began work immediately on this critical project, literally hours after the 9/11 Commission issued its report. From beginning to end she has brought her talents and skill to an extremely difficult issue. Chairman SUSAN COLLINS demonstrated tremendous leadership. The Senate and the Nation are in her debt.

This day cannot go by without also thanking many other Members: Senator LIEBERMAN, the ranking member; members of the Governmental Affairs Committee, and the Senate conferees; Senator WARNER, who stepped in to lend an able hand in this last week; Senator JON KYL, whose patience has been remarkable; Senator TED STEVENS, our very experienced hand who has dealt with all of the programs under review in this bill for decades and whose continued interest and leadership and focus on implementation of this bill will be absolutely critical; Senator TOM DASCHLE, who joined hands with me and said right after the report was released that we would work together in a bipartisan way to generate a complex bill in a responsive, expeditious way that would respond to the recommendations put forth by the 9/11 Commission.

That product has been developed and will be delivered to this body shortly and will be voted on this afternoon. The legislation is not perfect. It does not solve every problem. But the legislation was not designed to solve every problem. Specific problems were identified by the work of the Commission and Congress in reviewing operations in the intelligence community in the years leading up to the 9/11 attacks. To the best of our ability, we have produced legislation that, with the visionary leadership from the President and his Cabinet, will serve to make America safer.

I can't emphasize that last point enough. Today we are safer than we were before 9/11, but we are not yet safe. Active and engaged Americans around the world and here at home are our first and our best line of defense against a philosophy that seeks and is committed to doing us harm. This legislation is an important tool in a war against terrorism, but it is not one-stop shopping for our country's needs. It should help in making sure that our intelligence assets are deployed wisely, that information developed is shared broadly, that our strategy to fight this war evolves effectively, and it will accomplish those things.

The families who lost their parents, their children, their relatives, their close friends on that tragic day in New York and Pennsylvania and Washington, all deserve our constant dedication in the Congress to buttress the war on terror. This conference report is our latest contribution, not our final contribution, to that conflict. No one should have to suffer the horror and anguish of the 9/11 events again.

I will close by saying that when we act later today, we will have acted on that hope. We will have kept our charge as Members to stand on behalf of America in her defense. And we will have stood and made a lasting difference that is a fitting capstone to the 108th Congress.

I thank all Members for their patience. I appreciate them for their diligence and dedication since the end of July, working nonstop to bring this bill to the floor and ultimately see it through to passage today and later signature by the President of the United States.

INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to consideration of the conference report to accompany S. 2845 which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2845) to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes, having met, have agreed that the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment, and the House agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of December 7, 2004.)

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, in a discussion with the Democratic leadership, we have come to an agreement that gives us a pretty good template for the organization during the course of the day. This will be useful, and I will ask unanimous consent shortly to allocate time for the people who have come forward and said they would like to speak prior to the vote.

As part of this, the managers will have time right before the vote—up to 30 minutes, but probably that much time will not be used before the vote—to add closing statements.

I ask unanimous consent that debate on the conference report be limited to the list below:

Senator COLLINS will be controlling 45 minutes; Senator LIEBERMAN, 45 minutes; Senator BYRD, 120 minutes, to begin at 12:30 p.m.; Senator STEVENS, 5 minutes; Senator ROBERTS, 10 minutes; Senator ROCKEFELLER, 10 minutes; Senator DURBIN, 15 minutes; Senator WARNER, 30 minutes; Senator LEVIN, 15 minutes; Senator GRAHAM of Florida, 15 minutes; Senator COLEMAN, 10 minutes; Senator CARPER, 5 minutes; Senator SPECTER, 20 minutes, and his comments will follow Senator LIEBERMAN's comments this morning.

I further ask that following the use or yielding back of the time, the Senate proceed to a vote on the adoption of the conference report, with no intervening action or debate.

Mr. REID. Mr. President, reserving the right to object, I will ask a couple of things: One, that the time for quorum calls run off of the time equally against everybody. I suggest that those people who have time come over and use it. Senator BYRD will be here at 12:30. That time is locked in for 2 hours. I think this is fair and reasonable. I will also ask the distinguished majority leader if we will be able to—this vote is not close or controversial in any way, and nobody is trying to do anything untoward. People on both sides may not be here at whatever time the vote begins.

The PRESIDENT pro tempore. Is the Senator asking that the time be charged against all those who have time, or just against—

Mr. REID. I ask unanimous consent that the quorum calls—when they are in effect—be charged against everyone except Senator BYRD at 12:30. After 12:30, it would be charged against him also. So the time during quorum calls I ask be charged against all speakers equally. Otherwise, we are going to wind up with more people——

The PRESIDENT pro tempore. The Chair is constrained to ask the Senator to modify that. The occupant of the Chair has asked for 5 minutes. That could entirely wipe out the amount of time I have allocated to me.

Mr. REID. It would not if it is done on a proportionate basis. Well, if the vote does not occur until 7 o'clock, I don't really care. I will withdraw that request and we will let things fall where they may.

Mr. FRIST. Mr. President, for clarification, this is a plea to our colleagues to be here and be speaking on the floor of the Senate. We are trying to do an awful lot, so we can start the vote around 3 o'clock. It will likely finish around 5:15. In order to accomplish that, we cannot be sitting in quorum calls. We need the people wishing to speak to be here on time and to be available. Check with the managers.

The PRESIDENT pro tempore. May the Chair suggest that the time for quorum calls be charged against the next person in line to speak and put these speakers in order?

Mr. FRIST. Mr. President, since we have not talked to each individual, I don't want them necessarily to have to come in this order. I think we can leave it with the understanding that we need speakers here to work with the floor managers and to have no down time over the course of the morning and, if so, we are going to ask people to try to shorten their remarks.

Mr. REID. Parliamentary inquiry, Mr. President: If in fact we don't lock in a time for the vote, and Senators decide not to come and speak, we cannot have a vote until they finish their time; is that right?

The PRESIDENT pro tempore. I am informed that if one Senator does not appear, or does not use his or her allocated time, that will not delay the Senate from voting at the time specified.

Mr. REID. Well, so there is no confusion, it is my understanding this adds up to about 3:45 this afternoon.

The PRESIDENT pro tempore. The Chair is so warned by the Parliamentarian not to have a debate with the Senator, but the Senator is correct.

Mr. REID. Mr. President, I ask unanimous consent that the vote occur no later than 4 o'clock, and that it could occur more quickly if the time is used up.

The PRESIDENT pro tempore. Is there objection to the leader's request as modified?

Mr. SPECTER. Mr. President, for clarification, I will follow Senator LIEBERMAN for 20 minutes. So it is Senator COLLINS and Senator LIEBERMAN, and then I am up for 20 minutes?

The PRESIDENT pro tempore. The Senator is correct. The Chair's understanding is that this becomes the order for Senators to speak.

Mr. FRIST. No, Mr. President. We have no specific order. The unanimous consent request was granted that Senator SPECTER follow Senator LIEBERMAN, and that is the only specific request. The order, otherwise, has not been determined. Senator COLLINS will speak, then Senator LIEBERMAN and Senator SPECTER.

Mr. REID. Reserving the right to object, Senator DURBIN would like to speak after Senator SPECTER.

The PRESIDENT pro tempore. Is there objection? Without objection, the modified request is agreed to.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Maine.

Ms. COLLINS. Mr. President, in New England, we have an old expression: The difficult we do immediately; the impossible takes us a little longer.

The Intelligence Reform and Terrorism Prevention Act of 2004 before us today at times seemed to be an impossible goal. So it took us a little bit longer. It has been a long and arduous journey to reach this point today, but the extraordinary perseverance of the 9/11 Commission, the families of the victims of the attacks on our country, the conferees, our talented staff, our leaders, and, most of all, the President of the United States brought us to this point today.

We would not be at this historic moment without the informed, strong, and bipartisan leadership of my good friend, the Senator from Connecticut, Mr. LIEBERMAN. I am deeply grateful to him for his leadership and for working in partnership with me.

When Senator LIEBERMAN and I were first assigned this task by our Senate leaders back in late July, we pledged to work together and to recognize that when it comes to matters of national security, there is no place for partisanship. We worked from the very beginning to forge a bipartisan bill, and I am very pleased that the conference agreement we bring before the Senate today is a bipartisan agreement. I am confident that later today it will receive a strong bipartisan vote. But it was Senator LIEBERMAN's determination, his leadership, and his commitment to this cause that made it possible. It has been a great pleasure to work with him, and I look forward to many future collaborations.

I am also very proud of all of our colleagues on the Homeland Security and Governmental Affairs Committee. They worked so hard. From the very first hearing that we held in late July to the completion of the conference agreement over the weekend, they were there every step of the way. No leaders of a conference could ever have had more devoted and dedicated conferees than Senator LIEBERMAN and I had.

We were also fortunate to be blessed with an outstanding staff. Both Senator LIEBERMAN's staff, and my staff, headed by Michael Bopp, have worked countless hours over the last 4½ months. They sacrificed family vacations, and they have sacrificed a great deal of sleep. They have been here night and day working because they so believed in this legislation. We could not have done it without them.

On the House side, I want to thank Speaker HASTERT. His chief of staff devoted hundreds of hours to assisting in these negotiations. Congressman PETE HOEKSTRA and Representative JANE HARMAN led the conferees on the House side. They did outstanding work. They were absolutely committed to the principle of crafting legislation that would make America safer and more secure.

Throughout this process, President Bush has provided outstanding leadership. I would say that without the help of the President of the United States and his Vice President, we would not be here today. Their intervention at critical points throughout the debate was absolutely essential in helping us to forge the compromises that were necessary to move this bill along.

We all owe a great debt to the members and the staff of the 9/11 Commission. I have worked very closely with the chairman and vice chairman, Gov. Tom Kean and former Representative Lee Hamilton. The work they did, their leadership, their investigations, their interviews of 1,200 people in 10 countries provided a solid foundation for the recommendations they made and for the reforms included in this bill.

I am very pleased that we have their endorsement. They said:

> We believe this is a good bill and a strong bill. We believe it will make our country safer and more secure. We also believe that the essential elements of the Commission's recommendations remain intact. We are of the firm view what this conference report deserves the support of the House and the Senate.

But, Mr. President, perhaps the greatest debt of all is owed to the families of the 9/11 victims. In their profound loss, they found courage and determination. Their knowledge has contributed greatly to our debate, and their passion constantly reminded us of why we are here and what is at stake. They never let us give up. They refused to let us fail.

I am grateful to Senator FRIST and Senator DASCHLE for assigning our committee this important task. They showed great confidence in us, and I am pleased we did not let them down.

This legislation addresses the alarming flaws in our national intelligence structure that were so horribly and painfully exposed on that black September morning more than 3 years ago. It does what nearly a half century of studies and legislation calling for intelligence reform failed to do. It is legislation whose time has finally come.

The legislation implements the major recommendations of the 9/11 Commission. We are rebuilding a structure that was designed for a different enemy in a different time, a structure that was designed for the Cold War and has not proved agile enough to deal with the threats of the 21st century.

We have transformed that structure into one with the agility needed to respond to international terrorism, rogue states, the proliferation of weapons of mass destruction, and the other challenges and threats of the 21st century.

The legislation reforms the intelligence community and it gives us the tools to respond to threats of which we may not even be aware at this point.

It is fitting that this legislation comes to a final vote during the week when we pause to remember the events of December 7, 1941. Just as the National Security Act of 1947 was passed to prevent another Pearl Harbor, the Intelligence Reform Act will help us prevent another 9/11.

I am not saying that this legislation will prevent future terrorist attacks, but it will increase the capabilities of the intelligence community and help us improve the opportunity to better detect, prevent, and, if necessary, respond to attacks on our country.

The four primary components of this legislation are the creation of a director of national intelligence, the establishment of a national counterterrorism center, the creation of a civil liberties board, and strong information-sharing provisions. There are also many other provisions in this bill that improve border security, that improve transportation security, that set a new direction in our foreign policy.

This is a comprehensive approach that embodies many—indeed, most—of the recommendations of the 9/11 Commission.

The new director of national intelligence will be a strong position with clear and effective authority to build

and execute the intelligence budget. The DNI will be a dramatic improvement over the structure we have today. For the first time, we will have, in the words of Secretary of State Colin Powell, an empowered quarterback for our intelligence team.

To illustrate why this is important, why these authorities are crucial, let us consider a passage from the 9/11 Commission Report. In late 1998, it had become apparent to CIA Director George Tenet that al-Qaida was a growing and deadly threat to the people of this country, so on December 4 of that year, he issued a memorandum that said the following:

We are at war. I want no resources or people spared in this effort, either inside CIA or the Community.

Now, that is a pretty clear, concise, direct order from the head of the intelligence community.

According to the Commission, the memorandum had virtually no impact. One reason it had so little overall effect on mobilizing the resources of the intelligence community is that the Director of the CIA, beyond the direct control of the CIA, has very little authority over the funding, the people, and the other resources in the intelligence community. This legislation will ensure that in the future, when such a clear, concise order is issued, it will mobilize and galvanize the resources we can bring to bear.

The second important key component in this bill is the creation of the National Counterterrorism Center. This will build on the good work already being done by the Terrorist Threat Integration Center created by the President through an Executive order. The NCTC will help demolish the information stovepipes that the 9/11 Commission found and it will replace them, it will turn them into conduits for information sharing across the intelligence community. The NCTC will also conduct strategic operational planning to coordinate the agencies that are planning our response to al-Qaida and the other threats to our national security.

Throughout the debate on this bill, in addition to improving the ability of the intelligence agencies to cooperate and coordinate their efforts, we have also been mindful of our troops fighting on the front lines in the war against terrorism in Afghanistan and Iraq. Both Senator LIEBERMAN and I are privileged to serve on the Senate Armed Services Committee. I contend that our current system has not always served our troops well. It did not predict the insurgency that has cost us so many lives in Iraq. We owe it to our troops on the battlefields, as well as to our civilians at home, to improve the quality of intelligence they receive, and I believe, as does Secretary Powell, this bill will do just that.

I emphasize that nothing in this bill in any way hinders or impairs military operations or readiness. To the contrary, I believe this legislation will help improve the reliability and the quality of intelligence provided to our troops.

Another important provision of this bill would implement the recommendations of the 9/11 Commission by creating a civil liberties board. As we increase the power of Government to deal with the threat of terrorism, we must be mindful to preserve those freedoms that define us as Americans. We would be handing the terrorists a victory if we were to compromise the civil liberties Americans cherish. This board will help make sure we strike the right balance.

Finally, other key provisions of this bill, for which Senator DURBIN deserves great credit, are provisions that will improve the sharing of information across our intelligence agencies and throughout the Federal Government. We know from the extensive review of the 9/11 Commission that various agencies throughout our Government had pieces of the puzzle that had it been assembled might have allowed them to prevent the attacks on our country on 9/11. We need to make sure we have a culture in our Government of assembling the pieces of that puzzle, of sharing information. I believe the Counterterrorism Center, the information-sharing provisions, and having a DNI will all improve and remedy that problem.

The 9/11 Commission has told us repeatedly of the valiant and talented men and women we have in our intelligence agencies, and I salute their good work. I believe today that we will be giving them the tools they need to be more effective. This legislation provides those good people with a good structure.

Time, commitment, and perseverance have brought us this far. I urge my colleagues to join us in completing the journey by giving this landmark legislation an overwhelming vote later this afternoon. This legislation will implement the most sweeping significant reforms of our intelligence community in more than 50 years. The reforms are long overdue, and they will help to make our Nation more secure.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to join with Chairman COLLINS in recommending the adoption of this conference report on the Intelligence Reform and Terrorism Prevention Act of 2004 which, of course, implements the key recommendations made by the 9/11 Commission Report.

I begin by thanking Senator COLLINS for her extraordinary leadership in this effort. In the 16 years I have been here—and it is self-evident to the Presiding Officer and others that I am much the senior of Senator COLLINS—I have never had a better legislative experience.

This task came to us quickly. There was an enormous amount of work to do. As I said yesterday, it was a long and winding road we walked down, but we ended up where we needed to be and where the Nation needed us to be, and it simply could not have happened without SUSAN COLLINS' leadership. She has an extraordinary sense of purpose and principle. She understands the difference between right and wrong and, in a legislative context, perhaps, the difference between better and worse because that is often where we are. She is a persistent and very effective negotiator, knows when to hold them and when to fold them.

She is a wonderful person—I think maybe I should be that explicit—and that doesn't hurt around here, either, because it gains the confidence of the people who work with her. Part of her being a great person is her great sense of humor which got us through some of our darker moments.

I was thinking one of the great moments in the process was when we decided, late in the process, that the original title we gave to the central position we created, the National Intelligence Director, would have the acronym NID. It doesn't resonate the strength that we wanted. Some member of our conference with an inferior sense of humor said it would lead to a lot of ''NIDpicking.'' A lot of laughter led to the change of the title to the Director of National Intelligence, the DNI. You can feel the force radiating. We laughed a lot about that and about a lot of other things.

It is a familiar saying in public service and life, and certainly in campaigns, that victory has a thousand parents and defeat is an orphan. This is a victory for the American people. Many people have a right, here in the Senate, on the 9/11 Commission, the families of the 9/11 victims, the President of the United States, the Vice President of the United States—so many people can say, and we might say: Without their involvement this would not have happened. But nobody, really, can say that more or feel that more than Senator SUSAN COLLINS of Maine. I thank her very much for her friendship, for her partnership, for her leadership here, and I, too, look forward to working with you in many similar collaborations in the years ahead.

Before I get to the substance of the bill, I do want to say something about the process here. As we end the 108th session of Congress, unfortunately a session that was very often polarized and partisan, it is really great—besides the specifics of this accomplishment that is so critical to our national security—that we have ended it with a bipartisan, nonpartisan triumph. It ought to send a message to the American people, and perhaps just as important to us here, that we are capable of doing this. When the chips are down, we are capable of getting together across party lines and doing what is right for the country. That, ultimately, is why we all came here. That gives us the greatest satisfaction and,

incidentally, it is probably the smartest and most productive thing we can do politically as well.

This simply would not have happened in the Senate without the chairman of the committee on Homeland Security and Governmental Affairs, and ultimately the chairman of the conference, Senator COLLINS, setting exactly that tone. I thank PETER HOEKSTRA on the House side, JANE HARMAN, and all the members of the conference committee for all they contributed.

This legislation is a testament to the courage and persistence of the families of the victims of September 11. Their personal sacrifices, transformed into a steadfast devotion to see this bill to passage, will help make the rest of America safer. This bill was conceived in the memory of their husbands and wives, their sons and daughters, their mothers and fathers and brothers and sisters, and simply would not have been possible without the constancy of effort and the increasingly sophisticated advocacy by the surviving family members. I thank them.

We have worked hard for this historic agreement because we believe, quite simply, that the security of our Nation depends on it. There were various times at which people in this Chamber and the other body said we were moving too quickly; what was the cause for haste? I can tell you it didn't seem we were moving too quickly to Senator COLLINS and me. But what was the cause for our haste? Our enemies, our terrorist enemies, al-Qaida and their ilk, are not waiting, as we know. They are here. They are planning. We are at peril. Accordingly, we approached this task with a real sense of urgency, a grave and growing sense of urgency because we know we face a clear and present danger from terrorists.

The bill before us today is a landmark achievement because, as others have said and will say throughout the day, for the first time in over half a century we are going to modernize our national intelligence structure to meet the new challenges we face in today's world. With this bill, we recognize we can no longer keep the American people safe simply by projecting military force abroad. The world has changed. Our terrorist enemies today make no distinction between soldiers and civilians, between foreign and domestic locations when they attack us. To defeat them, we must have the best possible intelligence about their plans before they strike so we can stop them before they strike.

This legislation moves us toward that goal significantly by transforming our intelligence community from a Cold-War model—and after all, it was at the outset of the Cold War that the current structure was conceived—a Cold-War model that shared information only if there was a need to know, to a 21st-century model that will share information to maximize the intelligence community's substantial resources and expertise and, yes, guarantee greater returns for the billions and billions of dollars of taxpayer money that are invested in intelligence to protect the American people.

The 9/11 Commission supports our compromise. Chairman Kean and Vice Chairman Hamilton said in a statement:

> We believe this is a good bill and a strong bill. We believe it will make our country safer and more secure.

They support this compromise because it implements the Commission's key recommendations to establish that DNI and a National Counterterrorism Center that will improve coordination and collaboration, as the Commission puts it, ''to forge unity of effort'' between the 15 intelligence agencies scattered throughout the Government, and to ensure that, unlike up until now, someone is genuinely in charge.

I said to a business executive in my home State this morning, talking about this bill, explaining why I couldn't be with him today at a meeting in Connecticut, that if anybody in business really got inside and looked at how we are spending the billions of dollars we do on intelligence, they—well, they wouldn't believe it because no one is in charge.

The Commission indicted the status quo of America's intelligence community. The 9/11 Commission report is an indictment of the status quo. Those who pick and try to look for loopholes in this reform have to remember that the status quo failed to protect the American people on 9/11 and it has failed in different ways to provide us with the quality, accuracy and reliability of intelligence that we need.

Vice Chairman Hamilton memorably told our committee in our hearings on this Commission report:

> A critical theme that emerged throughout our inquiry was the difficulty of answering the question: Who's in charge? Who ensures that agencies pool resources, avoid duplication and plan jointly? Who oversees the massive integration and unity of effort to keep America safe? Too often [the 9/11 Commission said] the answer is no one.

The fact is, below the level of the President no one has been in charge of overseeing the entire intelligence community and its multibillion-dollar budget. Today, as testimony before our committee validated, no one is clearly in charge of the hunt for Osama bin Laden. No one has had the authority to knit together the efforts of the 15 disparate agencies working on intelligence for the American people, and, therefore, no one has ultimately been accountable for the deadly mistakes that have been made.

This legislation changes all of that, putting a clear command structure in place so that in the future the puzzle pieces will be put together, the dots will be connected, and so, I hope, pray, and believe, we will never have to suffer through another attack like the one we did suffer through, and still do, on September 11, 2001.

I wish to briefly discuss some of the key provisions, starting with intelligence reform.

Under our current intelligence structure, the CIA Director has to perform three jobs: acting as the President's principal intelligence adviser, overseeing the intelligence community as a whole, and directing the CIA. The 9/11 Commission reported what many had said before: The tasks are simply too much to expect of any one person.

So we have created a Presidentially appointed, Senate-confirmed Director of National Intelligence, who will lead the national intelligence community but be separate from the Director of the CIA. The DNI will be the President's principal intelligence adviser and will focus exclusively on breaking down those barriers that have obstructed information sharing and professional collaboration in the public interest. With the CIA Director in charge of daily CIA operations, the DNI will be able to forge that unity of effort which we need to better protect the American people.

The DNI will exercise significant budget authority over the intelligence community both in the development and the execution of the budget, and he or she will consult closely with the Secretary of Defense, the Director of the CIA, the head of the FBI, and other intelligence leaders on both funding and personnel issues.

The DNI will have unprecedented authority in the implementation and execution of all funding under our national intelligence program.

Our bill makes clear that the DNI will have the power to ''develop and determine'' the intelligence budget and that the Director of the Office of Management and Budget must apportion the national intelligence program funds at the ''exclusive direction'' of the DNI. The DNI is further responsible for managing the appropriations by ''directing the allotment and allocation'' of appropriations through the heads of Departments containing the elements of the intelligence community. Just to make sure there is no slow-walking in moving those funds forward, the Department comptrollers must then allot, allocate, reprogram, or transfer funds—in the words of the report—''in an expeditious manner.''

The DNI will have a major hand in the appointment of key officials across the intelligence community, thus elevating the authority of that position. He or she will recommend appointment of the Director of the Central Intelligence Agency to the President. The Secretary of Defense will have to obtain the DNI's concurrence in appointing the heads of the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency. The Secretary will consult with the DNI before appointing the Director of the Defense Intelligence Agency. The Secretaries of the Departments of Energy, Homeland Security, Treasury, State, and the Attorney General will need the concurrence of the DNI to appoint the heads of intelligence agencies under their immediate jurisdiction and under the DNI's

overall jurisdiction. That is real authority in this new office.

The DNI will also have significantly expanded authority to transfer personnel and funds beyond those of the current DCI so that he or she may react quickly to changing threats and direct intelligence resources where they are needed.

In addition to creating the DNI, this conference report will create—as recommended by the Commission—the National Counterterrorism Center and a series of National Intelligence Centers to ensure that critical national security issues are addressed with maximum coordination and teamwork.

This may well be the most significant process we have begun with this bill, the authority of DNI, but creating a model, and a model built on the most effective, modern corporate models of joint team efforts to deal with problems. But it really deals directly and grows out of the experience of the Pentagon post-Goldwater-Nichols, in joint warfare.

This says when we have a critical national security problem the best way to deal with it will be to create a center to deal with it, a table at which every element of our Government involved in dealing with that problem is present so they can collect intelligence together, analyze it together, and then plan how to combat the problem.

Specifically created in this bill, of course, is the National Counterterrorism Center which will seek to make ensure the disastrous disconnect between the FBI and the CIA that occurred prior to 9/11 will never occur again. It will develop plans, assign roles, and monitor the agencies' implementation of those plans in order to thwart the next terror attack.

This is not a narrowly focused, constricted center. The Center's planning will be at the strategic level such as how do we best win the ''hearts and minds'' of the great majority of people in the Muslim world. It will be at the tactical level—for instance, how we are going to capture Osama bin Laden.

The National Counterterrorism Center Director will be confirmed by the Senate and it will report to the Director of National Intelligence, and in some cases to the President himself.

Let me talk about those other centers.

This bill creates one other center to deal with a most pressing threat to our security; that is, the proliferation of weapons of mass destruction. This part of the bill was inserted as a result of the leadership of the majority leader, Senator FRIST. It is an enormous step forward in dealing with the threat of WMD.

These are the central structures of the intelligence reform, but our legislation goes beyond that. The 9/11 Commission documented that, in a period preceding September 11, 2001, potentially helpful information available to one part of the Government was not shared with others which could have used it.

This legislation takes that direction from the Commission to heart and requires the President to establish a network of technologies and policies that will resolve conflicts between the need to share and the need to protect sources and methods. It will create and allow us to use the best technology to make sure we are sharing and culling and filtering and applying the vast amount of data we get from our intelligence networks most effectively.

Beyond intelligence reform, this bill contains much more. In fact, the 9/11 Commission made 41 recommendations to protect our Nation from terrorism. In August, Senator MCCAIN and I drafted legislation to address them all. I am pleased and proud to say I am grateful for the conferees, to the Senate, and to the House that most of those initiatives have become part of this conference report.

For example, the 9/11 Commission observed that many of the actions necessary to protect us in the war against terror also involves a consolidation of governmental authority and the increased presence of government in our lives to protect us. In response, the Commission called for ''an enhanced system of checks and balances'' to protect the civil liberties that define us as Americans. In fact, this conference report creates a Privacy and Civil Liberties Oversight Board.

The Board will have two functions. First, to advise the President and Federal agencies at the front end of policymaking and, second, to conduct oversight at the back end, investigating and reviewing Government actions to determine whether executive branch officials are appropriately respecting the individual freedoms of the American people.

The 9/11 Commission also recognized the futility of combating terrorism only by military means. Of course, we have been, and will continue, doing our best to capture and kill all the terrorists we can as soon as possible. But we understand that ultimately what is required to stop the growth of terrorism are initiatives of foreign policy, diplomacy, economics, and of politics.

Our legislation—this conference report—includes many of the provisions recommended by the Commission which will do just that, including increased American foreign assistance to Afghanistan and a renewed U.S. commitment to Pakistan. It provides enabling authorities to help us win ''the struggle of ideas'' through the greater funding and use of much more imagination in American broadcasts to the Islamic world. It calls for broadening and growth of scholarships and exchange programs between the United States and the Muslim world, with students and faculty going back and forth.

The bill also takes aggressive measures to prevent attacks, as well, by targeting terrorist travel, improving screening at entry and exit points, and securing identification documents.

Our legislation requires secure identification for travel documents for all travel into the United States. This was a topic about which much was said and debated in the conference, and before, during, and after House adoption of this conference report yesterday. I guess the conferees, in their wisdom, decided some of the immigration reform in the House bill would have weighted the bill down and inhibited or prohibited its passage. It is urgently needed and we cannot afford to do that. We will get to that next year.

Make no mistake, this conference report contains some tough antiterrorist law enforcement measures, and some tough immigration enforcement measure. It specifically implements the 9/11 Commission Report recommendation for the Federal Government to establish minimum standards for birth certificates, driver's licenses, and personal identification cards. Those provisions will help decrease fraud so terrorists are not able to hide their identity. They will not deprive the States of the right that States understandably want, to determine, not the form of the driver's license, but who is eligible to receive a driver's license within their States.

Other measures in this conference report will go far to tighten border security. It will increase the number of border guards, immigration officers, and detention beds for those who are being held for legal action and other action to determine their immigration status and whether they should be deported. No longer will we have a case, as in the past, where a challenge is made to someone's immigration status but they are allowed to wander and disappear into the vastness of America. There will be thousands of new beds created, detention facilities, to hold those people while their cases are being reviewed.

We added a provision allowing the Government to deport anyone who has received military training from a terrorist organization. The Government will also be able to obtain a Foreign Intelligence Surveillance Act warrant for anyone engaging in terrorist activities even if they are not clearly connected to a specific terrorist organization. That is common sense, but it is not in the law now.

To better safeguard the Nation's transportation networks, this legislation also requires the Department of Homeland Security to produce a national transportation strategy that evaluates the risks faced by all modes of transportation, not just aviation, and sets some clear priorities and deadlines for security needs.

We also have included measures to help first responders, the hundreds of thousands of men and women, largely in uniform, some out, at the local and State levels. We want to help them obtain interoperable communications equipment so in a crisis they can talk with each other and work cooperatively.

I have long believed if we are going to make sense of what happened on

September 11 we need to look back honestly with clear eyes and honest hearts. The 9/11 Commission's extraordinary work enabled us to do just that. Its 587-page report did not close the book on September 11. It will never be closed. The legislation does not close the book on September 11. It will live alongside December 7 as a day that will live in infamy throughout American history and America's future.

The work on this conference report and its adoption today will open a new chapter for a safer America. Chairman Kean has said:

Our biggest weapon of defense is our intelligence system. If that doesn't work, our chances of being attacked are so much greater. So our major recommendation is to fix that intelligence system and do it as fast as possible.

That is exactly what this historic legislation does.

In this Congress, this President fulfills our constitutional duty to provide for the common defense of our Nation. I said before that many can claim to be parents of this victory. Members of both parties in Congress, leaders of both parties, bipartisan leadership in this Chamber certainly stood by Senator COLLINS and me all the way. This simply would not have happened without the support of the President of the United States, the Vice President of the United States, and their staffs, working hard and long to do something that institutions and government do not do easily, which is to change. If it was easy, the 20-some-odd attempts made in the last half century to reform our intelligence system would have worked, would have succeeded. They did not.

This is about to succeed because of the effort that has been made across party lines in the national interests by everyone from the President of the United States to every single Member of Congress who worked hard on this measure.

Maybe I should add another thank you. Maybe I should go from the President to our staffs. Senator COLLINS has said the legions of staff members on both sides of the aisle and both sides of the Capitol put their lives on hold and worked through nights and weekends for the cause of a safer America. I particularly thank Kevin Landy on my staff, whose work started with the legislation to create the 9/11 Commission—that was a story in itself—and who has been single minded in his devotion to crafting this legislation in a way that was real and excellent. I also single out the work of Majority Staff Director Michael Bopp, and all of his team. Michael has terrific legislative skills and leadership abilities and has served the conference and the country extraordinarily well. On my staff I also thank my staff director Joyce Rechtschaffen, and Dave Barton, Mike Alexander, Raj De, Christine Healey, Holly Idelson, Beth Grossman, Larry Novey, Jason Yanussi, Kathy Seddon, Dave Berick, Mary Beth Schultz, Tim Profeta, Fred Downey, Andrew Weinshenk, and Donny Ray Williams, Leslie Phillips, Bill Bonvillian and Laurie Rubenstein. I could go on and on. Many other staffers of other Senators contributed much to this bill and I thank them. I would especially like to thank Marianne Upton and Joe Zogby from Senator DURBIN's staff. And I particularly express my personal appreciation, in this and so many partnerships we have been involved in, to Senator JOHN MCCAIN of Arizona, and to his staff. We worked in close partnership to craft the legislation implementing the 9/11 Commission recommendations. Many provisions were adopted in the Senate and are integral parts of the conference report. I thank them all.

I come back to the beginning to particularly thank my colleague and friend, our chairman, Senator SUSAN COLLINS of Maine.

I ask unanimous consent to have printed in the RECORD two documents from the 9/11 Public Discourse Project regarding driver's licenses and military chain of command.

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

FACT SHEET: DRIVER'S LICENSES, 9/11, AND INTELLIGENCE REFORM

WHAT HAPPENED IN THE 9/11 PLOT

The hijackers obtained 13 driver's licenses (two of which were duplicates) and 21 USA or State-issued identification cards (usually used for showing residence in the U.S. or a State).

The driver's licenses themselves were all legal, that is, they were not forged. But they were not all legally obtained. Seven hijackers used fraudulent means (false statements of residency) to acquire legitimate identifications in Virginia.

Their fraud in obtaining driver's licenses did not arise from them being undocumented aliens. All the hijackers entered the United States with proper immigration documents, but several had committed fraudulent acts to get them.

One hijacker who obtained a driver's license when he was in status was out of status on 9/11. Another hijacker whose documents clearly showed that he was out of status and had overstayed his 30-day visitor's visa did not seek or obtain a driver's license. He used his passport to prove identification and board the aircraft.

Based on what we learned in the 9/11 story, we recommended stronger immigration enforcement to catch terrorists who were exploiting weaknesses in America's border security. We recommended greater attention to terrorist travel tactics and information sharing about such travel.

We also recommended strong Federal standards for the issuance of birth certificates and other sources of identification, such as driver's licenses, to avoid the identity fraud that terrorists can exploit.

We did not make any recommendations to State governments about which individuals should or should not be issued a driver's license.

Specifically, we did not make any recommendation about licenses for undocumented aliens. That issue did not arise in our investigation, as all hijackers entered the United States with documentation (often fraudulent) that appeared lawful to immigration inspectors. They were therefore ''legal immigrants'' at the time they received their driver's licenses.

WHAT THE PENDING CONFERENCE REPORT (FOLLOWING THE COMMISSION'S RECOMMENDATIONS) WOULD REQUIRE

The establishment of new standards to ensure the integrity of the three basic documents Americans use to establish their identity-birth certificates; State-issued driver's licenses and i.d. cards; and social security cards.

