and the U.S. Attorney—under, obviously, the jurisdiction of the Judiciary Committee.

I will give another example. The Secret Service is authorized at the request of any State or law enforcement agency or at the request of the National Center for Missing and Exploited Children to provide forensic and investigative assistance in support of inves-

tigations involving missing or exploited children.

Let me tell you right now, if you have a missing child, we want everybody involved. All the local authorities will tell you that, especially if they are anywhere near a State line. They want everybody. Again, it comes under our committee.

So I agree, as I said, with the Senator from Utah. This is not a partisan issue. It is not a liberal issue. It is not a conservative issue. It is just good, plain sense.

Mr. President, I would hope my colleagues would be willing to accept the amendment on behalf of myself, Mr. HATCH, Mr. SESSIONS, Mr. SPECTER, Mr. BIDEN, and others.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise, with a lot of respect for the Senator from Utah and the Senator from Vermont, to oppose this amendment. I do so because it continues the stripping away of jurisdiction from the newly designated committee on homeland security over more and more of what constitutes the Homeland Security Department.

The recommendation of the 9/11 Commission to improve congressional oversight of homeland security and to allow the leadership of the Homeland Security Department to spend more time protecting our homeland and less time running from committee to committee here in Congress was to create one committee on homeland security with jurisdiction over all aspects of the Homeland Security Department.

The Homeland Security Department includes 175,807 employees. Now, employees are not the only measure of jurisdiction, but let's start with that number and then say that the bill brought before us by the working group immediately took out 45,000 from the Coast Guard, now under the Homeland Security Department, and 51,000 from the Transportation Security Administration. Add to that an amendment offered by my friends from the Judiciary Committee today which took back a good part of Citizenship and Immigration Services, Immigration and Customs Service Enforcement, which will be shared in some part with Homeland Security and Customs & Border Protection, and you are at a point where jurisdiction over well over half—heading toward almost all—of the Department of Homeland Security employees is no longer under the committee we are establishing to oversee the Department of Homeland Security.

I will repeat what I said earlier about the Transportation Security Agency authority. Our committee recommended the creation of a Department of Homeland Security after September 11. Why are we here? We are here because we were attacked on September 11, and we looked back and said: We were not ready. We were not organized to defend our people. So we proposed the creation of the Homeland Security Department.

Almost every agency we wanted to bring together in that Department protested: We want to be on our own turf. We want our own ground. But we pushed forward because there was a larger national interest. We prevailed, and we brought all these agencies together—one department. And it is working. We brought them together for the synergy of them working together to protect our national security in an age of terrorists who hate us more than they love their own lives and have shown that over and over again.

So here comes another amendment to take the Secret Service, which is in the Department of Homeland Security, away from the oversight and jurisdiction of what we are calling the Homeland Security Department. We are beginning to make the homeland security committee look like a house without rooms in it or not as many rooms as are supposed to be there, or like a shell, when you pick it up and there is not much under it even though it says "homeland security" on the top. That is a shell game, and this adds only to that trend.

Now, look, there are a lot of committees that could claim some relationship to different subparts of the Department of Homeland Security.

Mr. LEAHY. Will the Senator yield on that point?

The fact is, they are a distinct entity within homeland security. We have carved out that distinct entity for the Secret Service because of their law enforcement role. The distinguished Senator from Connecticut had no problem with carving out the Coast Guard, and the Coast Guard—

Mr. LIEBERMAN. There is a problem.

Mr. LEAHY. But it has been done. It has been accepted.

Mr. LIEBERMAN. Not done by me.

Mr. LEAHY. It was not objected to by you, and it was accepted.

Mr. LIEBERMAN. It was indeed, and we are still working on an amendment to try to see if we can right that wrong. I say to the Senator from Vermont, with all respect, I understand your question. The point is, if we were doing this right, everything in the Homeland Security Department would be overseen by the homeland security committee. That is what the 9/11 Commission called for.

Mr. LEAHY. If I might respond to that, if we were doing this right, we would not have brought out something put together behind closed doors. I am not accusing the Senator from Connecticut of doing that, but we suddenly have this thing plopped on our desks as people are leaving for the long-promised recess, and we are told: Here, we just have to put this all together right now. It is not the way to do it. We have not had hearings. We have not done anything like that. I think had we had those hearings, had we discussed it, you would have found a vast majority of Americans would assume the Secret Service carries out their law enforcement functions.

Mr. LIEBERMAN. Mr. President, if I may, here is the basic point. The Secret Service is now part of homeland security. The Homeland Security Department should be overseen by the homeland security committee. I was not behind those closed doors, if they existed. My understanding is the working group leadership spoke to the ranking members on each of the committees. I may be wrong. I did not do that. That is what I heard.

But let me explain. The Senator from Vermont and the Senator from Utah have cited context between the Judiciary Committee and the Secret Service. As I say, there are so many committees that can cite context in one way or another with different components of the Homeland Security Department. But let me tell you why the Secret Service was put into the Homeland Security Department.

Obviously, the Secret Service is best known for its mission in protecting the Nation's highest elected leaders as well as visiting heads of state. It is entirely appropriate that the department responsible for safeguarding the security of this Nation includes an agency which is responsible for protecting its top leaders who, tragically, in this age may be targets of terrorism.

Since 1998, when President Clinton issued Presidential Decision Directive 62, the Secret Service has assumed responsibility for planning, coordinating, and implementing security operations at all national special security events. And what is the great fear at such events? Terrorism. These national events, like the Olympics or the political party conventions, are important to our country and, unfortunately, enticing targets to terrorists if they are not defended. It is the Secret Service that is responsible for planning, coordinating, and implementing those security operations—another obvious reason why it should be in the Homeland Security Department.

What has being there allowed the Secret Service to do? To draw on the expertise and resources of the different agencies within the Department of Homeland Security to support the Secret Service's protective missions as well, of course, as to share the Service's own expertise and experience with the other agencies in the Department to help them do their job better.

Some of the unique responsibilities of the Secret Service are particularly relevant to terrorism. The Secret Service has responsibility for identity theft in various forms and methods. This is one of the terrorists' primary tools, assuming identities not their own to break through the defenses our country sets up. The ability to identify and prevent the proliferation of false identifications is critically important to the Department's mission of identifying terrorists and stopping them before they strike us, and that is the Secret Service's responsibility.

The Secret Service also has responsibility for the protection of important

national buildings, including the White House, the Vice President's residence, foreign missions, and other important buildings in the Nation's Capital which, tragically, sadly, in our age, are also prime targets for terrorists. Those are the reasons why the Secret Service has been placed in the Department of Homeland Security.

But again, I come back to the main point. Are we going to do what we say we are going to do or are we going to false advertise? We say we are going to respond to the 9/11 Commission's recommendations for a committee on homeland security. I have said before and I will say it again, the Governmental Affairs Committee has had some experience in homeland security so we are a natural place to put it. But I haven't sought it.

What I seek is the willingness to reorganize ourselves to the same extent that we have been willing to reorganize the executive branch, by creating the Department of Homeland Security and now a national intelligence director. With all respect to my friends on Judiciary, this is just another step to stopping us from achieving that mission, from meeting the challenge that the 9/11 Commission has set before us—and the request of the families of 9/11—to organize ourselves in a way that we can perform the kind of oversight that will mean we are doing everything humanly possible to prevent anything such as September 11 from happening again.

I hope we will draw the line on what is sucking out the insides of what we are calling a committee on homeland security.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, the issue before us is really very straightforward. Do we want to reorganize the Senate to consolidate jurisdiction over the Department of Homeland Security within one committee or don't we? What we should not do is to pretend we are consolidating jurisdiction in one committee, as recommended by the 9/11 Commission, and as strongly endorsed by the administration and Secretary Ridge. If we are going to consolidate authority, then let's do it. If we are going to try to address the problem of 25 different Senate committees and subcommittees having a claim on the new Department, requiring testimony from officials in the Department, if we want to continue on that route, then let us not pretend we are undergoing significant reform.

Moreover, the Secret Service has responsibilities ranging from investigations of Presidential threats to protection at major events that go to the heart of the Department of Homeland Security's mission. The Secret Service is a vital part of the mission of securing the homeland. That is why it was moved into the Department of Homeland Security, and that is why if we are going to mirror the Department, it

should be under the jurisdiction of whatever committee is given responsibility for homeland security.

There are functions of the Secret Service that clearly fit with the core mission of the Department of Homeland Security. Indeed, at a hearing shortly before passage of the legislation setting up the new Department of Homeland Security, the Director of the Secret Service testified, explaining why it was important to include the Secret Service in the new Department. He stated:

Our core philosophy mirrors that of the new Department of Homeland Security. Like our agency, the new department will be prepared to respond to incidents and infiltration. Our common goal is to anticipate and prepare through robust threat assessments and analyses of intelligence information that is made available to us.

He also stated:

Beyond our protective responsibilities, the Secret Service is a major contributor to other aspects of our homeland security.

He concluded his testimony by stating:

It is clear the Department of Homeland Security will be built on the pillars of prevention and protection. These are the very words found throughout our strategic plan. They define the mission and the culture of the United States Secret Service.

I know that the Secret Service enforces certain criminal laws, and it has a good relationship with the Judiciary Committee. However, the fact is, it is part of the Department of Homeland Security. If we are going to have a committee responsible for the Department of Homeland Security, we should do that. We should not exclude key agencies. Otherwise, we are defeating the whole purpose of creating new jurisdiction and trying to consolidate oversight and responsibility for the Department of Homeland Security.

I yield the floor.

Mr. LEAHY. I wonder if the distinguished Senator from Maine would yield for a question?

Ms. COLLINS. I have yielded the floor.

Mr. LEAHY. I ask the distinguished Senator from Maine, we have the Secret Service in Homeland Security, but carved out is a separate entity, partly because of their criminal jurisdiction and the fact that their oversight is in the Judiciary Committee. I would ask if by the same logic that because they are there, they must suddenly come under this new committee, do we also bring the Attorney General's office under this new committee for oversight because they prosecute the cases brought by the Secret Service? Do we bring the U.S. attorneys? Maybe the Attorney General and the U.S. attorney should be brought into this new homeland security committee for confirmation, for oversight, or budget and everything else because, after all, they have criminal jurisdiction and the Secret Service goes to them.

Or do we have a bifurcated thing where the Secret Service criminal jurisdiction, which does come under the

Department of Justice and the U.S. attorneys for prosecution, suddenly say: Well, we can watch what they are doing in the Judiciary Committee, but maybe we shouldn't be watching because maybe it should be somewhere else where there is none of the 56 years of experience watching over it?

It seems to me what we are doing is trying to set up an organizational chart for the sake of organizational charts. I might say, maybe this is one of the problems with putting this thing together behind closed doors, without the input of the people most directly involved, without any hearings. And suddenly as the airplanes are revving up and the smell of jet fuel is in the air, we are saying: Quick, we have to do it, forget the 56 years, forget what has worked. Forget the fact that it is working. Forget the fact that it works extremely well. Forget all those criminal cases that they handle. We have an idea to fill out some new chart and, therefore, go forward with it. Forget the proud tradition of the Secret Service. Forget all the experience, all the things they have done. Forget the prosecutors they have to go to. But, by golly, we are going to have a nice new chart.

There is more I could say but I shan't. I think maybe we ought to vote and see where we stand.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, the Senator from Vermont raised a rhetorical question, or at least I think it was a rhetorical question. He said, Should we put the Office of the Attorney General under the jurisdiction of the Governmental Affairs Committee? Of course, the answer to that is obviously no, because the Office of the Attorney General is not part of the Department of Homeland Security.

The issue before us is really straightforward and simple. Do we want to follow the recommendations of the 9/11 Commission and Secretary Ridge and the rest of the administration and have a single authorizing committee in the House and the Senate with responsibility for the Department of Homeland Security, not responsibility for 38 percent of the Department of Homeland Security, not responsibility for 8 percent of the employees of the Department of Homeland Security? No, there isn't a recommendation to have agencies that are not part of the Department added to the jurisdiction.

The idea is to have a single authorizing committee in the House and the Senate to mirror the agencies that are in the Department of Homeland Security, to consolidate jurisdiction between the House and Senate, which is spread over 88 committees and subcommittees; so that the officials of the Department don't have to answer to so many congressional overseers that they are prevented from devoting as much attention as they need to to do their duties. That is what this debate is about.

Mr. LEAHY. Mr. President, the Senator from Maine, in asking the question actually gives my answer, because if the issue is simply where are they sitting, that determines jurisdiction. The Secret Service, for years and years, would have been under the jurisdiction of the Finance Committee because they are in the Treasury Department. They have been in the Treasury Department forever. But the jurisdiction has been under the Judiciary Committee because of their unique law enforcement aspects.

