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

amendment in the underlying legislation.

PUBLIC DIPLOMACY

Mr. BAYH. Mr. President. I commend the Senator from New York for her work on the section of the McCain-Lieberman-Bayh-Specter amendment to the 9/11 legislation that addresses education in the Muslim world. The provision commits the United States to taking a comprehensive approach to universal basic education in Muslim countries and requires our government to develop a cooperative plan to achieve this visionary goal. The 9/11 Commission understood that expanding education that emphasizes moderation, tolerance and the skills needed to compete in the global economy in these countries will create an alternative to hate and will show that the United States is committed to expanding opportunity in countries where we are often competing with our enemies for hearts and minds. It is only through a long-term public diplomacy strategy that we will win the war on terrorism, and modern education is a foundation of that effort. I would like to thank Senator CLINTON for her assistance in drafting the education provisions in this bill We could not have achieved such a comprehensive approach to education without her involvement, and we appreciate her efforts.

Mrs. CLINTON. I would like to thank Senator BAYH, along with Senators MCCAIN, LIEBERMAN and SPECTER, for stepping forward to ensure that the 9/11 Commission's recommendations on education become a key part of our Nation's anti-terrorism strategy. As you know, I have introduced legislation to promote universal basic education in all of the world's developing countries by 2015. I am pleased that the Senators forging this bipartisan bill have accepted many of these recommendations, including creating, for the first time, a strategy to promote universal basic education in the Middle East and other significantly Muslim countries. The bill also encourages countries to come forward with strong national education plans for quality universal basic education and directs our efforts at providing support for such crucial systemic reform. The provisions included in this 9/11 bill represent an important step toward the goal of universal basic education. I want to thank all the leaders on this amendment for working with me on this issue, and I appreciate their leadership on this bill.

PRIVACY AND CIVIL LIBERTIES

Mr. LEAHY. Mr. President, yesterday, we passed an important bill granting enormous additional authority and tools to the government to fight terrorism. We authorized the creation of a vast information sharing network that will allow officials throughout the U.S. government to search databases containing extensive data about American citizens. We also gave broad authority to implement new technologies, standardize identification documents and enhance border security. These are great powers that, as the Commission noted, will have substantial implications for privacy and civil liberties.

This bill was also notable because it balanced this grant of power with the creation of a Privacy and Civil Liberties Oversight Board. I thank Senator LIEBERMAN for including this Board as part of the National Intelligence Reform Act, and for working with Senator DURBIN, me and others to make sure the Board had the necessary authority, mandate and tools to ensure that civil liberties and privacy are safeguarded as we enhance our antiterrorism policies and tools.

Mr. LIEBERMAN. I have been pleased to work with Senator DURBIN, Senator LEAHY and others in creating a Privacy and Civil Liberties Board that is in keeping with the Commission's recommendation. The Commission recommended that we create an entity that could ''look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered.'' Senator COLLINS and I appreciated the contributions of members of the Judiciary Committee. Their longstanding expertise in these issues was very helpful to us in shaping the key provisions of the Board.

Mr. LEAHY. We all recognized that we were giving this Board substantial responsibility. Given the enormous powers we were granting the government, we needed a Board capable of counter-balancing these powers. But we also know that this does not end our duty.

Mr. LIEBERMAN. I agree. Accountability for this Board is essential. As the 9–11 Commission stated, ''strengthening congressional oversight may be among the most difficult and important'' of our recommendations. We cannot assign the Board such significant responsibilities without regularly reviewing its progress to ensure that its mandates are being met. We have an obligation to exercise vigorous oversight of its actions.

Mr. LEAHY. The Judiciary Committee and the Governmental Affairs Committee have a shared history of working together to preserve privacy and civil liberties, and to promote open and accountable government. Our committee members have developed substantial expertise and experience in these areas, and we have a duty to continue to oversee these concerns. I thank the distinguished Ranking Member of the Governmental Affairs Committee for working with us to ensure that the Board's work on privacy and civil liberties matters be under the jurisdiction of both these committees so that we can continue to provide effective oversight.

Mr. LIEBERMAN. I agree that joint jurisdiction over the Board's work on privacy and civil liberties matters is the most effective and appropriate way to take advantage of our shared expertise and experience. I thank the Ranking Member of the Judiciary Committee for his commitment and dedication to fighting for the rights and liberties that make this country worth preserving. As the Commission stated, ''[w]e must find ways of reconciling security with liberty, since the success of one helps protect the other.''

Mr. KYL. Mr. President, I ask unanimous consent that two letters, which I sent to 9/11 Commission member Slade Gorton, be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, May 13, 2004.

Hon. SLADE GORTON,
Member, National Commission on Terrorist Attacks Upon the United States, Washington, DC.

DEAR SLADE: Thank you for sending me the two 9/11 Commission staff statements in response to my April 23 letter to you about the visa-processing policies of the State Department. As you and the other Commissioners prepare to write your final report, I offer what I hope will be taken as constructive criticism of the statements.

What the Commission staff did not note is the most important point of all: if the law had been followed, at least 15 of the 19 9/11 terrorists would not have been in the country on September 11. The visa applications of the hijackers were so flawed that no reasonable person could have believed that they met the standards for entry imposed by the law for all visa applicants. Making matters worse, no matter how deficient the paper applications, most of the Saudi applicants were granted visas without an oral interview, clearly contrary to both the spirit and intent of the law, which makes clear that applicants for nonimmigrant visas are considered ineligible for a visa until they prove their own eligibility. In other words, our law creates a presumption against granting the visa by putting the burden of proof on the applicant.

Under Section 214(b) of the Immigration and Nationality Act an alien applying to enter the U.S. shall be ''presume[d] to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for admission, . . . that he is entitled to a nonimmigrant status.'' In other words, the law is intentionally designed to force applicants to prove eligibility for a nonimmigrant visa. For Saudi nationals, however, visas were all but guaranteed to be issued—directly in conflict with the spirit and intent of the law.

All 15 of the Saudi's applications contained inaccuracies or omissions that should have prevented them from obtaining visas; and, despite initial indications by the State Department that almost all of the Saudi applicants had been interviewed, only two of the 15 Saudi applicants were interviewed by State.

The errors in the applications weren't trivial mistakes, such as punctuation or spelling. Visas were granted to young, single Saudi males who omitted fundamental information such as: means of financial support (and it appears none of the 15 hijackers whose applications survived provided supporting documentation), home address, and destination or address while in the U.S. The October 28, 2002 National Review article by Joel Mowbray, ''Visas for Terrorists: They were ill-prepared. They were laughable. They were approved,'' provides the details about these mistakes.

In his article, Mowbray writes that, ''For almost all of the applications, the terrorists