New standards to ensure that the applicant for the identity document is actually the person the applicant claims to be; and improvements to the physical security of the document.

States would receive grants to assist them in implementing the new standards.

WHAT H.R. 10 REQUIRES

H.R. 10 requires that before issuing a driver's license a State would need to verify that each applicant:

Is a citizen of the United States;

Is an alien lawfully admitted to permanent residence status in the U.S.;

Has conditional permanent residence status in the U.S.;

Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the U.S.; or

Has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the U.S. (There are additional requirements but these are the key ones).

Only citizens and permanent residents could receive driver's licenses; all others with documentation would have temporary driver's licenses issued for the length of visa stay or not more than one year if there is no definite end to the period of authorized stay. Undocumented aliens could not receive licenses.

OBSERVATIONS

It is important to have national standards on driver's licenses, passports and other identification documents.

There is no doubt hijackers used State-issued documents to get through a lot of checkpoints. For this reason, we believe Federal minimum standards for such State-issued documents are important.

Whether illegal aliens should be able to get driver's licenses is a valid question for debate.

The debate over this issue ought not to hang up the hundreds of provisions in the conference report that would strengthen intelligence, improve information sharing, strengthen transportation and border security, improve American foreign policy, and support first responders.

We would also note that if the hijackers presented visa documentation that appeared valid to DMV officials (as they apparently did), they would still have been issued temporary driver's licenses for the duration of their visa, under the provisions in the House bill.

FACT SHEET: THE CONFERENCE REPORT AND INTELLIGENCE SUPPORT FOR MILITARY OPERATIONS

1. THE PROPOSED REFORMS DO NOT CHANGE THE CHAIN OF COMMAND FOR CONTROL OF NATIONAL INTELLIGENCE ASSETS

The warfighter today can call upon real-time intelligence support from the military services (like the Air Force), from his joint forces command (like CENTCOM), and from national agencies (like the signals intelligence analyzed by NSA).

The bill does not affect support relationships between combat units and military services (like the Air Force).

The bill does not affect support relationships between combat units and the joint

forces command to which they are assigned (like CENTCOM). It would not affect CENTCOM's management of the assets assigned to that command. So, for example, the bill would have no effect at all on the support relationship between the soldier in the field and a JSTARS aircraft or Predator UAV assigned to CENTCOM's intelligence component, its J–2.

Assets, like satellites, that are run by national agencies are managed for the benefit of the whole US government. That is why these are called ''national'' agencies. The chain of command for operational decisions about those assets therefore goes outside of DOD under the status quo.

Under President Bush's executive order (August 2004), DCI Goss has the duty to set the requirements and priorities for collection by these agencies. The DCI also has the authority to ''resolve conflicts in the tasking of national collection assets. . . .''

Under the conference report these same authorities simply move from the DCI to the DNI, for ''resolving conflicts in collection requirements and in the tasking of national collection assets of the elements of the intelligence community.''

At the operational level, the job of getting national assets in support of the warfighter is managed by the unified combatant commands with the help of the Joint Staff's J–2 and the J–2's National Military Joint Intelligence Center.

None of the current practices for the allocation of national assets would change as the focal point for national coordination moves from the DCI to the DNI.

2. THE SPECIFIC CONCERNS ARTICULATED BY JCS CHAIRMAN GENERAL MYERS IN HIS LETTER OF OCTOBER 21ST WERE ADDRESSED IN THE CONFERENCE REPORT

General Myers' letter of October 21st (attached) did not register any concerns about the chain of command in operational intelligence support for the warfighter.

General Myers focused only on budget matters, where he specifically requested that:

(a) ''the budgets of the combat support agencies should come up from the agencies through the Secretary of Defense to the National Intelligence Director''; and

(b) ''it is likewise important that the appropriations are passed from the National Intelligence Director through the Department to the combat support agencies.''

This latter point, on ''this vital flow,'' is the one—the only one—singled out for a ''recommendation that this critical provision be preserved in the conference.''

It was.

VVIn the conference report, the appropriations do not go to the National Intelligence Director. The appropriations for national intelligence go through the heads of the relevant departments.

With the help of OMB, the DNI can direct allotment or allocation of these funds, but the flow of funds goes through the department to (in DOD's case) the combat support agencies:

''Department comptrollers or appropriate budget execution officers shall allot, allocate, reprogram, or transfer funds appropriated for the National Intelligence Program in an expeditious manner.''

Thus the conference report accepted the recommendation of General Myers for how to direct the flow of funds.

Even on the issue of budget preparation, the conference report addressed the concern raised by General Myers.

In the conference report, the budgets from the combat support agencies come up through the Secretary of Defense. If the combat support agencies are not national intelligence agencies and are covered under the appropriations for joint military intelligence or for tactical intelligence and related activities, the proposed DNI participates with the Secretary of Defense in developing the final budget for them. For these combat support agencies the authority of the Secretary of Defense remains exactly as it is now.

If the combat support agencies are also national intelligence agencies (which is the case for the National Security Agency, the National Geospatial Intelligence Agency, and the National Reconnaissance Office), the proposed DNI would develop and determine the national intelligence program budget ''based on budget proposals provided . . . by the heads of agencies and organizations within the intelligence community and the heads of their respective departments and, as appropriate, after obtaining the advice of the Joint Intelligence Community Council.''

Thus, in the conference report, the Secretary of Defense has input into budget preparation for these national agencies both directly and through his participation in the proposed Joint Intelligence Community Council.

3. THE COMMISSION CONSIDERED DOD CONCERNS IN THE PREPARATION OF ITS RECOMMENDATIONS

Commissioners and Commission staff discussed DOD concerns about intelligence reorganization with Secretary Rumsfeld, Under Secretary of Defense for Intelligence Cambone, Director of the National Security Agency General Hayden, the Director of the National Geospatial Intelligence Agency General Clapper, and many others. General Hayden and General Clapper have spent their careers in providing military intelligence support for the warfighter.

Commissioners and/or Commission staff made three investigative visits to HQ Central Command and HQ Special Operations Command. They interviewed officers at HQ Northern Command and HQ Joint Special Operations Command. They interviewed users of intelligence in the field, in Afghanistan and Pakistan.

4. A BETTER STRUCTURE ENABLES BETTER MANAGEMENT

The Commission never took the view that reorganization solves all problems. A better structure enables better management.

Numerous specific management reforms are needed, in areas such as human intelligence collection; common standards for information technology and network capabilities; more efficient use of available experts; improved language skills; standardized processing of raw intelligence; and better all-source analysis.

What we found is that these and other management reforms falter in an unmanageable intelligence community. A better structure makes it more likely that such urgent management reforms will succeed.

APPENDIX: LETTER FROM GEN. RICHARD MYERS TO HASC CHAIRMAN HUNTER

CHAIRMAN OF THE JOINT CHIEFS OF STAFF,
Washington, DC, October 21, 2004.

Hon. DUNCAN HUNTER,
Chairman, Armed Services Committee, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As we discussed during our recent telephone conversation, I know that you and the conferees are discussing intelligence reform and the intelligence budget process. This is a vitally important subject as we look at the effectiveness of the intelligence provided by our combat support agencies. It is my belief that the responsibilities of the Secretary of Defense for the operation of these agencies, including budget preparation and execution, should be addressed as the conferees proceed to a final bill. In this regard the budgets of the combat support agencies should come up from the agencies through the Secretary of Defense to the National Intelligence Director, ensuring that required warfighting capabilities are accommodated and rationalized and ensuring that the Secretary meets his obligations. For appropriations, it is likewise important that the appropriations are passed from the National Intelligence Director through the Department to the combat support agencies. It is my understanding that the House bill maintains this vital flow through the Secretary of Defense to the combat support agencies. It is my recommendation that this critical provision be preserved in the conference.

The combat support agencies provide critical combat intelligence capabilities important to the day to day operations of our armed forces, including, of course, combat operations. Establishing the budget process in this manner would allow the combat support agencies to continue their outstanding support to the warfighters, our on-going counterterrorism efforts, and the men and women of our nation's armed forces serving in harm's way.

Sincerely,

RICHARD B. MYERS,
Chairman, Joint Chiefs of Staff.

Mr. LIEBERMAN. I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, before the Senator from Pennsylvania is recognized, I have a unanimous consent request.

Mr. President, I ask unanimous consent Senator MCCAIN be allocated 5 minutes of my time at some point during the debate today.

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

Ms. COLLINS. Mr. President, I will be putting into the record a list of the Senate conferees because each of them contributed in extraordinary ways to this bill. I will be making comments about some of them and their particular contributions later in the debate today.

Mr. LIEBERMAN. I ask unanimous consent that Senator CARPER of Delaware be given 5 minutes to speak at an appropriate time of the time allotted to me.

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

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I begin by congratulating the chairman, Senator COLLINS, and the ranking member, Senator LIEBERMAN, for their extraordinary leadership in the beginning of the legislative process which has culminated in where we are today and their steadfast determination in pursuit of this bill throughout many arduous months.

Senator COLLINS and Senator LIEBERMAN took up at the direction of the majority leader and the Democratic leader in structuring hearings which began at the end of July of this year immediately after the Democratic National Convention. They proceeded in August in an unprecedented way where the regular schedules were interrupted, a difficult thing to do in a campaign year. They reconvened the Governmental Affairs Committee on which

I served and the committee members were advised of schedules—difficult to do in a campaign season when many Members are up for reelection—but the legislative objective was of paramount importance and the committee responded and the committee pursued the hearings and came up with the legislation.

I believe what we have here is really a battlefield victory over the Department of Defense. The essential issue has long been a turf struggle, and I think we have taken a short step, but a significant one, in the legislation which is presented in the conference report today.

I do not think we should overstate where we have come, but I think, at the same time, we need to recognize we have stepped significantly forward, albeit a single step, as a result of the insistence of the President of the United States who deserves commendation for his leadership in the final stages of this matter to bring the legislation where it is today.

Where we have had a good bit of discussion on the issue of chain of command, I think realistically that has been more smoke than substance. But, at any rate, the key participants in the House of Representatives were satisfied so the bill did come to a vote in the House, and the Senate is ready to take the matter up today.

A great deal of credit is obviously due to the families of the 9/11 victims in their insistence that the 9/11 Commission be formed. And then great credit is due to the 9/11 Commission itself in structuring a report, which was filed in July, and then putting considerable pressure to have their report enacted.

I think, to repeat, the realities are that the final legislation is short of where the 9/11 Commission would like to have gone either with respect to budget control or with respect to day-to-day operations, but in the tortuous process of making changes in the intelligence community, the 9/11 Commission has been a catalyst here in a very important way.

It became apparent, when 9/11 occurred, that had there been proper coordination among the intelligence agencies that 9/11 might well have been prevented. There was that FBI report out of Phoenix about the suspicious character who was interested in learning how to fly a plane, not concerned about takeoffs or landings. That FBI report never got to the proper line in FBI headquarters in Washington.

Then, the CIA knew about the two al-Qaida operatives in Kuala Lumpur, but that information was never transmitted to the Immigration and Naturalization Service. It was not in the INS computers. Those al-Qaida operatives got into the United States and were two of the pilots on 9/11.

Then there was the FBI report out of Minneapolis with Special Agent Colleen Rowley, who wrote a 13-page, single-spaced report which finally received public attention, finally came to the attention of the key officials of the FBI.

The Judiciary Committee held hearings in June of 2002, and there was surprise and consternation that the appropriate test under the Foreign Intelligence Surveillance Act had not been applied. Had that material been known and had we been able to pick up the trail of Zacarias Moussaoui at an early date, again the case was building that 9/11 might well have been prevented, had these facts come to the attention of the appropriate authorities and been collated and put all under one umbrella.

So the need was imperative for revision and reform of the national intelligence system.

I had seen this need when I chaired the Senate Intelligence Committee back in the 104th Congress. At that time I introduced S. 1718, which contained very material changes in the national intelligence community. I will not put that legislation in the RECORD at this time. I have done so on prior debates. But it was apparent at that time there needed to be a revision of the national intelligence community. While the Director of the Central Intelligence Agency had paper authority, he did not have budgetary authority or day-to-day control sufficient to really put all of the intelligence operations under one umbrella.

Following 9/11, after the report from Colleen Rowley came to light in June of 2002, the administration agreed there should be a new Department of Homeland Security. Senator LIEBERMAN and I introduced S. 1534, 30 days after 9/11, on October 11 of the year 2001. The hearings were held and there was considerable debate, and the legislation languished and had a lot of opposition. It finally came to the Senate floor in the fall of 2002. Then, as what frequently happens, the House passed a bill and left town, leaving us with the option of either taking their bill in October of 2002, which was an election year, or putting the matter over, which would have gone to spring.

At that time, Senator LIEBERMAN and I made an effort to give the new Secretary of Homeland Security authority to direct—not to task or not to ask or not to request but to direct—the other intelligence agencies. It seemed to us when you were creating a new Department that this was the time to make some fundamental changes in the national intelligence structure. But the administration was opposed.

I talked to Secretary Ridge, Vice President CHENEY, and I talked to the President, and there was opposition, as concerns had been expressed to putting any agency or any instrumentality or any unit between the CIA and the President. It seemed to me—and I made this argument—that would not have been the case. But we were unable to make that modification. That is where the status of the record lay, until the 9/11 Commission came into operation and filed its report in July of this year.

Immediately thereafter, Senator MCCAIN, Senator LIEBERMAN, Senator BAYH, and I introduced a bill which tracked what the 9/11 Commission wanted done. When the Governmental Affairs Committee took up the issue, with the hearings in July and August, it seemed to me we needed a bill which gave a great deal more authority to the National Intelligence Director than where the committee was heading, and I introduced S. 2811, which gave the National Intelligence Director authority. I am not going to make that bill a part of the RECORD. It has already been made a part of the RECORD in prior debates.

The committee report did not give the National Intelligence Director day-by-day authority, which, as I say, I thought it should have. I offered an amendment which had cosponsors, including the former chairman of the Senate Intelligence Committee, Senator SHELBY; the present chairman of the Intelligence Committee, Senator ROBERTS; and many others who had very extensive experience on the intelligence structure for the country. I offered that amendment on the floor, and it was defeated by a vote of 78 to 19, so that the National Intelligence Director in the Senate legislation was not given day-to-day operation.

It was my thought then, and continues to be my thought, that if we raised the bar a little higher, perhaps in the negotiations—as we know, as a practical matter, in a House/Senate conference there are compromises—we might have ended up with a stronger Director than we have at the present time. In the course of the negotiations with the House, the budgetary control was not maintained.

So what we have today is a step forward. But there is a great deal more, in my judgment, of which the National Intelligence Director needs to have effective control over in the national intelligence community. But again, this is a step forward, not a big step but a significant step, and it is something upon which we can build.

It would be a colossal mistake to reject this bill with the thought of going back to the drawing board next year to begin again what we have accomplished, putting us on another plateau from which we can work.

We have in this legislation significant improvements on transportation security, on terrorist travel and effective screening, on border protection, immigration and visa matters, on terrorism prevention. We do have those areas of very significant improvement.

I believe that Congress is going to have a big job of oversight now, to see precisely what is done by the new National Intelligence Director. We have changed our Senate procedures to make permanent the Intelligence Committee so there will be some institutional knowledge there without the shift on 8-year terms. I served 8 years on the Intelligence Committee and had an opportunity to chair the committee

in the 104th Congress. That continuity will be very important.

On the Appropriations Committee on which I serve, we have structured a new intelligence subcommittee. In the line of seniority, I may have the opportunity to chair that subcommittee. That is something I am thinking about. I am reluctant to give up the subcommittee on Labor, Health, Human Services, and Education, but when we move forward from this point on the restructuring of the national intelligence community, this is a very significant period and is something to which I am giving personal consideration.

The creation of the new National Counterterrorism Center is a significant step forward. That has been an outgrowth of the mistake recognized by the intelligence community from 9/11. That had been in process, and this legislation takes a very important step beyond what is in existence at the present time, putting it into a statutory form. I have conferred with the top officials of the FBI, and the Judiciary Committee has oversight over the FBI. This is something which requires very substantial oversight.

It is my hope, depending on how the Judiciary Committee is structured next year, that this is something which the Judiciary Committee can accomplish. But the Intelligence Committee and the Governmental Affairs Committee and perhaps other relevant committees, Armed Services Committee, will have a big job in not resting on our laurels on legislation which will be enacted today. We ought not to take too much solace in laurels, although though it is justifiable to some extent. But there is a great deal more which needs to be done to see to it that there is the kind of coordination and that we have made a successful attack on the cultures of concealment which are present in the intelligence community.

I have seen that culture of concealment from the work that I have done on the Judiciary Committee on oversight for the past 24 years. I saw that culture of concealment in the Central Intelligence Agency in the 8 years I was on the Intelligence Committee. It may be that what has happened with the events of 9/11 and with the pressure of the 9/11 Commission, with the legislation on the Department of Homeland Security, that the intelligence community has been sensitized, perhaps even more than sensitized, perhaps more accurately stated, bludgeoned by congressional criticism and by public criticism over their failures to coordinate intelligence activities which, had they been coordinated, 9/11 might have been prevented.

In conclusion—the two most popular words in every speech—I urge my colleagues to adopt this legislation. I further urge my colleagues in both this body, the Senate, and the House to be vigilant, to pursue oversight, to see to it that the ultimate objective of coordination and centralized direction is obtained with this legislation as a significant starting point.

Far from perfect, it nonetheless provides a valuable foundation for future legislation and puts us on the path to meaningful intelligence reform. As such, I believe it is preferable to act now on a finite number of matters that can be accomplished immediately. Any attempt in the future to enact intelligence reform legislation from scratch, especially reform of intelligence budget matters, will be subject to the bitter turf battles involving the self-protection of entrenched bureaucratic prerogatives that have characterized this and past efforts at reform. And while the contentious issues of State driver's license standards and refugee asylum must be addressed, it is far better to do so in the context of hearings and additional input from interested parties. But simply starting over in the next Congress will likely accomplish little, if anything. Passage of this legislation—which includes a statutory requirement for the issuance of Presidential guidelines assuring that the statutory responsibilities of the heads of various departments of our government will not be abrogated—will provide a legislative base for Congress to build upon, while preserving the requisite military chain of command.

Valuable preliminary objectives have been accomplished in this legislation, consistent with the recommendations of the 9/11 Commission. This legislation creates a Presidential-appointed, Senate confirmed director of national intelligence, DNI, who, while not serving as the head of CIA, will 1. oversee national intelligence and provide all-source analysis on specific subjects of interest across the U.S. government, and plan intelligence operations for the whole government on major problems such as counterterrorism; 2. manage the national intelligence program and oversee the agencies that contribute to it; and 3. ''manage and direct'' the tasking of collection and analysis. The legislation also will establish a national counterterrorism center, with a Senate-confirmed director, for developing joint counterterrorism plans covering key missions, objectives to be achieved, tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities in the consolidated counterterrorism mission. Also, under this bill the President must establish a national counterproliferation center which, as envisioned by the provision's sponsor, Majority Leader FRIST, implements a key recommendation of my 1999 Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction. And the legislation will enable the implementation of other policy objectives that I have favored such as expansion of the electromagnetic spectrum to enhance first responder interoperability, deployment and use of explosives detection equipment at airport screening checkpoints, improved watch lists for passenger prescreening, improved border security, including an increase in full-time border patrol agents and detention beds, an increase in criminal penalties for alien smuggling, and for those who seek to use weapons of mass destruction, an increase in the number of serious criminal offenses designated as ''Federal crimes of terrorism,'' improvements in financial crime enforcement and terror financing abatement, authority to use our Foreign Intelligence Surveillance Act powers against ''lone wolf' terrorists, authorization to share grand jury information about terrorist threats with State and local officials, and development of a national strategy on terrorist travel and travel documents.

Many crucial objectives were not achieved, however. The budget execution authority deemed essential for the DNI to exercise genuine control over the intelligence community has been removed from the bill, so that the appropriation for the national intelligence program does not go directly to the DNI, and the DNI does not have authority to direct the allocation of funds to the various elements of the intelligence community. Further, the top line budget figure for the national intelligence program will be kept secret, and thus intelligence spending will remain unaccountable to the American people. The DNI is left with the power to ''develop and determine'' the national intelligence program budget, which is effectively the same authority that the current DCI is given over the National Foreign Intelligence Program budget by executive order. Also, personnel and transfer authority has been further diluted in this final legislation. Specifically, while the DNI can move intelligence community funds in their year of execution, the heads of the intelligence community agencies will have a right of refusal over any reprogramming or transfer exceeding 5 percent of their agency's aggregate budget, or exceeding $150 million, or involving the termination of an acquisition program, e.g., satellite procurement. Personnel transfer is also tightly circumscribed and can be accomplished only with the approval of the Office of Management and Budget.

Beyond budget and transfer authority, the new DNI has not been granted authority that approximates what I consider to be the appropriate level of operational control over the various elements of the intelligence community. The DNI also does not have, as the 9/11 Commission recommended, ''hire and fire'' authority over senior intelligence community officials, but rather has the right of concurrence in the hiring of senior intelligence community officials and the right to be consulted in the appointment of the head of DIA. Nor does the DNI control information infrastructure standards.

I also believe that the failure to include a statutory inspector general weakens the oversight of the new DNI

and thus raises additional privacy and civil liberties concerns.

Finally, the legislation sets up an inadequate structure within which the DNI must operate. I had initially proposed that the DNI serve as the head of an independent agency, or department, and the final Senate bill arrived at a similar ''National Intelligence Authority'' to house the office of the DNI and the national counterterrorism center. Contrary to the concepts conceived in the Senate, the NCTC and the DNI's officers under this legislation will be housed within the office of the DNI. In other words, there is no power base from which the DNI can operate. He will have no ''troops'' other than those that filter through the NCTC and the office, and no actual authority with which to influence, direct, or control intelligence community entities and personnel.

These shortcomings must be addressed in future legislation if we are to have an intelligence apparatus that can be effective against 21st century threats, while protecting constitutional rights.

It will not be easy, however, to overcome the ingrained bureaucratic tendencies to protect turf and the status quo. It has recently been reported that the Department of Defense fought extremely hard during the conference committee negotiations to further reduce the powers that would be accorded to the DNI. My experience in attempting to enhance the budget and operational authority of the Director of Central Intelligence in 1996 led me to the conclusion that the same turf battles existing prior to 9/11 would endure during the process of formulating this most recent attempt at intelligence reform. Unfortunately, this is precisely what has occurred this year and, like in 1996, the Pentagon has successfully attenuated intelligence reform legislation.

Thus, while we have gained marginal advantages over current law and practice in this legislation, the conference report in its totality should be viewed as the basis for building upon the powers of the DNI in future legislation. Conversely, if we reject this bill, it is ''back to the drawing board'' when we reconvene with an entirely new set of priorities to tackle in the next Congress. This delay will allow reform opponents the time and renewed vigor to marshal their resources in opposition to changing the status quo. It is far less likely that we will accomplish anything meaningful on intelligence reform next year if we must start from scratch, lacking the momentum of the 9/11 report and without the pressure of the congressional and presidential elections.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, we gather today in the Senate for an historic occasion. What we are about to consider is a conference report on the Intelligence Reform and Terrorism Prevention Act of 2004. In about 250 written pages, we will literally rewrite the laws governing the intelligence community of America.

This is an historic moment. It is rare, if ever, that the Congress rises to the occasion as it has with this legislation. It is rare, if ever, that we can find a bipartisan consensus on an item of such controversy. Yet we have achieved it. The National Security Intelligence Reform Act will make America safer. It will force our Government to modernize the way we collect and use intelligence.

This legislation was born from the tragedy of 9/11 and the determination of the victims' families that their loved ones would not have died in vain. These courageous survivors are the reason this congressional effort could not and did not fail. In their grief, many people tend to withdraw, to say that they will mourn in private. These victims' families, after a period of mourning, decided to step forward and to lead our country and our Government toward a safer America. Their dedication and their determination have resulted in this document.

The bipartisan 9/11 Commission gave us an excellent blueprint, a sense of urgency, and a constant reminder that we had to rise above our partisan differences. We all know about this report. It is so well known and so well read. It was even nominated as one of the great literary works. That is rare for a Government publication, but it deserved that nomination because it is well written, well thought out, well prepared. Governor Kean of New Jersey, Congressman Lee Hamilton of Indiana put together an extraordinary panel of Democrats and Republicans who brought us this report. And this report was our blueprint, as we sat down to write this historic legislation.

My personal contributions to this bill were in two specific areas. After three years of effort, we finally broke through the technical and bureaucratic obstacles to information sharing among our intelligence agencies by adopting a proposal which I suggested for a new government-wide approach, one with clear goals and clear authority to reach the goals. And for the first time, at the suggestion of the 9/11 Commission, we added to our intelligence efforts a privacy and civil liberties board which was crafted to ensure that we do not pay for our security with our freedoms. Let me salute those who made this possible, particularly on the Senate side.

Senator SUSAN COLLINS, chairman of the Governmental Affairs Committee, has really been an extraordinary leader. She is a close friend. We have worked on so many things together. I knew she would rise to the occasion, but I didn't know that she would have the endurance and the determination to bring it to this day. I watched as the conference committee drove on and on, day after day, hour after hour, week after week, month after month—many times appearing to disintegrate before our eyes. She never quit. She just kept pushing forward. She did it not just with a determination, but with such a unique understanding of what was in this conference report. She would dismiss critics in a moment if they misstated what was within the report. She knew it cover to cover. She was well prepared.

Had Senator COLLINS been doing this alone, she might not have achieved her goal. Standing by her side throughout was Senator JOE LIEBERMAN of Connecticut. Joe is my colleague in the Senate, a good friend, and a great Senator. I think what he did with SUSAN COLLINS was to demonstrate to America what Congress can do, that we can rise to the occasion, that we can put aside partisanship and have a genuine, honest discussion for the good of this country. That dynamic duo of Senator SUSAN COLLINS of Maine and Senator JOE LIEBERMAN of Connecticut, on our side of the Rotunda, were the guiding force.

I want to say a word about Congresswoman JANE HARMAN and Congressman PETER HOEKSTRA who, on the other side of the Rotunda, on the House Intelligence Committee, did an extraordinary job as well.

They would be the first to add that they could not have achieved any of this without extraordinary staff contributions. On my own staff, I salute Marianne Upton, who has put in more hours than you could possibly imagine, doing around-the-clock sessions, preparing different portions of this bill; Joe Zogby, an attorney on my staff who really carried the banner many times on issues of civil rights and civil liberties, oftentimes a lonely battle, not always successful but with a real determination and extraordinary skill that he brought to the Senate; and Shannon Smith, a member of my staff who looked at this bill from the perspective of defense issues and foreign policy issues. Those three, from my point of view, made my presence felt, even when there were times I could not be in conference committee meetings.

The path that led us to this point has not been without obstacles. We had to make major compromises in order to move the legislation forward. But this conference report proves that Congress could work in a bipartisan manner to bring together strength and wisdom and produce this significant bill.

Many people recall what happened on 9/11 and where they were when they learned of the tragedy. I remember. Everybody listening remembers. We also remember that late in the evening, after that sad and worrisome day, the Members of Congress, on a bipartisan basis, gathered on the steps outside and together sang God Bless America. How many times as I went through Illinois and across this country people would say: That was a good thing. We were sure glad you did it, to put aside your differences and to stand together.

That day was a precursor of this day because this day we will stand together again. There will be a vote today that will be a bipartisan vote, and it will be a clear and definitive victory for the passage of this legislation.

Let me speak to two or three areas that were of particular importance. First, the Privacy and Civil Liberties Oversight Board. The 9/11 Commission realized that one of the problems we have is when we give Government enough power to protect us, occasionally it overreaches. That has happened in virtually every war and in every period when there was a threat to our national security. Abraham Lincoln, who I believe to have been our greatest President, suspended habeas corpus during the Civil War. There were those who said he went too far in usurping the Constitution. During the period of World War I, when there was concern, we had the Espionage and Sedition Acts, which some believe was an overstepping of governmental authority. In World War II, Franklin Delano Roosevelt gave personal approval to the Japanese internment camps, where innocent Americans were, in fact, jailed and imprisoned when they had done nothing wrong, just for fear that they might. In the Cold War, with our fear of the Soviet Union, we went into the McCarthy era, questioning the patriotism of good Americans, destroying lives and careers in the process. During the Vietnam war, J. Edgar Hoover and the FBI compiled a list of suspects across America. The President compiled an enemies list.

This list goes on and on. It tells us that as we try to be safe, sometimes we go too far. The 9/11 Commission said we need to put into place something that is unique, has never existed in history. This Privacy and Civil Liberties Oversight Board will make certain they keep an eye on Government activity, make sure it doesn't violate privacy or civil liberties. I agree with the Commission when the Commission said to us ''the choice between security and liberty is a false choice.'' I believe, the Commission believes, we can be both safe and free.

We can protect the lives of Americans, and we can also protect their liberties. That is what the Board is setting out to do.

As Governor Kean said in answer to a question I asked, this Board should be ''disinterested'' and it should not be speaking for the Government. It should be independent in its oversight of the Government and its activities. This Board will have the authority to obtain information, to ensure the Government is respecting our privacy and civil liberties. If someone outside of the Government refuses to provide needed information, the Attorney General will have authority to subpoena it.

There is an exception for the National Intelligence Director and the Attorney General to withhold information in the interest of national security. That is understandable, but members of the Board and the Board's staff will have high-level security clearances, so we expect that it will only rarely, if ever, be necessary to invoke this national security exception.

The Privacy and Civil Liberties Oversight Board will be required to report to Congress about its work on an annual basis. These reports, to the greatest extent possible, will be unclassified so we can all look at the activities of our Government when it comes to respecting privacy and civil liberties. This transparency will keep us informed. The bright sunlight will shine on these activities when it doesn't compromise national security. This Board will ensure that as we fight the war on terrorism, we will respect the precious liberties that are the foundation of our society.

The second area I worked in that I think may turn out to have historic importance relates to information sharing. When the 9/11 Commission Report came out a little over 135 days ago, they kept referring to one basic theme. This is what the report said:

> The biggest impediment to all source analysis—to a greater likelihood of connecting the dots—is the human or systemic resistance to sharing information.

I have really focused on this since 9/11. So many colleagues looked at different aspects of the challenge created by that terrible day. When I looked at information sharing, the first thing I did was turn to the FBI, the premier law enforcement agency in America, the top of the heap, the best and brightest when it comes to law enforcement. I asked the basic question: Tell me about the computers at the FBI headquarters on September 11, 2001.

Do you know what I learned? Just three years ago, if you looked at the computers at the FBI, you found computers with no e-mail capacity, no access to the Internet, no mechanism for word/name search matching, and no capacity for the electronic transmission of photographs. Anyone listening—particularly younger people—have to shake their heads and say: Senator, they could have gone down to the local computer store and bought a basic computer that had all of this capacity.

What happened? Why did the FBI fall so far behind in technology? What happened was, in their vanity and in their bureaucratic protectionism, they said: We don't need to go to other firms creating computers. The FBI will create its own computer system.

They did and what a mess it was. On September 11, 2001, the technological capability of the FBI was virtually nonexistent when it came to computers. That is hard to imagine, isn't it?

As I spoke to every level that I could of Government leadership, including Vice President CHENEY; Attorney General Ashcroft; FBI Director Mueller, every one of them conceded that this was an obvious problem. Let me tell you something else. We asked the FBI and the Border Patrol to establish a common fingerprint database.

That makes sense, doesn't it? If we are going to bank all the fingerprints of suspects around America, wouldn't the Border Patrol want to have an integrated network of fingerprints they could check against the FBI base?

Let me tell you where we are on that. For more than six years, we have been trying to achieve this. For more than six years, we have been trying to get two agencies of Government to cooperate in comparing fingerprints. Earlier this year, the inspector general of the Justice Department reported it would take at least four more years to combine the systems.

I am sure a lot of people following this debate are saying: He has to be exaggerating. Why would it take ten years to reach the point that the fingerprints collected by one agency of the Federal Government could be compared to the fingerprint database of another agency?

It is a fact. It has to do with two things. First, it has to do with equipment. It has to do with technology. And second, it has to do with a mindset of cooperation rather than exclusion.

That is what led me to this whole issue of information sharing. I tried to encourage a debate on this issue when we created the Department of Homeland Security. I said to my colleagues on both sides of the aisle: It is great for us to talk about a new department bringing together all these agencies, but if they do not have compatible computer databases and the will to share, then we are going to lose out when it comes to information gathering.

I did not win that debate when we created the Department of Homeland Security, but I am happy to tell you that we have won the debate when it comes to this bill.

It is distressing to read chapter 8 of the 9/11 Commission's report entitled ''The System was Blinking Red.'' It is hard to make sense out of the information-sharing breakdowns before September 11.

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

Mr. DURBIN. Mr. President, I ask unanimous consent for 10 additional minutes.

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

Mr. DURBIN. On July 10, 2001, an FBI agent in the Phoenix field office sent a memo to FBI headquarters and to two agents on the international terrorism squads in the New York field office advising of the ''possibility of a coordinated effort by Osama bin Laden'' to send students to the U.S. to attend civil aviation schools—the famous Phoenix memo.

This Phoenix memo went into the system and virtually disappeared. On its face, this memo was fair warning. This memo was a flare that went off, climbed into the sky, and flashed a warning of danger, and no one noticed. This was July 10, 2001. The Phoenix memo went forward, and it disappeared in the sky without even notification.

The notice was there. Something needed to be done, but no one responded within the FBI or in the other appropriate agencies.

As we learned, the Phoenix memo was not an alert about suicide pilots. We learned the author was more concerned about a Pan Am 103 scenario. The fact is, whether they are talking about the Phoenix memo or what led up to the intelligence investigation involving Zacarias Moussaoui, we did not have a sharing of information among agencies that might have protected America and the 3,000 victims on September 11.

For well over two years, I have urged that we do something profound and historic. I thought about the Manhattan Project. That was a project, if you recall, that dates back to the attack on Pearl Harbor. Prior to that attack, Franklin Roosevelt had his atomic project that was looking into this new scientific research when it came to use of the atom. It was moving along at a snail's pace, and then came December 7, 1941. On that date, the President said we were shifting into a new approach. We want to know if we can use this new research in science to create atomic bombs, weapons that we may need in this war.

He shelved the commission that had been working on it and created a new group under the head of GEN Leslie Groves. GEN Leslie Groves, who was involved in the Army Corps of Engineers, dubbed it the Manhattan Project. What the general said was we are going to break all the rules. We are going to have Government leadership to develop this atom bomb, but we are going to turn to the academic side, the universities doing research, and we are going to turn to private business, and we are going to create what this country needs to defend itself. And we did. The Manhattan Project met its goal and produced the bombs that ended the Second World War.