Now, the Senator from Maine says, quite properly, we should not put the Attorney General under this committee, even though these various groups, various entities for criminal prosecution have to go to the U.S. attorney but because the Attorney General is under the Department of Homeland Security.

By the same token, when the Secret Service was in Treasury, everybody knew, because of the criminal jurisdiction and involvement, they would be under the jurisdiction of a committee that deals all the time with criminal law, with the courts, and with title 18. This is title 18 in my hand, the Federal Criminal Code and Rules. Taking up the whole middle part of this is Secret Service jurisdiction.

Do we want to make them better? Do we want proper oversight? Do we want to say, by golly, look at this, we came out with this closed door item and put it out here and immediately the Senate has saved the world—no hearings, nothing? Here it is.

I am far more interested in having the Secret Service be the best it can be. I am far more interested in making sure we are giving them the proper criminal codes they need. I am far more interested in making sure, when they are investigating crime, they can do their best.

I think what Senator HATCH and I are trying to save the Senate from doing is making a very serious mistake with the Secret Service, just to fill out an organizational chart.

I see the distinguished senior Senator from Utah in the Chamber. I will yield in a moment.

But I point out, in talking about the number of places Secretary Ridge may have to appear, he has only come to the Judiciary Committee once in each of the last 2 years. It is not like he is coming often.

But the point is, the Secret Service has 56 years of experience of making sure it works right. We are going to throw that overboard because we got this brand-new color-coded organizational chart for the Senate. My goodness, ladies and gentlemen, you can rest easy tonight, there will be no more terrorism because the Senate has a new organizational chart. Whoop-de-do.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I don't think there is anybody on this floor who respects the chairlady of the appropriate committee and the ranking

OCTOBER 7, 2004

member more than I do. I think the world of both of them. I think they deserve a commendation for what they have done. I just cannot pay enough tribute to them. I know they are sincere.

I want everybody here to know that I don't have an ax to grind. I have a reputation for trying to do what is right. I am very sincere about this. It is not a question of trying to retain jurisdiction for retention's sake. This is really important. I believe we should have a committee on homeland security. I believe it should have jurisdiction over much of the area that applies to terrorism. But I also sincerely believe—and I think the case is overwhelming—that most of what the Secret Service does is pursuant to the Criminal Code.

The Judiciary Committee is specifically and especially geared to handle oversight of those problems. You don't have to completely develop a whole new system of oversight. It has worked marvelously well for 56 years.

At the end of the day, the Secret Service is a criminal investigative agency. Sure, they may have some peripheral and even very important interests in terrorism, but their interests go way beyond that. Almost everything they do comes because of what the Criminal Code tells them to do.

The Secret Service's criminal authority is much broader than homeland security and counterterrorism. Let me review some of the longstanding criminal laws. I will just review some of them. These are criminal statutes and they are important, and the Secret Service works pursuant to these statutes.

It has jurisdiction to investigate acceptance of loan or gratuity by financial institution examiners; punishment for section 213, the prior section I mentioned; section 471, counterfeiting U.S. obligations; section 472, uttering counterfeit securities; section 473, dealing in counterfeiting obligations of securities; section 474, possession of device to counterfeit obligations; section 476, theft of tools used in counterfeiting obligations; section 477, selling of tools for counterfeiting obligations; section 478, counterfeiting of foreign obligations; section 479, uttering counterfeit foreign obligations; section 480, possessing counterfeit foreign obligations. This is all pursuant to title 18 USC. Section 481, possession of electronic images for counterfeiting foreign obligations; section 482, forgery or counterfeiting bank notes; section 483, uttering counterfeit foreign bank notes; section 484, fraudulently combining multiple U.S. instruments; section 485, counterfeiting U.S. coins; section 486, unauthorized passing of U.S. coins; section 487, making or possessing counterfeit dyes for coins; section 488, making or possessing counterfeit dyes for foreign coins; section 489, making or possessing a likeness of U.S. or foreign coins.

I will not read the rest. But it goes right down the Criminal Code where

they spend almost all their time. If you ask virtually anybody in the Secret Service, they believe the jurisdiction ought to be kept with the Judiciary Committee.

I do not think there is any question. I know the head of the Secret Service does. There is no question they have overlapping jurisdiction in some areas where they can help with terrorism, but that is a modest amount of what they do.

Most all of what they do involves technical Criminal Code laws, and that is judiciary, and the Judiciary Committee is especially equipped to handle those type of activities.

The Judiciary Committee has a long history of balancing civil liberties with law enforcement obligations. The Secret Service carries out a host of law enforcement activities.

Let's face it, the Judiciary Committee is uniquely qualified and uniquely structured to vigorously oversee and monitor this balance. My office received a letter from organizations from the ACLU to the American Conservative Union expressing civil liberties concerns with this reorganization.

Look, I understand my two colleagues and their desire to try to bring everything together, but if you use this as an excuse to do that—in fact, one agency or another might have something to do with terrorism, but that is not its major obligation—my gosh, you might as well take over the whole Government.

I think this works well. If it "ain't" broke, why are we trying to fix it? I believe very sincerely that my two esteemed colleagues, as much as I love and respect them, are wrong on this. I can live with anything the Senate decides to do, but I think it would be tragic if the Secret Service is moved over to this Department and this committee that is not particularly the committee that should have jurisdiction over it and over the work that the Secret Service does.

I do not want to keep the Senate any longer. All I can say is, I would feel badly if this amendment is not agreed to by the Senate. It should be agreed to by the Senate. I am prepared to vote on it.

Mr. LEAHY. Mr. President, earlier we discussed Judiciary Committee jurisdiction.

I ask unanimous consent that this letter be printed in the RECORD.

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

Hon. BILL FRIST,
*Capitol Building,
Washington, DC.*
Hon. TOM DASCHLE,
*Capitol Building,
Washington, DC.*
Hon. MITCH MCCONNELL,
*Capitol Building,
Washington, DC.*
Hon. HARRY REID,
*Capitol Building,
Washington, DC.*

DEAR SENATORS: We write to raise serious concerns about a provision of S. Res. 445, the McConnell-Reid Senate Intelligence and Homeland Security Oversight Reform Proposal, that would create a new Homeland Security and Governmental Affairs Committee.

While we commend the Senate for taking strong actions to revamp congressional oversight of the Executive Branch's intelligence and homeland security functions, we strongly oppose any action to remove from the Judiciary Committee its jurisdiction over criminal law, law enforcement, domestic intelligence activities, domestic surveillance authorities, the Federal Bureau of Investigation, the Department of Justice, and investigative guidelines issued by the Attorney General. As organizations with longstanding expertise and experience in these areas, we believe it is essential at this critical time in our Nation's history that the Judiciary Committee retain its jurisdiction over these issues and ensure continuity of congressional oversight. Its members and staff have developed years of experience in these complex legal issues, which have serious implications not only for safety and security but also for civil liberties and civil rights. In particular, the Judiciary Committee's deep substantive expertise and historical role in civil liberties issues is increasingly important as government powers expand to fight terrorism.

We urge you to clarify that jurisdiction over these law enforcement and domestic intelligence issues, including oversight of the FBI and Justice Department, remain with the Senate Judiciary Committee.

Sincerely,
American Booksellers Foundation for Free Expression.
American Civil Liberties Union.
American Conservative Union.
American Immigration Lawyers Association.
American Library Association.
Bill of Rights Defense Committee.
Center for American Progress.
Center for Democracy and Technology.
Center for National Security Studies.
Citizens for Health.
Cyber Privacy Project.
Free Congress Foundation.
Friends Committee on National Legislation (Quaker).
Human Rights Watch.
National Association of Criminal Defense Lawyers.
National Coalition of Mental Health Professionals and Consumers, Inc.
People for the American Way.
Private Citizen, Inc.
The Rutherford Institute.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, let me sum up. This amendment poses the question, Are we really going to do what the 9/11 Commission asked us to do, which is to create a committee to oversee the Department of Homeland Security? That is what it is all about.

We reorganized the Federal Government executive branch to better protect our homeland security. The Commission says we have to reorganize our

oversight to be able to protect our homeland security. That is what the proposal of the Commission is all about.

We are getting to a point, as we begin to take all these pieces out, where it is a sham, as I have said before. What we are calling a homeland security committee is not really. It is as if you had a cat, and you put a little necklace around its neck with a sign that said, "I am a horse," and expected people to think the cat was a horse.

We are at a point now where we are calling this committee the homeland security committee, and it is not.

Let me go to the numbers in closing. There are 175,000 employees in the Department. The McConnell-Reid proposal takes out the Coast Guard and TSA. That is 97,000 of those 175,000 employees gone. Earlier today, my friends from the Judiciary Committee took back Immigration, Customs enforcement, Customs, and border protection, another almost 19,000 employees gone from what is supposed to be the oversight committee of homeland security.

It was said earlier that what is left is a lot in our committee—three of the four directorates. OK, I know the number of employees does not say everything, but it does say a lot. Three directorates left in the oversight responsibility of the committee we are calling the homeland security committee, three directorates from DHS: emergency preparedness, 4,800 employees; intelligence analysis and infrastructure protection, 700 employees; science and technology, about 200 employees. We have about 5,700 employees left in the three directorates that come under the new committee on homeland security from the Homeland Security Department. That is 5,700 out of a total of 175,000 in the Department.

Let me give this stunning statistic, Mr. President. Are you ready? The Secret Service itself has 6,381 employees. That is about 500 more employees than in the three directorates that are left clearly within the jurisdiction of the committee being called the homeland security committee.

As I have said, if you want to give the responsibility for oversight of homeland security to another committee, do it. If you want to create a new committee on homeland security, do it. But if you are going to call it a committee on homeland security, then give it jurisdiction over homeland security.

A lot of the reality of the promise has already been taken away. I hope my colleagues will draw a line here and say that the Secret Service, which is part of the Department of Homeland Security for very good reasons that I enumerated earlier, should remain under the jurisdiction for oversight of what we will call the Department of Homeland Security.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, have the yeas and nays been ordered on the Hatch amendment?

The PRESIDING OFFICER. They have not.

Mr. McCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 4037. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS), the Senator from New Mexico (Mr. DOMENICI), and the Senator from New Hampshire (Mr. GREGG) are necessarily absent.

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. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 41, as follows:

[Rollcall Vote No. 202 Leg.]

YEAS—54

Allard	Crapo	Leahy
Allen	DeWine	Lott
Baucus	Dodd	Mikulski
Bennett	Dorgan	Miller
Biden	Durbin	Murkowski
Bingaman	Feingold	Reed
Boxer	Feinstein	Roberts
Brownback	Grassley	Sarbanes
Bunning	Hagel	Schumer
Byrd	Harkin	Sessions
Campbell	Hatch	Shelby
Cantwell	Hutchison	Smith
Clinton	Inouye	Specter
Cochran	Jeffords	Stabenow
Conrad	Johnson	Stevens
Cornyn	Kennedy	Thomas
Corzine	Kohl	Warner
Craig	Kyl	Wyden

NAYS—41

Akaka	Enzi	McConnell
Alexander	Fitzgerald	Murray
Bayh	Frist	Nelson (FL)
Bond	Graham (FL)	Nelson (NE)
Breaux	Graham (SC)	Nickles
Burns	Hollings	Pryor
Carper	Inhofe	Reid
Chafee	Landrieu	Rockefeller
Coleman	Lautenberg	Santorum
Collins	Levin	Snowe
Daschle	Lieberman	Sununu
Dayton	Lincoln	Talent
Dole	Lugar	Voinovich
Ensign	McCain	

NOT VOTING—5

Chambliss	Edwards	Kerry
Domenici	Gregg	

The amendment (No. 4037) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mr. TAL-ENT). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. 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. McCONNELL. Mr. President, Senator ROBERTS has a couple of amendments that he believes have been cleared with everyone interested in them.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Thank you, Mr. President. The two leaders have indicated they want to press forward on this resolution tonight. We still have a number of amendments. They are completing in the House, as we speak, the FSC conference report, the conference dealing with the drought aid and the hurricane assistance, and we have to deal with those in the next few days, so we need to finish this bill tonight if at all possible. The two leaders have instructed their two loyal assistants to move forward on this resolution, and that is what we are going to do. So everyone who has amendments should bring them forward. If there is a time when no one is offering amendments, we will move to third reading on the bill.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I have two amendments to offer. I wish to offer them in sequence, taking 2 minutes at most for each one. I propose to only give a very brief description of each amendment.

AMENDMENT NO. 4019 TO AMENDMENT NO. 3981

Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 4019.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 4019 to amendment No. 3981.

