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AMENDMENT NO. 3995, WITHDRAWN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 It is my understanding that another amendment superseded that.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 President, I ask unanimous consent that the amendment be withdrawn.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Without objection, the amendment is withdrawn.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 President, I ask unanimous consent that the order for the quorum call be rescinded.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 believe 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

the bill until September, almost a year after the House had passed it. At that point we were slowed by resistance from some Republican members of the panel, but after many hours we succeeded in working through the 20-plus amendments that were offered. All of them were rejected. Then the bill was approved by a strong bipartisan majority.

That was 3 weeks ago. Since then, this critical legislation has been blocked by the same Senators who tried blocking it in committee, and unfortunately they have been buttressed by opposition from President Bush and Attorney General John Ashcroft.

Undeterred by the fact that the Senate has not moved on this very important legislation, the House acted again. Yesterday it voted on the Justice For All Act of 2004, H.R. 5107. This is a criminal justice package that bundles the Senate DNA bill with another bill, already passed in the Senate, that would increase protection for victims of Federal crimes. Yesterday's House margin, 393 to 14, was even larger than it was a year ago. In these times you rarely see such bipartisan support—393 to 14. I believe it sends a loud message to us here in this body of: What are we waiting for? Let's pass this bill.

I want to take a moment to commend the Republican chairman of the House Judiciary Committee, JIM SENSENBRENNER, who spearheaded this effort in the House. The chairman deserves high praise for his leadership. We could never have come as far as we have without his steadfast commitment, and the hard work of his impressive staff.

I also thank my long-term colleagues in this effort, Representative BILL DELAHUNT from Massachusetts—I was honored to serve overlapping time as prosecutors, me in Vermont, Mr. DELAHUNT in Massachusetts—and Representative RAY LAHOOD, Republican of Illinois. They worked tirelessly over many years to pass the Innocence Protection Act. They deserve much of the credit for building the strong bipartisan support for the bill in the House.

The House has spoken, not once but twice. I believe Senate action is long overdue. It should not be threatened by a few holdouts in the Senate, even if they are emboldened by continuing help from the Department of Justice. I remind everybody, none of us here works for the administration—I don't care whether it is a Republican administration or a Democratic administration. We are elected as individual Senators, independent of the executive branch or the judicial branch.

The Bush administration's role in the effort to kill this bill is significant and it is a matter of public record. On April 28 of this year we received a 22-page letter from Assistant Attorney General William Moschella, presenting ''the views of the Department of Justice and the administration'' regarding the bill the House of Representatives had earlier passed by a vote of 357 to 67. They expressed the Administration's strong opposition to virtually every aspect of the bill.

I have rarely seen a letter—in fact, I cannot remember a time I have seen a letter from an executive branch agency so hostile to a bipartisan legislative effort that had already passed one House of Congress. I was shocked the Department would write such a scathing letter about a bill that had been carefully negotiated by Chairman SENSENBRENNER and Chairman HATCH, working very closely together. In light of the support of the congressional leadership, I thought the President would have supported the bill and worked to make the capital punishment system more fair. Instead, his Administration chose to stonewall the reforms and defend the injustices in current law.

The new House bill contains additional concessions to the Department of Justice and to the handful of Republican opponents in the Senate. But despite these concessions, despite the urgent need for reform, the Bush administration has obstinately refused to support the bill or even to withdraw its formal opposition to the bill. In particular, the Department has pressed its unreasonable demand for an arbitrary 3-year time limit on obtaining a DNA test after conviction.

If the White House kills this bill that has passed so overwhelmingly in the House, it will be a travesty. It has, after all, been supported by key members of the Republican leadership in both the House and the Senate; it has passed by an overwhelming margin in the House. To put this off another year may seem fine to the President and the Attorney General, but another year is a long time if you are a crime victim and you are hoping they may find the person who committed the crime, or if you are wrongly accused and you are waiting on death row for the chance to prove your innocence. Another year will pile more untested rape kits on to the thousands already piled up in labs across the country.

This bill is a rare example of bipartisan cooperation for a good cause, and instead of helping, the White House has actively hindered. They have been unwilling to lead. They have been unwilling to follow. Now, when all it would take is for them to get out of the way, they are even unwilling to stand aside.

I think it is time for them to understand what is happening here, and to become part of the solution instead of part of the problem. An overwhelming bipartisan coalition in both the House and the Senate supports this bill because it will mean more fair and effective criminal justice in this country.