I thought we needed something very similar when it comes to information sharing and technology in fighting this war on terrorism. This bill moves us in that direction. It creates an environment for us to have computers that communicate with one another, databases that can work with one another, information that can be shared. But all of the good words in this bill mean little or nothing if there is not the will in these agencies to make it happen, not only the person supervising this new environment, but each person who is involved at each agency to share this information and to make certain that we do not protect turf at the expense of protecting America.

Let me address one aspect of this bill—a bill which I am happy to support and will vote for—that is troubling to me. It is an aspect of the bill where we lost a provision in the conference which I think is very important.

That is a provision that was added in the Senate relative to the detention and humane treatment of captured terrorists. A provision in the Senate bill, which passed 96 to 2, addressed it. Unfortunately, the House Republican conferees insisted the provision be removed from the final version of the bill, so the bill is silent.

This is especially serious from my point of view because of the poor track record over the last several years when it comes to the use of torture.

In a January 2002 memo to the President, White House Counsel Alberto Gonzales concluded that the Geneva Conventions, which have guided us for decades when it comes to the humane treatment of prisoners, in the words of Mr. Gonzales were ''quaint'' and ''obsolete.''

In August 2002, the Justice Department sent a memo to Mr. Gonzales in which they adopted a new, very restrictive definition of torture. They stated that physical abuse only rises to the level of torture if it involves ''intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.''

They also concluded that the torture statute, which makes torture a crime, did not apply to interrogations conducted under the President's Commander-in-Chief authority.

Under our Constitution, the President does not have the authority to make his own laws by creating a new definition of torture, and he cannot choose which laws he will obey. There is no wartime exception to our Constitution.

In November 2002, Defense Secretary Rumsfeld approved the use of coercive interrogation techniques at Guantanamo Bay. These included removal of clothing, using dogs to intimidate detainees, sensory deprivation, and placing detainees in painful physical conditions. According to a recent Red Cross report, the use of these techniques has grown ''more refined and repressive'' and constitutes torture.

There are so many unanswered questions about the administration's position on the use of torture. Mr. Gonzales said, ''We categorically reject any connection'' between the administration's torture memos and the abuses at Abu Ghraib, Guantanamo Bay, and elsewhere. But how can the administration reject these connections when the torture techniques that they approved for use in Guantanamo were being used in Abu Ghraib and elsewhere in Iraq?

Mr. Gonzales was recently nominated to be the Attorney General. I look forward to getting to the bottom of this issue when he comes before the Judiciary Committee in January.

The 9/11 Commission correctly concluded that the Iraqi prisoner abuse scandal has negatively affected our ability to combat terrorism. They wrote:

Allegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the government will need.

As a result, the Commission recommended that the U.S. develop policies to ensure that captured terrorists are treated humanely. That is exactly what we did in the Senate bill. In fact, the Senate provision is similar to an amendment which I offered to the Department of Defense authorization bill requiring that the Department issue policies to ensure that they will not engage in torture or cruel, inhumane, or degrading treatment, a standard embodied in our Constitution and in numerous international agreements.

The Senate intelligence reform bill would have simply extended these requirements to the intelligence community. What possible basis could the House conferees have had for opposing this provision, turning its back on the Geneva Convention's basic standards that we have held in this country for decades?

I think what we have here, unfortunately, is a decision by the conferees to be less than explicit about America's commitment. We need to make certain that we stand by standards which America has preached to the world for decades, that we realize we are not just not talking about detainees captured by our Government, but the potential treatment of Americans and American soldiers facing detention.

For us to remove this provision from this new bill is troublesome to me.

I think the intelligence community should be held to the same standards as the Department of Defense, and taking this language out of the bill will make that very difficult to monitor, as I hoped we would be able to do.

As the 9/11 Commission report admonishes, we have to think more imaginatively to protect America and use information in a more sensible and thoughtful way. Intelligence is the first line of defense against terrorism. With this legislation, our intelligence gathering, analysis, and application will be significantly improved. No agency can do it alone. Collective vigilance requires mutual cooperation and not just within the executive branch. We need to do our part on Capitol Hill.

Congress needs to be part of this new concerted effort. I am ready to work with administration officials to make this happen. I salute President Bush, Vice President CHENEY, Speaker HASTERT, and many other Republican leaders who stepped up to make certain they did their part to pass this legislation.

As we have done on the Senate side, we have demonstrated that this kind of bipartisan cooperation makes America a safer place.

Finally, thanks to the decision of my colleagues on the Senate Democratic side, I step into the capacity of the Senate whip, the assistant Senate leader, in a few days. As a result of that, I will have new responsibilities on the floor and more demands on my time. It was necessary for me to step aside from

my service on the Governmental Affairs Committee, which I really enjoyed during the period I have been in the Senate.

I am glad the last action of the committee was the passage of this important legislation. I think a lot of work that was put in in that committee paid off with the passage of it. I am going to miss this committee. I wanted to make certain that whoever would fill that slot would have the time to dedicate to its important work of protecting America.

I thank Governmental Affairs Committee Chairman SUSAN COLLINS, as well as Senator LIEBERMAN, for all of the kindness they have extended to me during my period on the committee. I hope I will be able to continue to help them in my new capacity as the Democratic whip of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the Senator from Illinois for his comments. He has been an extraordinarily active member of the Governmental Affairs Committee. He has contributed to so many different investigations. Whether it was our review of mental health services for children or the food safety investigation, he has always been front and center in the committee's deliberations, as he has been with this intelligence reform bill. We will miss very much having him as a member of the committee, but I am grateful for his past service, and we hope he will return to the committee some day.

I know that two of the Homeland Security and Governmental Affairs Committee members are waiting to speak, so I will not prolong. I will talk more about my conferees, my wonderful, able group of conferees, later.

I ask unanimous consent that Senator CARPER be recognized next. He has already reserved time under the time agreement; to be followed by Senator COLEMAN, who has already reserved time under the time agreement; to be followed by the chairman of the Intelligence Committee, Senator ROBERTS, who similarly has reserved time. Two out of the three of these individuals were conferees on the bill. Two of the three also are members of the Governmental Affairs Committee. Each of them has played a significant role in bringing us to where we are today, and I am grateful for their support and involvement.

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

The Senator from Delaware.

Mr. CARPER. Mr. President, I say to our chairwoman of the committee, Senator COLLINS, a heartfelt thank-you for the leadership and persistence that she and my good friend JOE LIEBERMAN have demonstrated to get us to this day.

I also say to the President, thanks for using some of that political capital. You picked up a little bit last month, and I am pleased you have decided to invest a little bit of it in a worthwhile cause.

I plan to vote for this bill. I was privileged to be a member of the committee in the Senate that developed the proposal under which this bill is based, and we are happy to be here for this day.

To the members of the 9/11 Commission who have worked hard for about 18 months, their staff, a lot of folks who lost loved ones who provided the impetus, really the wind beneath the wings for the Commission and really for this effort, I say just a heartfelt thank-you for their efforts, and I hope they are pleased with where we are today.

Is this proposal perfect? No. Few of mine are. Is it better? You bet it is. It is a real improvement.

Back in 1947, the year I was born, the CIA was born as well. The intelligence structure that was created around the CIA and Cold-War years that followed was a structure that was designed to enable us to win the war against communism, the Cold War. That war is over. We won that war. We have a new war that we are fighting today, and it is a war against terrorism.

Just as the one approach worked well for many years—our intelligence apparatus worked well for many years against communism—it does not necessarily mean it is going to work well against terrorism. In fact, it has not.

When I was a naval flight officer, when I was not flying in a P–3 airplane, one of my ground jobs was to be the air intelligence officer on the ground, briefing other crews for their missions. We had a crew over here that was flying a top-secret mission, needed information about it, and then another group over here with the same clearance that did not fly that same mission. We did not brief the crew that was not going to fly the mission. There was a need to know. If they had a need to know, we provided the information for them. If they did not have a need to know, we did not provide it for them. It worked well in naval aviation. It did not work so well when it came to sharing information across 15 different intelligence agencies on information about terrorism.

We had one agency that knew there were bad guys around the world who wanted to come here and hurt us. We had another agency that knew the names of the people who actually came in and actually could have said that these were some of those bad guys. We had another agency that knew folks were being trained to fly in airplanes, not to land them, not to take them off but to literally fly them straight and level. Among those 15 different agencies, I call them stovepipes, they had the information but they never talked. At least they did not talk enough. We did not put it together.

People talked about connecting the dots. That is exactly what did not happen. So we were not talking; we were not sharing information. There was a need-to-know mentality that existed and has existed for a long time with respect to our agencies. It has to change. This bill is going to change it.

Another problem we had, nobody was in charge. There was nobody to assess accountability and say you were accountable for not letting this happen. With this provision, we are going to have a powerful person put in place, nominated by the President, selected by the President. It has to be an extraordinary individual, somebody smart, somebody who enjoys the confidence of both sides of the aisle, somebody who will enjoy the confidence of the intelligence community, somebody who will be willing to work real hard. I am sure that person is out there. My hope is the President will find him. My hope is we will confirm that person.

Some people say this is not a perfect bill; there are some provisions they do not like maybe with respect to our borders, maybe with respect to immigration, maybe with respect to the rights and prerogatives of the military and making sure they are still in a position to be strong and provide the intelligence that is needed when it is needed to our battlefield soldiers.

This is not a constitutional amendment. This is not something that is in concrete. This is a bill. It is a bill that has been hard fought and a compromise has been well won, but it is not forever. To the extent we go forward and we find that changes need to be made, we can make them, and we should.

In conclusion, we have been working at this stuff for a long time. People have known the system was broke for a long time. We have had any number of recommendations and studies that said, fix this system and this is how to do it. We have not done it. Today we have the opportunity to change it and to take a real step in the right direction. We would be foolish not to. I am happy to say we are not foolish. We are doing the right thing. It is time to seize the day, and that is exactly what we are going to do.

My thanks again to all those who have worked so hard to get us to this point.

I yield back my time.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. LEVIN. Mr. President, will the Senator from Minnesota yield for a unanimous consent request, unless there was someone else who was in order here? I wonder if we could set up an order following the Senator from Minnesota, the Senator from Kansas be recognized, and then I be recognized following the Senator from Kansas.

Ms. COLLINS. That is fine.

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

The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I serve on the Governmental Affairs Committee. I served on the conference committee that helped draft this bill, and I am going to be very proud to vote for this bill this afternoon.

I wish to start and end by thanking the chair, Senator COLLINS, for her incredible leadership. This was not easy to do. When we left around Thanksgiving, there were a lot of folks who said this would not happen, that it could not be done. We had people who had some very strong opinions about a wide range of issues, and there were differences.

Leadership makes a difference. The leadership of Chairman COLLINS made a difference. The leadership of Ranking Member LIEBERMAN made a difference.

I will also note, I am sure before we finally vote on this the chairman will talk about staff. But I see Michael Bopp, who is the staff director and chief counsel of the Governmental Affairs Committee. Staff worked very hard. They did an extraordinary job. We were on break, weren't around, but folks were working day and night over holidays to give us this opportunity to get it done. I do want to compliment Mr. Bopp and all of the staff, on a bipartisan basis, including my own staff who worked so hard. America should thank them because this bill is good for America. This bill makes America safer.

As I look back on the opportunities I had in my first session of Congress, the 108th, I believe the passage of this bill is the most significant thing this Congress has done. We have made America safer. There are a lot of important achievements—Medicare reform, tax cuts—but in the end you can't have economic security without national security. Americans cannot live if they live in fear. The threat of terrorist attack is the greatest threat that faces America, and we have now taken substantial steps in making America safer. We make us safer, as I said before, by the creation of a Director of National Intelligence, a single person whom we can say is in charge.

I was struck during the hearings by my understanding of the statement of George Tenet that a few years before 9/11, he made a statement, sent out an e-mail, that we were at war with al-Qaida, but a lot of folks didn't know the war was happening. The CIA didn't talk to the FBI and the Defense Department was not coordinated with the CIA to the degree it needed to be for us to be as safe as we should be. This bill addresses that by creating a Director of National Intelligence to advise the President, to be the go-to person, the person we know is in charge. It then creates a National Counterterrorism Center so we can bring the best and brightest together to make America safer.

This bill is not the same bill the Senate passed, but it is a good one. At the beginning of our efforts way back in June, Senator CARPER, from Delaware, shared the credo that one of his constituents lived by: The main thing is to keep the main thing the main thing. I believe we have done that in this bill.

This bill implements both of the 9/11 Commission's most important recommendations. It creates a Director of National Intelligence to oversee and coordinate the effort in the intelligence community. A central problem the Commission identified was that prior to 9/11, no one was in charge of our intelligence operations. We have taken care of that problem.

It is important to note a lot of people were doing a lot of things and doing good things, but they were not sharing information, they were not coordinating efforts to the degree we needed. We had this concept that has been talked about on the Senate floor of silos, folks working in their own areas, doing a good job. But the reality is, to be effective, you can't work in a silo, you can't work in isolation; you have to work together so all the activities of all those involved in intelligence reflect similar priorities.

We have corrected that now. The DNI is in charge of intelligence. He has the power to shape the intelligence community over time. He can implement joint policies on personnel, training, information systems, and communications. The DNI also has a National Counterterrorism Center to lead our counterterrorism efforts. The Center will contain the best and brightest the Government has. Merely by creating these two new entities we take an important step forward. This is not about more bureaucracy; this is about more effective, focused, targeted efforts to improve the safety of America, to improve our intelligence efforts. It is a base upon which we can continue to move forward.

Like all legislation, this bill represents a compromise. On intelligence reform, we agreed to many of the provisions in the House bill. We gave the Department of Defense more of a say in how funds are allocated after Congress appropriates them. We agreed to keep the total amount of money spent on intelligence classified. But the House, in turn, has agreed to respond to many of our concerns with the rest of their original language.

This bill makes important reforms in immigration and law enforcement powers but omits the most controversial sections included in the House bill, and I believe that is wise. We need to address the issue of immigration reform. It is a critical issue. But we cannot allow our efforts to improve intelligence, we cannot allow our efforts to improve security to get pushed aside, to somehow get held up because we have not had the kind of debate and analysis and scrutiny we need to have in both Chambers on the important issue of immigration reform.

9/11 was a horrible tragedy. We saw the face of evil. We learned the desperate measures people will take to stamp out our way of life. But we have seen and we have learned. From learning—I want to stress this—in this process we had extensive hearings. We moved forward quickly, but we didn't rush to judgment. The Senator from Kansas, Senator ROBERTS, who chairs the Intelligence Committee, has been part of our discussions. He noted there have been decades of efforts to reform intelligence. We had a base to build upon, but we had not moved forward until today, and we have moved forward building on so much of what has been done in the past and building on a record, which we heard about from folks who headed the CIA, doing operations work today.

There was a very extensive analysis of what the needs are. We looked at the work of the Commission, the families of the victims, the history of intelligence reform, and we made a difference today. For that, Chairman COLLINS, Ranking Member LIEBERMAN, and all involved—and the President of the United States—should be proud. The President of the United States played a tremendous role in getting this done.

One final point before I yield the floor. When we talk about intelligence reform, we do talk about the big things. We talk about creating a Director of National Intelligence and the National Counterintelligence Center. But I also want to take a moment to talk about what this bill does for the rest of us, some of the folks at the local level.

I come from Minnesota. It is a small State, located on our border with Canada. But, like her northern neighbors such as Maine, Minnesota can be a gateway for many of the goods and people crossing by boat, car, plane, and train. They may end up in Chicago or San Francisco or New York, but many come in through the border States. Homeland security starts with border security.

This bill recognizes that. It understands that when it comes to border security, it is going to be folks at the local level, not folks at the Federal level, who are going to be the first on the scene. That is why this bill contains a provision to ensure that State and local officials will be part of an integrated command system so first responders can communicate with each other. Communication and teamwork go hand in hand, and thanks to this bill, if we face another 9/11, local, State, and Federal officials will not only be ready but will be able to work as a team.

This bill also understands that border security takes resources and manpower by providing an additional 10,000 agents over 5 years to protect U.S. borders and unmanned aerial vehicles to monitor our border with Canada. This is good news for America and good news for places such as International Falls, MN.

International Falls is just a small town in Minnesota, but because of its location, this city is among the 50 busiest gateways in this country, admitting many hundreds of thousands of men and women through it into this country each year. I went there this August to see what was going on and to talk with people directly responsible for our border security, people like

Paul Nevanen, director of Koochiching County's Economic Development Authority, and Glen Schroeder, the chief agent in charge of border patrol. People like Paul and Glen highlighted the difficulties they had just communicating with their Federal counterparts and the difficulty of adequately screening entry of people into the United States without proper technology and resources. After talking with the people at International Falls, I came back to Washington and fought hard for our folks on the border. This bill reflects that hard work. It gives them the resources and manpower necessary to support and secure our border.

This is a good bill. I am going to vote for it with a great sense of pride. There are some who may say we could walk away from this bill and hope for something better next year. That would be irresponsible. This bill makes America safer. Passage of intelligence reform will only become more difficult as time passes—unless, God forbid, there is another terrorist attack. In that case, of course, there will be another call for reform. But I submit that Congress will have failed in its duty to the American people if it waits until then to do anything.

We don't have to wait. We have a great bill before us. We have been provided with great leadership from Chairman COLLINS, from the ranking member, and the President's efforts. I applaud all of them. As I said before, I look forward to voting for this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, it is my understanding that I have allotted to me 10 minutes. I had originally understood it was 15. I ask the distinguished chairman of the Governmental Affairs Committee if she could yield me 5 minutes out of her time, which I know is precious, thus making it 15?

Ms. COLLINS. I am happy to yield to the distinguished chairman of the Intelligence Committee 5 additional minutes from my time. It is my understanding that the ranking member of the committee, the vice chairman of the committee, is also seeking some additional time.

In between, however, Senator LEVIN has set a schedule to speak. I appreciate the order amongst Members. I will also be happy to yield 5 minutes from Senator LIEBERMAN's time to Senator ROCKEFELLER.

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

The Senator from Kansas is recognized for 15 minutes.

Mr. ROBERTS. I thank the Presiding Officer, and I thank the chairman.

Mr. President, one day after the 62nd anniversary of the attack on Pearl Harbor, and 3 years and 82 days after the 9/11 terrorist attacks on our country, we will now pass the National Security Intelligence Reform Act of 2004.

I rise in strong support of this conference report which is a remarkable first step in our goal to strengthen and improve our Nation's intelligence capabilities.

My colleagues, we should start—and others have said this, and it is certainly true—by recognizing Senator COLLINS and Senator LIEBERMAN and their staff for their efforts to get a bill which will have a positive impact on our intelligence community. They have put in a tremendous amount of hard slugging, sometimes very contentious and very difficult work, and overtime, since they began this effort back as of the 1st of August. I thank them. Together, we will have made a positive difference in behalf of our national security.

I would also like to thank President Bush for his instrumental efforts in getting this conference report moving. Without his leadership, this reform would still be in the midst of a turf and issue gridlock. The President knows that national security demands intelligence reform and that the status quo is not an option. So I thank the President for weighing in.

All one had to do is listen to the debate on this bill in the other body yesterday to understand that this bill by necessity is a compromise. When you compromise you do not get everything you want. In my case—and in the view of many who serve on the Senate Intelligence Committee—it does not do everything that I believe is necessary to clearly streamline the structure of our intelligence community. It is no secret that I believe we should have gone farther.

It is perplexing to me and a paradox of enormous irony that after the 9/11 investigation by both the Senate and House Intelligence Committees, after our Senate committee's WMD report, after the findings of the 9/11 Commission, after the report of the President's WMD commission, and after all of the hearings we have held within the appropriate committees and the Senate Intelligence Committee—we have held over 200 hearings this session, 60 percent more than the previous session of Congress—after all of this, and the knowledge of the attacks on the Khobar Towers, the USS *Cole*, and the embassy bombings, 9/11, terror attacks all over the world that we know are connected, that still some believe we do not need comprehensive reform or have or will vote against this legislation because they believe it is a rush to judgment or that the legislation did not include what they deem their top national security priority.

In this regard, some have argued that this bill will interrupt the military chain of command or prevent the men and women of the armed services from receiving crucial intelligence information. Certainly these arguments should not be ignored. But in the end, this legislation does very little to modify the chains of command within the intelligence community.

The tactical intelligence elements of the U.S. Government remain clearly and explicitly under the command of the Secretary of Defense.

The leadership construct for national intelligence assets remains largely unchanged. The Director of National Intelligence remains primarily a budget and policy leader for national intelligence assets.

Undoubtedly, the Director's budget and policy authorities are strengthened. But day-to-day operational control of our national intelligence collection agencies remains dispersed. The Central Intelligence Agency will now be led by an independent Director. The Secretary of Defense retains the operational control of the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office.

Note the word of all three agencies, ''national.''

These are not only combat support agencies, but national policy assets.

I cannot see how the existing chains of command have been seriously changed.

The history of the intelligence community does not support the opponents' second argument—that the Armed Forces will somehow be deprived of intelligence by a stronger Director of National Intelligence. The former DCI has always set requirements and priorities for collection by national assets. Moreover, neither the President nor Congress—certainly not this Member of Congress, a former marine—would ever permit the crucial intelligence needs of our military to be ignored by the Director of National Intelligence.

Certainly, the requirements of our men and women in the military must be met. That has been said over and over again, especially in the House. But we must also recognize that the principal user of national intelligence that is produced by our national intelligence agencies are our national policymakers, primarily the President of the United States, the National Security Council, and the Congress of the United States. The DNI must have authority to ensure that the intelligence requirements of the President and other national policymakers are met.

Thus, while the Department of Defense is by volume—everybody understands that, by volume—the largest user of national intelligence, we must not forget that our national collection assets at the CIA and at the NSA, the NRO and the NGA—what the critics call combat support agencies—serve our policymaking needs as well.

However, while this is not the best bill possible, it is the best possible bill. It is also a big step in the right direction.

As has been said it will create a Director of National Intelligence, or a DNI, who is separate from the Director of the CIA. It will give this Director, the DNI, marginally improved budget authorities over our intelligence community agencies. It will provide authority to conduct quality control

checks of the analytic products of our intelligence community. It will also create a National counterterrorism Center which will, I hope, eventually serve as the Nation's true clearinghouse for terrorist-related intelligence. These are, in my view, very positive steps forward in our intelligence community.

I would also like my colleagues to take note of several other important and long overdue provisions in this bill. For example, this bill will consolidate what is now a needlessly complicated and expensive background investigation and security clearance process under one agency. Today, it takes too long to get good people in very crucial positions. Noting the debate in the other body, it is important to stress this bill will also bring important improvements to our Nation's border security.

I am not, however, under any illusions. This bill is not perfect. No bill is. Senator COLLINS and Senator LIEBERMAN were forced to put the Senate bill through the filter of the demands of the House and still manage to get a bill that is a step in the right direction—a big step.

In conjunction with the administration, we in the Congress—more especially those of us who had the privilege of serving on the House and Senate Intelligence Committees—will need to nurture this new intelligence structure over the years and clarify as necessary the various authorities in order to make it effective.

For those who are uneasy with the unprecedented speed with which this bill was brought to this point, I would like to offer the reassurance that what we will pass today is certainly not the final chapter on the reform of our intelligence. After this bill becomes law, we will monitor its implementation and make any needed adjustments in subsequent years. If one looks at history, the process of amending and improving the National Security Act of 1947 began almost immediately following its passage. I expect that this bill will be no different. This bill is only the beginning of the intelligence reform process. Since July, several other Senators and I have made it clear that while we believe this bill has many good provisions, what it fails to do is create a leader of the intelligence community who is clearly in charge and as a result is fully accountable.

That does not make this a bad bill. It just means that Congress must continue to monitor and guide the intelligence reform process. We must continue the logical reform of our intelligence community. If we are not diligent, our newly created Director of National Intelligence could end up a director in name only. Our national security certainly demands better.

I am determined to work with my colleagues in this Congress and the administration to continue the process that has been started by this reform effort. This process will be difficult, but it is essential and we must persevere. President Eisenhower, a five-star general, a national hero, was unable to achieve the reforms he sought to unify the Department of Defense in the 1950s. Instead, President Eisenhower's reforms would have to wait another 30 years for the Goldwater-Nichols Act which made the U.S. military the very remarkable and unified force it is today.

The forces of the status quo beat back President Truman's efforts in 1947 to put military operations under the control of the Joint Chiefs of Staff and the unified commands that had shown their utility during World War II. Instead, in 1947, President Truman was forced to accept a National Security Act that codified a system in which the military services were loosely joined under a very weak Joint Chiefs of Staff organization that had no significant authority independent of the military services.

The compromise President Truman was forced to accept mirrors in many ways the compromise bill we are voting for today. But there is reason for optimism. That shell of a Joint Chiefs of Staff which was codified in 1947 did provide the foundation upon which the Goldwater-Nichols Act would build the remarkable unified command and control structure we have today.

In addition to serving as that important foundation, the Joint Chiefs of Staff also became a voice. That voice was independent of the military services turf interests in the debate over how to continue the process of the reform of our defense. That was the first step in the struggle that resulted in the Goldwater-Nichols Act and a major overhaul of the military command structure.

This bill does not give the Director of National Intelligence all of the authorities I would like to provide. It is my sincere hope, however, that it will at least create the same kind of voice, independent of the institutional interests that currently divide our intelligence community, a voice that can lead us toward the ultimate goal: a more rationally organized intelligence community with a clear chain of command and the real accountability that comes with it.

Since 1949, 24 attempts have been made to pass comprehensive intelligence reform legislation. I thank all concerned that we have been successful on the 25th attempt. It has been 3 years and 82 days since September 11. On behalf of the families of the victims of September 11 and on behalf of national security and every American, I am thankful we will not wait another day.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Michigan is recognized for 15 minutes.

Mr. LEVIN. I thank the Presiding Officer. I ask unanimous consent, instead of my proceeding, that the Senator from Florida be recognized and I be recognized following that; and following that, Senator ROCKEFELLER, and then we proceed to Senator BYRD, who, I understand, has agreed to begin at about 12:40 instead of 12:30.

I ask unanimous consent that be the order of debate.

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

The Senator from Florida.

Mr. GRAHAM of Florida. Madam President, I am going to submit for the RECORD a fuller statement, but in deference to the limited time we have, I have a few brief comments on what I consider to be one of the most important enactments of my 18 years in the Senate.

This is an accomplishment which did not happen beginning this summer but rather has been underway for at least the 15 years since the fall of the Berlin Wall. I am extremely pleased we have now arrived at the point we may be in a position to enact serious intelligence reform for the first time in over 50 years.

There are many important aspects of this legislation. One, it will centralize the intelligence agencies, not as an end in itself, but to create the platform from which we can then decentralize. As Senator ROBERTS was discussing, in 1947, the various separate military branches—there was a Secretary of the Army, there was a Secretary of the Navy—were brought together under a Secretary of Defense. Then, 39 years later, that centralized organization was decentralized into the combatant joint commands that now are the principal warfighters for America.

That is exactly the process anticipated here. The only major difference is it will not take 39 years to get from centralization to decentralization.

A second aspect of this bill I point out, we have much work to do in the area of human intelligence. The case could be made that both the war in Afghanistan and the war in Iraq were a product of our inadequate human intelligence capabilities. We must make a major effort to rebuild our human capabilities. This bill takes a step in that direction through emphasis on more linguistic training in the Defense bill that was the establishment of what I refer to as the intelligence equivalent of the Reserve Officers Training Corps. We need many other initiatives to fill this gaping hole in our intelligence.

The third area—and I particularly commend Senator WYDEN and Senator LOTT and others involved in this—is to try to make our security classifications more truly an issue of security rather than agencies trying to bury their mistakes.

In this legislation we establish a new classification board that will review decisions that are made in the executive branch to determine if there has been an excessive use of secrecy. Our former colleague, Senator Pat Moynihan, used to say that secrecy is for losers. We do not want the United States to be in that category of losers.

What we are doing today is an important step. It is not by any means the

last step. Let me mention a few things that will need to flow from our decision today. Some are rather tangential to the issue of intelligence reform. As an example, we are now requiring any visa applicant to have a face-to-face encounter with a visa agent. That may sound like an appropriate protection against inappropriate people getting access to the United States.

There are also, however, very practical matters. A country that will be of increasing significance to the United States is the country of Brazil. Brazil is a country which is the size of the continental United States plus a second Texas. It is the fourth largest country in population in the world. Today we have three places in which a person could get a visa. They are relatively close together. It would be as if the only place you could get a visa in the United States was Washington, New York, or Boston. We have to develop some strategy to make it more reasonable for persons around the world, but particularly in these large-sized nations that are so important to our economy, to be able to have reasonable access to the visa process.

The second part of this legislation relates to the United States relationship with Saudi Arabia. It points out that the Government of Saudi Arabia has not always responded promptly or fully to the United States request for assistance in the global war on Islamic terrorism.

I believe we need an enormous increase in the transparency of the relationship between the United States and Saudi Arabia, and that is a goal we have been retreating from. In the joint House-Senate report on the factors that led to 9/11, an 800-page report contained 27 pages on the role of Saudi Arabia in 9/11. Every one of those 27 pages was classified, so the American people in that and other instances have been denied access to the information about our relationship with Saudi Arabia. I hope the provision contained in this legislation will move us toward a greater frankness and candor in that important relationship.

Finally, this legislation places responsibility for important future actions in at least three places. One of those is the President. The President will have the responsibility for making a series of critical appointments so there will be the human beings responsible for implementing this legislation in a creative, dynamic manner.

He also must assure there is a value system in relationship to this new office and other positions which are also his responsibility to appoint. The most notable of these will be between the Director of National Intelligence and the Department of Defense. It will require continued Presidential involvement and monitoring to assure that relationship achieves rather than frustrates the objectives of this legislation.

The new Director of National Intelligence will have enormous responsibility. He or she will have to establish clear priorities for the intelligence community, and this will be reflected in the creation of additional national intelligence centers. These are the decentralizing units that have been established in the case of terrorism and counterproliferation and will be under the directive of the DNI to establish in other emerging threat areas. The DNI must also revise current budget priorities, particularly in areas such as research and development, to reflect response to our emerging threats.

He also will have to establish communitywide personnel policies that support the recruitment, training, and retention of the most effective intelligence community personnel.

Finally, there will be a responsibility here on the Congress. In the Senate, we have taken steps to reform our oversight of intelligence. No longer will there be an 8-year term limit. No longer will intelligence budgets go through the Defense subcommittee but, rather, through their own Appropriations subcommittees.

These are good starts. But we are also going to have to look at the culture of the congressional oversight committees, focusing much more on the future and the threats that are coming at us and relatively give less of our time to constant focus on the accidents that can be seen through the rearview mirror. By its nature, the intelligence community is going to create accidents from time to time. They need to be reviewed, but we cannot afford for them to be totally consuming in terms of our oversight responsibility. It is in the future that the threats are to be found, and it is our responsibility to be able to assure the American people that our intelligence communities are capable of identifying those threats and providing information to decisionmakers to mitigate the chances that those threats will become the next Pearl Harbor or the next 9/11 tragedy.

Madam President, in conclusion, I thank all the people who have played such a significant role. Obviously, Senator COLLINS and Senator LIEBERMAN deserve special notice. But there are many other people in this Chamber today, such as Senator ROBERTS and Senator ROCKEFELLER, who have played a continuing role in seeing that our intelligence community is able to serve its responsibility to the people of America.

Thank you very much.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I ask unanimous consent that I be allowed to yield 2 minutes of my time to the Senator from New York.

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

The Senator from New York is recognized.

Mr. SCHUMER. Madam President, I thank my friend from Michigan for yielding. I thank all those who worked on this bill. It is not everything we all would have wanted, but it is a large improvement, and I am proud to vote for this bill. I want to take a few brief minutes simply to praise the families from the New York metropolitan area who worked so long and hard on this bill.

Today we live in a cynical time. But these families showed that a small group of people, if they have the will and the fortitude and the strength and the courage, can move mountains, even here in Washington. Without the families, we would not have had a 9/11 Commission. Without the families, we would not have had a 9/11 bill. Without the families, we would not have had each House pass its own bills. And without the families, we would not have had the agreement we have come to now.

They are an amazing group. When you look into their eyes, as they carry their pictures of their lost husbands and wives and children and parents, you see the best of America and the best of New York. They are a beacon, a model of strength, of courage, of indomitability, and they can rest easier tonight, as we all can, that our world will be safer, and perhaps the horrible thing that happened to our city and our country on that tragic day of 9/11 will not be repeated, God willing, again.

Madam President, I yield the floor and thank my colleague from Michigan for his generosity.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, first, I want to state how indebted we all are to the 9/11 Commission and to the families for their work in putting us on the road to reform. That road will reach a culmination today. It is appropriate that we spent the time we did to try to put together a bill which is comprehensive and the most dramatic reform in the intelligence community that we have had in many decades.

We in the Congress started out on that road with the goal of creating a strong Director of National Intelligence, or DNI. One milepost was to empower that Director with real budget power and adequate control over personnel in the intelligence community. Another milepost was the creation of a strong National counterterrorism Center, or NCTC, with the authority to conduct strategic counterterrorism planning and to assign roles and responsibilities for counterterrorism activities. The managers deserve great credit as the conference agreement represents a significant achievement in regard to those issues. Their work, the work of Senators COLLINS and LIEBERMAN, is a model of bipartisanship, and I heartily commend them for it.

The conference agreement contains a number of provisions that I proposed in the Senate-passed version. For example, it is critical that there be a customer focus instead of a top-down focus in setting intelligence collection and

tasking requirements. There is language in this conference report to provide that customer focus.

The Senate bill contains language which I offered which precludes the NCTC Director from assigning specific responsibilities directly to components of the Department of Defense. That authority would have had a negative impact on the military chain of command. That authority should remain in the Department of Defense. The conference report retains our Senate language.

The legislation also contains a provision which I authored with Senator COLEMAN to stop money laundering and terrorist financing. The 9/11 Commission acknowledged that disrupting terrorist financing is one key to winning the battle against terrorism. Our provision strengthens bank oversight by imposing a 1-year cooling-off period on Federal bank examiners before they can take a job with one of the financial institutions which they oversaw. The need for this provision arose from our investigation conducted by the Permanent Subcommittee on Investigations which disclosed the weak anti-money laundering controls at Riggs Bank which resulted in highly suspicious financial transactions.

Among other problems, we were surprised to learn that the Federal bank examiner who oversaw Riggs and allowed the bank to continue operating for years with a deficient anti-money laundering program retired from the Government and immediately took a job at the bank, raising conflict of interest concerns. Our new provision will help eliminate such conflicts.