Mr. ROBERTS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify staff provisions)

In section 201, strike subsection (g) insert the following:

(g) STAFF.—Section 15 of S. Res. 400 is amended to read as follows:

“SEC. 15. (a) In addition to other committee staff selected by the select Committee, the select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member's designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

“(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated

representative to the select Committee. The designated representative shall have office space and appropriate office equipment in the select Committee spaces. Designated personal representatives shall have the same access to Committee staff, information, records, and databases as select Committee staff, as determined by the Chairman and Vice Chairman.

“(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee security clearance requirements for employment by the select Committee.”.

Mr. ROBERTS. Mr. President, this amendment simply clarifies language in the McConnell-Reid amendment regarding the staffing of the Intelligence Committee.

The amendment ensures that the professional staff of the Intelligence Committee and the personal staff now designated by Members to serve on the committee will be provided similar access to committee resources and information as determined by the chairman and vice chairman.

I urge my colleagues to support this amendment. I thank Senator KYL for his assistance. It provides modest but important clarity to the proposals of Senator MCCONNELL and Senator REID.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Kansas.

The amendment (No. 4019) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 4018 TO AMENDMENT NO. 3981

Mr. ROBERTS. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 4018.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 4018 to amendment No. 3981.

Mr. ROBERTS. Mr. President, I thank the clerk and 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:

(Purpose: To clarify the nominee referral provisions)

In section 201, strike subsection (h) and insert the following:

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

“SEC. 17. (a) The select Committee shall have final responsibility for reviewing, holding hearings, and reporting the nominations of civilian persons nominated by the President to fill all positions within the intelligence community requiring the advice and consent of the Senate.

“(b) Other committees with jurisdiction over the nominees’ executive branch depart-

ment may hold hearings and interviews with such persons, but only the select Committee shall report such nominations.”.

AMENDMENT NO. 4018, AS MODIFIED

Mr. ROBERTS. Mr. President, this amendment makes explicit what is already implicit in the McConnell-Reid substitute amendment; namely, that the Intelligence Committee will have explicit jurisdiction for the consideration and reporting of nominees for civilian intelligence community positions.

I urge my colleagues to support the amendment and hope the managers will agree to incorporate the modification.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

In section 201, strike subsection (h) and insert the following:

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

“SEC. 17. (a) The select Committee shall have jurisdiction reviewing, holding hearings, and reporting the nominations of civilian persons nominated by the President to fill all positions within the intelligence community requiring the advice and consent of the Senate.

“(b) Other committees with jurisdiction over the nominees’ executive branch department may hold hearings and interviews with such persons, but only the select Committee shall report such nominations.”.

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

The amendment (No. 4018), as modified, was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, I also understand that we are close to an agreement between the interested parties on the Intelligence Committee and the Armed Services Committee on the important sequential referral issue that has been under discussion all day long with the principals of those two committees. We are hoping to be able to deal with that amendment shortly.

If anyone else has an amendment they want to offer, now is the time. The majority leader and the minority leader have indicated we are going to press into the evening and finish this proposal. If you have an amendment, we urge you to come over and offer it.

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. MCCONNELL. 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. MCCONNELL. Mr. President, I am told by Senator ROCKEFELLER that the sequential referral issue that has been under discussion all day has now

been worked out, and he is prepared to offer it.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

AMENDMENT NO. 4030, AS MODIFIED, TO AMENDMENT NO. 3981

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 4030 at the desk and send a modification to the desk and ask that it be considered.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is set aside. The clerk will report the amendment, as modified.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER] proposes an amendment numbered 4030, as modified, to amendment No. 3981.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment, as modified, is as follows:

(Purpose: To clarify the jurisdiction of the select Committee on Intelligence)

At the end of section 201, insert the following:

(i) JURISDICTION.—Section 3(b) of S. Res. 400 is amended to read as follows:

“(b)(1) Any proposed legislation reported by the select Committee except any legislation involving matters specified in clause (1) or (4)(A) of subsection (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such standing committee; and any proposed legislation reported by any committee, other than the select Committee, which contains any matter within the jurisdiction of the select Committee shall, at the request of the chairman of the select Committee, be referred to the select Committee for its consideration of such matter and be reported to the Senate by the select Committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such committee.

“(2) In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed in this subsection, such Committee shall be automatically discharged from further consideration of such proposed legislation on the 10th day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise, or the Majority Leader or Minority Leader request, prior to that date, an additional five days on behalf of the Committee to which the proposed legislation was sequentially referred. At the end of that additional five day period, if the Committee fails to report the proposed legislation within that five day period, the Committee shall be automatically discharged from further consideration of such proposed legislation unless the Senate provides otherwise.

“(3) In computing any 10 or 5-day period under this subsection there shall be excluded from such computation any days on which the Senate is not the session.

"(4) The reporting and referral processes outlined in this subsection shall be conducted in strict accordance with the Standing Rules of the Senate. In accordance with such rules, committees to which legislation is referred are not permitted to make changes or alterations to the text of the referred bill and its annexes, but may propose changes or alterations to the same in the form of amendments."

Mr. ROCKEFELLER. Mr. President, strengthening the two congressional Intelligence Committees was a fundamental part of the 9/11 Commission recommendations for improving congressional oversight. This is more of that. They made many recommendations, most of which were included in whole or in part in our resolution.

One area where the Commission did not make a specific recommendation but which is very important was the question of shared jurisdiction between the Intelligence Committee and other committees, specifically the Armed Services Committee. Under the current structure, other committees have the automatic right to receive sequential referral of any legislation reported by the Intelligence Committee if it touches on their jurisdiction. And the Intelligence Committee enjoys a reciprocal right of referral. In practice, this authority has been exercised hardly at all—very rarely, infrequently—at least by the Intelligence Committee, but it has become a bit of an annual routine for the Armed Services Committee to seek sequential referral of the intelligence authorization bill. This practice is based upon legitimate interests on the part of the Armed Services Committee. But the system has worked to the detriment of the Intelligence Committee and effective oversight. I will try to explain why.

Every year the intelligence authorization bill is referred to the Armed Services Committee for a period of not more than 30 days of legislative session. The Armed Services Committee almost always holds the bill for a full 30 days which can, in fact, work out to 2 calendar months, when you really carry that math out. This allows them to review the bill, which is important and proper, but it puts the Intelligence Committee far behind in the annual legislative process. By which I mean by the time the bill is reported, after a sequential referral by the Armed Services Committee, acted on by the Senate, and negotiated with the House, the annual appropriations bill often is already enacted into law.

For example, this year our authorization bill has not been dealt with. The appropriations bill has been passed in the Senate. This is an awkward way to do business. So we too often have been unable to provide the appropriators with the benefit of the work of the intelligence oversight committees. Timely passage of the intelligence authorization bill would become even more critical with the creation of a new appropriations subcommittee on intelligence.

In order for this new system to work, the Intelligence Committee has to be

integral to the whole process. That is the whole point. We have to make changes in the way the sequential referral authority works. So Senator EVAN BAYH offered an amendment to completely strike the language that provides for automatic sequential referral, and that is certainly one way to approach it. It has some downsides.

The Armed Services Committee and other committees have legitimate interests that need to be protected. Doing away with the provision also would remove the Intelligence Committee's ability to request the referral of legislation reported by other committees when that legislation relates to intelligence matters.

Finally, completely removing the referral authority would have the inevitable result—and this is sort of the soul of this institution—of alienating the Intelligence and Armed Services Committees. This is something we cannot afford and must not do. The committees have to work together constantly on a wide range of issues.

To achieve what Senator BAYH and myself and others want, all of us seeking more effective intelligence oversight, we have worked out a compromise, I am very happy to report. The amendment I have offered significantly reduces the amount of time that another committee has available to review legislation reported by the Intelligence Committee and vice versa. That time goes from 30 days of legislative session down to 10.

But hold on. The amendment also makes clear that the clock does not begin until the committee receiving our bill has all the relevant classified annexes available for review which could be thousands of pages.

According to our compromise, an additional 5 days of sequential referral can be added if requested by the majority or the minority leaders. That struck people as wise and useful. So when there is a legitimate need to have more scrutiny by the Armed Services Committee, they would make that request, and it would, of course, be granted.

This is made easier under the new structure because the chairman and the ranking member of the Armed Services Committee are now ex officio members of the new Intelligence Committee. We welcome their participation. I don't think it will do anything but strengthen our committee more. In fact, I think we will end up with five members of the Armed Services Committee on our Intelligence Committee, and that is good.

So I thank Senator BAYH for bringing this issue to the attention of the Senate. I thank Senators LEVIN and WARNER for their willingness and insistence on finding a middle ground. I really mean I thank them. I thank both the majority and minority leaders who were instrumental in reaching this agreement because we were back and forth all day long.

Finally, I thank, of course, my chairman, Senator ROBERTS, for his help in

crafting this compromise. I urge my colleagues to support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. The amendment has been modified?

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. REID. I have spoken to the co-manager of this bill. We have no objection. We appreciate very much the time and effort of so many involved to get us to this point.

I urge that the amendment be accepted.

The PRESIDING OFFICER. Does any Senator seek recognition on the amendment?

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

The amendment (No. 4030), as modified, was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have tried to be silent tonight. If anyone wants to come and offer an amendment, I will sit down.

People have made statements asking: What is this committee going to have; you have taken everything from them. I am going to read a few of the most important things they have to do. This committee should not be concerned only with the number of employees. They should be concerned with responsibilities.

The first directorate, the Directorate for Information Analysis and Infrastructure Protection: the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection. In general: There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection.

Responsibilities: The Under Secretary shall assist the Secretary in discharging this responsibility. The Assistant Secretary for Information Analysis is under the control of this committee.

The Assistant Secretary for Information Analysis: There shall be in the Department an Assistant Secretary for Information Analysis who shall be appointed by the President.

The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary.

The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

Responsibilities of the Under Secretary: To access, receive, and analyze

law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies, including law enforcement agencies, and private sector entities, and to integrate such information in order to—A, identify and assess the nature and scope of terrorist threats to the homeland; B, detect and identify threats of terrorism against the United States; C, understand such threats in light of actual and potential vulnerabilities to the homeland.

That sounds to me like it is more than nothing. This is the policy of our country over which they have jurisdiction.

No. 2, to carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States, including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks.

No. 3, to integrate relevant information, analyses, and vulnerability assessments, whether such information, analyses, or assessments are provided or produced by the Department or others, in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

No. 4. To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

No. 5. To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

No. 6. To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

No. 7. To administer the Homeland Security Advisory System, including—

A. exercising primary responsibility for public advisories related to threats to homeland security; and

B. in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

No. 8. To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence

information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

No. 9. To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

No. 10. To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

No. 11. To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to the threats of terrorism against the United States.

No. 12. To ensure that—

A. any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

B. any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

No. 13. To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

No. 14. To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

No. 15. To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

A. are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

B. treat information in such databases in a manner that complies with applicable Federal law on privacy.

No. 16. To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties

and the optimal utilization of information received from the Department.

No. 17. To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

No. 18. To provide intelligence and information analysis and support to other elements of the Department.

No. 19. To perform such other duties relating to such responsibilities as the Secretary may provide.

Mr. President, this is a big-time focus on the administration of this new committee. This is only part of it. For someone to come to the floor and say they have not given us anything, I have read some of the most important aspects of setting the policy of this country as it relates to defeating terrorism. They may not have the right number of employees, but their responsibilities for setting the policy of this country are in that committee. Anyone who thinks not, let them see what we have done. This is only the first directorate. There are others. I have not completed reading what is in this directorate.

Here are the agencies covered: The Department of State, the CIA, the FBI, the National Security Agency, the National Imagery and Mapping Agency, and the Defense Intelligence Agency.

I have only read a few things of the first directorate. If they had nothing else to do during the legislative year than deal with what I have completed reading, it would be a massive undertaking. In addition to that, you see, we have not taken any of the responsibilities away from the Governmental Affairs Committee. They had huge responsibilities before we gave them this. For people to come on this floor and whine and cry about they don't have anything to do, it is not in keeping with what we have done with this committee.

I will go to one other directorate. I have only read a few pages from this directorate. I have read three pages. I have about 15 or 20 more here. I don't feel that I want to spend my time reading that, other than to say they have tremendous responsibilities.

Under the Office of Science and Technology, they have another big job. This is to "carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access by Federal, State, and local law enforcement agencies."

That is another huge responsibility they have been given.

In carrying out its mission, the Office shall have the following duties:

No. 1. To provide recommendations and advice to the Attorney General.

No. 2. To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

No. 3. To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 14-113) for, and

test and evaluate law enforcement technologies that may be used by Federal, State, and local law enforcement agencies.