If Congress fails to enact this much-needed law this year, I do not lay the blame on leadership in the House or the Senate, because the leadership in both parties has supported it, just as Senator HATCH and Chairman SENSENBRENNER have. If the Congress fails to enact this law this year, then I lay the responsibility directly at the feet of President Bush and Attorney General Ashcroft. They deserve to be held accountable, and will be if their stubborn opposition to the bill causes it to die. The leaders of their own party support it, as the leaders of my party do. They ought to stand aside.

For all those victims' groups, all those church groups, all the others who have supported this bill—as you know, if it doesn't go forward, it is not the fault of Congress. You should look down toward the other end of Pennsylvania Avenue.

Mr. President, I ask unanimous consent to print a longer statement in the RECORD.

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

JUSTICE FOR ALL ACT OF 2004

October 7, 2004

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 landmark legislation 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, which authorizes more than $1 billion over the next five years to eliminate the backlog crisis in the Nation's crime labs, and to fund other DNA-related programs. It also includes the Innocence Protection Act, a death penalty reform effort I launched more than four years ago.

DNA is the miracle forensic tool of our lifetimes. It has the power to convict the guilty and to exonerate the innocent. And as DNA testing has become more and more available, it also has opened a window on the flaws of the death penalty process.

Hearing after hearing before the House and Senate Judiciary Committees has shown beyond any doubt that the death penalty system is broken. These mistakes in our system of justice carry a high personal and social price. They undermine the public's confidence in our judicial system, they produce unbearable anguish for innocent people and their families and for the victims of these crimes, and they compromise public safety because for every wrongly convicted person, there is a real criminal who may still be roaming the streets. Indeed, in dozens of cases in which DNA testing has exonerated a wrongfully convicted person, the same test has identified the real perpetrator.

Our bill would put this powerful tool into greater use in our police departments and our courtrooms. It also takes a modest step toward addressing one of the most frequent causes of wrongful convictions in capital cases—the lack of adequate legal counsel.

BROAD BIPARTISAN SUPPORT IN CONGRESS AND AROUND COUNTRY

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 was a major breakthrough in finding solutions to the serious flaws in our justice system.

Sadly, the House acted, but the Senate did not. Despite Chairman Hatch's sponsorship of the bill, the Senate Judiciary Committee did not begin work on the bill until September, almost a year later. At that point,

we were slowed by resistance from three Republican members of the panel. After many hours, we succeeded in working through the 20-plus amendments that were offered—all of which were rejected—and the bill was approved by a strong bipartisan majority.

It speaks volumes about the opposition to this bill that one of the amendments offered in Committee sought to strike the Innocence Protection Act in its entirety. Our opponents want law enforcement to use DNA aggressively to fight crime, and so do I. But they do not want to let those who are wrongly convicted use DNA to prove their innocence. That is wrong. DNA can convict the guilty, but it can also exonerate the innocent. It should be available for both purposes.

That is why victims groups support the whole package of reforms in this bill. They do not want the wrong guy locked up while the real rapist or murderer is out committing other crimes. Throughout the Committee's consideration of this bill, there were two fixtures in the room—Kirk Bloodsworth and Debbie Smith. Kirk was exonerated by DNA testing. In Debbie's case, DNA testing led to the arrest and conviction of her attacker. Both support the whole bill.

The Committee reported the bill to the full Senate three weeks ago. Since then, this critical legislation has been blocked by the same three Republican Senators who held up the bill in Committee, buttressed by opposition from President Bush and Attorney General John Ashcroft.

This week, the House has acted again. It voted yesterday on the Justice For All Act of 2004, H.R. 5107, a criminal justice package that bundles the Advancing Justice Through DNA Technology Act with another bill, already passed in the Senate, which will increase protections for victims of Federal crimes. Wednesday's House margin—393 to 14—was even larger than the vote a year ago, and sends a loud and clear message to the Senate: ''Pass this bill!''

I want to take a moment to commend the Republican Chairman of the House Judiciary Committee, Jim Sensenbrenner, who has spearheaded this effort in the House. Chairman Sensenbrenner deserves high praise for his leadership. We could never have come as far as we have without his steadfast commitment and the hard work of his impressive staff.

I also want to thank my longtime colleagues in this endeavor, Representative Bill Delahunt of Massachusetts and Representative Ray LaHood of Illinois. They have worked tirelessly over many years to pass the Innocence Protection Act, and deserve much of the credit for building the strong support for the bill in the House.

The House has now spoken not once, but twice. Senate action is long overdue. Sadly, Senate passage in the waning days of this congressional session continues to be threatened by a few holdout Republicans, emboldened by continuing opposition from Department of Justice.