Our provision also directs the Treasury Department to conduct a study of current Federal anti-money laundering efforts and recommend improvements to the process for setting priorities so that we direct our efforts where they are most needed.

On the other side of the ledger, I want to talk about a number of provisions that were included in the Senate-passed bill but which are, unfortunately, absent from this conference report. We had a number of provisions in our Senate bill, on which we worked so hard, that are omitted from this bill. It seems to me the bill is weaker as a result.

One Senate-passed provision would have permitted the new DNI to transfer military billets among activities within the intelligence community but would not have permitted the new Director to transfer individual members of the armed forces, thereby avoiding the potential for the Director to interfere with the military chain of command. That was changed and it mystifies me as to why our provision was dropped.

Another Senate provision would have provided that the administration review certain Defense Intelligence Agency programs to determine whether they should be managed by the new Director of National Intelligence or by the Secretary of Defense rather than automatically transferring them to the new DNI without review. The conference report now gives that nonreviewable power to the new Director of Intelligence. The programs, then, that the new Director will have that kind of control over include the intelligence staffs of the Chairman of the Joint Chiefs of Staff, the intelligence staffs of the commanders, and the intelligence staffs of certain communications, and control over certain communications systems which support sensitive military command and control activities within the Department of Defense.

As I said, I am mystified why these two provisions, which were included in the Senate-passed bill, were omitted from the conference agreement. Did House Republicans object to those provisions even though those provisions addressed concerns that a number of us have and, as a matter of fact, that the Armed Services chairman in the House, Duncan Hunter, had about protecting the military chain of command and about the Department of Defense having a voice in budget matters which so directly and keenly affect them?

There are a number of other troubling omissions from the conference report. I happen to be one who agrees that we need a new strong director of national intelligence and a new NCTC, a new national counterterrorism center, with strong authority. But their creation will not solve all or even the most critical of the problems in our intelligence community. In fact, the creation of a stronger intelligence director makes it even more important that we enact reforms to ensure that intelligence assessments are not influenced by the policy judgments of whatever administration is in power and that a stronger DNI is not just a stronger political arm of any administration.

I am deeply troubled that the conference report does not contain critical provisions that were included in our Senate-passed bill on a bipartisan basis that were intended to promote independent and objective intelligence analysis.

The scope and the seriousness of the problem of manipulated intelligence cannot be overstated. History has too many examples of intelligence assessments being shaped to support an administration's policy goals, with disastrous results. Forty years ago Secretary of Defense McNamara invoked dubious classified communication intercepts to support passage of the Gulf of Tonkin resolution which was then used by President Johnson as the legislative foundation for expanding the war against North Vietnam.

Director of Central Intelligence Bill Casey heavily manipulated intelligence during the Iran Contra period. A bipartisan Iran Contra report concluded that CIA Director Casey ''misrepresented or selectively used available intelligence to support the policy that he was promoting.''

The intelligence failures before the Iraq war were massive. The CIA's failures were all in one direction, making the Iraqi threat clearer, sharper, and more imminent, thereby promoting the administration's decision to forcibly remove Saddam Hussein from power. Nuances, qualifications, and caveats were dropped. A slam-dunk was the assessment relative to the presence of weapons of mass destruction in Iraq. The CIA was telling the administration and the American people what it thought the administration wanted to hear.

In July of 2004, just a few months ago, our Intelligence Committee in the Senate issued a 500-page unanimous report setting out a long list of instances where the CIA or its leaders made statements about Iraq's WMD and, to a lesser extent, Iraq's links to al-Qaida, which statements were significantly more certain than the underlying intelligence reporting and more certain than the CIA's earlier findings.

In fact, the first overall conclusion on WMD in the intelligence committee's report was that ''most of the key judgments in the Intelligence Community's October 2002 National Intelligence Estimate . . . either overstated or were not supported by the underlying intelligence reporting'' regarding Iraq's programs of weapons of mass destruction.

These are life-and-death issues. We in Congress and the American people need to know that we are getting objective assessments on North Korea's nuclear program or Iran's nuclear intentions, for instance. We cannot have any doubt in our mind the intelligence assessments that we get represent the facts as they are objectively assessed and are not shaped to serve policy goals of the White House—this White House or any other White House.

We need a stronger national director of intelligence, but a stronger DNI must not simply be a stronger yes man for whatever administration happens to be in power at the time. When we wrote the Senate bill, we included provisions to promote the objectivity and independence of intelligence assessments and to provide a check on the new National Intelligence Director from becoming a policy or political arm of the White House. I am troubled that the conference report excludes some of those checks and significantly weakens others.

Perhaps the most troubling area in which this conference report falls short in that regard is the elimination of provisions which we had in our bipartisan Senate bill which gave Congress the tools to do effective oversight of the intelligence community. On this issue, the 9/11 Commission itself said that ''Of all of our recommendations, strengthening congressional oversight may be among the most difficult and important.'' That is why during the Senate's consideration of the bill, we worked so hard to include provisions

aimed at achieving that goal. The absence of these provisions from this conference report is deeply troubling.

The bipartisan bill that we passed here in the Senate contained language that required the new Director of Intelligence, the National Intelligence Council, the NCTC, and the CIA to provide intelligence not shaped to serve policy goals. The conference report omits that language.

The Senate-passed bill promoted independence of the NCTC by stating that the Director could not be forced to ask permission to testify before Congress or to seek prior approval of congressional testimony or comments. The conference report leaves out that provision.

The Senate-passed bill contained a provision requiring the DNI to provide Congress access to intelligence reports, assessments, estimates, and other intelligence information and to do so within a time certain.

The conference report omits that Senate-passed requirement giving us a tool to do oversight. There is a long, painful history of efforts in Congress, on a bipartisan basis, to obtain information from the intelligence community which have never been answered or have been slow-walked for weeks, months, and years at a time. It is unacceptable.

A more powerful DNI could make matters worse—or better. Congress is coequal to the executive branch on intelligence issues and it baffles me why any Member of Congress, over in the House where we had this opposition, would oppose strengthening our ability to access information and carry out our oversight responsibilities and to prod the intelligence community to give us objective facts without spin.

I ask unanimous consent for 1 more minute.

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

Mr. LEVIN. I was also troubled to find out that White House staff was actually present in the room during staff negotiations of these issues. It is my understanding that the White House objected to the Congressional oversight provisions during those discussions. I know these Senate provisions were strongly supported by both the Senator from Maine and the Senator from Connecticut. I know how difficult those discussions were and I appreciate that support very much. It was not a lack of trying on their part which led to the exclusion of these provisions. It was the opposition of the White House carried by House Republicans.

In the final negotiations leading up to the November 20 draft conference agreement, I even offered what I know the managers agreed was a reasonable compromise that would have simply required that the DNI report to Congress the status of outstanding requests for intelligence information from committee chairmen and ranking members. It is my understanding that the House Republicans and the White House opposed even that language. The record should be clear on this matter if we are to carry on the battle for stronger Congressional oversight, which is so essential.

Other provisions directed at the production of independent, objective intelligence were also included in the Senate-passed bill but were dropped from this conference report. For example, the Senate-passed bill created a statutory ombudsman to initiate inquiries into problems of politicization, biased reporting, or lack of objective analysis. This conference report weakens that provision by requiring merely that the DNI identify an individual—and that could be any individual, including the DNI him or herself—to fill that role.

The Senate-passed bill created a statutory inspector general in the office of the DNI with strong investigative powers. This conference report does not. Instead, it simply leaves it up to the DNI to create an IG or not.

The Senate-passed bill created a statutory Office of Alternative Analysis or ''red team.'' This conference report weakens that by simply requiring the DNI to establish a process and assign an individual or entity—again, any individual or entity—to conduct the function of red teaming.

Let me summarize. While I am pleased that we were successful in creating a strong DNI and NCTC, I am deeply disappointed that we did not reach our destination in these other equally important areas.

Mr. President, on balance, I have concluded that I will vote for this bill, but I am concerned about what has been left out of this conference report. I think the managers share my concern about these omissions and would ask that they work with me to address these issues in the 109th Congress.

While we have the chairman of the committee on the floor, I thank her and Senator LIEBERMAN for the strong support they gave to the provisions I just described. We should give Congress the tools to do the oversight which is so essential if we are going to get independent, objective analysis. I don't know why the House—apparently Republicans who are carrying out the desires of the White House—took this position. But it weakens Congress. I want to create a record here, number one, acknowledging and thanking and commending our managers for the work they did in conference, trying to preserve our bipartisan provision, but asking, if I could, that they comment on what I just said relative to where the objection came from to these provisions that gave Congress the tools to do effective oversight over intelligence assessments, which we had in our bipartisan Senate bill, and whether I was correct in stating that.

Perhaps the Senator can answer on her own time as to whether the objection came from the House Republicans and the White House.

Ms. COLLINS. Madam President, the Senator from Michigan worked so hard to craft a series of provisions that were included in this bill. Unfortunately, the conference agreement does not include many of the provisions the Senator cared most about concerning access to information by Congress in order to ensure effective congressional oversight.

I think the loss of those provisions is unfortunate. On the Senate side, they had bipartisan support. I think it reflects a historic tension between Congress and the executive branch when it comes to oversight and the inadequate sharing of information with Congress.

This has been a problem in previous administrations, and it has continued to this day. So the Senator is correct that this objection did not originate with any of the Senate conferees, either Republican or Democrat, and it did reflect the views of the executive branch. I want to make it clear that regardless of whether we have had a Democratic President or a Republican President, that tension has existed over decades.

Mr. LEVIN. I thank the chairman of the committee.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Madam President, I will spend a minute on separate intelligence-related matter before speaking about the bill currently before the Senate. In the time I have been vice chairman of the Intelligence Committee, I have worked hard to try to make sure that funds are channeled to where they ought to be in intelligence. For this reason, and with a great deal of reluctance, I am going to oppose the fiscal year 2005 intelligence authorization conference report, which the Senate will consider later today.

My decision to take this somewhat unprecedented action is based solely on my strenuous objection—shared by many in our committee—to a particular major funding acquisition program that I believe is totally unjustified and very wasteful and dangerous to national security.

Because of the highly classified nature of the programs contained in the national intelligence budget, I cannot talk about them on the floor. But the Senate has voted for the past 2 years to terminate the program of which I speak, only to be overruled in the appropriations conference. The intelligence authorization conference report that I expect to be before the Senate later today fully authorizes funding for this unjustified and stunningly expensive acquisition. I simply cannot overlook that.

My decision is shared by a number of my colleagues. Speaking for myself, if we are asked to fund this particular program next year, I will seriously consider and probably will ask the Senate to go into closed session so the Senators can understand, fully debate, become informed upon, and then vote on termination of this very wasteful acquisition program.

Mr. WYDEN. Madam President, I rise today to express my concern regarding

a provision included in the Intelligence authorization conference report, which has been included in the intelligence reform legislation before us. I commend the efforts of both Chairman ROBERTS and Vice Chairman ROCKEFELLER for their hard work during the negotiations over this legislation. But I, like the vice chairman, do not support the continued funding of a major acquisition program which is unnecessary, ineffective, over budget, and too expensive. The easier path would be to step aside and let this program continue without dissent. In this case, however, I do not believe the continued funding of this program is the best way to secure our Nation and the safety of our troops and citizens.

The Senate Select Committee on Intelligence has raised concerns about the need and costs of this program for the past 4 years and sought to cancel this program in each of the past 2 years. This has not been a political issue, a Democratic or Republican issue, nor should it be. The members of the Senate committee have supported these efforts in a nonpartisan way with unanimous votes each time.

The Senate Intelligence Committee has determined that this program should not be funded based on firm policy judgments. Numerous independent reviews have concluded that the program does not fulfill a major intelligence gap or shortfall, and the original justification for developing this technology has eroded in importance due to the changed practices and capabilities of our adversaries. There are a number of other programs in existence and in development whose capabilities can match those envisioned for this program at far less cost and technological risk. Like almost all other acquisition programs of its size, initial budget estimates have drastically underestimated the true costs of this acquisition and independent cost estimates have shown that this program will exceed its proposed budgets by enormous amounts of money. The Senate Intelligence Committee has also in the past expressed its concern about how this program was to be awarded to the prime contractor.

I understand why funding for this program was included in the conference report. The administration requested it, the appropriators have already funded it, and the House wanted to maintain the funding. Nevertheless, I believe this issue must be highlighted because it is not going away. I wish more of my colleagues knew of the details of this program and understood why we are so convinced that it should be canceled. I encourage you to request a briefing, to come to the Intelligence Committee and let our staff explain why we believe we are right about this program. If you do, I believe my colleagues would agree with the members of the Senate Intelligence Committee and vote to stop this program next year.

I am pleased that the so-called ''lone wolf'' terrorist provision, which had passed the Senate twice since the attacks of 9/11, has been included in the intelligence reform legislation.

As all my colleagues who have read the 9/11 Commission Report know, the case of Zacarias Moussauoui—the ''twentieth hijacker''—showed that current law was insufficient to address cases in which a foreign person is suspected of terrorist involvement but had no known connection to a terrorist organization. Current law under the Foreign Intelligence Surveillance Act, or FISA, required that the FBI show that any suspected terrorist must have links to a known foreign terrorist group before the special FISA court would issue an intelligence warrant to surveil or search the suspect. The Senate passed bill made this needed change and included reporting requirements necessary to ensure proper congressional oversight of how this provision was implemented. The bipartisan effort to enact this provision was led by Senators KYL and SCHUMER who proved that we can fight terrorism more effectively without giving up our privacy and cherished civil rights.

The 9/11 Commission identified the Moussaoui case as one instance where, if things had gone right and with a lucky break here or there, the disastrous attacks against the World Trade Center and the Pentagon may have been delayed, disrupted, or even stopped. I acknowledge the concerns some have expressed regarding the possibility this provision may be misused or unnecessarily extends the reach of the FISA statute. I believe that we can address these concerns with proper congressional oversight of how this authority is used and review of this provision prior to its 2005 sunset.

Mr. ROCKEFELLER. Madam President, I now turn to the business currently pending before the Senate, the National Security Intelligence Reform Act. I am pleased to be here at long last to speak in support of the National Security Intelligence Reform Act. After 5 months of endless work, led by Chairman COLLINS and Senator LIEBERMAN, we are poised to achieve what people thought was impossible. Some have criticized this legislation for being too hastily conceived or rushed to completion. To the contrary, this reform has been 50 years in the making and the issues have been the subject of 46 different commission reports. Most of them have suggested the same kinds of things we are doing here.

Now, under the extraordinary leadership coming from Senator SUSAN COLLINS and Senator JOE LIEBERMAN, our Nation will soon have a Director of National Intelligence who can begin to effectively coordinate our intelligence agencies for the first time since the creation of the National Security Act of 1947.

This critical reform was first suggested during the Nixon administration and was the central recommendation not only of the 9/11 Commission, but also the joint inquiry—not so well known in this body—that was conducted by both the House and Senate Intelligence Committees, working together over a period of 2 years ago.

The intelligence reform bill also establishes a National Counterterrorism Center where our analytical and operational efforts to combat terrorism, here and abroad, can be brought together in a coordinated way. This builds on the effort to centralize Counterterrorism analysis begun with the creation of the Terrorist Threat Integration Center.

But unlike TTIC, the new center will coordinate much more than just intelligence analysis. The NCTC, National counterterrorism Center, will be responsible for the strategic planning of all Counterterrorism operations across the Government. It will provide a unity of effort that we have been lacking for all of these years.

The final legislation is, I believe, a monumental achievement. I am proud to support it. But I am also very honest, as was the previous speaker, Senator LEVIN from Michigan, that it does not address all of the recommendations of the 9/11 Commission. That is somewhat natural in the process of a conference. But it is important to point out what we don't yet have and what we need to continue working for.

I am disappointed that a number of important provisions in this bill were dropped or weakened—in some cases necessarily—in order to get this agreement. The agreement had to be reached. The intransigence of the House conferees forced the Senate conferees to give up more than I would have hoped. A couple of examples are the DNI's ability to transfer funding and personnel. It is a basic part of what the President is asking for, what the commission was asking for. It is significantly weakened from the Senate bill, which passed 96 to 2.

The comptroller established to execute the National Intelligence Program funding has been dropped, requiring intelligence spending to still be channeled through the Pentagon comptroller.

The creation of the inspector general in the Office of the Director of National Intelligence is discretionary, not statutorily mandated. It is not going to be any good unless there is a person there doing their job.

Many provisions in the Senate bill designed to ensure the objectivity of intelligence and improve congressional oversight were modified or were dropped, including the provisions of the bill authored by Senator CARL LEVIN—many excellent suggestions that would have improved congressional access to information and unvarnished intelligence reporting.

Similarly, the Senate conferees were forced to modify other important provisions on the civil liberties, privacy, and declassification boards in order to overcome House objections.

Even with these shortcomings and others, the agreement reached is still a

very good one, one that I can support and one on which I hope we can build in the future in our intelligence authorization bills.

While several provisions from the Senate bill were weakened or dropped, the final agreement still includes many very important provisions—as I would say, the beginning of the turning of the battleship—that will make meaningful improvements to the operation of the intelligence community in all areas, not just counterterrorism.

We had a press conference yesterday, and I pointed out that in 1998, George Tenet announced and declared that there was a war against al-Qaida. Nobody listened. Nobody had to listen, I guess, and they did not. Under this new setup, if the Director of National Intelligence so declares and has the authority to follow through, that will be absolutely enormous.

Some of the good provisions are: Language directing the DNI to create an ombudsman to ensure the objectivity and independence of intelligence analysis. That is so important because it means that people can come to an ombudsman within an intelligence agency and air their grievances, saying they are being pressured to do analysis a certain way, whatever. But having an ombudsman is very important in big and sensitive organizations.

The establishment of a intelligence community reserve corps is, I think, a really good idea. It is in the bill. It helps relieve the burden during periods of increased deployments, such as we are going through right now.

And the establishment of an alternative analysis or ''red teaming'' capability—which is simply the act and the art of taking the collection of intelligence and then the analysis that comes from that collection and having people who are there to say: But did you ask this question? What about that? In other words, they bring a contrarian point of view, thus disciplining intelligence at the collection, development, and production phase into a more worked product.

These reforms address problems uncovered in the Senate Intelligence Committee inquiry into the prewar intelligence on Iraq, some of the ones I just mentioned. When we put them to those two heroic Americans, Governor Kean and Congressman Hamilton, they supported them strongly. They are very critical to this reform effort.

The creation of a Senate-confirmed Director of National Intelligence presents the President with the opportunity and the challenge to select an individual with strong national security and management credentials and who will be viewed by all as a nonpartisan leader of the intelligence community. That goes without saying. That is absolutely basic.

Now, more than ever, we need an individual who will not only effectively manage the intelligence community for the first time ever, but who can also be an objective adviser to the President, somebody immune to the influence of political pressure.

In order to carry out the enormous responsibilities created in this bill, the new Director cannot be seen as pursuing a political agenda of any kind or forcing the intelligence community to support a particular administration policy. That would apply, obviously, to both Democratic and Republican Presidents and their administrations.

We need a Director who will speak truth to power, as we say, and present what the intelligence community knows, does not know, or believes in a timely and objective way.

I urge the President to nominate an individual to serve as the first Director of National Intelligence who embodies these qualifications.

In conclusion, I again thank Senators COLLINS and LIEBERMAN for leading us through this extraordinary process, watching the process seem to disintegrate, and then, through the absolute persistence of both of them—even to the extent, I understand it, of BlackBerrying each other from the office to the Kennedy Center—and I will not say which Senator was at which place. But all of this helped bring the deal together.

They were extraordinary in what they did. I have never seen anything like it in the 20 years I have been here. I am really proud of both of them. They never gave up their fight. They never took their eyes off the prize. They overcame institutional resistance to change, and, in the end, they overcame House efforts to undermine and emasculate the bipartisan mandate for intelligence reform, but did so in a way which drew an enormously positive vote from the House last night. They are skillful, and we honor them.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I thank the Senator from West Virginia for his extraordinarily generous comments. We would not be where we are today without the support of the vice chairman of the Senate Intelligence Committee. He contributed greatly to the bill. He was there from the very first day, drawing on his impressive experience in intelligence and national security matters, advising Senator LIEBERMAN and me on what should be in the bill. He was one of our most active and dedicated conferees.

I am very grateful for his support and efforts and his contributions. I realize the bill we produced is by no means a perfect bill, and I know that in the years to come, he and his colleague, Senator ROBERTS, will work to strengthen and improve our efforts. I thank him very much.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, might I inquire of the distinguished managers as to the recognition of speakers that meets the desire of the two managers? The Senator from Virginia has indicated a desire to speak, and I believe I am on the list. I will be happy to take whatever position is available. I can follow my distinguished colleague from West Virginia. I am here to listen and learn.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, it is my understanding that the Senator from West Virginia is scheduled to speak next. The Senator from Virginia is on the list for 30 minutes of time. The Senator from West Virginia is on the list for 2 hours of time. I am uncertain whether the Presiding Officer can be advised whether there is a further order beyond what I have just indicated?

The PRESIDING OFFICER. That is the extent of the list of speakers.

Mr. WARNER. Madam President, the senior Senator from West Virginia indicated to me that in all probability he might not use that time. To facilitate matters, I can be on short notice to come after should he not use 2 hours.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, am I recognized?

The PRESIDING OFFICER. If the Senator from Maine yields the floor.

Ms. COLLINS. Madam President, I will yield the floor. I just want to indicate that the Senator from Alaska, Mr. STEVENS, is also on the list to speak for 5 minutes. I believe he wanted to follow the Senator from West Virginia. And I see that the Senator from Louisiana is also here and would like to speak for 5 minutes. So I ask that they also be put in the queue.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from West Virginia.

Mr. BYRD. What does ''in the queue'' mean in this situation?

Madam President, maybe I can shed just a little bit of light here to help. I do not intend to take the full 2 hours which have been allotted to me under a previous request. I will be very happy to yield to the very distinguished senior Senator from Virginia at this time if he so wishes to precede me.

Mr. WARNER. Madam President, I thank my colleague. As we discussed, I would like to have the benefit of the remarks which he is going to deliver to the Senate prior to my speaking. If we just leave it, I will be available whenever the managers wish to indicate I can speak, I will do so.

Mr. BYRD. Madam President, as I say, I will not use the full 2 hours. There will be ample time, I am sure, for some of the others whose names have already been mentioned.

When I refer to the distinguished Senator from Virginia, may I take this opportunity to thank him for the service he continues to give to the country and to his constituents, the people of the great State of Virginia. I have noted in the press some of the concerns he has expressed with respect to this particular legislation, and I am sure

those concerns have led to improved legislation, certainly improved chances for its passage today, and I want to thank him for that.

Mr. WARNER. Madam President, I thank my distinguished colleague. History will have to reflect, once this is adopted into law, and I intend to support it, upon certain provisions that I had some role in preparing, working with the distinguished managers of the bill and my counterpart in the House, the distinguished chairman of the House Armed Services Committee, DUNCAN HUNTER, who has been a very forceful and committed individual to achieve the common goals Congressman HUNTER and I shared.

I might add to the distinguished Senator from West Virginia, there were at least four or five others in the Chamber who consulted with me, worked with me, and provided ideas, and I want to thank them, although I shall not take the time at this time to mention their names.

I will be available whenever the managers wish to put in a call to me.

On another subject, I say to my distinguished colleague from West Virginia, the Christmas tree that is now gracing the west lawn of the Capitol grew on the border between Highland County and West Virginia, and my understanding is that some of the roots penetrated into West Virginia. So while the trunk may have been in our State, it really drew on the wisdom of West Virginia and Virginia, and I think my colleague and I are very appreciative that this tree was selected.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the managers of this bill, Senator COLLINS and Senator LIEBERMAN, for the courtesies which they never failed to extend. I have the utmost respect for the dedication and for the knowledge which they have brought to this particular subject matter. They have spent many weeks, days, and hours in the consideration of this matter in the committee, on the Senate floor, in the conference, and their kindnesses, their studies, their knowledge, their ability to translate into action the concerns that so many of us have held with respect to intelligence is something worthy of admiration.

I also thank Senator ROBERTS and my colleague in the Senate from West Virginia, Senator ROCKEFELLER. They, too, have worked hard and have contributed much and will continue to do so. I recognize that these Senators have worked tirelessly since last summer in trying to craft the best legislation possible. So I have to compliment these Senators. I have to salute them. I have to respect them for their tenacity.

I regret that I cannot join them in supporting the conference report. I will vote against it. Mine may be the only vote against it, for that matter. But I feel that I must speak out and must vote my own sentiments as I attempt to represent the people of West Virginia according to my own lights.

I know the families of the individuals who perished in the September 11 attacks are following the proceedings of the Senate closely today, and my sympathies go out to them, as my sympathies did immediately after the terrible tragedy that befell them and befell the Nation. As chairman of the Appropriations Committee at that time, I responded in a very positive way. We passed a $40 billion appropriations bill within 3 days. That is somewhat of a record, I must say. Again, I say, we enacted—when I say ''we,'' I mean the entire Congress—a $40 billion appropriations bill within 3 days of that tragic happening.

These families who have grieved over the loss of their loved ones for more than 3 years, and who will continue to grieve over these losses throughout their lifetimes, have been critical to the efforts to create the 9/11 Commission and allow their thorough investigation to be completed. The greatest tribute to their efforts of these past years would be for the Congress to get these intelligence reforms right.

When the elected representatives of the people allow themselves to be coerced into a process that encourages the abdication of our responsibility to understand and fully debate and thoroughly review legislation, the people are robbed of their voice and their government. Senators take an oath to defend the Constitution of the United States. I have taken that oath many times over these 58 years that I have served in public office. Common sense suggests that that means reading and studying the legislation before the Congress. We are dutybound to explore the opinions on all sides of an issue and, especially an issue that is so serious as is this one, we are dutybound to work toward a process that does not exclude opponents or silence the opposition.

In its heyday, the Senate, this body, the U.S. Senate, was known as the greatest deliberative body in the world. It should still be that. I wonder if it is. What we have seen in recent times, however, is a hollow shell, a hollow shell of that noble tradition. Time after time after time, the Senate forgoes its responsibility to deliberate and to carefully review legislation, and even defers to others to craft legislation for it.

Legislation is passed by the Senate and then, all too often, hastily rewritten in a conference report behind closed doors marked, as it were, ''no minority view admitted.'' All too often during the 108th Congress, the party leadership has held bills until just before a recess and then employed disingenuous rhetoric about, ''Oh, last opportunities, these are the last opportunities to get something done.''

Senators, preoccupied with holiday schedules and holiday travel plans, for example, roll over timidly and accept whatever is placed in front of them. They do it. They do it time and time again. And they importune those Senators who might be hopeful of speaking out and spending some time and debating with their colleagues. These Senators are pressured by their colleagues and by the leadership and by the White House to roll over and let the vote come and let us go home. I anguish about the eroding character of the Senate.

I have now served in this Senate 46 years. I have seen the Senate when it took the time to speak and to debate and to amend, to ask questions. I have seen those times, and those were the great days for the Senate. It fulfilled its duties to the American people and to the Framers, to the forefathers, to those who have preceded us. I greatly regret that those days seem to be gone. They seem to be gone.

I anguish, as I say, about the eroding character of this body. I anguish about the message it sends to the American people when this body allows itself to be stampeded, as it so often does allow itself to be stampeded, into passing legislation without thorough examination.

Oh, we congratulate ourselves on a job well done and then vote overwhelmingly in support of the legislation, and yet we cannot even be bothered to ask questions about the changes made in conference. Like pigmies on the battlefield of history, we cower like whipped dogs in the face of political pressure when it comes to issues such as intelligence reform.

I felt the pressure to forego any speech, forego any request for a rollcall vote but just to let it pass by voice vote. Can you imagine that? Let this piece of legislation pass by voice vote; oh, Senators have travel plans, and it would be well if we could just have a voice vote.

We have too much of that around here. I for one have a rebellious feeling against our relaxing in our duties to the Senate and to the people by giving in to such pressure.

I do not claim to know as much about this legislation as the managers of the bill. But I do know about process. And it galls me that the Senate has allowed itself to be jammed against a time deadline time and time and time again—and in this instance, jammed against a time deadline in considering this conference report.

This is the most far-reaching reorganization of our intelligence agencies since 1947. These changes will remain for decades, and these changes will impact upon the security of our Nation at countless levels. Such matters ought to be held to a higher standard of consideration by the Congress than is the case here.

This conference report has been reworked and redrafted over the course of 2 months in a closed-door conference, and the Senate has only received a printed copy of the conference agreement less than 24 hours ago. I

don't know what is in the conference report. I would say that any other Senator who stands before this Senate and tells the American people he or she knows what is in the conference report is like the emperor who had no clothes.

As late as yesterday, the conferees were still making changes. It is outrageous, outrageous, to expect Senators to read and understand a 615-page measure in less than 24 hours. Is that the way we ought to legislate? Here we have young pages who come here from all States of the Union. They expect to learn how legislation is made, how the Senate works, how we Senators perform in the bright lights of publicity, how we do the people's business. I know they read the casebooks and the history books and the textbooks and all these things about how legislation is made. They come here with bright eyes, open eyes, open ears, great hope, great aspirations, and they work for what I say has been rightly called the greatest deliberative body in the world.

Is this deliberation, a 600-page report? If I stood before the American people and said I can vouch for everything that is in this, I know what is in it, the people would know I am misleading them, wouldn't they? But this is so often the way it is. We allow ourselves to be pressured by the leadership. The leadership calls up measures here in the Senate. Any Senator can make a motion to proceed. But Senators don't do that. They defer to the majority leader. I have been the majority leader. I have been the minority leader. Senators defer to the majority leader, whether it is a Democrat or a Republican, to call up measures. I say that we often just do not have the debates the Senate should give to important measures.

This conference report—as I say, it is outrageous for Senators to understand the 600-page bill in less than 24 hours.

I want to call attention to the Washington Post of today and its lead editorial titled ''Reform In Haste.'' I shall just take the time to read the first two paragraphs of today's Washington Post lead editorial titled ''Reform In Haste.'' I quote therefrom:

> The rhetoric emanating from the Capitol Hill in the past few days may have created the impression that, after a hard-fought battle over key provisions, Congress worked its way to a sensible plan for reorganizing the U.S. intelligence community. Sadly, that is far from the truth. The 600-page omnibus measure on its way to approval yesterday had not been read or carefully considered by the vast majority of members, including some of those most involved in its construction. What passed for a debate in the past couple of weeks was actually little more than a turf battle by Pentagon satraps and the Congressmen who share their interests on issues that are marginal to the broad reorganization outlined in the legislation.
>
> That shake-up, driven by an odd combination of election-year politics and the determination of the September 11 commission to leave a mark, may improve the quality of intelligence information supplied to the President and other key policymakers; we have our doubts. Like the passage of the USA Patriot Act or the creation of the Department of Homeland Security, it has been mandated hastily and with scant consideration of its long-term consequences.

That is what I am talking about. The Washington Post hit it right on the head.

I tell you that I am not going to vote for legislation of this importance under such circumstances. I have done it before. I have voted against other legislation from time to time which I felt was being rammed through the Senate without proper consideration, without ample time for debate. And this measure, of course, cannot be amended. A conference report under Senate rules cannot be amended. So we have to take it or leave it, vote it up or down. We are buying a pig in a poke here, I can assure you.

This conference report is very different from the legislation that passed the House of Representatives and the Senate 2 months ago. I have heard Senators here on the floor today talk about how this differs from the legislation that we passed in the Senate a few weeks ago.

For example, a number of provisions related to the U.S. PATRIOT Act and the law enforcement powers have been inserted into this bill, which again has never been considered on the Senate floor.

This legislation has encountered virulent opposition since the time of its conception. And while it may enjoy the support of the overwhelming majority of Members here today, nobody—I say nobody—can say with any confidence or certainty as to how this new layer of bureaucracy will affect our intelligence agencies or the security of our country. We don't know if it will enable the intelligence agencies or enable the Government in all its ramifications to better guard against a terrorist attack or whether it will cause a host of unforeseen problems. We are failing in yet another misguided rush to judgment to take the time and effort to find out. We are failing to take the time. It is a rush to judgment. There has been a mad scramble to cobble the pieces together and pass a bill. Oh, I have to pass a bill.

The Senate barely understands how the experts line up on this bill. The 9/11 Commission is for it. That much we know. But former CIA Director George Tenet said last week he opposes this bill. That is sobering criticism from someone who, having left Government months ago, no longer has any turf to protect.

A distinguished group of national security experts wrote in September that they oppose any intelligence reform this year. That group included former Senate Intelligence Committee Chairman David Boren; former Senator Bill Bradley; former Secretary of Defense Frank Carlucci; former Secretary of Defense Bill Cohen; former CIA Director Robert Gates; former Deputy Secretary of Defense John Hamre; former Senator Gary Hart; former Secretary of State Henry Kissinger; former Senate Armed Services Committee Chairman Sam Nunn; former Senator Warren Rudman; former Secretary of State George Shultz.

We do not know how these experts regard this conference report. We do not know how they regard the bill today, but even months ago they urged we take more time.

Henry Kissinger appeared before the Senate Appropriations Committee and urged we take more time. He suggested we take more time, even as much as perhaps 8 months—nothing this year.

I read from an excerpt of a statement by former Secretary of State Henry Kissinger, as of Tuesday, September 21, this year:

> What we are urging is a time for reflection and a time for consideration with maybe a short deadline of 6 to 8 months, but to take it out of the immediate pressures of a period that is bound to affect the thinking.

There we were, about to enter into the heat of an election campaign and Henry Kissinger was saying, whoa, whoa, wait a minute. Let's slow down. Let's take adequate time. Don't be pressured by the election. Let's don't do these things in such a hurry.

We do not know what these experts regard how they would perceive this conference report today. I don't know how Henry Kissinger would judge it. He doesn't know what is in the conference report, just as I don't know what is in it. Why should Senators forego the valuable insight of almost every public figure who may actually be able to assess what is in the new version of intelligence reform?

So I say again, let us not say we believe we understand what is included in this conference report. I don't understand it. We have not had the time to understand it. We do not have sufficient resources by way of assistance from capable staff people. They have not had the time. It is, in effect, a new bill and in some ways very different from anything the Senate has considered to date.

Common sense suggests the Congress ought to hold hearings on the contents of this new measure so we may be informed by experts about its benefits and defects, so that we may ask questions, so that those questions and answers may be compiled into printed hearings so we all may have the benefit of the knowledge, the benefit of time to study and to reflect.