No. 4. To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

No. 5. To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

No. 6. To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

A. weapons capable of preventing use by unauthorized persons, including personalized guns;

B. protective apparel;

C. bullet-resistant and explosion-resistant glass;

D. monitoring systems and alarm systems capable of providing precise location information;

E. wire and wireless interoperable communication technologies;

F. tools and techniques that facilitate investigative and forensic work, including computer forensics;

G. equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

H. guides to assist State and local law enforcement agencies;

I. DNA identification technologies; and

J. tools and techniques that facilitate investigations of computer crime.

No. 7. To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

No. 8. To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels as requested.

No. 9. To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

No. 10. To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

No. 11. To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

No. 12. To support research fellowships in support of its mission.

No. 13. To serve as a clearinghouse for information on law enforcement technologies.

No. 14. To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

No. 15. To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

No. 16. To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

Mr. President, that is a pretty heavy load. I would say if they think they have more time than this, then they have a lot of time. This is what we believe we have given them, partially. And for anyone to come here and say that these three directorates, plus the fourth—this doesn't give them anything to do, it may not be the number of employees, but there is a large number of employees in the TSA.

They have so much. Committees are there to set policy. That is the whole purpose of it, and I have laid out policy directions that they have on which it would take forever for this body to hold hearings.

It is very unfair to Senator MCCONNELL and me and the task force generally to say we did not give them anything. We gave them so much you need a semitruck and trailer to haul the responsibilities alone. I have read only part of them.

Senator MCCONNELL will be on the floor shortly. If there are no other amendments, we will go to final passage. Everybody should know it is 8:30 at night, and we waited all day. We want to be patient. As I indicated, we are going to do our very best to finish this legislation as soon as we can.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. 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. 3986 TO AMENDMENT NO. 3981

Mr. MCCONNELL. Mr. President, there is an amendment at the desk by Senator BYRD, No. 3986. I ask that it be considered. It has been cleared on both sides.

The PRESIDING OFFICER. Without objection, the pending amendments are laid aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for Mr. BYRD, proposes an amendment numbered 3986 to amendment No. 3981.

Mr. MCCONNELL. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 3986

At the appropriate place in Sec. 402(b) after the word "matters," insert the following: ". . . as determined by the Senate Committee on Appropriations"

Mr. HARKIN. I didn't hear the request.

The PRESIDING OFFICER. There was a request to dispense with further reading of the amendment.

Mr. HARKIN. What amendment?

Mr. MCCONNELL. An amendment by Senator BYRD relating to the resolution we are working.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3986) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 4038 TO AMENDMENT NO. 3981

Mr. MCCONNELL. Mr. President, there is an unnumbered amendment at the desk by Senator SHELBY regarding the National Flood Insurance Act.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for Mr. SHELBY and Mr. SARBANES, proposes an amendment numbered 4038 to Amendment No. 3981.

Mr. MCCONNELL. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To retain jurisdiction over the National Flood Insurance Act of 1968, with the Committee on Banking, Housing, and Urban Affairs)

At the appropriate place, insert the following: "Provided, That the jurisdiction provided under section 101(b)(1) shall not include the National Flood Insurance Act of 1968, or functions of the Federal Emergency Management Agency related thereto."

Mr. MCCONNELL. 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. MCCONNELL. 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. MCCONNELL. I am aware of no opposition to the Shelby amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4038) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

Mr. MCCONNELL. 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 (Mr. ENSIGN). Without objection, it is so ordered.

Mr. REID. Mr. President, the distinguished Senator from Delaware has an amendment to offer. He has indicated

he would be willing to enter into a time agreement which, as far as I am concerned, is fine. He has indicated he would take—

Mr. BIDEN. Mr. President, unless someone else wishes to speak on this, 15 minutes. I think I can do it in 10, but let's say 15 minutes to protect myself.

Mr. REID. And whoever wishes to speak against him have 15 minutes, and Senator BIDEN have 5 minutes to close if somebody speaks following that.

Would that be appropriate?

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Could we be informed as to the topic?

Mr. REID. The topic of it is Senator BIDEN and Senator LUGAR wish to add the chairman and ranking member of the Foreign Relations Committee as ex officio members of the Intelligence Committee, having no voting rights or the ability to help establish a quorum.

Ms. COLLINS. I thank the Senator for the explanation.

Mr. REID. Mr. President, I ask unanimous consent that Senator BIDEN have 15 minutes, that someone opposing his amendment have 15 minutes, and Senator BIDEN have 5 minutes to close the debate prior to a vote on the amendment, and that no amendments to the amendment be in order prior to a vote on the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Delaware.

AMENDMENT NO. 4021 TO AMENDMENT NO. 3981

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments are laid aside. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN], for himself and Mr. LUGAR, proposes an amendment numbered 4021 to amendment No. 3981.

Mr. BIDEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 5, after line 3, insert the following: "(C) The Chairman and Ranking Member of the Committee on Foreign Relations (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum."

Mr. BIDEN. Mr. President, this is very straightforward. Right now, the chairman and ranking member of the Armed Services Committee are ex officio members of the Intelligence Committee, with no voting rights, no requirement that they be there to make a quorum. Quite frankly, they are there to be able to listen when they seek to do that.

Senator LUGAR and I are proposing the same exact status be made available for the chairman and ranking

member of the Foreign Relations Committee. I know the argument will be, why don't we make everybody, every chairman, every ranking member, ex officio members? But the Foreign Relations Committee does need access to this information.

I know it will come as a shock, but because of the necessary requirement of focusing on certain subject matters, which hopefully we gain some expertise on, the Foreign Relations Committee and its chairman and ranking member, hopefully, have some insights occasionally which other Members may not have because they do not spend the time on that issue. Just as in the Armed Services Committee, the ranking member and the chairman may have access to information that is not intelligence information but is information that would shed light upon judgments being made by the Intelligence Committee as a consequence of information made available by the CIA and other intelligence operations. Because, as we all know, intelligence operations can have major impacts for good or for ill on American foreign policy.

I am necessarily, as we all are, restrained from giving contemporary examples of that, but I have been here a long time and go back to the period of the Cold War. I sat on the Intelligence Committee at the time, but I was not a ranking member. I was on the Intelligence Committee for 10 years, I think as long as anybody who served in this body. There may be somebody who served longer than me on that committee. But one of the things I learned is occasionally the Intelligence Committee would come up with initiatives made available under our special rules, which are necessary, special rules that are applicable only to the Intelligence Committee, and access and brief only the Intelligence Committee, and many members on the committee would not be aware that there were totally different operations going on on a diplomatic front or on an arms control front or on a matter relating to national security that were not explicitly—explicitly—intelligence matters.

Let me give you a few examples without giving, obviously, the details, but generic examples. Intelligence collection and analysis are essential to the verification of compliance with arms control and nonproliferation agreements. A few years ago, we on the Foreign Relations Committee heard that a particular intelligence system that is important to that function—that is, collecting intelligence for compliance on nonproliferation treaties and arms control—we heard that function was in danger of being lost.

We took the initiative. We raised it with the Intelligence Committee because we had heard this. We let them know what we had heard to make sure the executive branch retained this particular system that we believed, in the Foreign Relations Committee, was essential to a matter relating to non-

proliferation, something that most of the members on the Intelligence Committee, understandably, serving on many committees other than Foreign Relations or Armed Services, did not see the particular relevance of. So when briefed by the Intelligence Committee, it seemed all right. It didn't seem like this particular system was critical for a foreign policy initiative that was underway and a treaty that existed. And by the way, we only heard about it from someone in the executive branch who had made it known to a member of the Foreign Relations Committee.

Intelligence is also needed to give warning of new dangers and opportunities around the world. That may require different capabilities from those of us who serve on the Armed Services Committee or who served in the Armed Services. The Armed Services Committee rightly worries about intelligence support for military operations. Why is that unrelated to major diplomatic operations? That can have as much consequence on American security as tactical military operations.

The Foreign Relations Committee has a concern to ensure that there is a balance, that U.S. intelligence resources are not devoted primarily or overwhelmingly to tactical targets. My friend, the chairman of the committee, may disagree with me, but if I translate that, we only have so many assets that can be brought to bear. If I can make an analogy to the FBI, there are only 11,600 FBI agents, I think maybe 11,800. By the way, I might note, before 9/11 there were only 11,300. So we haven't done much there.

But let's assume we say what is going on right now. There is a decision being made that those agents should focus on counterterrorism. That is a legitimate issue. But what about the Mafia? What about organized crime units that deal in drugs that are not involved in terror? It is a legitimate issue to debate as to where the resources should be placed. Of that 11,800, you have about 4,000 people to be made available. You only have so many satellites. You only have so many agents. You only have so many resources. And, understandably, the Armed Services Committee wants to make sure those resources are focused on those tactical issues that are critically important.

I am not suggesting they should not. But there should be a voice there that is fully informed on the foreign policy side and has access that other members of the Foreign Relations Committee do not have because, as we all know, there are certain things that are made available to the Foreign Relations Committee, under our rules, only to the ranking member and only to the chairman and not the whole membership. And so absent having the fact that we have a member who may be brighter than and more informed than the chairman or the ranking member, they don't have the same access. They don't have the same access to all the diplomatic initiatives that are underway.

So if it makes sense to have Armed Services have tactical input here, it seems to me that this false separation of our foreign policy and our defense policy is one of the reasons we got ourselves in trouble to begin with. What are we doing now? We are agreeing to change the rules. We are about to change the rules, I hope, when we get into reorganizing this body. And we are going to say no longer is a member of the Foreign Relations Committee not able to serve on Armed Services, and no longer is a member of Armed Services not able to serve on the Foreign Relations Committee. Why? We are going around making sure that there are not stovepipes in the Intelligence Committee. We finally figured out there should not be stovepipes in terms of information and access and expertise as it relates to strategic doctrine, foreign policy, and tactical military operations. It is necessary.

I know of one matter on which we were kept in the dark for some months, then briefed earlier this year. And we have gotten no information since. We go back, the chairman and I, and say: We want more information.

They say: We already told the Intelligence Committee.

Then the Intelligence Committee tells us, which is literally true: We can come and read whatever it is that is there.

We all know how this place works. If you are not there in the middle of a hearing, if you are not there in that closed session, if you are not able to probe what is being said and have a perspective that may be different than the members of the committee, you are not likely to get the information.

That is especially true because if we gained information as ex officio members of the Intelligence Committee, we would be bound by the same nondisclosure rules that apply to other members of the Intelligence Committee. I found in my 10 years on the Intelligence Committee—I think that is longer served time than anybody who presently sits on the Intelligence Committee, or as long; I could be wrong about that—I found, as one of my friends said early on when I got put on that committee originally: I don't want to go on because it is like Pac-Man. They will tell you information that you otherwise could learn, but once they have told you, you can't disclose it because if you do, even though it appears in the New York Times, you have violated the law.

One of the things that is useful, I find that people are much more open with me as a junior member of the Intelligence Committee rather than a 31-year member of the Foreign Relations Committee. So we would be bound by the same rules. The Foreign Relations Committee also has a major concern for the safety and security of overseas embassies. We have shared that concern in this regard with the Intelligence Committee, which doesn't want to see intelligence personnel or infor-

mation put at risk by ineffective security in our embassies. We will be able to pursue that shared interest more effectively if our chairman and ranking member have ready access to the information on this security and security around the world.

And lastly, because I am getting pretty close here, the idea of being able to completely separate the functioning of our State Department and the functioning of the intelligence community in little neat boxes does not comport with reality. That is not how it works.

Other than the present chairman of the committee maybe not wanting the Government expense of adding two more chairs at the table, I quite frankly don't understand what the problem is.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who seeks time in opposition?

The Senator from Kansas.

Mr. ROBERTS. Mr. President, Senator BIDEN, in his usual flare, has offered an amendment to add the chairman and ranking member of the Senate Foreign Relations Committee as ex officio members of the Intelligence Committee. Under S. Res. 400, the organizing resolution for the Senate Intelligence Committee, eight members are already crossovers from other committees: two from the Judiciary Committee, two from Armed Services, two from Appropriations, and two from Foreign Relations. This is on purpose, because we believe these four committees should have crossover representation on the committee as it now stands. That is under S. Res. 400.

With all due respect, I think the members of the Foreign Relations Committee—Senator HAGEL, Senator ROCKEFELLER—do an excellent job in representing the Foreign Relations Committee on the Intelligence Committee. These crossover members do perform an invaluable service for the Intelligence Committee.

First, they ensure that the insights and perspectives of the other Senate committees are considered in the oversight of the intelligence activities of the United States. And second, they do already provide the Armed Services Committee and the Judiciary Committee and the Appropriations Committee and, yes, the esteemed members of the Foreign Relations Committee, with a view of the Intelligence Committee on issues that cross jurisdictional boundaries.