INACTION HAS REAL CONSEQUENCES

While Congress has failed to act, much has happened in the real world. Over the last year, five more wrongfully convicted individuals were cleared of the crimes that sent them to death row, bringing to 116 the number of death row exonerations since the reinstatement of capital punishment. Also in the past year, another 10 wrongfully convicted individuals were exonerated by DNA testing in non-capital cases. That brings to 151 the number of post-conviction DNA exonerations in this country in little over a decade.

What else has happened in the real world? Just last week, Houston's top police official called for a moratorium on executions of inmates who were convicted based on evidence that was handled or analyzed by the Houston Police Department's crime lab. In a floor statement in March 2003, I described the widespread problems at that lab, which included poorly trained technicians, shoddy recordkeeping, and holes in the ceiling that allowed rain to possibly contaminate samples. It turns out that the situation is even worse than previously imagined.

In May, the Republican Governor of Texas pardoned Josiah Sutton, who spent 4½ years in prison for a crime that he did not commit. He was only a teenager when he was convicted and sentenced to 25 years for rape, based largely on a bogus DNA match by the Houston police lab. More recently, Houston's district attorney admitted that chemical testing used to convict another man was inaccurate. That was after six forensic experts concluded that the lab's analysis of DNA evidence in the case was ''scientifically unsound.''

The situation in Houston is appalling but it is not without precedent. There have been similar problems in various State crime labs, as well as in the once-distinguished FBI lab. Crime labs across the country are suffering the consequences of years of increased demand and decreased funding.

One consequence is sloppy lab work. Another consequence is massive backlogs. In December 2003, the Department of Justice estimated that there were more than 500,000 criminal cases with biological evidence awaiting DNA testing. This estimate included 52,000 homicide cases and 169,000 rape cases. Ten months later, the situation has only gotten worse. While the Senate has been idle on this bill, rape kits and other crime scene evidence has been sitting on shelves, untested for lack of funding. This bill would authorize the funding that our labs so desperately need.

BUSH ADMINISTRATION'S REPEATED ATTEMPTS TO SABOTAGE BIPARTISAN INITIATIVE

The Bush Administration's role in the effort to kill this bill is a matter of public record. On April 28 of this year, we received a 22–page letter from Assistant Attorney General William Moschella presenting ''the views of the Department of Justice and the Administration'' regarding the bill that the House of Representatives had earlier passed by a vote of 357 to 67. The letter expressed the Administration's strong opposition to virtually every aspect of the bill.

I have rarely seen a letter from an Executive branch agency so hostile to a bipartisan legislative effort that had already passed one house of Congress. I was shocked that the Department would write such a scathing letter about a bill that had been carefully negotiated by Chairman Sensenbrenner and Chairman Hatch. In light of the support of the Republican congressional leadership, I expected that the President would support this bill and work to make the capital punishment system more fair and effective. Instead, he chose to stonewall reform and defend the injustices in current law.

The Justice Department's criticisms of the bill are all unfounded. Let me respond to just a few of the key claims in the Department's April 28 letter.

The Department claimed that the post-conviction DNA testing provisions in the bill would invite abusive prisoner litigation. In fact, the bill includes numerous checks against frivolous litigation, including the following: An applicant seeking a test must assert his ''actual innocence'' under penalty of perjury; The applicant must not have waived the right to DNA testing, or knowingly failed to request DNA testing in a prior post-conviction motion; A chain of custody must be established; The proposed DNA testing must be reasonable in scope; The applicant must identify a theory of innocence not inconsistent with any affirmative defense presented at trial; Testing may be ordered only if it could produce ''new material evidence'' and raise a reasonable probability that the applicant did not commit the offense; And the bill establishes serious sanctions, including new criminal charges, if DNA testing produces inculpatory results.

The Department argued that the bill should bar post-conviction DNA testing unless DNA technology was ''unavailable'' at the time of the defendant's trial. But witnesses at House and Senate hearings on the bill reported numerous examples of defendants failing to request DNA testing despite its availability at the time of trial because the defense lawyers were incompetent or unfamiliar with the technology, the defendant was mentally ill or retarded, or the defense was simply unaware of the evidence, perhaps due to government misconduct.

The Department complained that the bill would allow prisoners who pleaded guilty to obtain a DNA test. But witnesses at the hearings told Congress of the startling fact that innocent defendants sometimes do plead guilty, due to bad lawyers, mental retardation, or government intimidation. David Vasquez in Virginia, Frank Townsend in Florida, and Chris Ochoa in Texas are just three examples of this disturbing phenomenon.