There is no reason the Senate cannot proceed in this prudent matter early next year. Instead of viewing this conference report as the final stage of the process, we ought to consider it as the starting point for debate next year. It is only a few days away, next year. We ought to invite witnesses back to testify and allow the process to begin anew outside the election cycle and built on the foundations of knowledge acquired this year.

Instead, we are allowing ourselves to be lulled into the fallacious belief that we must accept this bill, we must accept this conference report, we cannot

amend it, we must accept it from page 1 through page 615. We have to accept it lock, stock, and barrel.

We do not know what is in it. There may be several pigs in this poke, but we buy them all; we embrace the whole thing virtually sight unseen. We allow ourselves to be lulled into the fallacious belief that we must accept this bill or risk it not passing next year, with some even suggesting a terrorist attack could result from it.

Now, a terrorist attack may happen, but it won't happen because this conference report would have been put over until next year. If it is going to happen, it will happen and nothing in this conference report would stop it if it happened next week or the next month or the next several weeks or months. That is nonsense. Don't believe it.

I have heard even some comments from people who ought to know better on the TV saying, What I am concerned about, if we don't pass this report, I just hope we don't have another terrorist attack—as though passage of this conference report will make any difference to any terrorist who may be planning an attack next week or 10 days or the next month or the next 2 or 3 months. No legislation alone can forestall a terrorist attack on our country.

The momentum is strong now to reform our intelligence agency. I submit the greater risk is not that the momentum will dissipate next year if this bill does not pass today or this week, but that the passage of this bill will remove any incentive to focus on the broader intelligence failures that have occurred outside the war on terror.

This legislation is appropriately focused on the failings of September 11 but oblivious to the many other glaring deficiencies in our intelligence community. Our country went to war in Iraq, a war we should not have engaged in, a war in Iraq on the shoulders of false claims about weapons of mass destruction. But this bill dances around that issue on tippy toes. It is as though Congress is too afraid to mention the fact that faulty intelligence claims deceived the public out there, deceived the man and the woman on the street, deceived the people of this country into believing there was an imminent threat from Saddam Hussein.

Why is Congress avoiding that critical issue? Is it because some do not wish to expose the role of the White House in feeding bad intelligence to the American people? The Founding Fathers intended Congress to be a check on the power of the Chief Executive, but increasingly Congress appears content merely to be a cheerleader for the President depending upon which party might be in control at a given moment.

The intelligence bill fails to address the unfolding prison abuse scandals in Iraq, Afghanistan, and Guantanamo Bay.

The Armed Services Committee has held six hearings on the abuse of prisoners in U.S. military jails. There is mounting evidence that the CIA had some hand in the mistreatment of detainees. The Red Cross has reported on the illegal practices of U.S. intelligence agencies holding ''ghost detainees'' in secret prisons. Why is this intelligence bill silent on such outrageous policies? How can Congress claim to fix what is wrong with our intelligence agencies if this major piece of legislation does not even address such colossal intelligence failures?

The only way to reduce the risk of such failures is to ensure the accountability of this new Intelligence Director to the people's representatives in the Congress. It is the Congress that must make the decision to declare war, and it is the Congress that is responsible for the oversight of this new intelligence program to help guard against future intelligence failures.

It is paramount that the Congress do everything possible to ensure itself access to timely, objective intelligence. Yet that is not what we see in this legislation.

This conference report eliminates provisions to ensure that the Congress receives timely access to intelligence. It also allows the White House's Office of Management and Budget to screen testimony before the Intelligence Director presents it to the Congress. Whistleblower protections for intelligence officials who report to the Congress have also been stricken from the Senate-passed bill.

The conference agreement creates senior intelligence positions but exempts many of them from confirmation by the Senate. It eliminates the privacy and civil rights officers included in the Senate-passed bill. It strips 18 pages of legislative text that would have created an inspector general and ombudsman to oversee the Intelligence Director's office. That language has been replaced with one paragraph, authorizing the Intelligence Director, at his discretion, to create or not to create an inspector general, and provides the Director with the power to decide which, if any, investigative powers to grant the inspector general.

That means the new Intelligence Director could exempt his office from inspector general audits and investigations, and that the Congress would not receive reports from an objective internal auditor. The Congress is limiting its own access to vital information within this new intelligence office, and it will have thereby compromised an essential mechanism for identifying potential abuses within the new intelligence program.

Given the dark history of abuses of civil liberties and privacy rights by our intelligence community, I had hoped that the Congress would exercise more caution, but it has not done so in this legislation.

The 9/11 Commission recognized that its recommendations call for the Government to increase its presence in people's lives, and so it wisely endorsed the creation of an independent Civil Liberties Board to defend our privacy rights and liberties. The Senate-passed bill embraced this recommendation and included additional protections to help ensure that executive agencies could not exert undue influence on the Board. This conference agreement, however, scuttles those protections by burying the Board deep inside the Office of the President, subjecting Board members to White House pressure. Why?

The conferees included language making changes to the 1978 Foreign Intelligence Surveillance Act, the law that blurs the rules on electronic surveillance and physical searches by the U.S. Government. This conference report, though, states that the Intelligence Director shall have authority to direct or undertake electronic surveillance and physical search operations pursuant to FISA if authorized by statute or executive order. This is dangerous ground, isn't it? This is dangerous ground to walk when the President, through executive order, and without the authorization of the Congress, can direct this new Intelligence Director to undertake electronic surveillance and physical search operations.

Yet another provision would make terrorist crimes subject to a rebuttable presumption of pretrial detention, which means that prosecutors will not be required to show a judge that the defendant is a flight risk. Instead, the defendant will be presumed to be a flight risk. Are Senators sure we are not trampling on the civil liberties of the American people with the hasty passage of this conference report?

Again, few, if any, Senate hearings have been held on these provisions by the full Senate Judiciary Committee. The inclusion of these provisions in title VI, with so little examination of their real meaning, reminds one of how the PATRIOT Act itself was enacted in haste without sufficient review, and with no real understanding of its true consequences.

These are unsettling provisions, and the Senate ought to insist on its rights to consider them more carefully. The Senate has not had enough time to understand this legislation or its implications. This new Intelligence Director has been granted significant authorities, and the Congress has not done enough to ensure adequate checks on the actions of the Intelligence Director.

With regard to homeland security, the bill authorizes a significant increase in the number of Border Patrol agents, immigration investigators, and a significant increase in the number of beds for immigration detention. The bill also authorizes increased funding for air cargo security and for screening airline passengers for explosives. All of these are worthy goals, but the provisions are just empty promises.

Last September, when I offered an amendment to the Homeland Security

appropriations bill to fund these precise activities, the White House opposed the amendment and my Republican colleagues lined up, virtually to the man or woman, and voted against it. And today, Members will line up and vote for more empty promises.

President Bush had the opportunity to support Congressman SENSENBRENNER and insist on tougher immigration reforms in this bill, but the President welched. Senators talk about reforms needed to protect against terrorism, and the fact is that this bill is a hodgepodge of empty border security promises that the administration has no intention of funding—and I am certainly concerned about that; no intention of funding—and that will only encourage the kind of illegal immigration that leaves our country wide open to terrorists.

Mr. INHOFE. Will the Senator yield?

Mr. BYRD. Yes, I will yield.

Mr. INHOFE. I ask the distinguished senior Senator from West Virginia if he would yield me a little bit of his time, and then I will yield right back, because something the Senator said I think is worth elaborating on a bit.

Mr. BYRD. Very well. Will the distinguished Senator inform me as to how much time?

Mr. INHOFE. Oh, 10 minutes, but I probably will not use it all.

Mr. BYRD. Does the Senator wish me to yield at this point?

Mr. INHOFE. I would like that, yes, or I will wait until the Senator finishes his current thought. I want to reference former Senator Boren and some things that you mentioned.

Mr. BYRD. Yes.

Mr. INHOFE. I will wait.

Mr. BYRD. I will certainly yield to my friend very shortly. Let me say, however, continuing my thought, it may well be that the only problem that this bill will actually fix is one of politics.

Passing this bill in the waning hours of the 108th Congress means that for all intents and purposes intelligence reform will be removed from the agenda of the next Congress. By passing this bill today, the Senate will be giving political cover to those who wish to dismiss calls for more thorough reform of intelligence agencies to fix problems that are not addressed in the legislation, including the Iraq WMD, weapons of mass destruction, fiasco and the abuse of prisoners in secret detention facilities.

Intelligence reform should be done right the first time. But the actual implementation of this bill will be shrouded in secrecy and hidden from public scrutiny. Under this conference report, the total amount of intelligence spending will remain classified so that the American people may never know if the President is shortchanging the reform effort that this bill requires. Senators ought not be so willing to rush this bill through knowing that it may serve as political cover for an administration that has a sorry history of promising big reform efforts that it never funds.

Mr. President, I am happy to yield now, if I may retain my right to the floor, to my friend from Oklahoma.

Mr. INHOFE. I thank the Senator for yielding.

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

Mr. INHOFE. Mr. President, the Senator had referred to a report and named several very distinguished people, including the former Senator from Oklahoma, my predecessor, current president of Oklahoma University, David Boren.

Mr. BYRD. Yes.

Mr. INHOFE. I would share with the Senator from West Virginia that when I won the election to replace him, he and I had a talk. And he said: I have something very significant to talk to you about.

If the Senator from West Virginia will recall, Senator Boren was the chairman of the Senate Intelligence Committee at that time.

Mr. BYRD. Yes.

Mr. INHOFE. He said: You have to do something. I have tried and I haven't really succeeded because no one is aware of the shambles that the system is in in terms of the turf battles in intelligence collection and all of that.

I told him at that time I would do everything I could even though I was going to be on the Intelligence Committee but not on some of the committees dealing directly with this. So he talked about the crisis it was in.

I will read to you from the CSIS report that was written by the very people the Senator from West Virginia listed. It reads:

> Racing to implement reforms on an election timetable is precisely the wrong thing to do.

I think that it does have to be deliberative, and we do have to have more time.

Additionally, there is no one I hold in higher regard in terms of his background and capability than Porter Goss. I served with him in the other body. Here is a man who has the background, yet we haven't heard anything from him on this. It seems to me if we all agree, as we did when his confirmation took place, that he is the expert that he is, he should have some participation. At least I want to know what his thinking is about this.

Just for a moment, I saw several things in the House bill I liked. I have a very short list of things that were taken out of the House bill in conference. This disturbs me. For example, they took out any requirement for proof of lawful presence in the United States. The requirement applies to immigration law provisions passed in 1996, which I supported, as did the Senator from West Virginia, that were signed into law by President Clinton.

Secondly, the temporary license requirements, including a requirement—again this was in the House bill and was taken out—that the license term should expire on the same date as a visa or other temporary lawful presence authorizing document. This means if you are here on a document—it might be a visa—and it expires, your driver's license should expire at the same time. That was a part of the House bill that was taken out.

The required documentation for identity is the hard document. Many States have inadequate and outdated proof of identity. This provision ensures that the States would have hard documentation on this.

The restriction of the State's ability to accept foreign documents for a driver's license, we have discussed this. I, for one, do not hold in as high a regard foreign documents as I do our own documents that are generated here.

The antitrafficking provision was taken out. The House bill adds to the existing criminal code addressing identity theft and fraud language to address the growing and lucrative crime of selling the technology and information that facilitates counterfeiting of identity documents. This was taken out. I have not had the opportunity to find out the reason for this. Notwithstanding that, I know there are many good provisions we should be passing.

One of them I draw to the attention of the Senator and the Senate is the electronic confirmation by the various State Departments of Motor Vehicles to validate other States' driver's licenses.

Had Virginia referenced the Florida records of Mohammed Atta who was stopped here, it is likely they would have discovered that his license was not current. Who knows whether that would have prevented 9/11 from happening. However, we do know this: He piloted one of the airplanes that went into the towers, and he was also one of the masterminds at that time. Mohammed Atta was actually stopped in Virginia. The House put a provision in to make it very difficult for that to take place.

This morning on a news show on Fox News, Congressman SENSENBRENNER was on, and E. D. Hill asked him some questions:

> . . . Explain to me this whole driver's license thing. Because I know that out in California they're giving out licenses and then there are these matricular I.D.s—all sorts of stuff like this.
>
> This bill—the last part that I read—said that they wanted national guidelines for federal—for identification, for driver's licenses and that type of identification form. What does this mean?

Congressman SENSENBRENNER responded:

> Well, it would be proof of lawful presence in the United States, which means either a birth certificate, a U.S. passport, a foreign passport with a green card. Or if someone is here on a temporary visa with an expiration date, that passport and changing the law to have the driver's license expire as of the date the visa expires.

He goes on and talks about Mohammed Atta and when he was stopped and what happened. That part is very disturbing to me.

Finally, there has been a lot of talk about the 16-mile gap that was in there that has now been returned back to about a 2½ mile gap between San Diego and Tijuana. It is a gap because there is no fence there. People come and go as they will. That is where a lot of the illegals are coming through, a lot of people who could be terrorists. We don't know. Nonetheless, they are going through.

They had closed that gap in the House bill, and that language was taken out. That might be something that has been said on this floor. I haven't heard anyone justify why that was done, but it seems like it was done.

I know that Congressman HUNTER placed a provision to close the gap, and apparently there were some endangered species lawsuits that came in and have caused this conference report to leave that gap open.

I suggest that if we are leaving it open, I say to the Senator from West Virginia, we are leaving it open to protect a maritime succulent shrub which is something that is required or could create a harassment to some endangered species. So I checked to see what that was. I found out that the two major species that might be endangered species, that might be harassed—not killed, harassed—were the vireos or the flycatchers.

I am holding a picture of a flycatcher. Let me get the full name.

I don't seem to have that here.

Anyway, this is one of the species that might be harassed—not killed, but harassed. The other is this critter, a vireo. I checked with the U.S. Geological Survey, and I found out there are an estimated 2,000 vireos in existence today and 1,000 flycatchers in existence today, and the most this would prevent, not from being killed but from being harassed, would be 2 of these and 3 of these.

Now, I ask you to prioritize this. Is it better to harass five of these endangered species and at the same time leave this 3.5-mile gap open for perhaps terrorists or someone else to come through? I have been very concerned about these things.

I do understand that the House has said they are going to fix all this in January—I cannot remember, I think in the first part of January sometime—but every time that happens, when they say they are going to fix something that we rush through to pass, it doesn't happen.

I saw my friend, the Senator from Florida, walking through here a minute ago. He reminded me that I was the only Senator in 2000 to vote against the Everglades Restoration Act. I did so because we did not have a core plan, a feasibility study, and we didn't know about the cost. We were given assurances that if we would pass that bill on that particular day, we would have a feasibility study and the cost would not exceed where they are today. Now we find out that the costs have dramatically exceeded the estimates in 2000.

I only say this not to criticize anyone, but only to say that, without exception, every time we have rushed to do something, we have used the excuse that we are going to fix it 3 weeks from now or tomorrow or in the beginning of the next session, but it doesn't seem to take place. So like a lot of reforms that are in this, I would rather go back and have the opportunity to make sure we get the reforms I outlined that were taken out or put in by the House. The reason is that once you pass a bill, you lose your leverage to get those things that were controversial back in. I don't have any doubt that the Speaker—he says he will bring this up, and I don't doubt that. I have serious doubts that if they pass something in the House and send it here to correct those five areas I outlined, it would be done over in this body.

I appreciate very much the Senator yielding me a few minutes of his time to share those thoughts with him.

Mr. BYRD. Mr. President, I thank the Senator who has expressed, rightly, his concern. The Senator has cited excellent examples of why this bill is being rushed and why it should not be rushed.

I am for intelligence reform. There are many things in this package, I am sure, that are worthwhile. But we cannot fully protect ourselves against terrorists unless we address the gaps in our borders and stem the rise of illegal immigration. There is a great deal of friction in the House of Representatives with respect to this conference report because of the failure to address many of the problems Congressman SENSENBRENNER spoke about. I hope we will still have an opportunity to do that. But this is just one area in the conference report that ought to have had more time, but it did not get the time, as the subject matter in its entirety should have had more time.

Next year, the President will ask the Congress to pass a sweeping amnesty. It's clear that illegal aliens will continue to pour into this country until the Congress takes action to protect its borders.

The 9/11 Commission's endorsement of this legislation will mean nothing if these so-called reforms lead to future intelligence failures.

What the American people will remember, however, is that the Congress—the Senate and the House—abdicated its role to fully protect their security interests. The American people will remember that the Congress empowered an unelected bureaucrat while doing little else to protect against future intelligence failures.

This process has been hurried and rushed from the beginning. It has been tainted ever since the decision was made to tie its consideration to a political schedule.

When the 9/11 Commission needed more time to conduct its investigation into the September 11 attacks, the Congress acted magnanimously in granting a 2-month extension. Senators said at the time:

> It would be counterproductive to deny the commission the extra 2 months it now says it needs to complete its investigations. . . .

Mr. President, the Founding Fathers would be ashamed of the notion that time is a luxury reserved for the unelected members of independent commissions. What about the Senate? What about the elected representatives of the people who serve in this body?

The Framers of the Constitution conceived a Senate that would resist the forces that urge us to bend with each change in the political breeze. To the contrary, the Constitution binds Senators to serve the greater causes of the Republic and reserves the power of each Member to demand more time for debate, more time for thoughtful consideration. So shame on us for not invoking that wisdom in claiming the additional time we need to better assess this legislation and to better protect the security of this Nation and to better enhance the well-being of the American people, who stand in need of closer examination and scrutiny of legislation that will provide for their security and the security of their children and the security of the institutions that need that protection and that security.

Mr. President, I yield the floor.

FOSTERING THE FLOW OF INFORMATION

Ms. COLLINS. Mr. President, the 9/11 Commission found that the biggest impediment to ''connecting the dots'' was resistance to information sharing. As the Commission stated in its report: ''Agencies uphold a 'need to know' culture of information protection rather than promoting a 'need to share' culture of integration.'' I ask if the ranking member on the Governmental Affairs Committee, Senator LIEBERMAN, would explain how this legislation addresses this finding of the Commission.

Mr. LIEBERMAN. In drafting this legislation, we fully considered the finding of the 9/11 Commission that Senator COLLINS refers to, and we designed the bill to foster a shift away from a ''need-to-know'' culture of excessive secretiveness, toward a more integrated and open culture of ''need to share.'' The bill assigns key responsibilities to the DNI and to the President to achieve this shift in culture.

The bill makes the DNI responsible for establishing guidelines for the intelligence community to ensure maximum availability of, and access to, intelligence information within the community, and to maximize the dissemination of intelligence consistent with protection of sources and methods. The legislation recognizes that there will sometimes be a tension between the need to share intelligence information and the need to protect intelligence sources and methods, and the DNI will be responsible for establishing policies and procedures to resolve any conflicts in this area. The DNI's guidelines are to foster a shift from a culture of undue secrecy by, among other things, allowing for dissemination of intelligence products at the lowest possible

level of classification consistent with security needs—and in unclassified form to the extent possible.

The President will be responsible for also establishing an information sharing environment for communicating terrorism information beyond the intelligence community. This program will facilitate the sharing of information among all appropriate Federal, State, local, and tribal entities and the private sector. To help shift from a culture of undue information protection that can impair our security efforts, the legislation instructs the President, among other things, to require a reduction in overclassification of information. The President will also issue guidelines to ensure that information is provided in its most shareable form, such as by using ''tearlines'' to separate data from the sources and methods by which the data is obtained.

Ms. COLLINS. I thank the Senator.

Mr. President, some concerns have been expressed to us about whether the authorities under this bill might be used, or abused, to unduly limit the flow of information to the Congress, State and local governments, and the public. Nothing could be farther from our intent than to chill the appropriate and desirable dissemination of information. This bill does not grant any new authority for the DNI or the President to establish a regime of undue government secrecy. The bill properly affords the DNI authority to protect intelligence sources and methods, but this is the same authority that is currently vested in the Director of Central Intelligence. The legislation does not include any new provisions to criminalize or unduly suppress the lawful sharing of unclassified information, nor does the bill waive any existing protections of government employees who raise legitimate concerns by disclosing information to Congress or through other lawful channels.

I fully expect the DNI and the President will exercise their responsibilities under this bill in a way that fosters—not unreasonably restricts—the flow and dissemination of information to Congress, State and local officials, and the public. Certainly, if there is any indication that the authorities under this legislation are being misused to unduly stifle the flow of information and to thereby defeat the purposes of the bill, I fully expect and intend that Congress will promptly look into and remedy the situation. Congressional oversight of these issues will be fostered by the reports that are required during the implementation and operation of the Information Sharing Environment, and through the establishment of the Privacy and Civil Liberties Oversight Board.

Does the Senator from Connecticut agree with my assessment?

Mr. LIEBERMAN. I could not agree more. This legislation is designed to enable the Governmental and non-Governmental entities with security responsibilities to have access to the intelligence information they need to do their jobs. And the legislation will also enable and encourage the diffusion of information about terrorism to the American people. It has often been said that an informed citizenry is a bulwark against tyranny, but an informed citizenry is also a bulwark against terrorism. By fostering the diffusion of information, consistent with the need to secure intelligence sources and methods, the legislation should help enable the American people to have the information they need to make informed decisions about the threats our nation faces and the steps we must take to overcome those threats.

Mr. NELSON of Florida. I would like to make a statement in regard to an important provision in the conference report: Section 4071, Watch Lists for Passengers Aboard Vessels. I would like to first commend the cruiseline industry for all of its proactive measures to enhance passenger vessel security. Both the cruise industry and I share the same commitment—that is to ensure the safety and security of the millions of passengers and crew traveling on their vessels each year, in addition to securing our ports.

In an effort to clarify the intent of the provision included in the Intelligence Reform Conference Committee Report, I want to take this opportunity to recognize the current procedures in place at the Department of Homeland Security in regard to passenger vessels and express support for the increased security procedures undertaken in this area. Currently, passenger vessels electronically transmit advance passenger information through the Federal APIS reporting system or through the 96-hour advanced notice of arrival. This allows the government to review all passenger and crew manifest information and check against numerous Federal agency databases to ensure that all passengers and crew are cleared for sailing, though not always before departure.

The purpose of section 4071 is to prevent terrorists or suspected terrorists from physically boarding cruise vessels that depart from U.S. and U.S. controlled ports. Currently, both Customs and Border Protection and the Coast Guard require the submission of passenger and crew manifests. This provision would codify the reporting requirement for vessels, and ensure that both manifests are checked against one consolidated terrorist watchlist prior to departure. The provision also includes language which would allow the Secretary to waive the requirement for vessels embarking at a foreign port if the requirement is impractical, however, in such cases the passengers and crew would continue to be screened prior to arrival at a U.S. port according to the 96-hour rule.

Mr. LIEBERMAN. I thank the Senator from Florida for highlighting this important matter. As the Senator pointed out, since January 2003 DHS, through the Bureau of Customs and Border Protection, has required commercial aircraft and commercial vessels to electronically transmit advance passenger and crewmember information in order to assist the Department in the effective inspection of passengers and crew. Currently, passenger vessels provide advanced passenger manifests both upon the original departure of the voyage and 24 to 96 hours before arrival into the United States. This provision will help streamline the process, by requiring the manifest data be compared against one consolidated, comprehensive terrorist database, and by requiring that the comparison be done prior to the departure of the vessel. The cruise industry will do its part by ensuring that complete and accurate data is collected as early as possible, and the Department of Homeland Security will work to ensure the comparison is done effectively and efficiently, and make every effort to not delay the departure of these vessels. We expect the cruise industry and the Department to work closely together on these issues throughout the rulemaking process.

Ms. COLLINS. I thank both Senators for their excellent summary of the DHS reporting requirements currently in place. The intent of section 4071 is to encourage DHS to establish a simple and timely method of collecting information. I want to make clear that the intent of this provision is to ensure accurate passenger vessel information is collected and shared with the appropriate authorities in an efficient manner, so it may be compared against one consolidated database to be developed by DHS. The provision is not an entirely new requirement. It is based, in part, on current practices, but is designed to utilize one consolidated and comprehensive terrorist database that can be used to screen crew and passenger data more effectively in all transportation modes, while keeping delays to a minimum.

Mr. NELSON of Florida. I thank Chairwoman COLLINS and Ranking Member LIEBERMAN for their comments and support on this important issue. Our efforts here today are focused on encouraging the Department of Homeland Security to further increase passenger vessel security. I urge the Department to work closely with the cruise line industry in crafting this rule to prevent any unnecessary departure delays from occurring.

TERRORIST SANCTUARIES DEFINITION

Ms. COLLINS. Mr. President, section 7102 of the conference report provides that the term ''repeated provided support for acts of international terrorism,'' as used in the Export Administration Act, shall include, but not be limited to, ''the recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations.'' I ask if the ranking member on the Governmental Affairs Committee, Senator LIEBERMAN, would clarify the addition of this criteria to the definition used in the Export Administration Act.

Mr. LIEBERMAN. ''The recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations'' is not the only factor the administration should take into account when making determinations of which nations are terrorist sponsors for the purposes of the Export Administration Act. It is just one of the appropriate factors to be taken into account when the Secretary exercises his discretion to determine whether the government of a country has repeatedly provided support for acts of international terrorism. I understand from the State Department that other factors that the Secretary of State typically takes into account include: Whether the government of a country is furnishing arms, explosives or lethal substances to individuals, groups or organizations with the likelihood that they will be used in terrorist activities or whether a government is providing direct or indirect financial backing for terrorist activities.

Ms. COLLINS. I thank the Senator.

DRIVER'S LICENSE AND PERSONAL IDENTIFICATION CARD PROVISIONS

Ms. COLLINS. Mr. President, I yield to the Senator from Illinois to speak on one of the provisions in the conference report.

Mr. DURBIN. Mr. President, I want to discuss section 7212 of the conference report accompanying the intelligence reform bill that deals with minimum standards for driver's licenses and personal identification cards.

I am joined on the floor by Senators COLLINS, LIEBERMAN, SUNUNU, and LAUTENBERG, who are all my colleagues on the Governmental Affairs Committee, and who have been leaders in this effort. I hope they will join in a colloquy to help explain what we collectively intended as we drafted this provision.

In the days immediately following September 11, 2001, we read in the newspapers that the hijackers had in their possessions multiple driver's licenses and State identification cards. The press reported that some of the nineteen hijackers had obtained these documents from DMV offices in States that, at that time, had lenient rules on issuing such documents. They also obtained other official-looking identification documents from the Internet.

In the last Congress, the Governmental Affairs Committee held a hearing that revealed that the 9/11 terrorists took advantage of loopholes in some State DMVs' issuance processes that have been apparent for years to anyone willing to obtain fake IDs.

Following the hearing, I asked the GAO to study how easy it would be for someone to obtain driver's licenses and State ID cards from DMVs, using false pretenses. The GAO investigators went out to several States and conducted undercover operations where they tried to obtain licenses using fake breeder documents, or using other false methods. Incredibly, the GAO investigators succeeded every single time. More incredibly, the GAO study was undertaken several months after some of these same States claimed that they reformed their driver's license issuance processes following the 9/11 tragedies.

In October 2002, I introduced S. 3107, the Driver's License Fraud Prevention Act of 2002, with Senator MCCAIN, to address the glaring problems we uncovered with the hearing and the GAO study. The core goal of that bill was to allow for the Federal Government to work with States and interested parties to develop a set of minimum security standards to be applied uniformly to all States.

In drafting that bill, we had three main principles for reforming the State processes: 1. reform must apply uniformly to all 50 States; 2. State's rights and jurisdictions must be respected; and 3. applicants, holders, and users of driver's licenses must have their privacy, civil liberties, and other constitutional rights protected.

Then, a few months ago, when Senators MCCAIN and LIEBERMAN drafted S. 2774, their comprehensive bill to implement the 9/11 Commission Report, I worked with them to add a provision that would provide Federal standards for driver's licenses. This addressed one of the recommendations that the 9/11 Commission made:

> [T]he federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.

This provision was adopted unanimously by the Senate as an amendment to the Collins-Lieberman intelligence reform bill, and is also in the conference report before us today. I am glad to see that the provision in the conference report before us today lives up to the three principles I outlined above.

First, the provision would prohibit Federal agencies from accepting, for any official purpose, a driver's license or identification card newly issued by a State more than 2 years after the regulations on minimum Federal standards are promulgated, unless the document conforms to such standards. The language also requires the Transportation Secretary to set a date after which no license may be accepted unless it conforms to the new standards.

This should encourage all 50 States to work together and adopt the minimum Federal standards at the same time so that no State will remain the weakest link in our national efforts to protect our homeland. We want to make sure terrorists and criminals do not forum shop for the easiest State from which to obtain fraudulent ID cards.

Second, the language of the Senate bill as adopted in the conference report requires a negotiated rulemaking process under the Administrative Procedure Act. This requires the formation of a negotiated rulemaking committee that would include representatives of States, among other stakeholders. The committee is empowered to make a recommendation for the minimum standards to be promulgated by the Department of Transportation. The mininum standards would address among other issues 1. documentation required as proof of identity of the applicant; 2. verifiability of documents used to apply for a license; 3. processing of the applications to prevent fraud; and 4. security features to be included in the card.

On this point, I would like to commend the chair of the Governmental Affairs Committee for her tireless efforts on behalf of the States' interests. Senator COLLINS has worked to ensure that this bill recognizes the limited role of the Federal Government in this area—issuing driver's licenses are a unique State function and that we should not impose reform measures on States without their valuable input.

Third, the rulemaking process includes safeguards to protect the privacy and due process rights of applicants.

Ms. COLLINS. If the Senator from Illinois would yield, I would like to speak on that issue.

Mr. DURBIN. I am happy to yield to the distinguished manager on the floor.

Ms. COLLINS. I want to take this opportunity to thank Senator DURBIN for his leadership on this issue. He and I serve together on the Governmental Affairs Committee and we have worked hand-in-hand on identity theft issues.

I wholeheartedly agree with what the Senator has said, and I want to emphasize again how important it is for the appropriate stakeholders to have a seat at the table in developing a recommendation for minimum standards that the Department of Transportation will promulgate. I know that State officials and their representatives from the National Governors Association and the National Conference of State Legislatures have raised serious concerns about Congress imposing unfunded mandates on the States and preempting State laws on eligibility requirements. That is why I support the innovative approach we came up with in the Senate bill and the conference report that would allow representatives of State officials to have a real voice in the development of a recommendation for these Federal standards.

That is also why I believe it is important to emphasize that the conference report includes language ensuring that any recommendation made by the negotiated rulemaking committee include an assessment of the benefits and costs of the recommendation. The report also states that the Secretary of Transportation shall award grants to States to help them conform to the minimum standards and that each State shall receive a minimum allocation of grant monies to help offset the costs of implementing the new Federal standards.

Mr. SUNUNU. Will the Senator yield for a question?

Ms. COLLINS. I am happy to yield.

Mr. SUNUNU. I believe the National Governors Association and the American Association of Motor Vehicle Administrators both endorsed the Senate version of this language over the House version because, among other things, the Senate version provided the flexibility and partnership between the Federal and State governments. Is this an accurate portrayal of their position?

Ms. COLLINS. The Senator from New Hampshire is correct, and I would also point out that the White House has also weighed in on that issue. In its statement of administration policy, dated October 7, 2004, the White House emphasized the need for ''consultation with the states . . . to address important concerns about flexibility, privacy, and unfunded mandates.'' This conference report maintains those important aspects of the approach in the Senate bill.

Mr. SUNUNU. I thank the Senator.

Mr. LAUTENBERG. I also have a question for the Senator from Maine, or for any other Senator who helped draft this important provision in the bill. Would the Senator yield for a question about who else would be involved in the negotiated rulemaking?

Ms. COLLINS. I see the distinguished Senator from Connecticut is on the floor and I wonder if the ranking Democrat on the Governmental Affairs Committee, who is the expert on this issue, would be willing to engage in this dialog.

Mr. LAUTENBERG. I will address this question to the Senator from Connecticut. In reading section 7212(b)(4)(B), I see that the negotiated rulemaking committee to be established by the Secretary of Transportation has to also include ''interested parties.'' What does the author of this provision understand to be the intent of this category?

Mr. LIEBERMAN. I want to thank the distinguished manager for yielding to me, and the Senator from New Jersey for the excellent question. The general legal criteria for selecting such parties for inclusion in a negotiated rulemaking is described in the Negotiated Rulemaking Act. We have been told by many experts, including the 9/11 Commission, that we need to address every vulnerability to prevent any future attacks, and that we need to enlist the assistance of everyone who can contribute to protecting our homeland. So in this provision, we are really asking for experts and interested parties who can bring some productive ideas to the table to join us in developing these minimum Federal standards. Interested parties must also include groups or organizations presenting the interests of applicants for and holders of driver's licenses and personal identification cards, such as consumer organizations and organizations representing immigrants. It is important that the interests of these groups be considered.

Mr. LAUTENBERG. I thank the ranking member and also the chair of the Governmental Affairs Committee. I am pleased that they agree that it is important that representatives of interested parties have a seat at the table, and I would emphasize that the negotiated rulemaking committee should also include organizations with technological and operational expertise in document security, in addition to organizations that represent the interests of applicants.

Mr. SUNUNU. I would also like to ask a follow-up question to the Senator from Connecticut. Although the conference report does not specify any particular group or organization to be included on the rulemaking committee, it is certainly expected that privacy and civil liberties groups, along with organizations like the National Conference of State Legislatures, the National Governors Association, and the American Association of Motor Vehicle Administrators would play an important role in the rulemaking process. I would ask my colleague from Connecticut if I understand this provision correctly?

Mr. LIEBERMAN. I thank the Senator from New Hampshire for his inquiry. The Senator makes an important point in noting that the language of the conference report does not specify any particular group or organization to be included. However, I think a collaborative rulemaking process would be difficult to imagine without input from interested groups and organizations. And I believe the distinguished, chair of the committee would agree that this is the intention behind our language.

Ms. COLLINS. I absolutely agree with the Senator from Connecticut that the negotiated rulemaking process has to include groups that represent the interest of many interested parties, including the States, and applicants for, and holders of, driver's licenses. It is also important to note the Department of Homeland Security and other Federal entities will represent the security interests of the Federal Government in the process.

This collaborative process among all parties is essential to ensure that the final rule strikes the right balance of all the competing interests. One of the interests that should not be lost in this debate is the need for protecting privacy and civil and due process rights of all applicants for, and holders of, driver's licenses and personal identification cards. 1 believe it is crucial that the American people be assured that these new Federal standards will not encroach on their fundamental rights and that their personal information will be handled properly, respectfully, and securely.

That is why we included language in the conference report that specifically requires the agency rulemaking to include procedural safeguards for the privacy rights of applicants and holders of driver's licenses and identification cards.

Mr. LIEBERMAN. The Senator from Maine has raised a very important part of our language that is worth emphasizing. Moreover, in making our country safer by tightening standards for identification documents, we must never trample on any individual's civil and due process rights.