Now, under the McConnell-Reid reform proposal, the Intelligence Committee would grow by two ex-officio members already. The chairman and ranking member of the Armed Services Committee, the majority and minority leaders, already serve as ex-officio members of the committee. So following reform, the Intelligence Committee will be composed of eight crossover members. If Senator BIDEN's amendment is successful, there will be six nonvoting ex-officio members.

Now, any chairman or any ranking member who has crossover jurisdiction with any other committee, under this logic, should be an ex-officio member of the committee. After all, we need to keep an eye on one another. I have every trust in thee and me, but I wonder about thee. This is like Bob Barker: Come on down, be an ex-officio member of the Intelligence Committee. This is empowerment? This is further dissolution in terms of the responsibilities and cohesion and pertinence in regard to the Intelligence Committee.

Well, does the Intelligence Committee need that much oversight? Do the guaranteed crossover memberships not really protect sufficiently the equities of the Armed Services and Foreign Relations Committees?

As chairman of the Intelligence Committee, I said on the Senate floor earlier today that I often have concerns with the actions of the Armed Services Committee, Foreign Relations Committee, Appropriations Committee, and the Judiciary Committee—not necessarily in that order.

Given this logic, as such, given the proliferation of ex-officio memberships, perhaps the chairman and vice chairman of the Intelligence Committee should have ex-officio membership on other committees with jurisdiction that overlap the intelligence issues. What is good for the goose is good for the gander. I will leave Members to decide who is the goose and who is the gander. I focus on four primary committees: Armed Services, Foreign Relations, Appropriations, and Judiciary. I was going to have a second-degree amendment to say, why can't Senator ROCKEFELLER and I be ex-officio on these committees if they want to be ex-officio on our committee? I am not sure exactly what they would do other than monitor. We can certainly find something for them to do as they follow the work of the Intelligence Committee. I could go on. We could have ex-officio status for Senator ROCKEFELLER and myself for the new Homeland Security and Governmental Affairs, Banking, Finance, and Agriculture Committees. They all have cross-jurisdictional interests that touch on intelligence issues.

With only limited exceptions, all Senators have access to the information and activity of the Intelligence Committee. As chairman, I and the distinguished vice chairman, Senator ROCKEFELLER, have invited all Senators to come down and take a look at the classified portions of the Iraq review or any other Intelligence Committee product or holding. You are welcome. Just ask. Come on in.

The committee assists in the arrangement of classified briefings for all Senators by our intelligence agencies. Ex-officio membership is an unnecessary requirement and maintains the status of the Intelligence Committee as a weak child of the Senate.

Let's not have any further diminution of the Intelligence Committee. I

urge colleagues to oppose the Biden amendment.

I yield the floor.

Mr. BIDEN. Mr. President, you know, one of the problems of being around here a while is that you get in this body and you take things in a personal context. This has nothing to do with overseeing the Intelligence Committee. This is about expanding the capability of the Intelligence Committee.

Let me give my friend an example. I think he totally misses the point. He views this as an assault on the committee, a weakening. We are looking at them. I wonder if the Senator is aware that on the Foreign Relations Committee, there are numerous occasions when the ranking member and chairman are made aware by the Secretary of State and/or the President himself of a diplomatic initiative that they have no idea is about to be undertaken. I wonder if he knows that. It is not about the collection of intelligence, it is about a diplomatic initiative.

Let me make something up. Assume we were having great difficulty with Canada and they are our enemy. The President and Secretary of State call the chairman and ranking member of the Foreign Relations Committee down to get our judgment on whether, if we made the following entree diplomatically to a particular group in Canada—say, Quebec—we might be able to move the ball, and, at the same time, the Intelligence Committee is hearing information that is meat and potatoes, critically important, that there is an initiative underway in the Intelligence Committee to eavesdrop upon the undertakings of the very people who are about to make this initiative. It might be a useful thing, not an assault on the chairman or a diminution of his authority but another access and avenue of, hopefully, an informed person with a different perspective on something that is not banking, or it is not agriculture; it is serious stuff.

We tend, when we think about intelligence, to think only in terms of covert operations and the military. The fact is, that is part of our problem. This false separation of the conduct of American foreign policy and the policy of our strategic doctrine and our tactical doctrine is part of our problem. So this is not about sitting down and babysitting, or whatever the phrase used by my friend was; this is about being collaborative and letting them maybe know a perspective they didn't know.

Lastly, we all have access to all kinds of information. The problem is, unless we are essentially tasked with the responsibility and obligation, there is so much we have to do, we don't get to do it. I know what the chairman is worried about: this guy sitting next to me. I hired him in the Intelligence Committee 20 years ago. He sat there for 10 years. Now he works for me on the Foreign Relations Committee. There is a worry—not about my particular colleague on my left—but we

will have staff there that will do what they do in every committee if they attend a hearing: Mr. Chairman, this is about to happen, and it is a small thing and it totally conflicts with what you have been told by the Secretary of State and it may be useful.

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

Mr. BIDEN. Do I have any time beyond that?

The PRESIDING OFFICER. Five minutes to close.

Mr. BIDEN. The bottom line is, I wish we would get together in this place and stop viewing everything as sort of an assault on somebody else's jurisdiction. This is not about that. I got off of the Intelligence Committee. I was on the Intelligence Committee, the Budget Committee, the Foreign Relations Committee, and the Judiciary Committee. I concluded that I could not do all four of those, so I got off. I gave up the chairmanship of the Budget Committee because I didn't think I could do that and my job on the Foreign Relations Committee and the Judiciary Committee.

The strength of this institution lies in our willingness to recognize the contribution that each of us can make, the perspective we bring to the table, and, occasionally, just maybe a degree of expertise that maybe another colleague doesn't have. I clearly do not have the expertise of my colleague on the Intelligence Committee on intelligence matters now. He is fully, contemporaneously, totally informed. I don't have the competence on matters relating to the Banking Committee and the international banking system as the chairman and ranking member do because that is their obligation. I don't have the competence my friend from Alaska has on the Appropriations Committee and how all these pieces fit together, but I respectfully suggest that I might be able to contribute.

Whoever succeeds me—the Senator from Connecticut, I think, is next in line to be chairman or ranking member of the Foreign Relations—I respectfully suggest he has a perspective that might be useful.

Why do we view this in terms of competition? If you hang around this place long enough, you kind of go through a couple phases, one of which is you end up sometimes not recognizing the potential strength that lies here.

Senator HAGEL and Senator ROCKEFELLER are brilliant members of the Foreign Relations Committee. Senator ROCKEFELLER, because he is the co-chairman, has not been able to attend one-fifth of our hearings, and he should not be at our hearings. He should be doing the work of the Intelligence Committee because that is his primary responsibility. Senator HAGEL is the same way. They are both incredibly well-informed people. They both serve on the committee, but they do not have the full access Senator LUGAR has to every diplomatic initiative that Senator LUGAR may be aware of or the

particular concerns or the sensitivity of a particular initiative and at a particular time.

I conclude by saying, I go back to my days on the Intelligence Committee. I happened to be aware, only because Senator Pell made me aware, of an initiative that was underway in a particular Eastern European country. At the time, Mr. Casey and Ugeux were running operations there. Only because I was made aware by the chairman of the committee of what he had been briefed on and was allowed to communicate was I able to say in a hearing and I think—I don't know this for a fact. I know I asked for two hearings, as a member of the Intelligence Committee of the entire Senate. I demanded there be a secret hearing, that we close the doors, only Senators, no staff. It does not often happen because you only have one of two choices when you are informed about what you think is a dangerous initiative that is underway in the intelligence community. You go forward and you blow it and you suffer the consequences, you have broken the law, or under the laws, you can ask for a secret meeting of the Senate.

There was an operation that was proposed. This is years ago in the early days of the Reagan administration, relating to the very country in which there was a serious diplomatic initiative being made, in a sense covertly, not by the intelligence community, but by the State Department and the White House.

When I made the Congress aware of that, it was concluded that maybe it was not a good operation, and I signed on that piece of paper. You still have to sign off: I oppose this action. Whether it is because I did that or not, I cannot say, but the action was jettisoned. It was ill-conceived and totally at odds with the initiative the Reagan administration had going over in another piece of it. I do not know if that was a positive contribution or not, but I can tell you it was a different perspective.

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

Mr. BIDEN. I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I believe I have approximately 9 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERTS. Mr. President, let me say to the Senator from Delaware, whom I admire for his expertise on foreign policy, I think all of us have an obligation to learn from, to ask, to seek guidance, to seek expertise from other Members, and I hope it is in that spirit that we are able to do this.

As Chairman of the Emerging Threats Capabilities Subcommittee on Armed Services, I work very closely with Senator LUGAR on the Counterthreat Reduction Program. I do not think I can do the job without talking to Senator LUGAR. Senator

Nunn and Senator LUGAR put that together, the Nunn-Lugar program. I talk with Senator LUGAR a lot in regard to his perspectives on foreign policy.

I have not taken the opportunity that I probably should have to talk with the Senator from Delaware at great length—we talk about some things but certainly not enough. I welcome the Senator to come to the Intelligence Committee in regard to any desire he might have to go over or to review any of the intelligence material that pertains to foreign policy. All of that does, as a matter of fact. It was the State Department that pretty much got it right in the WMD review in regard to possible WMD in Iraq, and we know that and we respect that. We made a special effort to invite the State Department in, and we will be happy to visit with the Senator from Delaware about that.

I yield the remaining time I have to a member of the Foreign Relations Committee who is always telling me about the need to tie in the relationship with regard to foreign relations and intelligence. He is the distinguished vice chairman of the Intelligence Committee. We work together in a bipartisan way. We have gone through pretty tough times. We achieved a 17-to-0 vote in regard to the WMD inquiry.

We are not trying to deny information to anybody. We want to share it. We want to learn, especially from people such as Senator BIDEN.

I yield my remaining time to Senator ROCKEFELLER.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished chairman, the Senator from Kansas. I say to the Chair, I was downstairs and I had a wonderful opportunity to spend some time talking with Senator BYRD. We do not have that much opportunity to talk with each other—all of us—and I enjoyed it. Then I began to listen to the conversation. I began to think, I don't know of any committee in the Congress which is more specifically and more logically set up with respect to representation from other committees.

We have the Foreign Relations Committee. We have the Judiciary Committee. We have the Appropriations Committee. We have the Armed Services Committee. We have general members. We are actually going to grow somewhat smaller probably as a result of this intelligence reform. So everybody is represented.

One of the things I have also noticed is that there are a number of Senators—unfortunately not the majority of them, but a number of them—who will come in early in the morning, and they will get with my staff or Senator ROBERTS' staff and they will say: I want to read stuff that I can only read inside these closed facilities. It may be a National Intelligence Estimate. It may be parts of a report. But we operate openly within a very discreet and necessarily secreted space.

It does not occur to me that Foreign Relations is denied access. Everybody, by definition of being a Senator, belongs to the Intelligence Committee by way of information. It would be perfectly honest to say sometimes taking the 3 or 4 hours, as a number of Senators do, they come in and read and sometimes those are much more productive than even some of the hearings that we might have where everybody gets 5-minute questioning rounds, and Senators will take that.

Is it true we have a special relationship with the Armed Services Committee? Yes, it is true because a great deal of the Armed Services budget interacts and relates to what is going on in intelligence. This evening, we passed a very carefully crafted compromise between sequential referral because the relationship between Armed Services and Intelligence is necessarily complex and can have tension or less tension, and we want to try and keep it having less tension.

We have a very small space. Our hearing room is the smallest hearing room I have ever been in, in either the State legislature or the Senate. It seems to me the particular committees that have jurisdiction are represented. They are represented under S. Res. 400. It is very formal, it is very exacting, and just as Senator LUGAR—I am so distressed to see Senator LUGAR leave the committee because he was so good at it, but that was the 8-year limit, which is now hopefully going to disappear.

There is representation, I say very honestly to my friend from Delaware. There is representation. The Senator is always welcome. The Senator has as much right and access—equal and not one-quarter of 1 percent less—to what goes on in terms of the intelligence that is available to us, Chairman ROBERTS or myself and other members of our committee—now 17, soon to be 15—have.

I would just hope that that particular relationship of armed services would be understood. The chairman is on the Armed Services Committee and that is a conflict. It tears at him because he is chairman of one and very senior on the other, but we work it out. We simply work it out because we stay with it.