The Department claimed that the evidence retention requirements in the bill were unduly burdensome. In fact, we took every precaution to make sure that these requirements would not pose an undue burden to law enforcement. Only biological evidence must be preserved. Evidence need not be preserved if the court denies a request for testing, the defendant waives testing, or 180 days pass after the defendant receives notice that the government intends to destroy the evidence. If evidence would be impractical to retain, the government need only take reasonable measures to preserve a portion of the evidence. Finally, the failure to retain evidence does not provide grounds for habeas corpus relief.

The Department claimed that the counsel provisions in the bill amounted to a Federal regulatory system for capital defense. That characterization is grossly unfair. The Capital Representation Improvement Grants authorized in the bill are strictly voluntary. States are under no obligation to participate. At House and Senate hearings on the bill, witnesses enumerated numerous studies over 20 years that document the failure of many States to provide competent counsel in capital cases. In light of these long-standing flaws, it is entirely appropriate for the Federal government to offer financial assistance to those States that seek it.

The Department claimed that the agencies responsible for appointing capital defense lawyers would have limitless resources. This criticism is unsupported and contrary to the experience in states like North Carolina and New York that have established independent defense entities which operate within a budget.

If the White House kills this bill it will be a travesty. Putting this off another year may seem fine to the President or the Attorney General, but another year is a long time if you are a crime victim or if you are wrongly accused, waiting on death row for the chance to prove your innocence. Another year will pile more untested rape kits on to the thousands already piled up in labs across the country.

This bill is a rare example of bipartisan cooperation for a good cause, and instead of helping, the White House has actively hindered. They have been unwilling to lead.

They have been unwilling to follow. Now, when all it would take is for them to get out of the way, they're even unwilling to stand aside. The time has come for the President to understand what is happening here, and to become part of the solution instead of part of the problem.

BUSH ADMINISTRATION IGNORES EFFORTS TO COMPROMISE

This bill is the product of years of work and many months of intense negotiations. It reflects a lot of compromises by all the principal sponsors. None of us is entirely happy with everything in the bill. There are plenty of things that I would do differently. There are plenty of things that Senator Hatch and other cosponsors would do differently. Nobody got everything they wanted.

But that is why the bill has such broad bipartisan appeal. That is what the legislative process is all about—finding the middle ground that a broad majority can support. That is why 393 members of the House support this bill, and why a substantial majority of the Senate would vote for it if our opponents would allow it to come to a vote.

The new House bill reflects a number of additional concessions to the Department of Justice and to our Republican opponents in the Senate. Let me briefly describe just a few of the changes that were made.

First, to address concerns raised in Committee by Senator Sessions and others, the Debbie Smith DNA Backlog Grant Program now authorizes the use of grant funds to address non-DNA forensic science backlogs, but only if the State has no significant DNA backlog or lab improvement needs relating to DNA processing.

Second, the bill no longer prevents States from uploading arrestee information into their own DNA databases, although they must expunge such information if the charges are dropped or result in an acquittal.

Third, the standard for getting post-conviction DNA testing has been streamlined by striking unnecessary language that required courts to assume exculpatory test results. Obviously a court considering such an application cannot know for sure what the test results would reveal and must consider the application in a light most favorable to the applicant in light of all the evidence.

Fourth, the bill no longer permits Federal inmates to obtain DNA testing of evidence relating to a State offense, except when that offense may have resulted in a Federal death sentence.

Fifth, it is now presumed that a motion for post-conviction DNA testing is timely if filed within five years of enactment of the bill, or three years after the applicant was convicted, whichever is later. Thereafter, it is presumed that a motion is untimely, except upon good cause shown. The Department has complained that the ''good cause'' exception is so broad you could drive a truck through it, and its continued opposition turns in large part on the inclusion of this language. But while I agree that the language is broad, it is intentionally so; I would not agree to a presumption of untimeliness that could not be rebutted in most cases. At the same time, this provision should allow courts to deal summarily with the Department's hypothetical bogeyman—the guilty prisoner who ''games the system'' by waiting until the witnesses against him are dead and retrial is no longer possible, and only then seeking DNA testing.

Sixth, modifications were made to the standard for obtaining a new trial based on an exculpatory DNA test result; instead of establishing by ''a preponderance of the evidence'' that a new trial would result in an acquittal, applicants must now establish this by ''compelling evidence.'' The point of this change, which I proposed, is to require courts to focus on the quality of the evidence supporting an applicant's new trial motion rather than trying to calculate the odds of a different verdict.