One of the standards we require for the rulemaking is for a State to confiscate a driver's license or identification card if any component or security feature of the license or identification card is compromised. It is important that this standard, as well as all of the standards, include procedures and requirements to protect the civil and due process rights of all individuals who apply for and hold driver's licenses and personal identification cards.

Mr. DURBIN. I ask the Senator from Connecticut a related question on how this provision of the conference report deals with the issue of immigration laws.

It is my understanding that the language of the conference report makes it clear that the Federal regulations to be developed by the Department of Transportation cannot directly or indirectly infringe on a State's power to set eligibility criteria for who can qualify to obtain a driver's license or identification card. So if a State has unique reasons for allowing or prohibiting certain groups of people to hold licenses based on their age, physical disability, in-State residency, or legal status in the United States, then, under the conference report language, those would continue to be the State's decisions.

This issue was handled differently by the other Chamber. The House bill had language that would have taken away the States' rights to determine eligibility by imposing a new harsh legal presence requirement for the issuance of driver's licenses. This is the provision that, I believe, created a lot of misunderstanding in the press about what the conference report does.

States around the country are already struggling with the issue of whether to provide licenses to undocumented aliens, and they should continue to work on the issue through their own legislative processes. Congress should not preempt the rights of all 50 States through the backdoor.

The issue of how our country treats those who are here without proper documentation is a complex one that involves myriad of overlapping immigration, foreign policy, and economic laws. We should not open that debate here unless we are ready and willing to address all the comprehensive proposals that ought to be included in such a debate.

I certainly hope the President will engage in this debate, and soon. But obviously, we cannot accomplish such an enormous task of overhauling our immigration laws through the 9/11 Commission bill, and the 9/11 Commission did not ask us to do that. We should not use this bill to require the

States to turn their DMV employees into immigration agents, and this conference report will not do so.

Mr. LIEBERMAN. I thank the Senator from Illinois for pointing out this language in the conference report. I know that this is a complicated and emotional issue and one which the States are already dealing with on a State-by-State basis. I agree that the conference report language does not allow the minimum standards to directly or indirectly infringe on States' power to set eligibility criteria for who can obtain a driver's license or personal identification card.

Ms. COLLINS. I thank the Senators from New Hampshire, New Jersey, Illinois, and the distinguished ranking member for their comments, their valuable contributions to this bill, and for participating in this colloquy.

DNI, NCTC

Ms. COLLINS. Mr. President, the legislation that is before the Senate remedies the problem identified by the 9/11 Commission that there is no one in charge of the U.S intelligence community. The Commission found that the Director of Central Intelligence, DCI, has too many jobs—namely leader of the intelligence community, principal intelligence adviser to the President, and director of the Central Intelligence Agency, CIA—to do any of them effectively. In addition, the Commission found that the DCI lacks sufficient authority to manage the Intelligence Community, including authority over funding, personnel, security, and technology.

The intelligence community is dominated by its component agencies and is organized into ''stovepipes'' that do not share information adequately among themselves and with the rest of government effectively. The DCI lacks the authority to break-down these stovepipes and transform the Intelligence Community into a 21st century enterprise.

The intelligence community needs to operate as a network in order to counter 21st century terrorist networks and other agile foes. Despite many impressive accomplishments since the 9/11 attacks, the intelligence community is unable to transform itself into a network due to its anachronistic structure and is still oriented toward fighting the bureaucratic nation-state enemies of the Cold War.

In response to the 9/11 Commission's findings, this legislation restructures the intelligence community by creating a strong Director of National Intelligence, DNI, who can lead, shape, and transform the 15 organizations of the intelligence community into a cohesive network. It creates a DNI who has the authority needed to set the course for the intelligence community and ensure that the course is followed.

It is fitting that this legislation should be completed during the week of December 7, the day on which the United States was attacked at Pearl Harbor in 1941. The National Security Act of 1947 was adopted in order to prevent another Pearl Harbor attack in the Cold War. This legislation seeks to enable the intelligence community to prevent another 9/11 attack from terrorists and other adversaries in the 21st century.

Under this legislation, the DNI has two primary responsibilities.

First, the DNI is the head of the intelligence community. In this capacity, the DNI will unify and optimize the resources of the intelligence community to serve the President, the National Security Council, and other intelligence consumers. The direct locus of the DNI's authority is the National Intelligence Program, which is the new name for the National Foreign Intelligence Program. The renaming of the program signifies that the national security threats of the 21st century straddle the foreign/domestic divide and that our Intelligence Community must have capabilities that cross this seam.

Second, the DNI is the principal intelligence adviser to the President. Accordingly, the DNI, not the CIA Director, will be responsible for briefing the President, including the President's daily brief. As the President's principal intelligence adviser, the DNI will rely on the National Counterterrorism Center and the National Counter Proliferation Center; additional National Intelligence Centers established by the DNI, which will have primary responsibility for analysis of particular topics or matters; the National Intelligence Council; and all of the analysts who reside within the various agencies of the Intelligence Community.

Mr. President, will the Senator from Connecticut explain the National Intelligence Centers and their purpose?

Mr. LIEBERMAN. I thank the Senator and agree with her statements. The National Intelligence Centers are a critical element in the transformation of the intelligence community into a 21st century enterprise. The 9/11 Commission stressed the role of the centers in the restructured intelligence community. The Commission's recommendation stems from the pre-9/11 and current situation in which no one below the DCI is responsible for how the CIA, the National Security Agency, and other intelligence agencies integrate their capabilities against specific intelligence targets.

The centers will provide unified direction across the intelligence community to fulfill missions. They are analogous to the Defense Department's combatant commanders, who unify the military services' capabilities to perform missions and fight wars. The purpose of the National Intelligence Centers can be summed up in one word: ''jointness.'' Just as, in the military, the Goldwater-Nichols Department of Defense Reorganization Act of 1986 sought to integrate the military services' capabilities by strengthening the combatant commanders, so this legislation fosters greater jointness among the intelligence agencies.

The centers are to be created within the Office of the DNI, which also will house the National Counterterrorism Center, the National Counter Proliferation Center, the National Intelligence Council, and other entities whose purpose is to integrate and unify the efforts of the various intelligence agencies to accomplish intelligence missions. Among their responsibilities, the centers will provide all-source analysis of intelligence, identify and propose to the DNI intelligence collection and analysis requirements, and have primary responsibility for net assessments and warnings. With their ability to harness the capabilities of entities across the Intelligence Community and create a unified effort, the centers will improve the intelligence community's ability to respond with speed and agility.

Each center will be led by a director who will be appointed by the DNI and serve as the DNI's principal adviser in that center's area of responsibility. The center's director reports to the DNI. Each center will have a professional staff, including personnel transferred, assigned, or detailed from elements of the intelligence community as directed by the DNI. The centers will be administratively distinct from the intelligence agencies, just as the combatant commands are administratively distinct from the Military Services. This prevents a center from being subsumed within and dominated by a particular agency.

I should add one point of clarification. The legislation calls on the DNI to explore creating an open source intelligence center to improve the collection and analysis of open source materials. This entity is different from the national intelligence centers, which are organized on geographic or transnational topics rather than functional topics like human or signals intelligence. This center would be like the agencies and entities in the intelligence community—like the CIA or the National Security Agency—that are organized to exploit particular collection disciplines.

Ms. COLLINS. I thank the Senator and concur with his description of the centers.

This bill provides the DNI with significant new authorities regarding such areas as determining the National Intelligence Program budget and executing its appropriation, transferring funds and personnel, and reprogramming funds. I would like to summarize some of these critical authorities.

Under this bill, the DNI will have sole authority to ''develop and determine'' an annual budget for the National Intelligence Program based on the budget proposals provided by the heads of the agencies and organizations of the intelligence community as well as these agencies' and organizations' respective department heads. The word ''determine'' in the legislation means that the DNI is the decisionmaker regarding the budget and does not share

this authority with any department head. The DNI is to produce a consolidated annual budget for the National Intelligence Program, which ensures the integration of the agencies and entities within the intelligence community.

The heads of such agencies and organizations within the intelligence community must provide directly to the DNI such other information as the DNI requests for the purpose of determining the budget. Thus, the DNI will have direct access to information from such agencies as the National Security Agency in the budget-build process and so be able to understand the needs of each component of the Intelligence Community when determining the annual consolidated national intelligence budget. The department heads may not interpose themselves between the DNI and the heads of agencies and organizations within the intelligence community.

Whereas the DCI today effectively only has a role in the execution of the CIA budget, the DNI will ''ensure the effective execution'' of the entire National Intelligence Program appropriation across the intelligence community. The Director of the Office of Management and Budget, OMB, for instance, must apportion National Intelligence Program funds—whether for the CIA, Federal Bureau of Investigation, FBI, National Security Agency, or any other element of the intelligence community—at the DNI's ''exclusive direction.'' The DNI's ''exclusive direction'' is intended to extend to apportionment plans as well, which delineate how appropriated funds will flow from the U.S. Treasury to the agencies and entities of the intelligence community. The DNI is further responsible for managing the National Intelligence Program appropriation by ''directing the allotment or allocation'' of such appropriation through the heads of departments containing elements of the intelligence community. Department comptrollers must then allot, allocate, reprogram, or transfer those funds ''in an expeditious manner.''

In order to ensure that the National Intelligence Program budget is executed in accordance with the DNI's direction, the DNI will ''monitor the implementation and execution'' of the appropriation, including by audits and evaluations. A department, agency, or entity has no authority to refuse or obstruct DNI-mandated audits. If department comptrollers act in a manner inconsistent with the DNI's directions, then the DNI shall report such action to the President and to Congress within 15 days. I expect that the DNI will need to create a chief financial officer with comptroller-like responsibilities to implement these authorities.

Some observers have raised concerns regarding whether departmental comptrollers are able to 'tax' the National Intelligence Program appropriation channeled through their departments in order to pay for fact-of-life costs such as increased fuel costs. The legislation precludes any reprogramming or transfer of funds from the National Intelligence Program without the DNI's consent. In addition, apportionment plans—in which any 'taxes' would have to be reflected—are to be prepared at the DNI's exclusive direction. Accordingly, under this legislation, comptrollers are not authorized to exact such 'taxes' unilaterally. Congressionally mandated cuts will also be implemented through the apportionment process, which will occur at the exclusive direction of the DNI.

We have worked closely with White House, OMB, and the National Security Council staff in developing this budget language, and all agree that this language will provide the new DNI with the full budget authority needed to manage the national intelligence budget and appropriation effectively.

The new DNI will also have significantly expanded authorities to transfer personnel and funds. After OMB's approval and congressional notification, the DNI may transfer personnel from one element of the intelligence community to another for not more than 2 years as long as the transfer is for a higher priority intelligence activity and supports an emergent need, improves program effectiveness, or increases efficiency. Most significantly, while personnel transfers must be made in accordance with procedures developed by the DNI and department heads, those department heads will no longer have the right to object to such transfers—as they do under current law. Finally, the DNI is also provided additional authorities to transfer a limited number of personnel upon the establishment of the Office of the DNI and each time a new National Intelligence Center is created.

As I mentioned, National Intelligence Program funds may not be transferred or reprogrammed without the DNI's approval except in accordance with procedures prescribed by the DNI. All transfers and reprogrammings must be for a higher priority intelligence activity; must support an emergent need, improve program effectiveness, or increase efficiency; and may not involve funds from the CIA Reserve for Contingencies or a DNI Reserve for Contingencies. Most importantly, the DNI will not require concurrence for such transfers or reprogrammings from affected department heads as long as they are less than $150 million and 5 percent of a department's National Intelligence Program funds and do not terminate an acquisition program. Thus, the DNI will have unilateral authority to transfer or reprogram a significant National Intelligence Program funds, subject to OMB approval and congressional notification. Permit me to take a moment to mention the DNI Reserve for Contingencies. I believe that creation of this reserve is important to permit the DNI to meet special circumstances that arise.

The DNI is also responsible for overseeing the coordination of the intelligence community's liaison with foreign intelligence and security services to avoid having each agency of the intelligence community pursue an individualistic approach. The DNI will create common policies and strategy among the various entities in the intelligence community to ensure maximum returns from foreign liaison relationships. In implementing the DNI's strategy, the CIA will coordinate foreign liaison ''on the ground'' in foreign countries.

The DNI should be in the chain of command involving the conduct of covert action and will be responsible and accountable to the President for such conduct by the intelligence community, including their funding. The DNI would be undercut if the President interacted directly with the CIA Director—who is the DNI's subordinate—or any other element of the Intelligence Community directly regarding covert action. Instead, this legislation envisions that the President will give orders regarding covert action directly to the DNI, who will then task the CIA and other agencies of the Intelligence community as appropriate.

Mr. LIEBERMAN. I agree with the Senator's statements. I would like to elaborate on the CIA's role under this legislation. With respect to the CIA, the 9/11 Commission stressed that the DNI should no longer be responsible for managing the day-to-day activities of the CIA. The legislation has been very carefully crafted to ensure that the Director of the CIA is subordinate to and reports to the new DNI only, and not directly to the President, but that the DNI does not manage the CIA's daily activities. This situation is similar to how a CEO runs a company composed of various business divisions. The CEO is the undisputed head but focuses on high-level issues of strategy, policy, personnel, and budgets rather than getting involved in the daily workings of any single business division. Likewise, the DNI should not manage the CIA and other intelligence agencies. No CEO would run a company that way, nor should the DNI manage the Intelligence Community that way.

To emphasize that the DNI is no longer the head of the CIA, the legislation stipulates that the Office of the DNI—which houses the centers and other entities designed to unify and integrate agencies' capabilities—cannot be co-located with any other element of the intelligence community after October 1, 2008. This provision ensures that the DNI is not put in the inherently conflicted position of being both the CEO of the intelligence community and closely aligned with one of the subsidiary elements simultaneously.

The Senator from Maine previously stated that the DNI, not the CIA Director, is the President's principal intelligence advisor and is responsible for briefing the President or preparing the President's daily brief. The CIA Director is subordinate to and reports to the

DNI only, and not directly to the President, both regarding intelligence activities and covert action. The CIA Director should concentrate on ensuring that the Central Intelligence Agency transforms its human intelligence and special activities capabilities to meet the difficult challenges of the 21st century. The CIA Director should also ensure that the Central Intelligence Agency trains analysts of the highest caliber for deployment to the centers and that whatever analysis is conducted by the CIA in-house—which would primarily be on topics for which there is no center—is done with the greatest independence, clearest objectivity, and best tradecraft.

I would like to discuss for a moment the CIA Director's salary. Under current law, the DCI is paid at Executive Schedule Level II pursuant to section 5313 of title 5, United States Code. The legislation places the DNI at Executive Schedule Level I but does not delete the reference to the DCI at Executive Level II. Section 1081(b) of the legislation makes clear that any reference to the DCI in the DCI's capacity as the head of the CIA in any law, regulation, document, paper, or other record of the United States shall be deemed a reference to the CIA Director. After passage of this legislation, the provision in current law that states that the DCI is paid at Executive Schedule Level II will therefore refer to the CIA Director.

Ms. COLLINS. I thank the Senator and agree with his statements. I previously discussed the purpose of the Office of the DNI, which is to house entities such as the centers which integrate and unify the efforts of the various intelligence agencies to accomplish intelligence missions. The legislation authorizes the DNI to create new entities within the Office of the DNI to respond to new challenges, such as new centers and ad hoc groups.

The legislation also authorizes the DNI to coordinate the performance by elements of the intelligence community of services of common concern that can be more efficiently accomplished in a consolidated manner. For example, there may be information technology services, security services, and personnel services that are being performed in duplicative or competitive manner by various entities across the intelligence community and that the DNI believes would be more efficiently performed—such as by exploiting economies of scale, or preventing discrepancies between agencies—when done in consolidated manner. The DNI may select one entity within the intelligence community to perform those services for the community. The DNI may also create a new entity within the Office of the DNI to perform such services. I expect that the DNI will exercise this authority in order to streamline the intelligence community, reduce discrepancies across agencies, and save resources that can be devoted to producing better intelligence.

I want to highlight two other DNI authorities. Current law precludes the DCI from directing, managing, or undertaking electronic surveillance or physical searches under the Foreign Intelligence Surveillance Act, FISA unless otherwise authorized by statute or executive order. This legislation also precludes the DNI from directing or undertaking such operations. As the legislation makes clear, the role of the Department of Justice and the Attorney General under FISA are unaffected by this legislation. However, this legislation does delete a restriction that now precludes the DNI from managing FISA collection. This change should better ensure that national intelligence collected under FISA is used efficiently and effectively for national purposes.

Current law also makes the CIA the manager of all human intelligence operations. The legislation changes that formulation, authorizing the CIA to manage human intelligence operations abroad. The intent of the legislation is not to have human intelligence operations split among the CIA, the FBI, and elements of other agencies with no one in charge. Instead, it is the DNI who is in charge. Of course, the DNI should not be spending his or her day managing human intelligence operations. Instead, the DNI should delegate his or her authority to an official within the intelligence community, when appropriate.

Indeed, the issue of delegation is critical. This legislation centralizes authority in the DNI in order to clarify responsibility, authority, and accountability for the intelligence community. However, the intent of this legislation is not that the DNI should retain all authority himself or herself. Like any good CEO, the DNI should delegate and decentralize. This legislation centralizes authority so that the DNI can build a network—with information, resources, and personnel flowing freely across the agencies of the intelligence community—that operates in a decentralized, fast, and flexible manner. For example, the DNI should delegate authority to the heads of the National Intelligence Centers so that they can utilize capabilities throughout the intelligence community to accomplish intelligence missions.

Included in this legislation is very strong tasking authority for the DNI. Under current law, the DCI has authority to task assets across the intelligence community to collect information. Pursuant to the National Security Act of 1947 as amended, the DCI controls the tasking of national intelligence assets. Section 403–3 of Title 50, United States Code, states explicitly that the DCI ''determine[s] collection priorities, and resolve[s] conflicts in collection priorities levied on national collection assets.'' The President's latest Executive Order 13355 on the issue is even stronger: It gives the DCI authority to ''manage collection tasking.'' This language is interpreted in practice that the DCI decides whether a satellite is to be positioned over North Korea or Iraq. Of course, the DCI consults closely with the Secretary of Defense—but the DCI is the final decision-maker. And there is no evidence that the military has been dissatisfied in recent conflicts with the supply of intelligence from national collection assets.

The legislation's provision regarding tasking authority merely sharpens current law by making the DNI's authority to task collection and analysis explicit. In this way, the bill essentially codifies current practice.

The DNI's tasking authority will be critical to the DNI's success. The 9/11 Commission envisioned a strong, empowered DNI, with more—not less—authority to control the collection and analysis of intelligence information. The Commission cites specifically the DCI's limited ability ''to influence how . . . technical resources are allocated and used'' as a problem. 9/11 Commission Report, p. 409. In a hearing before the Senate Armed Services Committee on August 17, 2004, Secretary of Defense Donald Rumsfeld spoke of the need to rebuild the intelligence community ''along 21st century lines.'' According to Secretary Rumsfeld, this reorganization includes ''a national intelligence director with authority for tasking collection assets across the government.''

This legislation includes a provision that the Senator from Connecticut and I drafted requiring that the President issue guidelines to ensure the effective implementation and execution within the Executive branch of the authorities granted to the DNI under this legislation, in a manner that respects and does not abrogate the statutory responsibilities of department heads. The interaction among the DNI, department heads, and heads of agencies and entities within the intelligence community is critical and must be as smooth and efficient as possible. These guidelines will be important for ensuring such seamless interaction.

This provision does not authorize the President or department heads to override the DNI's authority as contained in this legislation. This legislation has carefully crafted authorities for the DNI—including budget, transfer, tasking, et cetera—that give the DNI sufficient authority to manage the Intelligence Community. This provision is not intended and should not in practice trump or undermine in any way the DNI's authorities contained in the legislation.

In addition, the legislation amends the Secretary of Defense's authority to implement the DNI's decisions regarding the National Intelligence Program, contained in section 105(a) of the National Security Act of 1947 as amended, to ensure that the Secretary of Defense does not interact with the Intelligence Community in a way that is inconsistent with the DNI's authorities. This provision is another example of Congress's intent to create a strong

DNI with sufficient authority to manage and be accountable for the Intelligence Community, including those elements within the Department of Defense.

Some observers have raised concerns that this legislation will impede the flow of intelligence to the warfighter. I believe that nothing is further from the truth. The warfighter will benefit from far-reaching intelligence reorganization that creates a DNI with significant authorities. The DNI will have the power to force the various Defense and non-Defense intelligence entities to work together seamlessly, creating a more accurate intelligence product that can be shared more quickly than today. The DNI would also be a single point of contact for the military—and the military would know whom to hold responsible if intelligence from national assets is inadequate. The DNI inevitably will prioritize the warfighter's need for intelligence, subject to the direction of the President as to overall intelligence priorities.

Mr. LIEBERMAN. I thank and agree with the Senator. This reform legislation will benefit our troops in the field, as well as better protect our citizens at home.

The 9/11 Commission found that the U.S. intelligence agencies are still organized to counter yesterday's challenges, not today's threats. During the Cold War, the enemy was well-known, and our intelligence was appropriately focused on determining its capabilities. We could tolerate then a stove-piped intelligence system where the FBI's intelligence efforts were separate and disconnected from overseas and military intelligence because our enemies were not attacking us from within our borders. We could tolerate then a separate overseas intelligence system run by the CIA because there was no clear reason to integrate foreign military and domestic intelligence. We could tolerate then a separate military intelligence system because we faced a military force comparable to our own, using conventional tactics against us, different from the threats we faced at home.

In the war on terror, all that has changed. The threat has become asymmetrical, meaning a weaker enemy attacks a stronger force at its points of vulnerability. That's how al-Qaeda operates, working in the shadows, attacking us on all fronts: domestic, overseas, civilian and military.

The cold fact is that the killing zone has expanded. This requires a much more integrated and more agile intelligence apparatus. It requires someone in charge with the authority to force disparate agencies to share information, to determine overall priorities, and to make sure we maximize the return on our enormous investment in intelligence so that we will be successful at thwarting an enemy determined to kill civilians as well as military combatants.

A modernized intelligence community will help us better protect both our citizens and our soldiers. Reforms that help achieve greater ''unity of effort,'' as the 9/11 Commission put it, will clearly benefit our troops in the field because information critical to their safety and success could just as easily come from the CIA or the FBI as from the Pentagon's own intelligence systems. Similarly, the vital clues to stop the next attack on our own soil could come from the National Security Agency or the other national intelligence agencies within the Department of Defense. Fully connecting all these pieces is now critical to our total security effort.

But as the 9/11 Commission showed in its powerful report, we will not succeed if there is no one in charge who is able to forge unity among all of our intelligence agencies. A fundamental lesson of bureaucracy is that there will be no coordination at the working levels if there is no unified authority at the top. And there will be no real unified authority in the intelligence community unless a Director of National Intelligence has significant authority over budgets and people. Our troops battling in Iraqi streets must have, in real time, not simply traditional military intelligence on the force levels they face, but CIA-developed intelligence on the nature and identity of the al Qaeda and insurgent combatants firing at them.

Ms. COLLINS. I thank the Senator from Connecticut and agree with his statements. Mr. President, I wonder if my distinguished colleague from Connecticut would be kind enough to describe the National Counterterrorism Center provision in our bill.

Mr. LIEBERMAN. I thank the Senator from Maine. The 9/11 Commission's recommendation for a National Counterterrorism Center, NCTC, arises from two main findings. First in keeping with the Commission's general finding regarding the intelligence community, the intelligence agencies are not fully integrated in their efforts against terrorism. No one below the DCI has responsibility, accountability, and authority for the counterterrorism mission. Second, counterterrorism requires an integrated Executive branch-wide effort in which departments and agencies beyond intelligence must work together on a tactical level, with agility, and a rapid pace—like a network—but today ''stovepipes'' still dominate the Executive branch. Although departments and agencies are cooperating at unprecedented levels, the Commission concluded that such cooperation is more confederative than truly joint and integrated. To remedy these two problems, the Commission proposed that the NCTC be responsible for both joint counterterrorism intelligence and joint counterterrorism operational planning.

The legislation creates the NCTC along the lines of the Commission's model. Per the Commission's recommendation, the NCTC director is a Deputy Secretary-equivalent and with a dual line of reporting: (1) to the DNI regarding the NCTC's budget and programs and concerning intelligence matters, and (2) to the President regarding Executive branch-wide planning. This arrangement reflects the nature of the NCTC's mission, which is both to integrate intelligence—for which the DNI is the ultimate authority—and to conduct Executive branch-wide planning—which is beyond the DNI's jurisdiction.

As per the Commission's proposal, the NCTC will have two directorates to reflect its dual mission. The NCTC's Directorate of Intelligence will in essence be the national intelligence center for counterterrorism, but the NCTC will be more than just a strengthened TTIC. The NCTC will transcend the TTIC because the NCTC will clearly be preeminent in the intelligence community for counterterrorist analysis, will propose collection requirements to the DNI and otherwise integrate the intelligence community's capabilities, and will attract the best professionals from across the intelligence community. The tasks of this directorate are similar to those of any national intelligence center: integrating the activities of intelligence agencies such as the CIA and the National Security Agency; performing all-source analysis on transnational terrorism; being the repository for intelligence on transnational terrorism; conducting net assessment matching terrorist capabilities and intentions with U.S. vulnerabilities and countermeasures; and warning about potential threats.

Some observers question whether the NCTC will absorb all the counterterrorism analysts from across the intelligence community. However, those who question whether the NCTC would drain our precious supply of analysts actually prove the case for the NCTC—because there are so few analysts, we need to centralize this precious resource rather than dissipate them across the intelligence community. And the same reasoning applies to the National Counterproliferation Center and the National Intelligence Centers as well.

The NCTC's second directorate is for Strategic Operational Planning. This directorate would conduct strategic operational planning for the entire Executive branch—ranging from the combat commands, to the State Department, to the FBI's Counterterrorism Division to the Department of Health and Human Services to the CIA.

Witnesses at the Committee on Governmental Affairs hearing on August 26, 2004, argued that interagency operational planning is already taking place organically and thus there is no need for the NCTC. Yet the witnesses could only identify planning processes within their organizations in which representatives from other agencies were involved, not a single truly joint planning process across the Executive branch. The military had a process—but so did then-DCI George Tenet, who

had a daily counterterrorism meeting. And the multitude of joint planning processes drain personnel, time, and resources. Moreover, the lack of a central coordinating mechanism provides no safety net for an issue falling through the cracks when each agency—viewing it through a stovepipe—misses the issue's overall significance. There should be only one interagency strategic operational planning process, run by the NCTC, for counterterrorism.

The Commission has analogized this directorate to the J–3 Directorate of Operations of the Joint Staff, which works for the Chairman of the Joint Chiefs of Staff. J–3 does planning for operations conducted by the combatant commands. However, because the Chairman is not in the Defense chain of command, J–3 has no operational authority to enforce its plans on the combatant commands. The Chairman's stature gives J–3's plans a certain amount of persuasive authority, but J–3 has no direct authority over the combatant commands. As the Commission has stated explicitly, and as reflected in this legislation, the NCTC's Directorate of Strategic Operational Planning has no operational authority. Accordingly, the NCTC would not interfere with the military chain of command.

I would like to discuss in-depth the definition of strategic operational planning. Some observers have advocated confining the NCTC's operational planning function to high-level strategic issues, such as fashioning an Executive branch-wide strategy for winning Muslim ''hearts and minds''—leaving more tactical planning to the agencies individually. An Executive branch-wide ''hearts and minds'' strategy would fall within the NCTC's purview, but the NCTC must reach below that strategic level in order to have the impact envisioned by the Commission and this legislation.

The legislation defines strategic operational planning to include ''the mission, objectives to be achieved, tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities.'' Examples of missions include destroying a particular terrorist group or preventing a terrorist group from forming in a particular area in the first place. Objectives to be achieved include dismantling a terrorist group's infrastructure and logistics, collapsing its financial network, or swaying its sympathizers to withdraw support. Tasks include recruiting a particular terrorist, mapping a terrorist group's network of sympathizers, or destroying a group's training camp. Examples of interagency coordination of operational activities include the hand-off from the CIA to the Department of Homeland Security and the FBI of tracking a terrorist as that terrorist enters the United States, or the coordination between CIA and special operations forces when operating against a terrorist sanctuary abroad.

With respect to the assignment of roles and responsibilities, the NCTC will not dictate to each department or agency which personnel or capabilities to utilize, unless the selection of the personnel or capabilities directly impact the mission such as a risk calculation or likely collateral damage.

Perhaps the best example of an issue for strategic operational planning is the hunt for Osama bin Laden. There is no policy dispute about the objective; all departments and agencies agree. But the mission inherently cuts across the Executive branch: Intelligence agencies must find bin Laden's whereabouts, diplomats must pressure countries to cooperate, public diplomacy must persuade his sympathizers to turn him in, and special operations forces must raid suspected sanctuaries. Some of the action is longer-term, such as using diplomatic and economic pressure to win countries' cooperation. Some of the action is very short-term. For example, the NCTC would recommend to the CIA and the Defense Department's Special Operations Command, SOCOM, whether to infiltrate or raid a sanctuary; indeed, one can imagine a situation in which the CIA recommends infiltrating while SOCOM recommends raiding, and now the only independent interagency body that can help resolve the issue is the National Security Council staff. If SOCOM objected, then the legislation's provision for the resolution of disputes would apply. If the CIA and SOCOM accepted the NCTC's plan, the NCTC would not dictate how the department or agency performed the mission, i.e., how the CIA infiltrated the group or SOCOM executed the raid.

An analogy for strategic operational planning is like lanes in a highway, each lane symbolizing an agency's expertise (e.g., special operations, espionage, and law enforcement). The NCTC will not tell each agency how to drive in its lane. But effective counterterrorism requires choosing which lane—meaning which type of activity, and thus which agency, to utilize in a particular situation. The NCTC would select the lane but would have no authority to order an agency to drive.

Returning to the discussion of the DNI's authorities, I note that the new DNI will take on a number of additional duties and responsibilities beyond what the DCI has today. I would ask my friend from Maine, how will the new DNI manage the new community functions that he or she will need to direct as head of the intelligence community?

Ms. COLLINS. I thank my colleague and agree with his statements. The new DNI will not need to create a staff from scratch to manage the intelligence community. Today, the DCI relies on the Deputy Director of Central Intelligence for Community Management, DDCI/CM, and that official's staff to coordinate the activities of the intelligence community. This professional staff already has substantial experience that will be invaluable to the DNI in managing the intelligence community. This legislation supplants the DDCI/CM but transfers the official's staff as the DNI considers appropriate to the Office of the DNI. The DNI can then build on this staff as necessary to implement the DNI's new authorities.

Finally, I would like to describe the implementation of this legislation. The legislation does not permit the current DCI to become the DNI without going through the Presidential nomination and Senate confirmation process for the DNI position. This legislation gives the DNI different authorities and responsibilities than the DCI has today. As such, the Senate will need to provide advice and consent to the President's selection for the DNI.

Title I of the intelligence reform legislation takes effect not later than six months after the Act's enactment. The legislation envisions that the President will decide upon the effective date for title I and may effectuate parts of title I at different times within that 6-month period. For example, the President could decide that all or parts of title I become effective upon the confirmation of the DNI. Until such time as the President determines—but in no event later than six months after enactment—the DCI will remain head of the intelligence community and the DDCI/CM and the various assistant DCIs will continue to report to him. The legislation requires that the President submit an implementation report to Congress not later than 180 days after the act's effective date, but it is desirable that this report be submitted as soon as possible.

Some provisions in title I explicitly state that they are effective on the act's date of enactment, namely the transfer of the TTIC or its successor to the NCTC and the transfer of the staff of the DDCI/CM to the Office of the DNI as appropriate. The NCTC has already been created by Executive order, absorbing the TTIC. With respect to the staff of the DDCI/CM, that staff does not cease to exist upon the act's enactment but rather becomes available for transfer to the Office of the DNI after the Office of the DNI is established.

This legislation requires the DNI to take various actions within 180 days of the act's enactment, including submitting a report to Congress concerning operational coordination between the CIA and the Defense Department, assigning an individual or entity to be responsible for analytic integrity, and identifying an individual to serve as an ombudsman. The DNI also shall prescribe regulations and other directives not later than one year after the act's enactment. Thus we hope that the President will move speedily to nominate an individual to serve as the DNI. The threats arrayed against the United States do not afford us a grace period.

INFORMATION SHARING

Mr. LIEBERMAN. Mr. President, I wish to call attention to an important

part of this legislation—the provision in section 1016 on information sharing.

The effective use of information, from all available sources, is essential to the fight against terrorism. The 9/11 Commission, in fact, concluded that the biggest impediment to all-source analysis, and to a great likelihood of ''connecting the dots,'' is the resistance to information sharing. As the commission documented, in the period preceding September 11, 2001, there were instances o potentially helpful information that was available but that no person knew to ask for; information that was distributed only in compartmented channels; and information that was requested but could not be shared.

As a result of its findings, the commission urged that a new approach to information sharing be developed that would help move from a ''need-to-know'' culture of information protection to a ''need-to-share'' culture of integration. Noting that no single agency could develop a meaningful information sharing system on its own, the commission recommended a new, government-wide approach, based on the conceptual model of the Systemwide Homeland Analysis and Resource Exchange SHARE Network proposed by a task force of leading professionals assembled by the Markle Foundation.

This legislation puts the commission's information sharing recommendations in place, requiring that the President establish a new, government-wide Information Sharing Environment ISE to share information among federal, State, local and tribal entities, and, where appropriate, with the private sector which owns or controls much of the nation's critical infrastructure)—in a manner consistent with national security and with the protection of privacy and civil liberties.

Ms. COLLINS. I agree wholeheartedly with my colleague about the importance of these information sharing provisions. I also want to emphasize that the ISE is not some mammoth new database. Indeed, it is not just technology, but rather represents a combination of technologies and policies designed to facilitate the appropriate sharing of terrorism information.

Section 1016 includes a list of attributes the ISE is required to have. These include such things as facilitating the sharing of information among those who have differing levels of access or clearance or different capacities to make use of the information—i.e., providing information from the beginning in its most shareable form, so that the maximum number of individuals can access the information in at least some meaningful form at its earliest point of consumability—while having additional details available to those who are granted appropriate access; in this way, the right information gets to the right consumer at the right time. It also includes building on existing systems where possible, rather than creating whole new, and potentially overlapping, systems, and employs an information access management approach that controls access to the data rather than just systems and networks without sacrificing security. And it includes incorporating protections for individuals' privacy and civil liberties from the very beginning—both in the policies of the environment and in technologies and processes to ensure that the policies are adhered to.