Again, I say that being on Intelligence is sort of like 100 percent of your time, and I think the quickest way to achieve that is to come in and do the reading. I am thinking of a lot of Senators, whose names are going through my head as I speak, who do that. They come in at 7 in the morning. My staff and the chairman's staff are there. They accommodate them. They say: What do you want to read? And they make it available. They sit down and read and they walk away and they have gotten an enormous amount of information.

So I think the system works pretty well.

Mr. BIDEN. Will the Senator yield for a question?

Mr. ROCKEFELLER. I think the committees are accommodating, and I would hope that the Senator would be understanding of that.

Mr. BIDEN. Will the Senator yield for a question? I will be very brief.

Mr. ROCKEFELLER. Yes.

Mr. BIDEN. I used to have a friend who used to say: You have to know how to know.

The Senator has been on the Intelligence Committee long enough to know that unless one is there and they know what has been said, reading the report is not particularly relevant half the time. My question is this: What is the problem? The committee does not have enough seats? The committee does not have enough chairs if we walk in? What is the deal? What is the concern? That we would release the information more than anyone else on the committee might?

I mean, I am a little confused. Like from that line in the movie: What is the story, Richie? What is the problem? What is the downside? Do we breathe too much of the oxygen in the room? Are we going to take up more time? I do not quite get it.

I understand what the Senator says about how we are covering it. What I do not understand is, no one has said to me what is the downside of Senator LUGAR being able to, when he feels like it, show up, sit there and ask questions just like the Senator asks questions because he has a perspective. I am a little curious about that.

I yield the floor.

Mr. ROCKEFELLER. I would be happy to do my best to respond.

The PRESIDING OFFICER. All time has expired.

Mr. BIDEN. I ask unanimous consent that the chairman have 2 minutes to respond.

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

Mr. ROCKEFELLER. I say to the distinguished ranking member of the Foreign Relations Committee, that, in fact, to get into the room space is a problem. We do not have a single place to put a single person except in the back of the room. Now, that embarrasses me to say that, but it is a fact.

Secondly, I differ with the ranking member when he says that reading does not count that much. Reading and knowing the material, whether it is WMD or whether it is predictions, or whatever it is, is the greatest part of it.

The hearings are tremendously important and they are the democratic part of it so everybody has a chance to ask questions, but I know of nothing which precludes the ranking member being able to do that. For example, to staff, it is a matter of just saying, I want to know the answers.

The Senator has the same privileges on Intelligence that this Senator does, I would say through the Chair.

Mr. BIDEN. I do not believe that is accurate.

The PRESIDING OFFICER. All time has expired.

The Senator from Kentucky.

Mr. MCCONNELL. Before going to the vote, I will say that I am aware of only two, possibly three, amendments remaining. We are still hoping to push forward. I know Senator CRAIG is here, and I believe he is prepared to offer an amendment. It is still our hope that we can press through to final passage tonight.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4021.

Mr. MCCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from New Mexico (Mr. DOMENICI), the Senator from New Hampshire (Mr. GREGG), and the Senator from Mississippi (Mr. LOTT) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 54, as follows:

[Rollcall Vote No. 203 Leg.]

YEAS—36

Akaka	Corzine	Kennedy
Alexander	Daschle	Kohl
Biden	Dodd	Landrieu
Bingaman	Dorgan	Leahy
Boxer	Durbin	Lincoln
Breaux	Feingold	Lugar
Cantwell	Feinstein	Nelson (FL)
Carper	Hagel	Nelson (NE)
Chafee	Harkin	Pryor
Clinton	Inouye	Reed
Coleman	Jeffords	Sarbanes
Conrad	Johnson	Stabenow

NAYS—54

Allard	Ensign	Nickles
Allen	Enzi	Reid
Baucus	Fitzgerald	Roberts
Bayh	Frist	Rockefeller
Bennett	Graham (SC)	Santorum
Bond	Grassley	Schumer
Brownback	Hatch	Sessions
Bunning	Hutchison	Shelby
Burns	Inhofe	Smith
Byrd	Kyl	Snowe
Cochran	Lautenberg	Specter
Collins	Levin	Stevens
Cornyn	McCain	Sununu
Craig	McConnell	Talent
Crapo	Mikulski	Thomas
Dayton	Miller	Voivovich
DeWine	Murkowski	Warner
Dole	Murray	Wyden

NOT VOTING—10

Campbell	Graham (FL)	Lieberman
Chambliss	Gregg	Lott
Domenici	Hollings	
Edwards	Kerry	

The amendment (No. 4021) was rejected.

Mr. FRIST. Mr. President, there will be no more rollcall votes tonight. We

will continue to be here for a while. The plan will be to have a cloture vote on this bill tomorrow morning. We will have to start fairly early tomorrow morning. That vote should occur around 9:15. We will come in at 9 and do a little bit of business and have the first rollcall vote tomorrow around 9 o'clock.

We do appreciate everyone's patience and especially appreciate the bill's managers, Senators MCCONNELL and REID. This has been a very long day. I know people are exhausted. We have a lot more work to do. We will continue for a while. Again, no more rollcall votes tonight.

Mr. DASCHLE. Our two managers have done a wonderful job in getting us to this point. It is very important now to know what amendments are left. If they can be submitted tonight, we will work on a finite list and try to get that finite list locked in tonight or first thing tomorrow to work through what amendments remain.

Our two managers are to be congratulated for a job well done today. We will try to finish tomorrow.

Mr. FRIST. For planning purposes, because people are asking how long we will be around, we are really having to take this an hour at a time. The plans remain, as the Democratic leader and I have said all week, we will complete this bill. We are going to deal with FSC/ETI, the jobs manufacturing bill, and we will complete Homeland Security appropriations before we leave.

We have been fairly clear about the schedule, and everyone has worked very hard, but it means we will stay here until we finish. So we will be here tonight, tomorrow, Saturday, Sunday, or whenever we complete our work. I don't know how long that will take. Everyone knows what the bills are. We have again and again asked for people to focus on the bills. Members have done a very good job. People are very tired.

Rather than break and spend all next week or even the week after that, we have decided to go straight through. We know what the business is. The objectives are as I said. And we will again—it is late tonight—we will start early tomorrow morning, and we will complete business before we leave.

No more rollcall votes tonight.

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

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

AMENDMENT NO. 4040 TO AMENDMENT NO. 3981

Mr. BINGAMAN. On behalf of Senator DOMENICI and myself, I send an amendment to the desk. I understand it has been agreed to by both sides.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for Mr. DOMENICI, for himself and Mr. BINGAMAN, proposes an amendment numbered 4040 to amendment No. 3981.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that further reading be dispensed with.

The amendment is as follows:

(Purpose: To transfer jurisdiction over organization and management of United States nuclear export policy to the Committee on Energy and Natural Resources)

Section 101(b) is amended by—

(1) striking paragraph (10); and

(2) adding at the end the following:

“Matters relating to organization and management of United States nuclear export policy (except programs in the Department of Homeland Security) shall be referred to the Committee on Energy and Natural Resources.”.

Mr. BINGAMAN. I urge my colleagues to support this amendment.

Mr. CRAIG. We support the amendment. It is an excellent, necessary amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4040) was agreed to.

Mr. BINGAMAN. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. 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. 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.

VITIATION OF VOTE

Mr. REID. Mr. President, I am sure that everyone in good faith offered the amendment, but the action that was taken by the Senate has to be rescinded. The managers of the bill were not aware of what was going on. Anyone interested in this had no knowledge of what was going on. It is simply not the right thing to do.

I ask unanimous consent that the action taken by the Senate on amendment No. 4040 be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. Mr. President, I certainly have no objection. I thought this had been agreed to by both managers.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, both managers of the bill were engaged in conversation here. There was a misunderstanding about whether the Domenici amendment had been approved. Senator REID correctly asked that the vote be vitiated.

The PRESIDING OFFICER (Mr. BENNETT). Is there objection to the request?

Without objection, it is so ordered.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand there is no quorum call in progress.

The PRESIDING OFFICER. The Senator is correct.

OVERTIME PAY

Mr. HARKIN. Mr. President, America is stuck in a jobless recovery. This jobless recovery is not an accident. It is in large measure the result of failed economic policies, policies that the Bush administration stubbornly clings to. Despite the loss of millions of private sector jobs over the last 3 and a half years, this administration has embraced offshore outsourcing. It has been against extending unemployment insurance for the long-term unemployed. It is adamant against raising the minimum wage. And it has been determined to eliminate time-and-a-half overtime pay for millions of American workers.

It is time, I believe, for us to chart a new course. It is time for Washington to listen to ordinary working Americans. They are telling us loudly and clearly that their No. 1 issue is economic security. They are telling us that they fear losing their jobs, their health care, and their retirement.

Now they also fear losing their right to time-and-a-half compensation for overtime. They fear, with good reason, that under the Department of Labor's new rules, they will be obliged to work a 50- or 60-hour week with zero additional compensation. For millions of working Americans this is unacceptable, and it is the last straw.

Accordingly, we have repeatedly offered an amendment to stop the Bush administration's new rules to eliminate overtime pay protections for millions of American workers. That amendment was voted on numerous times in the Senate and passed both by strong bipartisan majorities. It also has the overwhelming support of the American public. Yet despite this clear expression of the will of Congress and the public, my overtime amendment was stripped earlier in the year from the Omnibus appropriations bill in conference and again this week in the conference on the FSC-ETI bill.

But my overtime amendment will be back, and it will be back by popular demand. It amazes me, wherever I travel in the United States, people come up to me to talk about this overtime issue. They know what the administration is doing. They are angry. They want action to stop these new overtime rules.

Frankly, at this point, the administration has zero credibility on this issue. The Department of Labor claims that it simply wants to give employers a clearer guide as to who is eligible for overtime pay. But ordinary Americans are not buying this happy talk. They know the administration has put into effect a radical rewrite of the Nation's

overtime rules. They know these new rules strip millions of workers from the right to fair compensation.

The American people are right. Plain and simple, the new overtime rules are a frontal attack on the 40-hour workweek, proposed initially by the administration without a single public hearing.

The new rules could effectively end overtime pay in dozens of occupations, including nurses, police officers, clerical workers, air traffic controllers, social workers, even journalists. Indeed, the new criteria for excluding employees from overtime are deliberately vague and elastic, so as to stretch across vast swaths of the workforce.

Listen to Mary Schlichte, a nurse in Cedar Rapids, IA. Here is what she said:

Many nurses just like me work long hours in a field with very stressful working conditions and little compensation. . . . Our patients rely on us, and our families depend on us. We need overtime pay so we can stay in the profession we love and still make ends meet.

Ms. Schlichte told me about her nurse colleagues in Cedar Rapids who also rely on overtime pay. One nurse is married to a struggling farmer, and she relies on overtime pay to cover their insurance premiums. They already fear losing their farm, she says, and now they fear losing their health care, too.

Dixie Harms is a longtime trainer of nurses in Des Moines. Ms. Harms told me:

If overtime is changed for hospital nurses, we will see a mass exodus of registered nurses from the hospital setting because they will get fed up and refuse to "volunteer" so many hours doing what they love doing.

Three years ago, after the terrible September 11 attacks, many here in Washington spoke eloquently about the heroism of our firefighters, police officers, first responders, and public safety workers. Ever since, America's first responders have worked long hours to protect us from terrorist threats. But the administration even wanted to deny these workers time-and-a-half compensation for those longer hours. This is wrong.

Since passage of the Fair Labor Standards Act of 1938, overtime rights and the 40-hour workweek have been sacrosanct, respected by Presidents of both parties. But alas, it is not sacred to this administration. For 65 years, the 40-hour workweek has allowed workers to spend time with their families instead of toiling past dark and on weekends. At a time when family dinner is becoming an oxymoron, this standard is more important than ever.

These radical revisions are antiworker and antifamily. And given the fact that we are stuck in a jobless recovery, the timing of this attack on overtime could not be worse. It is yet another instance of this administration's economic malpractice. Bear in mind that time-and-a-half pay accounts for some 25 percent of the total income of Americans who work over-

time. With average U.S. incomes declining, the proposed changes would slash the paychecks of millions of white-collar workers.

Moreover, the new rules are all but guaranteed to hurt job creation in the United States. Isn't this just basic logic? If employers can more easily deny overtime pay, they will push their current employees to work longer hours without compensation. With millions of Americans currently out of work, why would we give employers yet another disincentive to hire new workers?

It is bad enough to deny 6 million workers their overtime rights, but what is striking is the mean-spiritedness of the Department of Labor. The Department offered employers what amounts to a cheat sheet. It offered employers helpful tips on how to avoid paying overtime to the lowest paid workers, the same workers who are supposedly helped by the new overtime rules.