Finally, the bill now specifies that 75 percent of funds awarded under the new capital representation improvement grant program must be aimed at improving trial counsel, unless the Attorney General waives this requirement. This change was included to assuage concerns that this program will somehow resurrect the post-conviction resource centers that Congress de-funded in the mid-1990s.

With few exceptions, these most recent changes to the bill were made at the behest of the Department of Justice, after weeks of negotiations aimed at securing the Department's endorsement of the bill. Yet despite the changes, and despite the urgent need for reform, the Bush Administration has obstinately refused to support the bill or even to withdraw its formal opposition to the bill. As Chairman Sensenbrenner has said, we ''bent over backwards'' to try to satisfy the Department's concerns, but ''no matter how much we bent, nothing could satisfy them.'' In particular, the Department pressed its unreasonable demand for an arbitrary three-year time limit on obtaining a DNA test after conviction.

Let us be clear what this means. A DNA test is not a get-out-of-jail-free card; it does not even guarantee someone a new trial. All this is about is providing access to evidence in the government possession for purposes of forensic testing. Judge Michael Luttig, one of the most conservative jurists in the country, has written that this is nothing less than a constitutional right. Senator Specter took the same position in the last Congress. A large majority of the States that have passed post-conviction DNA testing laws have rejected time limits, recognizing, as I do, that there should never be a time limit on innocence.

The reforms proposed in the Justice for All Act will mean more fair and effective criminal justice in this country. The few remaining opponents of the bill still wave around the April 28 letter from the Department of Justice. If Congress fails to enact this needed law this year I lay responsibility directly at the feet of President Bush and Attorney General Ashcroft. They deserve to be held accountable if their stubborn opposition to the bill causes it to die.

NATIONAL INTELLIGENCE REFORM BILL

Mr. SARBANES. Mr. President, I rise today to express my pleasure that yesterday the Senate incorporated an important amendment I authored with my colleagues, Senators BINGAMAN and HARKIN, into the National Intelligence Reform Act of 2004. Our amendment strengthens Congress's role in protecting our civil liberties as we move forward with the reform of our intelligence structure. The randomness of the terrorist acts of September 11, and the relative ease with which they were perpetrated, exposed serious gaps and deficiencies in our intelligence and security systems. In the aftermath of those attacks, we established the 9/11 Commission, which through its seminal report and recommendations has helped to clearly identify critical problem areas and recommend solutions to remedy them. And now, through this National Intelligence Reform Act, we are working to implement these recommendations in a way that strengthens the intelligence infrastructure and increases synergy and coordination within our intelligence community.

But in the aftermath of September 11—in our vigilance to protect against future attacks and to comprehensively overhaul our intelligence system—we run the risk of enacting procedures that could diminish or overrun our civil liberties. The Commission recognized this risk and in one of its most important recommendations has wisely suggested the establishment of a civil liberties oversight board within the executive branch. In the spirit of that recommendation the authors of the underlying bill have provided for such a board whose purpose it is to continuously review the impact on civil liberties of intelligence gathering initiatives and operations devised under the new National Intelligence Program, NIP. To that end, the board will be charged with reviewing new proposals under the NIP, advising on the civil rights implications of those proposals, and determining whether proposals will expand powers at the expense of our civil liberties.

The question arises, however, as to what the board can do with a finding that a violation has occurred. Under the bill as currently drafted the Board is not authorized to intervene or put any stopgaps in place through the legislative or regulatory process. I recognize that the intelligence community must have the ability to implement its proposals and operations with a level of flexibility and expedience. But, I also recognize that the board must have the ability to check initiatives that infringe on our most sacred constitutional rights. Our amendment strikes a balance between these two goals by making Congress aware of specific instances in which the board has significant concerns about a given proposal's adverse effect on civil liberties. Specifically, this amendment requires that the board include, within its biannual reports, a detailed accounting of each time the board finds that: No. 1, a proposal to create a new means of gathering intelligence will unnecessarily infringe on civil liberties; and No. 2, that finding is not adequately addressed by those implementing or creating the means.

By receiving this information, Congress will be able to keep pace with the implementation of national intelligence reform as well as provide guidance on ways to refine and calibrate new intelligence gathering initiatives so that we balance security interests with constitutional rights. In short, the amendment provides Congress the information it needs to accomplish a critical part of its oversight function, ensuring that while we work to keep our country safe we also safeguard the constitutional freedoms upon which it was founded. Again, I thank the managers for including this important