Mr. LIEBERMAN. Another important aspect of this provision is the mechanisms it puts in place to ensure that this new approach to information sharing actually gets implemented. We have known for some time now about the critical importance of information sharing in the fight against terrorism. But translating generalized calls for improved information sharing into a working, fundamentally changed system requires hard and sustained work. To help ensure that this ambitious new effort will succeed, and that the ISE is actually implemented as envisioned, the legislation provides for a staged development process, with periodic reporting and the promise of significant and sustained Congressional oversight.

The first benchmark in the ISE development process is 180 days after enactment: by this date, a review must be conducted of current agency capabilities; in addition, a description of the technological, legal and policy issues presented by the creation of the ISE, and how they will be addressed, must be submitted to the President and Congress. Within 270 days of enactment, the President is required to issue guidelines for acquiring, accessing, sharing, and using information, and, in consultation with the Privacy and Civil Liberties Oversight Board established in section 1061 of the legislation, guidelines to protect privacy and civil liberties in the development and use of the ISE. These two sets of guidelines are critical in defining the framework of the ISE, and their issuance will provide an important opportunity for Congress to evaluate the proposed direction of the ISE. Within a year, a detailed implementation plan for the ISE, including budget estimates and proposed performance measures, must be submitted to Congress, which will provide for a further opportunity for Congressional evaluation. Finally, in 2 years, and annually thereafter, the President must submit a report to Congress on the state of the ISE and of information sharing across the Federal Government.

Ms. COLLINS. In addition to the step-by-step development process my colleague has described, I would also note that the other key means by which the legislation seeks to ensure the successful implementation of the ISE is through the appointment of a program manager. Not later than 120 days after enactment of the legislation, the President is required to designate an individual who is to be responsible for information sharing across the Federal Government. By placing a single individual in charge of the development of the ISE, the legislation seeks to ensure the accountability and focus necessary to accomplish this critically important task.

Although the President has discretion to determine whom to designate as program manager, it is essential, and required by subsection 1016(f)(1), that the program manager have and exercise government-wide authority; the ISE will involve the sharing of terrorism-related information from across the government, including from entities outside the intelligence community—whether bioterror information from the Centers for Disease Control or relevant border information from Customs and immigration offices at the Department of Homeland Security—so that the program manager will be someone with responsibilities that cut across the Federal Government as well. Although the DNI is, and will continue to be, responsible for setting information sharing standards throughout the intelligence community (a responsibility expressly recognized in subsection 1016(e)(10)(A)), it is not our intent that the DNI also assume the further responsibilities of program manager. We expect and intend that whomever is designated as program manager will have the development of the ISE as their sole or primary responsibility, and we believe that it is desirable that the individual have management expertise in enterprise architecture, information sharing and interoperability.

The legislation provides that the program manager is to serve for 2 years, during the initial development of the ISE, to ensure that the project gets off to a sound start. As part of the implementation plan to be submitted to Congress after one year, the program manager is to recommend a future management structure for the ISE, including a recommendation as to whether the position of program manager should continue. During this two-year start up period, the program manager will be assisted in his or her efforts by an Information System Council established by the legislation and based on the existing Information System Council established by the President through executive order. The council, made up of representatives from agencies participating in the ISE, will not only advise the President and the program manager, but also, among other things, provide a means of coordinating among the various agencies participating in the ISE, helping to resolve interagency disputes that may arise. In performing its duties, the council is to consider input from those outside the Federal Government as well—including state, local, and tribal officials and those in the private sector who are potential participants in the ISE or who have relevant policy or technical expertise.

I also note the legislation provides that the individual agencies that possess terrorism information or otherwise participate in the ISE are to fully

cooperate in the development of the ISE. The cooperation of all relevant agencies is critical to the success of this government-wide information sharing effort, and agencies can expect Congressional oversight to ensure that they are planning for, and fully contributing to, the construction of the ISE.

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Mr. LIEBERMAN. Mr. President, among its other significant provisions, the bill before the Senate, S. 2845, establishes a new Privacy and Civil Liberties Oversight Board. Waging the war on terror has required that the federal government take steps that consolidate governmental authority and increase the government's presence in our lives. As the 9/11 Commission observed, this shift of power and authority to the government, while necessary, calls for ''an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life.'' Following the commission's recommendation on this point, this bill creates, for the first time, a Board that can look across the federal government and ensure that liberty concerns are appropriately considered in the policies and practices of the executive branch.

Ms. COLLINS. Specifically, the board established in the bill is to be made up of five members, who are to be appointed by, and serve at the pleasure of, the President. Two of the five members—the chairman and vice-chairman—are also required to be Senate-confirmed. To help ensure an independent and effective board, all of the members are to come from outside the federal government and are expected to be people of stature, selected on the basis of their achievements, experience and independence. All of the members of the board are expected to devote significant time to this important endeavor, and the chairman may be appointed to a full-time position; given the broad responsibilities of the board, we believe that having a full-time chairman though not required would usually be the wisest course.

The Privacy and Civil Liberties Oversight board's purpose is to ensure that privacy and civil liberties concerns are appropriately considered in the implementation of all laws, regulations, and policies that are related to efforts to protect the Nation against terrorism. The board is empowered to carry out its mission in two equally important ways. First, the board is to advise policy makers at the front end, to ensure that when executive branch officials are proposing, making or implementing policy, they appropriately consider and protect privacy and civil liberties. Second, the board is to conduct oversight, by investigating and reviewing government actions at the back end, reviewing the implementation of particular government policies to see whether the government is acting with appropriate respect for privacy and civil liberties and adhering to applicable rules. Further, the bill provides the board with the tools it will need to carry out its functions.

Mr. LIEBERMAN. I agree with the Senator from Maine that the board will have the tools necessary to carry out its purpose. In its advice role, the board has a broad mandate to review and provide advice to the President and to federal agencies on proposed policies, whether or not codified formally in regulations, and on the implementation of new and existing laws, regulations and policies, in order to ensure that privacy and civil liberties are appropriately considered. Following a related 9/11 Commission recommendation, the board is further specifically directed, when providing advice to executive branch officials on proposals to retain or enhance particular governmental powers, to consider whether the need for those powers have been balanced against the need to protect civil liberties and privacy and whether there are adequate guidelines and supervision to ensure that the use of the power is properly confined and that privacy and civil liberties are protected.

Although the board has no authority to veto or delay executive branch actions, executive branch officials are expected to routinely consult with the board, and the board to routinely review and provide input, on the development and implementation of policies intended to protect the Nation a against terrorism; indeed, a suggestion in conference negotiations that would have limited the board to providing advice only when requested by the head of an agency was specifically rejected. It is our intention that the board become an institutionalized voice that ensures that privacy and civil liberties concerns are always considered and, where appropriate incorporated, in policy making.

With respect to its oversight role, the board has broad authority to review and investigate executive branch actions, whether limited to a single agency or involving interagency policies, to determine whether the government is appropriately protecting privacy and civil liberties. To carry out this function effectively, the board has been given investigative powers similar to those of a government-wide inspector general. Specifically, the and is to have access to all relevant documents and materials in the executive branch, including classified information, and to all relevant federal officials to interview them and take statements. Departments and agencies, moreover, are required to cooperate with the board: if the board believes information or assistance has been unreasonably refused, it is to notify the relevant agency or department head, who, unless the information cannot lawfully be provided to the board, is to ensure compliance with the request.

The bill provides an exception to the requirement that an agency comply with a board request for information only in cases where the DNI in consultation with the Attorney General, determines that withholding information from the board is necessary to protect the national security interests of the United States or where the Attorney General determines that withholding the information is necessary to protect ongoing sensitive law enforcement or counterterrorism operations. In light of the fact that board members must in any event have appropriate clearances to see classified information, as well as the expected nature of the board's work, we anticipate that these exceptions will rarely need to be invoked.

In addition to getting information from the executive branch, the board may also request information and assistance from State, local and tribal officials, and it may request documents or testimony from others outside the executive branch, including private parties who may have relevant information, such as former federal employees and government contractors. Although the board does not itself have the authority to subpoena documents from private parties, if the card is unable to obtain relevant information from a nongovernmental party, it may refer the matter to the Attorney General, who may take such action as appropriate to ensure compliance, including the use of compulsory process.

I would also like to note that although the board's jurisdiction is not intended to extend beyond matters related to efforts to protect the Nation against terrorism—to, for example, claims that the IRS is not adequately protecting the confidentiality of tax returns—it is our intent its jurisdiction be interpreted inclusively, to reach, for example, laws that were originally adopted to protect against terrorism, but may now have been turned towards other purposes.

Ms. COLLINS. I thank my colleague for his clear explanation. Just as important to the other authorities provided to the board is ensuring some transparency of the activities of the board. Transparency helps to give confidence to the American people that the protection of their civil liberties and privacy is being addressed as we take actions to further protect our Nation from terrorism. To that end, the board is to report to Congress at least annually on its activities, and may do so more frequently, as would be expected should the board complete an important investigation or otherwise make findings or recommendations of which Congress would wish to be aprised. The bill requires that the board's reports to Congress be unclassified to the greatest extent possible, in order to facilitate public discussion of the board's activities; where it is necessary to include classified information in the reports, it is to be included in a separate classified annex. Whether and when to release reports directly to the public or to otherwise engage in activities that directly involve and inform

the public is left to the discretion of the board, but we believe that given the public importance of the issues entrusted to the Privacy and Civil Liberties Oversight Board, openness is called for and will ultimately foster public trust that the government is appropriately protecting privacy and civil liberties as it continues to vigorously fight the war on terror.

Also intended to foster this public trust is the fact that, while the board is exempted from the requirements of the Federal Advisory Committee Act because, as a permanent, ongoing entity, it does not fit comfortably into the mold of the usual subjects of that act, the board is expressly subject to the Freedom of Information Act, like any other agency.

Mr. LIEBERMAN. I would also like to point out that the bill encourages federal departments and agencies involved in law enforcement and anti-terror functions to designate an agency official to serve as a privacy and civil liberties officer. Such officers, modeled on similar officers at the Department of Homeland Security and newly created in the Office of the DNI, can play an important role in providing day-to-day advice and insights on civil liberties and privacy matters and conducting internal reviews. Because such officers would be highly knowledgeable about their own agencies, they could augment the role of the board and help address issues early on. The role of such officers would be distinct from those of the new chief privacy officers created in the Omnibus Appropriations bill. Those officers would be largely responsible for focusing on informational privacy issues and not responsible for addressing broader civil liberties concerns.

Ms. COLLINS. I would like to thank my friend for working with me on these very important provisions. In the wake of the terrorist attacks on September 11, 2001, during his joint address to Congress, the President called on all Americans to ''uphold the values of America and remember why so many have come here. We're in a fight for our principles, and our first responsibility is to live by them.'' Indeed, as we improve government to better secure our Nation against future attacks, we must at the same time protect those American values that define our free society. These freedoms and values are what define us as Americans and what defines our Nation. Since the inception of our Nation, there has been much sacrifice in order for us to have the freedoms we enjoy today. These liberties are what have been entrusted to us to protect. That is why, as we protect our Nation from future terrorist attacks, we also must ensure that we do no trample on the very values that the terrorists seek to destroy.

Mr. WYDEN. Mr. President, I wish to commend Senators COLLINS and LIEBERMAN for their leadership in working round the clock for months to translate the key recommendations of the 9/11 Commission into reality. Thanks to their tireless and bipartisan effort, I and my colleagues today can point to a provision in the intelligence reform bill that will clear the fog of unnecessary secrecy that has for too long clouded our national intelligence picture. As the principal sponsor of this bipartisan provision, which will establish for the first time an appeals procedure that members of Congress may use regarding the classification of materials for national security purposes, I wish to explain how I envision this new process working.

The power to classify documents as secret is one of the most powerful tools in American Government, and it seems to be very much in vogue. Over-classification of documents is now the rule rather than the exception. Documents are sometimes classified for political reasons rather than to protect national security interests. Last year alone, the Federal Government spent $6.5 billion creating 14.3 million new classified documents. That is double the number of documents 10 years ago. This awesome power should be used judiciously, and it surely should not be the subject of old fashioned horse trading, as it was last summer during the preparation of the Senate Intelligence Committee's report on pre-Iraq war intelligence.

Last summer the Senate Intelligence Committee, on which I serve with my co-authors, spent more than 6 weeks arm-wrestling with the Central Intelligence Agency, CIA, over how much of the report on pre-Iraq war intelligence would be made public. Originally, the agency wanted to black out more than half of the report. In the end, ''only 20 percent'' of the report was blacked out.

At that time, there was no independent body to which the committee members could turn to find out what should and should not be classified for national security purposes. That is precisely the problem addressed by the provision crafted by Senators LOTT, BOB GRAHAM, SNOWE, and myself. Our provision will give Congress for the first time a means of appealing classification decisions.

The provision gives Congress the authority to appeal classification decisions to an independent standing body, the Public Interest Declassification Board. This Board is made up of nine members with expertise in national security and related areas; five are appointed by the President and four by the bipartisan leadership of the Senate and House. Under the amendments made by section 1102, when any Member of Congress asks the Board to declassify a document or materials, the Board ''shall advise the originators of the request in a timely manner whether the Board intends to conduct such review.''

This means that if I or another Member of the Senate were to ask the Board to determine whether a document is properly classified for national security purposes, the Board must respond in a timely manner. ''Timely'' is defined as ''early'' or ''soon.'' It is my expectation that whether it is a member of Congress or a committee seeking the Board's decision on the proper classification of information, the Board will get back to the requester expeditiously.

I am of the view that the problems in our intelligence community will not be addressed until the problems in the national security classification system are addressed. Thomas Kean, who chaired the 9/11 Commission, said that three-quarters of the classified material he reviewed for the Commission should not have been classified in the first place. Now, as the Senate acts on the conference report that strongly reflects the 9/11 Commission recommendations, it only makes sense to include this provision.

I have no illusions that this classification appeals mechanism will abolish the strongly rooted institutional bias in favor of overclassification, but taken in conjunction with the overall review of the standards used to classify information contained in other sections of the conference report, it is a very sound first step.

I am grateful to Senator LOTT, my principal cosponsor, for championing this matter in conference. He and his staff worked nonstop to preserve this provision. I also want to acknowledge the efforts of Senator BOB GRAHAM, another conferee, and his staff to defend our work.

Mr. DOMENICI. Mr. President, I rise to express my support for the intelligence reform provisions negotiated by the House and Senate. These measures provide common sense restructuring of our Nation's approach to national intelligence.

For years the United States has contemplated reorganizing the intelligence community. Unfortunately, it took the tragedy of September 11 and the loss of nearly 3,000 citizens to achieve systemic change. This legislation, however, is the culmination of a serious national debate that has occurred since that fateful day. It is a just tribute to those we lost, their families and to future generations of Americans whose security depends on our actions today. I believe this legislation better prepares us to meet the security challenges of today and I would like to make note of some important provisions.

First, it creates a National Director of Intelligence who has the necessary authority to write and execute intelligence budgets. This critical change will help ensure that resources and personnel can be moved to areas of priority throughout the intelligence community for more effective management of intelligence operations and analysis. This change was strongly endorsed by both the 9/11 Commission and Joint Inquiry of the House and Senate Intelligence Committees and I believe it is essential.

Second, it establishes a National Counterterrorism Center. This will

achieve an integrated approach to counterterrorism intelligence and strategic operational planning. Given the continuing threat the United States faces from international terrorists, it is vital that we organize our information and resources in a highly coordinated fashion to meet this challenge. The NCTC provides the proper mechanism to facilitate this coordination by gathering relevant information from all appropriate departments and agencies within our government.

In addition to these primary reforms provisions, I am pleased the conference report includes two other provisions of importance to New Mexico. By retaining my language directing the Department of Homeland Security to report on development of an Unmanned Aerial Vehicle border surveillance capability, this legislation recognizes the need to exploit emerging technologies for securing the homeland. The porous nature of our borders, particularly in remote areas of the Southwest, is vulnerable to terrorists, drug smugglers and other criminal activity. My language begins to seek new solutions to this significant security concern. Also, I am gratified that the conferees recognized the value of the National Infrastructure Simulation and Analysis Center operated by our national laboratories as Sandia and Los Alamos. The formal relationship this legislation creates between NISAC and the National Director of Intelligence ensures the intelligence community has access to the very best capability our Nation has for understanding vulnerabilities to critical infrastructures.

In conclusion, I believe this legislation is historic. Nothing is more important than the security of our country and intelligence is the underpinning of success in the war on terror. Objective, timely, accurate intelligence is what our policymakers need to make the right decisions affecting the safety of Americans at home and abroad. This legislation takes an important step toward invigorating our intelligence gathering as we face the threats of the 21st century and it has my strong support.

Mr. AKAKA. Mr. President, I rise today to express my support for the conference report on legislation creating a Director of National Intelligence. Before doing so, I commend the tremendous effort made by Senator SUSAN COLLINS, the chairman of the Governmental Affairs Committee, and Senator JOE LIEBERMAN, the ranking member, who have dedicated the last few months to ensuring this legislation was passed. I salute them.

Passage of this legislation ensures that many of the key recommendations of the 9/11 Commission become law. Most important of these are the establishment of a Director of National Intelligence, DNI, and a National counterterrorism Center, NCTC.

However, much still remains to be done. I continue to believe that the key to a stronger America lies not just in clarifying institutional lines of authority but in ensuring that we have the best and brightest on the front lines of our national defense.

One of the important objectives driven home by the 9/11 Commission's report and in testimony before the Governmental Affairs Committee is the need to have the right people in the right places in our Government, both civilian employees and military personnel, to combat future threats. We must ensure that our Federal workforce remains trained and ready to respond to the challenges we may face in the future, just as Federal employees have responded with courage when called upon in the past.

There is a human capital crisis in the Federal Government. Not only are we losing decades of talent as civil servants retire, we are not doing enough to develop and nurture the next generation of public servants. Nowhere is this more evident than in our intelligence services. Time and time again senior officials note the lack of trained linguists, the lack of trained analysts to evaluate information, and the lack of scientific technical expertise needed to confront these new threats.

Staffing new interagency intelligence operations centers on a 24/7 basis, developing new human intelligence, HUMINT, operations and interpreting the information coming into our intelligence analysts pose management problems of massive proportions. We continue to be seriously understaffed. I have been calling attention to this problem, along with my colleague, Senator VOINOVICH, for a number of years.

Thus, I am pleased that the legislation we vote on today contains provisions similar to those in S. 589, the Homeland Security Federal Workforce Act, which I introduced and was passed by the Senate last November.

The National Intelligence Reform Act mirrors the intent of S. 589 by establishing a program awarding scholarships to students in exchange for government service in the intelligence community. I would like to reiterate that the language in the Governmental Affairs Committee report relating to this provision and urge the DNI to give special consideration to applicants seeking degrees in foreign languages, science, mathematics, or a combination of these subjects.

S. 2845 includes other aspects of S. 589, such as an incentivized rotational program for employees in the intelligence community in order to break down cultural and artificial barriers to information sharing, build a cadre of highly knowledgeable professionals, and ensure cooperation among national security agencies.

In addition, the conference report includes language offered by Senator BOB GRAHAM and Senator RICHARD DURBIN, and myself requiring the Director of National Intelligence to review existing programs to increase the number of personnel with science, math, and foreign language skills and report to Congress on the proposals to improve the education of such individuals if existing programs are found inadequate.

These programs partially address, however, a larger national problem in our educational system that must be tackled, including at the primary and secondary level. I look forward to working with my colleagues in the next Congress to implement additional programs to solve the human capital crisis in our national security community as well as elsewhere in the government.

In addition, I am pleased that the legislation includes language creating an Office of Geospatial Management in the Department of Homeland Security, which was added to S. 2845, the Senate version of the bill, through an amendment offered by Senator ALLARD and myself. This language is identical to S. 1230, the Homeland Security Geographic Information Act. It will help to better coordinate the procurement and management of geospatial information within the Department of Homeland Security and centralize activities within one office. Geospatial information has become a critical component in both assisting our war fighters and in protecting our homeland.

However, I would be remiss not to mention areas that are not included in the legislation.

I regret that the conference report did not include a Senate amendment I sponsored with Senator FITZGERALD to create a chief financial officer, CFO, within the Office of the Director of National Intelligence. Our amendment would have placed the NIA under the Chief Financial Officers Act of 1990, which requires agencies to submit audited financial statements and requires that CFOs be appointed by the President, confirmed by the Senate, and report directly to an agency's head. This amendment is similar to legislation Senator FITZGERALD and I sponsored now Public Law 108–330—which brings the Department of Homeland Security, DHS, under the CFO Act and ensures a Senate-confirmed CFO who reports directly to the Director of DHS. I plan to introduce legislation that embodies our amendment because I strongly believe that this new entity must have the financial management systems and practices in place to provide meaningful and timely information needed for effective and efficient management decisionmaking.

It would be naive to say that this legislation by itself will make America stronger. Americans will make America stronger. What this legislation does offer is a framework within which we can build a more secure nation if we all work together within the limits of our Constitution.

In creating a Director of National Intelligence it is critical that the President pledge to make this office accountable to the American people. The DNI must be kept free of political pressures and independent of partisan policy agendas. While employees working

under the DNI will have the same rights and protections as those at the CIA, I urge the DNI to make every effort to ensure that whistleblowers are not retaliated against and that their disclosures, which may have a significant impact on the security of this nation, are taken seriously.

The DNI must make civil liberties and privacy rights a capstone in the structure of this new agency. Without these basic protections, our freedoms will not be strengthened, our Nation will not be more secure.

I pledge to do all I can to exercise my responsibility to oversee this new intelligence agency and ensure it lives up to the trust being placed in it by the Congress today.

Mr. CONRAD. Mr. President, I will join many of my colleagues today in voting for the Intelligence Reform bill; however, I do so with some reservations.

First, let me highlight the provisions contained in this bill that are especially important to North Dakota. The bill includes a proposal I authored that would establish a pilot project on the Northern border to enhance security through the use of advanced technologies like remote sensors, cameras, and unmanned aerial vehicles. The bipartisan 9/11 Commission Report recognized that the Northern border operates with only a fraction of the manpower and resources that are devoted to the Southern border, but poses no less risk for terrorists sneaking across into the United States. This project will help the border patrol in monitoring the border more effectively and efficiently. Additionally, I am pleased that the bill includes a provision directing that at least 20 percent of any increase in the number of Border Patrol agents be assigned to the northern border. Both of these provisions take a step in the right direction to improve the security of our northern border.

In considering intelligence reform, I embraced the recommendations of the 9/11 Commission. They made a major effort to understand what happened on September 11, 2001, and to figure out how we could help prevent future attacks. This legislation never would have passed without their hard work. By adopting one of the key recommendations of the 9/11 Commission, this bill takes a major step toward improving our Counter-terrorism efforts. Establishing a National Counterterrorism Center that can both analyze the terrorist threat and do strategic planning for operations to defeat terrorists will make us safer.

This bill would never have become law without the commitment of the families of the victims of the 9/11 attacks. They demanded real reform, without any further delay. We in Congress owed those families no less.

Some of my colleagues today have said that this bill is the largest reform of our national security agencies since 1947. The provisions I have just mentioned are important reforms. Nevertheless, I remain concerned that creating a new Director of National Intelligence will not do enough. It still leaves too many participants with an opportunity to fail to communicate and cooperate.

No one can argue against the basic rationale for creating a Director of National Intelligence. The American intelligence community has suffered from a lack of coordination and communication, as the 9/11 Commission and many other reports have outlined. This lack of coordination and communication comes in part from the absence of any one person in charge and, ultimately, accountable for the accuracy and timeliness of our intelligence. I strongly agree that we need a National Intelligence Director. But such a Director cannot improve the communication and coordination between the intelligence agencies without the full authority and resources necessary to do the job.

The concern I have with this final bill is that we have maintained the CIA and all of the other intelligence agencies we had before, and added a National Intelligence Director on top. Instead of consolidating the various intelligence agencies, we have created additional boxes on an organizational chart that I fear will only create more turf battles, thereby undermining our ability to enhance and improve our intelligence capabilities. I was concerned about this issue in the Senate's intelligence reform bill. The final bill has an even weaker Director of National Intelligence. That makes me even more concerned.

In my view, this bill simply does not provide the National Intelligence Director with all of the tools he needs to do the job. He will have only a very limited power to move money among the different intelligence agencies. Without strong control over the money, the Director could become just another layer of bureaucratic review.

If that was the end of the story, I probably would have to vote against this bill. But I see this bill as a step in the right direction. Its authors have assured me this is a beginning. In the end, the success of the Director of National Intelligence depends on the President creating procedures that place that official at the heart of the intelligence community, with real authority and real accountability. I am counting on President Bush to do so.

Ms. MIKULSKI. Mr. President, I rise in support of the National Security Intelligence Reform Act.

I am proud to cast my vote in favor of the first major reform of the intelligence community. Intelligence reform will make our Nation safer and stronger, and ensure we use our resources smarter. We have created a framework that works to prevent a predatory attack on the United States, supports our troops, and provides good intelligence to policymakers so we can guard and guide the Nation.

I am excited that we are going to pass such fundamental reform of our intelligence agencies. I have been fighting for intelligence reform for years. It is overdue and greatly needed. Now is the time.

This is a very good and important bill. This bill will make the American people safer by reforming our intelligence community for the 21st Century, by improving protection of our homeland, and by unifying and strengthening our efforts to combat terrorism.

The reforms will help prevent another 9/11 attack and help ensure we never go to war again on dated and dubious information. These reforms will make highest and best use of the talent in our intelligence agencies, who will have a framework to be able to protect the Nation and speak truth to power.

I have fought for reform of our intelligence community for years. I have been a member of the Intelligence Committee since before 9/11 to be an advocate for reform, particularly regarding signals intelligence.

Since I joined the intelligence committee we have also investigated two serious intelligence failures:

Why couldn't we prevent the 9/11 attacks on America?

Why did we think Saddam Hussein had weapons of mass destruction?

The House and Senate intelligence committees had a joint inquiry into intelligence relating to 9/11. We found insufficient information, missed opportunities, and failures to share information. So many talented and highly skilled people in our intelligence community worked so hard and so effectively, but our intelligence agencies did not serve them or us well.

These investigations convinced me that our intelligence agencies needed fundamental reforms. I recommended the creation of a Director of National Intelligence to unify and lead the intelligence community and many other important intelligence reforms. I am pleased that many of the reforms I have been advocating are part of this bill.

The National Security Intelligence Reform Act also builds on the work of the 9/11 Commission. I want to thank Senator COLLINS and Senator LIEBERMAN for their work on this bill in Committee, in the Senate, and holding the line in conference with the House. The result is broad, deep and authentic reform.

The bill gives the intelligence community one leader, a Director of National Intelligence, with real authority over the National Intelligence Program budget and personnel, to manage and unify and oversee the intelligence community.

The bill creates a National Counterterrorism Center to unify our Nation's intelligence information and planning to fight terrorism more effectively.

The bill creates a National Counterproliferation Center to provide the same unity of effort and effectiveness in the effort to prevent the spread of weapons of mass destruction.

The bill provides for diversity of opinion in intelligence analysis and protects the independence of analysis from policy and political pressures, by using red-teaming to test assumptions and avoiding group-think by ensuring that alternative views are presented to policy-makers.

The bill requires better sharing of intelligence information, both within the intelligence community and with first responders in our States and communities who have a need to know.

The bill provides protections for the rights of Americans by creating a Privacy and Civil Liberties Oversight Board and making officials in each agency responsible for protecting civil liberties and privacy rights.

The bill will also unify and streamline the standards for granting security clearances and require that a clearance granted by one agency is accepted by other agencies.

This bill goes beyond intelligence reform to address many of the other 9/11 Commission recommendations: to improve aviation security, including air cargo inspections, to improve maritime security, to strengthen border enforcement, and to strengthen criminal laws on terrorism, building weapons of mass destruction, and financing terrorist groups.

I have been fighting for many of these reforms and am very pleased that this bill includes them. They are going to make America safer, stronger and smarter.

This is not a perfect bill; no bill is. There are some provisions in this bill that raise questions or concerns. You can count on me to be vigorous and rigorous in oversight, to make sure we have real reform to protect America and protect the freedoms that America stands for.

Thanks to the dedication, commitment and persistence of the 9/11 families and the Congress, we had an independent commission to investigate 9/11. The 9/11 Commission brought into the sunshine what many of us knew from our classified hearings. The 9/11 Commission report was not just riveting reading—it was a good blueprint for intelligence reform. Senators COLLINS and LIEBERMAN picked up that blueprint and ran with it. The Senate produced a bipartisan bill that is a shining example of what can be done around here when we work together, not as blue State Democrats, not as red State Republicans, but as Americans—as members of the red, white and blue party, working together for America and the American people. As a proud member of the red, white and blue party, I enthusiastically support the National Security Intelligence Reform Act.

Mr. REED. Mr. President, I rise to express my support for S. 2845, the intelligence reform bill.

I first want to commend the 9/11 families who have worked so tirelessly to ensure that necessary reforms were implemented through the formation of the 9/11 Commission and the enactment of this bill.

I believe this bill is an important first step toward needed intelligence reform. As we are all aware, intelligence is the key to keeping America safe and winning the global war on terrorism. I think that there are many provisions of this bill which will improve U.S. intelligence. It creates a Director of National Intelligence who has personnel and budget authority; establishes an Information Sharing Environment to facilitate the sharing of terrorism information among all appropriate Federal, State, local, tribal and private sector entities; provides for training and education to meet linguistic requirements; and emphasizes the use of open intelligence, a resource I believe we have overlooked recently to our detriment.

I am also pleased that this bill establishes a National Counterproliferation Center since I believe the proliferation of weapons of mass destruction and the potential for terrorists and rogue states to obtain these weapons are the greatest threats facing us today.

In addition, I commend the House and Senate for providing for a Privacy and Civil Liberties Oversight Board within the Executive Office of the President that would ensure that privacy and civil liberties concerns are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism. While Americans are more willing to give up some of their privacy after 9/11, necessary intrusions must be carefully balanced against the rights of U.S. citizens and I believe the Board will help maintain the balance.

Again, this bill is simply a first step. The United States remains vulnerable in many areas. I do not believe the bill does enough to provide for transportation security such as for ports, public transportation and railroads. In addition, it does not address other asymmetrical threats such as food safety. Two days ago Secretary of Health and Human Services Thompson noted how easy it would be to tamper with and poison our food supply.

Finally, I would like to express my disappointment with the administration's and Republican congressional leadership's participation in this undertaking. The administration originally did not want a 9/11 Commission and its support of this bill was lukewarm at best. The tragedy of September 11 made it clear that our Nation was not as secure as it could be and changes needed to be made. It is the duty of the administration to make those changes as quickly as possible. September 11 was over 3 years ago and we are just now enacting the first changes. The process certainly could have proceeded more quicky if the administration had been more actively engaged throughout the process.

But we have a bill which is a good first step. I support this bill and look forward to working with my colleagues on future reforms.

Mr. CHAMBLISS. Mr. President, an enormous amount of time and effort by the White House, the Congress, the 9/11 Commission, the families of the victims the 11 September 2001 terrorist attacks, and others have gotten us here, today, to make a final decision on the Intelligence Reform and Terrorism Prevention Act of 2004. We owe a debt of gratitude to all those involved with this process. However, not everyone will agree, nor should they, with everything contained in, or missing from, the bill we are about to vote on.

This should not surprise us, since no one individual or group has all the answers on how best to reform our vast intelligence community. What we can all agree upon, however, is the dedication and sense of purpose of everyone in the Congress who has worked on this legislation. The Members and staffs, from both sides of the aisle, all tried to do what they thought was best for the future security of the United States and for that they all deserve our appreciation.

I rise today not simply to commend the hard work of a lot of people, rather, I want to make the point that today marks the start, and not the end, of the intelligence reform process. Our work in the Congress on this issue is not ending today; it is just beginning in earnest.

We were attacked on 11 September 2001 in a vile, unprovoked manner that employed methods heretofore never used in warfare. Before 11 September, the idea of hijacking civilian airliners, loaded with innocent people, and using them as guided missiles to destroy landmark buildings and thousands of non-combatant people was something you would only find in a book of fiction.

It was difficult to imagine before that attack that a group of people could be so evil, so focused on destroying innocent lives, and so ready to kill themselves for some warped sense of their own religion and their distorted sense of justice.

We can fault our intelligence analysts for not ''connecting the dots,'' but maybe they had too few ''dots'' to work with and maybe what they did have didn't seem quite plausible at the time relative to our own understanding of human nature and how wars have been fought in the past.

The House Subcommittee on Terrorism and Homeland Security issued the first report outlining problems within the intelligence community about our failure to stop the 9/11 attacks. As the chairman of that subcommittee, I released that report on 17 July 2002. What we discovered was that the two most egregious intelligence failures involved human intelligence or HUMINT and the sharing of intelligence, primarily between the CIA and the FBI.

A dedicated enemy without any constraints on their behavior is a difficult

and extremely dangerous foe to defeat. As I said in this Chamber last July 21, ''. . . there is only one principle to follow on intelligence reform. Intelligence is our first line of defense against terrorism, and we must improve the collection capabilities and analysis of intelligence to protect the security of the United States and its allies.'' The question we all need to ask ourselves is does this bill strengthen this principle or not? The answer is a qualified one and there is much more to do before we can unequivocally say we have done everything possible on reforming our intelligence community. Let me mention just six issues that we will need to focus on early in the 109th Congress relative to intelligence reform:

One, once this bill becomes law, the President will be nominating the first Director of National Intelligence, DNI. This will be one of the most important decisions of his presidency and, in like manner, the confirmation of the individual nominated will be one of the most important responsibilities of this Senate. We need to make sure that the DNI has the ability, experience, and leadership qualities to successfully implement the legislation we are voting on today.

Two, the Congress needs to put its primary focus on rebuilding the most critical aspect of our intelligence collection capability, namely HUMINT. If we are ever to win the war on terrorism we need to put our spies inside of al-Qaida and other organizations that mean us harm. We also need good HUMINT to get a better indication of the threats being posed by nation states such as North Korea, Iran, and Syria.

Three, in this regard, we need to reshape the culture in the Directorate of Operations at CIA, which is responsible for managing our HUMINT activities, from ''risk-avoidance'' to ''risk-taking.'' Porter Goss has begun this process, but he will need the strong support of the Congress to institutionalize this new, aggressive culture. It is because of this very point that I voiced objections to the creation of a Privacy and Civil Liberties Oversight Board, both in the original bill passed by the Senate and in the Conference Report. We need to take more risks in HUMINT and we need to rebuild the morale of our HUMINT collectors. What kind of message are we sending to our intelligence agents in the field who are risking their lives to protect us by creating a board designed to look over their shoulders and, which is redundant to the President's Board on Safeguarding Americans' Civil Liberties? This may create a morale problem throughout our intelligence community that might take years to repair and, I hasten to add, at a time when we need HUMINT more than ever to protect our citizens.