For example, the Department suggested cutting a worker's hourly wage so that any new overtime payments will not result in a net gain to the employee. It also recommended raising a worker's salary slightly to meet the threshold at which eligibility for time-and-a-half pay ends. This is just disgraceful. But it gets worse. The administration's scheme specifically targeted veterans, categorizing many as professionals even if they do not hold a professional degree or receive the same salary as degreed professionals.

Think about it: The administration opted to deny overtime pay to first responders, police officers, and firefighters who put their lives on the line protecting us here at home. It also aimed to take away overtime from veterans who put their lives on the line overseas. This may seem outrageous to most Americans, but some major employers are very pleased.

Here is a portion of the Boeing Corporation's comments on the Department's rules:

Many of [Boeing's] most skilled technical workers received a significant portion of their knowledge and training outside the university classroom, typically any branch of the military service . . . Boeing thus supports the department's focus on the knowledge used by the employee performing her job rather than the source of the knowledge or skill . . .

The National Association of Manufacturers made similar comments. Let me quote:

NAM applauds the department for including this alternative means of establishing that an employee has the knowledge required for the exemption to apply. This addition is entirely consistent with the realities of the current workplace and the purpose of the Fair Labor Standards Act. For example, many people who come out of the military have significant knowledge based on work experience but have not had "a prolonged course of specialized intellectual instruction."

Understandably, veterans were deeply disturbed by the administration's

proposed new rules. For example, Vietnam Veterans of America wrote to the Secretary of Labor and said:

[Veterans] who have received military training equivalent to a specialized degree could now be classified as a professional employee and lose their right to overtime. This will be true even if the veterans in question do not earn the higher pay afforded to those with an advanced degree or with supervisory/management positions.

The organization further complained that this legitimizes the already extensive problems of discrimination against veterans.

And this is from the national president of the Vietnam Veterans of America, Thomas Corey:

Therefore, we would like to make you aware that the proposed modification of the rules would give employers the ability to prohibit veterans from receiving overtime pay based on the training they received in the military . . . The proposed rule changes will make these veterans and their families unfairly economically vulnerable in comparison with their non-veteran peers. We hope you will agree that the men and women who have served our Nation so well in military service should not be penalized for having served.

Mr. President, 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. VOINOVICH. 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. VOINOVICH. Mr. President, I rise to express my sadness with the actions of the Senate these last 2 days and express why I will oppose the resolution to reorganize the Senate. I will vote against the resolution because it was supposed to improve the manner in which this Chamber oversees the intelligence and homeland security issues. As of now, it will do no such thing. In fact, it is a step backward because we have claimed to have taken action when in reality little has changed.

Make no mistake, the status quo rules the day and underscores the observation that the Senate has failed to change the way it conducts oversight of intelligence and homeland security issues as recommended by the 9/11 Commission.

First, the 9/11 Commission recommended we establish a single committee, each House of Congress, combining authorizing and appropriating authorities. However, the Senate overwhelmingly rejected the amendment offered by the Senator from Arizona, which I supported, that would have given the Select Committee on Intelligence appropriating power that would substantially reform the manner in which this body conducts oversight of intelligence. The actions of the Senate fly in the face of the 9/11 Commission recommendations.

Without this power, I anticipate that the problems that have been described

by Senator McCAIN and Senator ROBERTS during this debate will continue. In many instances, the executive branch agencies will pay their authorizing committees lip service and go behind their backs to the Appropriations Committee to get what they want. All you have to do is talk to members of the Intelligence Committee and you will understand why it is so important that they have the appropriations power.

If we are going to be asking people to serve on a Select Intelligence Committee and we don't give them the appropriations, then why serve on the committee, because it will be more of the same that we have had around here for the last several years?

I have seen it time and again in my first term. We do a poor job of oversight because authorizing committees lack the power of the purse. The defeat of the McCain amendment will only continue to make oversight of intelligence more difficult than necessary.

Second, the Senate took up this resolution to fulfill the recommendation of the 9/11 Commission that there should be a single authorizing committee in each House of Congress for the Department of Homeland Security, just as we have for the Department of Defense, Department of State, and Department of Justice.

Again, what we did flies in the face of the recommendation. We have seen amendment after amendment offered and accepted by this body, which guts the authorizing jurisdiction of the committee on homeland security and governmental affairs. Instead of having a single authorizing committee, the Department of Homeland Security will have at least four. Many of my colleagues took the floor and insisted the exceptions they were carving out of the jurisdiction of the homeland security committee had nothing to do with turf. Baloney. It had everything to do with turf.

At a time when our national security is in jeopardy, the American people should be upset and concerned with what we have seen on the floor of the Senate when we should be concerned about our homeland security. All of us in the Senate understand that we are in jeopardy from what we are doing in our respective offices to make sure our people are being taken care of here.

As a result of the turn of events, it is a farce to rename the Committee on Governmental Affairs the committee on homeland security and governmental affairs. It is no such thing. It has jurisdiction over a small percentage of the employees of the Department and less than 40 percent of the budget.

Let me repeat that we didn't even give the proposed homeland security committee the jurisdiction over either the majority of the budget or the personnel of the Department.

When we return in November—maybe in January—I will seek to offer an amendment to restore the name of the

Committee on Governmental Affairs. If we are not going to create a homeland security committee, let's not pretend that we are. Let's not pretend. Things have not really changed at all, in my opinion. I hope that what the Senate has done is reported across America, so that our constituents can see what we have done and tell us what a lousy job we did. Then maybe we can come back during the lameduck session in November and pass a reorganizing resolution that actually makes a difference and is guided solely by what is in the best interest of our country and not the best interest of each individual Senator.

A few years ago, the Committee on Governmental Affairs held a hearing at which the Comptroller General testified on the preparedness of the executive branch to meet the 21st century challenges facing America. I am reminded of that hearing and I ask, Is the Senate prepared to meet the challenges of the 21st century? Are we capable of making the changes necessary to meet both the great dangers and wonderful opportunities we have before us? These last few days would indicate that we are not.

Shame on the Senate, Mr. President. I yield the floor.

Ms. MIKULSKI. Mr. President, I support the proposed reform to strengthen our oversight of the intelligence community.

We just passed sweeping, historic legislation to reform America's entire intelligence community. It was a very good bill that will greatly strengthen our ability to develop good intelligence and fight terrorism.

The National Intelligence Reform Act fulfills what I consider the priorities for intelligence reform, including many reforms I have been fighting for: A strong National Intelligence Director to lead and manage the intelligence community. A National Counter Terrorism Center so we have unity of effort to combat terrorism. Information sharing so analysts can connect the dots. An Inspector General for the entire intelligence community. Strong alternative analysis or red-teaming. An ombudsman so our intelligence professionals can speak truth to power. And protection for civil liberties and privacy.

But reform of our intelligence community is only half the job. We must also reform our oversight of the intelligence community. As the 9/11 Commissioners said, reforming intelligence without reforming oversight is like one hand clapping.

The 9/11 Commission report says that, "Of all our recommendations, strengthening congressional oversight may be among the most difficult and important." Our leaders gave this "most difficult and important" task to two of our most esteemed colleagues: Senator REID and Senator MCCONNELL. I thank them for their leadership. And thank the entire bipartisan working group. I thank them for their creativity, cooperation and consideration

to develop the substance of the proposal now before the Senate.

I support all three key recommendations of the bipartisan working group: to create an appropriations subcommittee for Intelligence; to strengthen the Select Committee on Intelligence; and to create a Homeland Security Committee. Let me talk about each of these recommendations.

The bipartisan working group proposal, and the rule we are now considering, will create an appropriations subcommittee for Intelligence. I believe this is one of the most important reforms we can make to strengthen Congressional oversight of the intelligence budget. That's why I wrote to Senator MCCONNELL and Senator REID urging them to do this.

Some of my colleagues point out that the 9/11 Commission recommended creating a combined authorization and appropriations committee for intelligence. But that was just one option mentioned in the 9/11 Commission Report.

The 9/11 Commission Report also included two provisions supporting an Intelligence Appropriations subcommittee:

The 9/11 Commission, on page 410 of its report, criticized the intelligence appropriations process, noting that "the final budget review is handled in the Defense Subcommittee of the Appropriations Committees. Those committees have no subcommittees just for intelligence, and only a few members and staff review the requests."

The 9/11 Commission included the following recommendation on page 416 of its report: "Congress should pass a separate appropriations act for intelligence. . . ."

Governor Tom Kean, Chairman of the 9/11 Commission, supports creating an Intelligence Appropriations subcommittee. In the September 7, 2004 Intelligence Committee hearing, I asked him directly what he thought of my idea of an Intelligence Appropriations subcommittee. Chairman Kean said, "I think that would be very much in my mind within the spirit of our recommendations."

Creating an Intelligence Appropriations subcommittee is the best way to strengthen oversight of the intelligence budget. Appropriations subcommittees conduct rigorous oversight of the agencies they fund. Senator BOND and I certainly do for the agencies funded by our VA/HUD bill. An Intelligence subcommittee will make the Appropriations Committee's oversight stronger: intelligence will have the attention of a full subcommittee, and that subcommittee will have sufficient staff for real oversight of intelligence funding. I hope my colleagues will join me in strong support of the proposal to create an Intelligence Appropriations subcommittee.

The working group also recommends strengthening the existing Select Committee on Intelligence. I am proud to serve on the Intelligence Committee. I

take that responsibility very seriously. Senator DASCHLE appointed me to the Committee in 2001, before the September 11th attacks. I have always used my role to push for reform and modernization so that we have the best possible intelligence for our decision-makers and our troops.

The bipartisan working group proposal maintains many of the good things about the way the Intelligence Committee is organized: Including members of the Armed Services, Appropriations, Foreign Relations and Judiciary Committees. Ensuring the majority has only a 1-vote advantage. Having subpoena authority. Having a core nonpartisan professional staff.

The rule would also strengthen the committee: Elevating it to an "A" Committee. Creating at least one subcommittee to strengthen oversight. Giving the committee a stronger role in reviewing civilian intelligence nominees. Creating designated staff positions for each member of the committee.

So I really think this resolution will help the Intelligence Committee to be more effective.

The third reform proposed by the bipartisan working group is to create a Homeland Security Committee. We know that our colleagues on the Government Affairs Committee did a good job with the creation of the Department of Homeland Security, so it's only logical that the current Governmental Affairs Committee would take on responsibility for homeland security. I believe it's important to make sure that other functions within the jurisdiction of Governmental Affairs do not lose out in this reform. I am thinking in particular of the Committee's work on government management and the Federal workforce, to ensure that we support our federal employees who serve the American people in so many ways.

Having an authorizing committee for homeland security should be a real help in the unfinished business of making the Department of Homeland Security an effective agency, to work with our States, counties, cities and towns, as well as other Federal agencies, to protect the American people.

The three reforms proposed by the McConnell-Reid working group, and codified as changes to the Senate Rules in this resolution, meet the challenge of the 9/11 Commission and our obligation to the American people to strengthen congressional oversight. That's why I intend to support the Resolution, and urge my colleagues to support it as well.

Mr. BAUCUS. Mr. President, I am very pleased that the Senate agreed, by unanimous consent, to an amendment that Senator GRASSLEY and I offered to S. Res. 445, the Senate intelligence reform resolution. Our amendment will preserve the jurisdiction of the Finance Committee over the commercial operations of what has historically been known as the United States Customs Service.

The United States Customs Service is one of the oldest agencies in the U.S. Government. It was created in 1789 to collect tariffs which, at that time, were the principal source of revenue funding the Federal Government.

Until 1816, the Senate had no standing committees. Senators established ad-hoc committees to consider specific bills. In his 1815 message to Congress, President Madison recommended a series of controversial economic measures, including tariff revisions and the creation of a second national bank. The Senate responded by creating the Select Committee on Finance and Uniform National Currency.

In his 1816 message, President Madison recommended a further series of economic measures. This time, the Senate responded by creating the Committee on Finance as a standing committee on December 10, 1816. Under the leadership of Chairman George Campbell, Democrat of Tennessee, the committee's very first task was to consider the Tariff Act of 1816. Other original members of the Finance Committee included Senators Chace of Vermont, Bibb of Georgia, King of New York, and Mason of New Hampshire.

Over the ensuing 188 years, the Finance Committee's jurisdiction has come to include not just tariff legislation, but all legislation related to international trade. Up until 1930, trade policy had been set primarily through Congressional establishment of tariffs, under the jurisdiction of the Finance Committee. When, however, the Smoot-Hawley Tariff of 1930 became associated with the Depression, Congress shifted its approach. As the new Roosevelt administration considered proposals to reduce tariffs, Secretary of State Cordell Hull suggested that, instead of reducing tariffs unilaterally, Congress authorize the President to negotiate reciprocal reductions.

When, in 1934, President Roosevelt endorsed this approach and sent it to Congress, the bill was referred to the Finance Committee. The bill was enacted into law as the Trade Act of 1934, establishing the basic model for trade policy ever since. As a result, the committee acquired jurisdiction not only over tariffs, but over a broad range of issues implicated by U.S. trade policy.

Throughout those 188 years, the Finance Committee has retained jurisdiction over the Customs Service. And, like that of the Committee, the mission of Customs has expanded to cover a range of trade issues.

Today, Customs continues to serve a revenue collection function. This year, it will collect nearly \$25 billion in import duties, making it the second largest source of government revenue after the income tax.

In today's globalized world, however, Customs has also come to serve a vital role in facilitating trade and, through trade, the nation's economic well-being. For example, in fiscal year 2004, Customs will process approximately 28

million entry summaries, covering imports worth \$1.36 trillion. That is more than 56,000 separate merchandise entries every day.

In fiscal year 2003, Customs made 6,500 seizures of goods, worth nearly \$1 billion, that were imported in violation of the intellectual property rights of U.S. businesses and individuals.

Customs enforces the U.S. trade remedy laws, collecting \$1.5 billion in anti-dumping and countervailing duties in fiscal year 2004.

In addition, Customs enforces country-of-origin labeling rules, blocks trade in endangered species and conflict diamonds, collects trade data widely relied upon in the government and private sector, fights child pornography, and issues hundreds of classification and valuation rulings every year. Thousands of American businesses and jobs depend on Customs to process imported inputs efficiently, so they can reduce production costs through just-in-time inventory systems.

Over time, Customs has also come to have a national security mission. Customs agents are often the first line of defense at the border. For example, it was a Customs agent who apprehended the so-called "millennium bomber" crossing the border from Canada into Washington State in December 1999.

Until recently, Customs was housed within the Department of the Treasury. Treasury was well-suited to oversee both the revenue collection and commercial facilitation functions of Customs, and to ensure that those functions were carried out in a manner calculated to advance the economic growth and well-being of the United States.

After September 11, 2001, however, things changed. We learned that day how important it is to ensure the strongest possible coordination among the many Federal Agencies charged with our domestic security.

In the Homeland Security Act of 2002, Congress moved the Customs Service from the umbrella of the Treasury Department into the new Department of Homeland Security.

The Customs Service, as such, no longer exists as a single entity. Rather, its many functions were divided among two parts of the Border and Transportation Security Directorate of the Department of Homeland Security—Customs and Border Protection and Immigration and Customs Enforcement.

When Congress created the Department of Homeland Security, there was widespread concern in the business community that moving Customs from Treasury—an agency whose principal mission is the health of the U.S. economy to a new agency principally concerned with national security would lead to a shift in Customs' focus away from trade facilitation—with adverse consequences for those businesses and for the economy as a whole.

For some agencies, this problem was solved by splitting the agency apart

and moving to DHS only the people directly working on security issues. For example, this is what happened at APHIS. That solution did not work for Customs, because many Customs employees perform both commercial and security functions as part of their jobs.

Instead, Congress made Customs serve two masters. The employees of Customs were physically moved into the Department of Homeland Security. But the commercial functions of Customs remain under the policy control of the Treasury Department. Section 412 of the Homeland Security Act of 2002 expressly provides that "authority related to Customs revenue functions" that was previously vested in the Secretary of the Treasury "shall not be transferred" to the Secretary of Homeland Security.

There was some flexibility built into the law. That way, over time, the Secretary of Treasury could delegate some responsibilities to the Secretary of Homeland Security if experience demonstrated that a particular Customs function was more closely related to security than to trade facilitation.

As a practical matter, the result has been shared authority over Customs by Treasury and Homeland Security. Similarly, in the Senate, the result has been shared oversight by the Finance Committee and the Committee on Government Affairs. One committee focuses on homeland security issues and the other on commercial issues.

In response to the recommendations of the 9/11 Commission, the Senate is now engaged in a debate over how to reorganize our committee structure to provide stronger, more coherent oversight over issues related to homeland security.

In my view, the recommendations of the 9/11 Commission do not justify any changes in committee oversight jurisdiction of Customs. The Commission has recommended centralizing oversight over homeland security issues in one committee in each House. The clear purpose of that recommendation is to centralize oversight over homeland security functions, not over other functions that happen to be performed by individuals employed by the Department of Homeland Security.

The Grassley-Baucus amendment to S. Res. 445 ensures that the Finance Committee will retain the jurisdiction over the commercial facilitation functions of the Customs Service that the committee has held for nearly 200 years.

Everyone understands that in the post-9/11 world, the United States must vigilantly protect our borders. But while we do so, we must ensure that we do not overburden commerce with other Nations. We must strike a delicate balance between protecting the Nation's borders and promoting the nation's economic health. If we lose that balance, American businesses will suffer. So will our ports, because shippers will find it faster and less expensive to send their cargo through Canadian or Mexican ports.

I believe that granting jurisdiction over the business facilitation functions of the Customs Service to the Committee on Homeland Security and Government Affairs would inevitably lead to commercial considerations being discounted heavily in the name of security. That would hurt the U.S. economy in the long run.

On the other hand, retaining jurisdiction over the revenue and commercial functions of Customs in the Finance Committee in no way detracts from the ability of the new Homeland Security and Government Affairs Committee to oversee those functions of Customs that pertain to border security. Separating oversight of these two functions will guarantee that commercial concerns receive a full and fair airing in any debate involving both commerce and security.

So what are the functions over which the Finance Committee would retain jurisdiction under this amendment? Clearly, all the "revenue functions" defined in section 415 of the Homeland Security Act are included. These are generally functions that have virtually no security aspects to them—such as collecting tariffs, regulating country of origin labeling, or enforcing anti-dumping duty orders.

The amendment also preserves Finance Committee jurisdiction over "any commercial function" of CBP or ICE, "including matters related to trade facilitation and trade regulation."

For example, the Finance Committee would retain jurisdiction over all commercial aspects of the implementation of Customs' new computer system, the Automated Commercial Environment or ACE. ACE was conceived many years ago long before 9/11—as a way to create a paperless environment that reduces paperwork and delays for goods clearing Customs and enhances the efficiency of American businesses that depend on those goods.

ACE has security applications. It can be used to flag entries with suspicious documentation. And the Homeland Security and Government Affairs Committee can certainly look into those issues. But it is not, and never has been, primarily a security-focused project.

A second example is the issue of container security. Customs is engaged in a program of public-private cooperation with shippers to try to balance security concerns with incoming cargo containers and the economic concerns of shippers. Under this amendment, the Finance Committee would retain jurisdiction over the trade facilitation aspects of Customs' inspection and clearance of cargo containers.

Trade is critical to the health of the America economy. Exports alone accounted for 25 percent of U.S. economic growth between 1990 and 2000. Exports support an estimated 12 million jobs. Imports allow businesses and consumers more choice of goods and inputs and foster America's competitiveness in the global economy.

For these reasons, Congress has a responsibility to ensure that Customs continues to serve the needs of the business and trade community. That can only be achieved by safeguarding a balance between Customs' trade facilitation and homeland security functions. The Grassley-Baucus amendment promotes that balance.

AMENDMENT NO. 3995, WITHDRAWN

Mr. REID. Mr. President, earlier today there was a long deliberation and finally adoption of an amendment that had been earlier filed by Senator BAYH. It is my understanding that another amendment superseded that. That amendment is pending. It is No. 3995.

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

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is withdrawn.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that, other than conforming and technical managers amendments, the only remaining first-degree amendments be the following, which are filed at the desk: COLLINS, NICKLES, HUTCHISON, FRIST, BINGAMAN-DOMENICI, and ROCKEFELLER.

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

Mr. MCCONNELL. Mr. President, I further ask unanimous consent that it be in order to file timely second-degree amendments up until 9:15 tomorrow morning.

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

Mr. REID. Mr. President, the unanimous consent agreement that was adopted by the Senate a few minutes ago, we want to make sure the RECORD is clear that when we talk about COLLINS, NICKLES, HUTCHISON, FRIST, BINGAMAN, and ROCKEFELLER, we are talking about one amendment per member, and I want the RECORD to reflect that.

The PRESIDING OFFICER. The RECORD will so reflect.

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

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

MORNING BUSINESS

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

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

JUSTICE THROUGH DNA TECHNOLOGY

Mr. HATCH. Mr. President, I would like to discuss H.R. 5107, the Justice

for All Act that was just passed by the House, by an overwhelming bipartisan vote of 393 to 14. The bill is the result of the hard work and dedication of many on both sides of the aisle.

In particular, I would like to commend Chairman of the House Judiciary Committee SENSENBRENNER and Ranking Democrat, Representative DELAHUNT for their outstanding leadership in shepherding this groundbreaking crime bill that will allow us to further unleash the evidentiary power of DNA. It will provide law enforcement the ability to find and punish the guilty and give use the comfort of certainty in criminal prosecutions. Moreover, the House attached Senator KYL's and Senator FEINSTEIN's critical Crime Victims Act that ensures victims' rights are protected in criminal prosecutions. That is very important.

This House passed bill is the result of months of intense negotiations and addresses the concerns raised regarding title III of the former DNA bill, including the major concerns, I believe, of Senators KYL, SESSIONS, and CORNYN.

And let me say, the overwhelming support for this bill in the House could not have been achieved without the hard work and dedication of the Department of Justice. I would like to specifically thank Attorney General Ashcroft, Assistant Attorney General William Moschella, and Deputy Assistant Attorney General Sean McLaughlin for bringing the parties together to create a truly bipartisan bill that meets the interests of all parties. Without their constructive input we would have never been able to get to where we are. I personally want to thank them for their support.

But our work is not done. I call upon the Senate to act expeditiously to pass this anticrime bill so we can present it to the President for his signature.

So we all know, there has been a tremendous amount of work done in the 22-page memorandum by Mr. Moschella and the Justice Department. I think we have made a monumental effort to address every one of those concerns. We haven't been able to address every case exactly the way the Justice Department requested, but there has been a good-faith effort on the part of the distinguished Senator from Vermont and Congressman DELAHUNT to be able to bring this Justice for All Act through to completion.

When it passed 393 to 14 yesterday in the House, I think that sent a message to everybody that not only would we get this DNA bill, but we would also get the victims' rights bill for which Senators KYL and FEINSTEIN have worked so long and hard.

Rather than take the time of my distinguished friend from Arizona and any further time from the bill on the floor, I want to compliment the Justice Department.

I hope we can get the last few things resolved so that this bill can pass, and that means working it out with a few of our colleagues in the Senate. I be-

lieve when they look at this bill and read it, they will realize almost every one of those concerns have been addressed in good faith. Senator LEAHY and I have worked hand in hand trying to make sure those matters were addressed.

Mr. President, I hope we can get this bill up and out so we can do what should be done for 400,000 rape kits—some of which are 20 years old—to help not only to discover those who are guilty but to put those who are on the streets, who have raped women, in jail where they belong. This bill will do exactly that. It is a very important piece of legislation.

Having said that, however, I want to make it clear that this administration has done a great deal. Thus far, it has committed to doing this, and it is the first administration that has done it. We have known about these rape kits for years. This is the final touch in the bill to help protect women in this country. It will be very important for us to pass it today. I hope we can get it done.

We are working very diligently to try to satisfy the concerns of all of our colleagues. Thus far, we are down to just one major concern, and hopefully when they read the bill they will realize we have addressed that as well and will agree to satisfy this matter.

I thank my colleague from Arizona and my colleague from Kentucky.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, a year ago this month, I stood with a bipartisan group of Senators and Representatives to announce the introduction of the Advancing Justice Through DNA Technology Act of 2003. This is landmark legislation. It provides law enforcement with the training and equipment required to effectively and accurately fight crime in the 21st century. It enacts the President's DNA initiative, as the Chair probably knows, authorizing more than \$1 billion over the next 5 years to eliminate the backlog crisis in the Nation's crime labs and fund other DNA-related programs. It also includes the Innocence Protection Act, a death penalty reform effort I launched more than 4 years ago.

We introduced our bill on October 1, 2003. One month later, the House passed it with overwhelming support, 357 to 57. Among those supporting the bill were the chairman of the House Judiciary Committee, Congressman JAMES SENSENBRENNER, and virtually the entire Republican leadership, including Majority Leader DELAY. Clearly there was a broad consensus for action. The House vote marked a major breakthrough in finding solutions to these serious flaws in our criminal justice system.

Unfortunately, while the other body acted, we did not. Despite Chairman HATCH's sponsorship of the bill and strong support of it, the Senate Judiciary Committee did not begin work on