Four, to help Porter Goss rebuild our HUMINT capabilities and to raise the importance and priority of HUMINT reform, the Senate Select Committee on Intelligence, SSCI, should establish in the 109th Congress a Subcommittee on HUMINT to focus our attention on this critical aspect of our security. Without a subcommittee structure in the SSCI, I fear we will not be up to the task of providing in-depth oversight of the intelligence community, which would be a failure of one of the Congress' most important constitutional responsibilities.

Five, the span of control for the new DNI that is being created by this legislation is enormous. In fact, it is almost impossible. This bill leaves the intelligence community at fifteen members, eight of which are in the Department of Defense. I had a bipartisan amendment to S. 2485 that was co-sponsored by my colleague from Nebraska, Senator BEN NELSON, that would have created a unified command for military intelligence giving the new DNI a single point of contact for military-related intelligence requirements and collection capabilities instead of eight. Collectively, the eight members of the intelligence community that this bill leaves in the Department of Defense are huge, with tens of thousands of people and multi-billion dollar budgets. How someone outside of the Department of Defense, like the DNI, could adequately and efficiently manage these vast intelligence capabilities by dealing with eight separate military members is beyond me. Senator NELSON and I are committed to fix this shortcoming by introducing a bill to create a four-star command for military intelligence in the 109th Congress.

Six, Chairman JIM SENSENBRENNER championed several critical proposals relative to immigration reform, including improving our asylum laws and standards for issuing driver's licenses. I regret his proposals are not in the conference report before us today. We should be committed to working on legislation to strengthen our immigration laws as soon as possible.

Yes, our work in the Congress on intelligence reform is just beginning. Confirming the first DNI, focusing our effort on HUMINT, shaping a ''risk-taking'' culture among our intelligence officers, improving our oversight of the intelligence community, creating a four-star military intelligence command, and strengthening our immigration laws will assuredly keep the 109th Congress fully focused on intelligence reform. Today is but the beginning of this effort and this process.

Ms. LANDRIEU. Mr. President, today, nearly 38 months after the September 11 attacks on New York City and the Pentagon, the Senate will pass a bill to make Americans safer at home and abroad. What was broken before 9/11 must be fixed. S. 2845 is based on the lessons learned from the National Commission on Terrorist Attacks Upon The United States—the 9/11 Commission. This legislation is a great step forward to revamp and strengthen our intelligence community to thwart terror attacks on Americans in the future.

It has not been an easy task to bring this legislation to the Senate floor for a vote. Initially, the 9/11 Commission was not to report its findings to Congress and the American public until after the November elections. Fortunately, the Commission was permitted to issue its findings during the summer, which allowed Congress to draft S. 2845 and act upon nearly all of the 9/11 Commission's 41 recommendations to reform the intelligence community and improve the public's safety. Nevertheless, there were roadblocks along the way. Many Members in both Houses tried to kill this legislation, and it is a major accomplishment that we will hold a vote today and send this bill to the President this evening.

Of course, the credit goes to Senators SUSAN COLLINS and JOSEPH LIEBERMAN, the chairman and ranking member of the Senate Committee on Governmental Affairs. With great skill, they pushed and pulled in unison when they needed to keep this legislation afloat. They refused to let our national security fall prey to those who sought inaction over action. Additionally, Senator JOHN WARNER, the able chairman of the Armed Services Committee, worked tirelessly to ensure that S. 2845 would preserve the military's chain of command and ensure necessary intelligence resources would remain available to the military at all times. As a result of the efforts of these Senators, we will pass a bipartisan bill that will achieve the goal of centralizing U.S. intelligence operations while helping intelligence agencies better coordinate with U.S. military efforts.

Again, the 9/11 Commission found that our Nation was vulnerable to attacks because we were not properly collecting, analyzing, and acting upon intelligence. Our domestic intelligence agencies were not talking with their foreign intelligence counterparts, and federal law enforcement offices were not working with local law enforcement. And so, perhaps most importantly, this bill creates a Director of National Intelligence, DNI, and a National Counterterrorism Center, both of which will go a long way toward ensuring that our Nation's many intelligence and military agencies have the oversight, resources and coordination necessary to protect our borders and our citizens.

This bill will also help improve interagency cooperation by requiring extensive sharing of intelligence and law enforcement operations among Federal, State, and local agencies. That alone is a key step toward better protecting our citizens by ensuring information that could be vital to our national security makes it to the appropriate level. To better balance security with citizens' rights, this bill also establishes a Privacy and Civil Liberties Board to review Federal policies and practices.

Before I close, I do want to point out a provision that was deleted in the conference which could have made this bill even stronger. Our Nation needs a director of national intelligence with the mandate to provide the President and

other intelligence consumers with accurate, truthful, and even blunt intelligence. The DNI should not feel hamstrung to tell the President and other intelligence consumers what they want to hear; rather, the DNI must be able to tell them what they need to hear. The DNI must be independent and unsusceptible to the political whims of his/her superiors. S. 2845 does not go as far as I would like to ensure that there will be no politicization of the gathering and analysis of intelligence. The original Senate bill contained safeguards to ensure intelligence would not be politicized. I am hopeful the DNI will not feel pressured to validate certain political or policy points of views where the intelligence simply cannot provide such validation.

While I hope we can revisit this issue in the 109th Congress, this bill is a success. It will benefit the American people greatly, and I look forward to its passage.

Mr. KOHL. Mr. President, I am pleased that in one of the final acts of this Congress we have overcome the objections of the House leadership to pass a major intelligence reform bill. The 9/11 Commission report provided a unique opportunity for Congress to act. If we had allowed this moment to pass and we had not succeeded in enacting the Commission's reforms, it is unlikely that we would ever achieve effective intelligence reform, leaving us right where we started—with a fragmented counterterrorism infrastructure struggling to keep up with the terrorist threats of tomorrow.

The legislation before us creates a Director of National Intelligence who will have broad authority over the many elements of our intelligence community. While many of us were confident that the Senate bill did not jeopardize the chain of command, language was added to ensure that the military would have access to the intelligence it needs.

In addition to creating a National Counterterrorism Center to coordinate counterterrorism intelligence and missions, the bill includes important provisions strengthening FBI intelligence capabilities, transportation security, border protection, and diplomatic and military efforts in the war on terrorism. We cannot rely on intelligence alone to prevent the catastrophic terrorist attacks of the future. We must remain vigilant in all these areas.

Finally, I want to applaud the diligence of our colleagues and the members of the 9/11 Commission who pressed on when it seemed that this bill was doomed to die. While I have no illusions that this bill will suddenly make us invincible, it is critical that we begin the difficult process of realigning the way our government anticipates and responds to terrorism. That is why I intend to support this bipartisan legislation.

Mr. VOINOVICH. Mr. President, I rise to support the Intelligence Reform and Terrorism Prevention Act of 2004. I first must recognize and congratulate the extraordinary hard work and leadership of Senator COLLINS and Senator LIEBERMAN and their respective staffs. It is only because of their determination and tireless efforts that we are able to consider this legislation today. I would also thank and recognize Representatives HOEKSTRA and HARMAN and their staffs for their hard work. On balance, this legislation is an important step in improving our national security.

This legislation establishes a Director of National Intelligence with greater budget authority than the current Director of Central Intelligence to provide leadership and direction to the 15 agencies of the Intelligence Community.

It also establishes a National Counterterrorism Center to conduct analysis of terrorism-related intelligence and conduct strategic planning for the War on Terror.

To ensure that the civil liberties of Americans are protected during this time of justifiably increased government powers, the legislation also establishes a Privacy and Civil Liberties Oversight Board within the Executive Office of the President.

All of these provisions were key recommendations of the 9/11 Commission, and I am pleased that they are included in this legislation.

I am also pleased that the legislation we are considering includes three provisions that I have sponsored.

The bill reforms the broken process of granting security clearances. The extended length of time it has taken to conduct and subsequently adjudicate a security clearance prevents qualified Federal employees and their private sector partners from doing important work to enhance our national security. In addition, a lack of reciprocity among agencies for already granted clearances delays and mobility of Federal employees within the government and places an unnecessary administrative burden on agencies as they duplicate the clearance process.

The reforms in this legislation are an important step in expediting the process, while preserving national security interests. The President designates a single entity to oversee the security clearance process and develop uniform standards and policies for access to classified information. The President also designates a single entity to conduct clearance investigations. Additional investigative agencies could be designated if appropriate for national security and efficiency purpose. Reciprocity among clearances at the same level is required.

The bill also includes a provision I added in Committee to improve the intelligence capabilities of the Federal Bureau of Investigation. Specifically, the FBI Director may work with the Office of Personnel Management to develop new classification standards and pay rates for intelligence analysts. This will facilitate the development of a robust national security workforce at the FBI and falls squarely within the spirit of the 9/11 Commission recommendations. It is my sincere hope that the FBI will utilize these flexibilitie4s to build an elite cadre of intelligence analysts that will help win the War on Terror.

Finally, this legislation attempts to reform the Presidential appointments process, which has been broken for decades. An amendment I offered on the Senate floor would require the Office of Government Ethics to submit a report to Congress evaluating the financial disclosure process for executive branch employees within 90 days of the date of enactment. It would require the Office of Personnel Management to submit a list of presidentially appointed positions to each major party candidate after his or her nomination. It would require the Office of Government Ethics, in consultation with the Attorney General, to report to Congress on the conflict of interest laws relating to Federal employment. The provision would also require each agency to submit a plan to the President and Congress that includes recommendations on reducing the number of positions requiring Senate confirmation. I hope that we are able to take definitive action to reform the appointments process in the 109th Congress and finally reform a process that has been examined by no less than 15 commissions, including the 9/11 panel.

I would like to offer an observation regarding the Office and Director of National Intelligence which this bill establishes. The director only will be successful if an individual is chosen who can develop a strong working relationship with the President. In other words, the DNI can be successful with the powers provided by Congress if this individual has the confidence and trust of the President. If not, then no amount of authority granted to that individual by Congress will make a difference.

Similarly, the Office of the Director will have to be staffed by the best and brightest minds in the Intelligence Community if it is going to be successful in managing and improving U.S. intelligence efforts. I hope that our Intelligence Community agencies will work closely with the DNI, his staff, and the new intelligence centers to ensure their effectiveness and enhance the security of the United States.

The passage of this legislation also places a new burden on Congress. Every Member of the Senate, but especially the members of the Senate Select Committee on Intelligence, will need to be involved in ensuring that this legislation is implemented effectively. Robust congressional oversight of intelligence is vital, and we here in this chamber are not off the hook just because we have passed this bill.

Finally, I want to inform my colleagues that while we have demonstrated our willingness to reform the

structures and processes of the executive branch to better protect our Nation, we have been less willing to reform our own structures and procedures. The 9/11 Commission recognized that changing congressional committee jurisdiction is exceptionally difficult but also noted reforms of the executive branch ''will not work if congressional oversight does not change too.'' They recommended that the Senate and House each establish a single authorizing committee for the Department of Homeland Security.

I remain deeply disappointed that the Senate did not do this in October. Rather, Senate Resolution 445 maintains authorizing jurisdiction over significant elements of DHS with at least three different committees. The inappropriately renamed Committee on Homeland Security and Governmental Affairs will have jurisdiction over less than 10 percent of the DHS workforce and less than 40 percent of its 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.

It is disappointing that the Senate was unable to put aside turf considerations and adopt meaningful reform of its committee structure. Shame on us for not doing better. I intend to raise this issue again when Congress reconvenes in January and hope that my colleagues will join me in that effort.

Once again, I would like to thank Senators COLLINS and LIEBERMAN and their staff for all their hard work on this legislation. I hope they are proud of their efforts.

I yield the floor.

Ms. SNOWE. Mr. President, I rise to support the conference report to accompany the intelligence reform legislation before us today.

First and foremost, I want to recognize and thank my colleague, the Senator from Maine and chair of the Governmental Affairs Committee, Ms. COLLINS, for her exceptional and tireless work throughout the past several months to produce this comprehensive to reform to our nation's intelligence community. I applaud her for undertaking this historic effort and for guiding this legislation through her committee and through the conference with the House of Representatives on a bipartisan basis.

As well, I want to express my appreciation to the ranking member, Senator LIEBERMAN, for his efforts in bringing us to this day. It truly was an enormous undertaking that was assigned to the Governmental Affairs Committee, and I want to thank them for all they have done on this intelligence reform legislation.

Intelligence community reform is not a new issue. Since the First Hoover Commission in 1949, studies have been conducted, commissions have been established, and reports have been issued on how best to structure and reform our Intelligence Community.

Despite over 50 years of debate on the issue, it was the morning of September 11, 2001, and all that followed thereafter that provided the major impetus to get us where we are today, on the floor of the U.S. Senate passing legislation to finally address what has eluded so many for so long.

To say that September 11 is a seminal moment for our nation is an understatement. That day forever changed the way we view the world. It was that day, more than any one before, that proved that we have entered a new era where our nation faces very different, more pervasive and inimical threats.

It was a day, more than any before, which proved that intelligence is now and must always be our best, first line of defense against a committed enemy who knows no borders, wears no uniform and pledges allegiance only to causes and not states.

It was a day that has proven that the intelligence community's old structure and old ways of doing business are insufficient for confronting the challenges of the twenty-first century.

As a member of the Senate Select Committee on Intelligence, my position on intelligence community reform has been steady and consistent—I was an early supporter of comprehensive reform and came to believe that a new Director of National Intelligence was vital in order to address the deficiencies and failures that became evident to us as a Congress and as a nation. The work of the Senate Select Committee on Intelligence over the past 2 years in undertaking a thorough review of the pre-war intelligence on Iraq's weapons of mass destruction programs, the regime's ties to terrorism, Saddam Hussein's human rights abuses and his regime's impact on regional stability allowed me to delve into those failures and ask pointed questions about the methods and organization of the community.

After the in-depth analysis of 30,000 pages of intelligence assessments and source reporting, and the interview of more than 200 individuals, the committee produced a report in July, 2004 that indisputably begged for intelligence community reform.

I joined several of my colleagues, most notably, Senator FEINSTEIN, on legislation overhauling the community and championing the idea of establishing a position, to be filled by single person, independent from the day to day responsibilities of running a single intelligence agency, and whose sole responsibility is to lead and manage the intelligence community. The Feinstein legislation, I believe, was a catalyst from which to begin this reform and I am proud to have been associated with it. Senator FEINSTEIN's early and steadfast work on this issue was crucial and I commend her for her dedication and vision.

The conference report we have before us today is not perfect. It is not, in my mind, an ideal solution. There are holes—some glaring—that I believe should be filled. But the fact that we are on the precipice of passing such a landmark package is indeed impressive. This bill is a product of compromise and again, I want to thank my Senate colleagues, led by Senators COLLINS AND LIEBERMAN, who served on the conference committee that produced this bill.

Mr. President, issues of accountability have often been central to the work we as Senators do in seeking to bring better government to our constituents—particularly when matters of national security are at stake.

In that vein, Mr. President, before the release of the 9/11 Commission report earlier this year, I introduced stand-alone legislation—cosponsored by Senator MIKULSKI creating an Inspector General for Intelligence. The ''Intelligence Community Accountability Act of 2004'' proposed an independent inspector general for the entire intelligence community—all fifteen agencies and department members. I introduced this legislation largely as a result of my experience as a member of the Senate Intelligence Committee and the revelations of the investigation on the pre-war intelligence of Iraq.

The version of the reform bill adopted by the Senate in October embraced the concept and spirit of my earlier bill and included language creating an Inspector General for the Director of National Intelligence.

I was disappointed to learn that much of the language included in the Senate-passed version of the bill was not ultimately included in the final package before us today. The conference agreement gives the DNI the authority to establish an IG according to the guidelines set forth in the Inspector General Act of 1978. Unfortunately, the conference agreement does not mandate that he establish an IG.

I want to make clear my intentions to continue working for better and more comprehensive accountability in our intelligence community. It is my view that the scaling back of the Inspector General provision in this bill flies in the face of the 521 page report that followed the Intelligence Committee's investigation on Iraq pre-war intelligence and ignores vital problems of information sharing that have been found throughout the community.

My strong preference would be to codify and explicitly define expanded authorities for the DNI's inspector general rather than simply give the DNI the authority to create an IG on his/her own. While I am pleased that the conference agreement does retain DNI inspector general language in spirit, I am dismayed that it is not stronger.

I firmly believe that a community-wide IG should have the authorities to delve into the coordination and communication between and among the various entities of the intelligence community.

An inspector general will help to enhance the authorities of the National

Intelligence Director that we will shortly create, assisting this person in instituting better management accountability, and helping him/her to resolve problems within the intelligence community systematically.

Ideally, the inspector general for intelligence should have the ability to investigate current issues within the intelligence community, not just conduct ''lessons learned'' studies. The IG should have the abilities to seek to identify problem areas and identify the most efficient and effective business practices required to ensure that critical deficiencies can be addressed before it is too late, before we have another intelligence failure, before lives are lost.

In short, an inspector general for intelligence that can look across the entire intelligence community will help improve management, coordination, cooperation and information sharing among the intelligence agencies. A strong, effective IG will help break down the barriers that have perpetuated the parochial, stove-pipe approaches to intelligence community management and operations.

Too many incidents of failure to prevent attacks, failure to properly collect the needed intelligence, failure to adequately analyze that intelligence and failure to share information within the community beg for better accountability in the entirety of the community. Who better to do this than a single IG, who can reach across the community, work with the existing individual agency IG's, and confront any problem with a macro, overarching view? This remains an issue on which I look forward to further working with my colleagues in the very near future.

As I stated earlier, members of the Senate Select Committee on Intelligence have spent a great deal of the past year looking at the intelligence available to national policymakers in the run-up to military action in Iraq. One of the major conclusions we drew was that the intelligence community suffered from a collective presumption that Iraq had an active and growing weapons of mass destruction program and that this ''group think'' dynamic led intelligence community analysts, collectors and managers to both interpret ambiguous evidence as conclusively indicative of a WMD program as well as ignore or minimize evidence that Iraq did not have active and expanding weapons of mass destruction programs.

From our review, we know the intelligence community relied on sources that supported its predetermined ideas, and we also know that there was no alternative analysis or ''red teaming'' performed on such a critical issue, allowing assessments to go unchallenged. This loss of objectivity or unbiased approach to intelligence collection and analysis led to erroneous assumptions about Iraq's WMD program.

For this reason, I believed that was vital that we use this opportunity to reform the intelligence community to ensure that the new National Intelligence Director was given the tools and the authority to ensure that alternative analysis becomes a key component in the development of national intelligence products. To that end, I offered amendment during the Senate debate that called on the Director of National Intelligence to establish, as he sees fit, alternative analysis units within our analysis agencies.

I am pleased the conferees elected to retain provisions within the bill that require the Director of National Intelligence to establish a process for ensuring that elements of the intelligence community conduct alternative analysis of their intelligence products. National policy makers must be confident that the underlying assumptions and judgements of any analysis have been tested and found valid before making decisions that affect our national security.

Another key failure the committee uncovered was in the production of a comprehensive and coordinated intelligence community assessment of Iraq's WMD programs. In fact, a National Intelligence Estimate on Iraq's weapons of mass destruction programs was not written until Congress requested that one be drafted in September 2002, in the midst of the debate about taking military action against Iraq.

We received the NIE just 2 weeks before we voted to authorize the President to take action in Iraq. The intelligence community should have been more aggressive in identifying Iraq as an issue that warranted the production of a National Intelligence Estimate and should have initiated the production of such an estimate prior to the request from Congress.

For this reason, I offered an amendment that would have required the examination of the process by which the NIE's are initiated, developed, coordinated and disseminated to national decision makers. I believe we must develop methods to ensure that NIE's are linked to priorities outlined by the President and Director of National Intelligence and not simply developed in an ad hoc fashion.

It is unacceptable that just weeks before Congress considered the weightiest matter that will ever come before us—the decision to commit our young men and women to war—the intelligence community only first began working on an intelligence estimate on what they would face. We must do better than that. We must have the foresight to know what threats face us in the future and the ability to develop and report accurate and timely national intelligence estimates.

I am disappointed that the final bill passed out of conference did not include provisions for streamlining the development of our National Intelligence Estimate and I will continue to work toward improving that process.

During the year, we in the committee heard testimony that indicated that the effectiveness and interagency coordination within the Terrorism Threat Integration Center left much to be desired so I am vitally interested in what structures work best for integrating the vast intelligence collection, analysis and dissemination efforts necessary to counter the international threat of terrorism. Coupled with the 9/11 Commission's recommendation that a series of such centers be established, I believed it was time that we took the time to understand what worked well in such centers and what didn't. Therefore I amended the Senate bill to require an evaluation of the effectiveness of the NCTC at the end of one year. That evaluation would have included an assessment of whether the NCTC is accomplishing their mission, the state of interagency relations, problems or issues relating to personnel assignments, funding, and so forth.

Unfortunately, with this bill, will not have the opportunity to understand whether the NCTC construct is the best way to approach other threats facing the nation. My concern has been amplified by the merging of the TTIC into the NCTC and the establishment of a National Counter Proliferation Center in this bill. Congress will need to closely monitor the effectiveness of such centers to ensure that they provide the nation with the agility and flexibility we must have to counter the 21st century threats.

The legislation before us today addresses another key issue: the continuing vulnerability of our transportation system. Obviously, failures in transportation security were paramount in the September 11 attacks. As the 9/11 Commission report states, the 9/11 terrorists were ''19 for 19'' in penetrating our shortcomings. To be sure, we can never secure our entire transportation system 100 percent. But, given the consequences of a failure to secure the system, that doesn't mean we should not expend 100 percent of our effort in trying.

First, the conference report implements the central 9/11 Commission recommendation with respect to transportation security by requiring that the Secretary of Homeland Security develop and implement a national, overarching strategy for transportation security. Timely development of this strategy is critical so that we are able to understand what needs to be done, what we need to do to get there, and to fill the gaping holes in our homeland security system as quickly as possible.

This bill also addresses the issue of air cargo security, which in my view is currently a gaping hole in our homeland security net—particularly when you consider that half of the hull of each passenger flight is typically filled with cargo. As Governor Kean, Chair of the 9/11 Commission, put it, quite simply, before the Senate Commerce Committee this summer, ''The Transportation Security Administration must improve its efforts to identify and physically screen cargo.''

The bill before us today would help TSA to do just that by incorporating an amendment written by Senator ROCKEFELLER, which I cosponsored, authorizing $600 million to enhance security on both all-cargo and passenger aircraft. The conference report also requires TSA to develop better technologies for air cargo security, authorizes funding for equipment and research and development and to create a pilot program to evaluate the use of currently available and next generation blast-resistant containers.

Overall, with respect to transportation security, I believe that the comprehensive, bipartisan bill before us today will give TSA the tools it needs to carry out his critical piece of the homeland security puzzle—securing our air transportation system.

I have addressed some of the issues that were central to my work on this matter and shared many of my concerns with this conference agreement package. It is critical, however, that I also express my deep sense of satisfaction that we are here today, ready to pass this bill and send it to the President's desk.

We have come a long way this year. And while it is not a perfect product, this legislation is still one the American people can be proud of. As of last week, we were not even sure this accomplishment would be attributed to the 108th Congress or if we would begin anew next year with the 109th. This legislation builds on the recommendations of the 9/11 Commission and also addresses the views of many other studies and related commissions which focused on protecting the United States.

Mr. President, on September 7, 2004, I had the opportunity to question members of the 9/11 Commission during a SSCI hearing and in response to my question about how much we needed to accomplish in this round of reform, former Secretary of the Navy John Lehman reminded us that in the 1947 National Security Act, there were at least three major fine-tunings in the subsequent years.

He told us that the basic framework was passed as one package, but it was recognized there was more needed to be done or refining what was done in the original act. He said that if we could get the framework passed, then the flesh can be put on the bones further down the road. He specifically mentioned that some things such as how many of the national intelligence centers we should establish could wait until the DNI got his feet on the ground but that our primary focus should be to put the framework in place now.

I agree with Secretary Lehman and that is why I will support passage of this bill even while believing we have much work left ahead before we have successfully transformed our intelligence apparatus, in the executive branch and the legislative branch, into an organization that is fully equipped to meet the challenges and threats this Nation will face in the future.

Mrs. BOXER. Mr. President, I am pleased to have this opportunity to vote in support of the Intelligence Reform and Terrorism Prevention Act. Passage of this conference report today is an important step forward in defending our country against the new threats that face us.

While I expect that the overwhelming majority of the Senate will vote in favor of the conference report today, it has not been an easy road to this point. The Bush administration fought tooth and nail against creating an independent commission to investigate the Government's failings leading to the tragic day of September 11, 2001. And, once the 9/11 Commission was established, the President's record of cooperation was spotty, at best. But largely because of the brave efforts and persistence of those families who lost loved ones on 9/11, these obstacles were overcome and the important recommendations made by the bipartisan 9/11 Commission will be enacted into law.

The 9/11 Commission, led by co chairs Thomas Kean and Lee Hamilton, did this country a great service by conducting a thorough investigation of the events leading up to September 11, 2001. The report issued in July contained more than 40 important recommendations that will make us a stronger nation as we work to confront the dangers of global terrorism. Through the hard work of Senator COLLINS, Senator LIEBERMAN and others, these recommendations were incorporated into bipartisan legislation that easily passed the Senate. And although the House of Representatives did not take the same bipartisan approach, the final negotiated conference report is a good bill that will improve our ability to fight terrorism in several ways.

First, the bill creates a new Director of National Intelligence to serve as the head of all 15 intelligence agencies and control their budgets. This person would be accountable to Congress, the President, and the American people in implementing the National Intelligence Program.

Second, the bill requires the President to create a new information sharing environment. The 9/11 Commission found that our ability to defeat terrorism is severely hampered because government agencies are resistant to sharing information. This provision will ensure that information about terrorists is shared not only among Federal agencies, but also between Federal, State and local agencies.

Third, the bill creates a new National counterterrorism Center to plan and coordinate counterterrorism missions and a new National Counterproliferation Center to improve the Government's ability to halt the proliferation of weapons of mass destruction.

Fourth, the bill increases the number of border guards and immigration agents while also improving surveillance capabilities along the southwest border.

Finally, the bill improves security for our aviation system, including additional funds for Federal air marshals. And while I am pleased that conferees took note of my concern about protecting the anonymity of Federal air marshals, I do not believe the final provision is strong enough.

Clearly, this bill cannot be the last piece of legislation we pass to make us safer. There is much more work to be done to protect our ports, our nuclear and chemical plants, and the flying public. Our first responders need far more attention so they have the interoperable communications systems they need, and an adequate number of personnel to protect our streets at all times and for whatever reason. I also believe that we are moving far too slowly on developing countermeasures to protect commercial aircraft against the threat of shoulder fired missiles. I will press hard for action on all of these issues so that we do not simply return to business as usual.

America will never forget the tragedy that took place on September 11, 2001. We are a changed Nation because of it. The families of those who lost their lives that day have done tremendous work in fighting for this bill. That is why I am pleased we are passing this bill today. The Federal Government must do everything it can to prevent another attack and today's vote is a step in the right direction.

Mr. FEINGOLD. Mr. President, with a recognition that this bill is imperfect, and with the firm conviction that this effort is only one step in a much broader effort needed to get this country on the right track to effectively defeat the terrorist forces that have attacked this country, I will vote in favor of the intelligence reform conference report today.

I have tremendous respect for the 9/11 Commission that made the recommendations at the heart of this legislation. Their report was not characterized by an ill-considered rush to simply act, but rather an imperative to act wisely. It was not colored by partisan biases, or tainted by self deluding rosy scenarios about where we stand as a country. I may not agree with every word in the 9/11 Commission's report, but I strongly agree with the vast majority of it, and I believe that the Commission performed a tremendous service for the American people.

Among the most detailed and thoughtful recommendations of the Commission were those focused on the urgent need for reform of America's intelligence community. By stressing unified effort, and most importantly, accountability, the Commission pointed the way toward the reforms contained in this bill.

This bill puts someone in charge of America's intelligence community—someone to be appointed by the President and confirmed by the elected representatives of the American people in

the Congress. The Director of National Intelligence will be in charge not simply via title and not only because we reorganized boxes on an organizational chart. This legislation provides real authorities to the DNI in terms of allocating resources, establishing tasking priorities, and ensuring information-sharing to unify our efforts. It is up to the Director to use the powers granted in this bill to make this community function—to make sure that the right people have the right resources and the right priorities, and that they share crucial information with their colleagues.

And I will add that it is up to the President of the United States and this Congress to ensure that the lines of authority and the clear accountability laid out in the language of this legislation come alive. We must insist on real accountability; we must accept nothing less.

The conference report also establishes, in law, the mandate for the National Counterterrorism Center to bring an integrated effort to that urgent priority. If we are ever to connect the disparate dots that can shed light on the methods, the plans, and the vulnerabilities of fluid, flexible terrorist networks that operate in the shadows, we must integrate our own efforts, not as an afterthought, but as a fundamental organizing principle.

However, I am troubled by some provisions that were added in conference that have nothing to do with reforming our intelligence network. The bill includes in section 6001 what has come to be known as the ''lone wolf'' provision. The lone wolf provision eliminates the requirement in the Foreign Intelligence Surveillance Act, FISA, that surveillance or searches be carried out only against persons suspected of being agents of foreign powers or terrorist organizations. I am very concerned about the implications of this provision for civil liberties in this country.

It is important to remember that FISA itself is an exception to traditional constitutional restraints on criminal investigations, allowing the government to gather foreign intelligence information through wiretaps and searches without having probable cause that a crime has been or is going to be committed. The courts have permitted the government to proceed with surveillance in this country under FISA's lesser standard of suspicion because the power is limited to investigations of foreign powers and their agents. This bill therefore writes out of the statute a key requirement necessary to the lawfulness of intrusive surveillance powers that may very well otherwise be unconstitutional.

By allowing searches or wiretaps under FISA of persons merely suspected of engaging in or preparing to engage in terrorism, the bill essentially eliminates the protections of the Fourth Amendment. I voted against the lone wolf bill when it passed the Senate early in this Congress. I believe there are better and more constitutional ways to deal with a situation where evidence of a connection to a foreign government or terrorist organization is not easily obtained.

Even if section 6001 survives constitutional challenge, it would mean that non-U.S. persons could have electronic surveillance and searches authorized against them using the lesser standards of FISA even though there is no conceivable foreign intelligence aspect to their case. This provision may very well result in a dramatic increase in the use of FISA warrants in situations that do not justify such extraordinary government power.

When the lone wolf provision was considered in the Senate as a stand alone bill last year, I supported an amendment by Senator FEINSTEIN that we thought was a reasonable alternative way to make sure that FISA can be used against a lone wolf terrorist, without eliminating the important agent of a foreign power requirement. The amendment would have created a permissive presumption that if there is probable cause to believe that a non-U.S. person is engaged in or preparing to engage in international terrorism, the individual can be considered to be an agent of a foreign power even if the evidence of a connection to a foreign power is not clear. The use of a permissive presumption rather than eliminating the foreign power requirement would have maintained judicial oversight and review on a case by case basis on the question of whether the target of the surveillance is an agent of a foreign power. The permissive presumption would permit the FISA judge to decide, in a given case, if the government has gone too far in requesting a FISA warrant.

Senator FEINSTEIN's formulation would have put some limit on the government's ability to use this new power to dramatically extend FISA's reach. If the government comes to the conclusion that an individual is truly acting on his or her own, then our criminal laws concerning when electronic surveillance and searches can be used are more than sufficient. True lone wolf terrorists can and should be investigated and prosecuted in our criminal justice system. Section 6001 allows the government to use FISA to obtain a warrant for surveillance even if it knows that the subject has no connection whatsoever with a foreign power or a terrorist organization. That is not right.

I am also very concerned about the material support, section 6601 et seq., and pre-trial detention, section 6952, provisions contained in the conference report. Neither of these provisions was considered by the Senate, or even by the Senate Judiciary Committee. While it appears that the material support provision adopted by the conference is not as broad as the provision contained in the House bill, its full implications cannot possibly be analyzed in the brief time we have to consider this bill.

The material support provision amends and expands the current crime of providing material support to terrorists or terrorist organizations. One federal court, of course, has ruled that a provision of the current statute is unconstitutional because it criminalizes First Amendment protected activities. In January, a federal judge in California ruled that a provision added by the PATRIOT Act criminalizing the provision of ''expert advice or assistance'' to a terrorist organization was vague and therefore unconstitutional. The judge found that the term ''expert advice or assistance'' could be interpreted to include unequivocally pure speech and advocacy protected by the First Amendment. The judge found that the PATRIOT Act bans all expert advice and assistance, including providing peacemaking or conflict resolution advice, and places no limitation on the type of expert advice and assistance that is banned.

The conference report attempts to cure this constitutional defect in the law. It states that the law criminalizing providing material support to a foreign terrorist organization shall not be construed to abridge rights guaranteed by the First Amendment. The conference report also allows an exception for providing personnel, training, or expert advice or assistance that is approved by the Secretary of State and the Attorney General. But I am not convinced that these provisions cure the constitutional flaws. And expanding this provision is therefore the wrong way to go.

Furthermore, as I noted earlier, the material support provision in the conference report has not been debated and analyzed in the Senate Judiciary Committee or even on the floor of the Senate when this bill was considered before the election. The 9/11 Commission strongly recommended that when determining whether to expand Federal law enforcement power, the burden is on the executive branch to show how its proposals would materially enhance security and what steps it will take to ensure the protection of civil liberties. The executive branch has not even started to meet that test here. We don't know how this new provision will work, and what problems might arise because of it. We haven't had the opportunity to consult with experts and consider amendments in the normal legislative process. Congress and the American people deserve a full debate on this issue. Inserting this provision in the conference report without that debate was a mistake.

Similarly, the pretrial detention provision was not recommended by the 9/11 Commission, and the administration has never shown how current law is inadequate. Furthermore, like the material support provision, this provision did not receive adequate consideration by the Senate. At the only hearing where this issue was raised this year, the Department of Justice could not give a single example where current

law failed and this expanded presumption of pretrial detention was needed. Current law, which allows for bail to be denied if a defendant is a flight risk or a danger to the community, is fully adequate to cover the kinds of terrorism cases where bail should not be granted. Reasonable bail is a constitutional right. I am very troubled by the expansion of the presumption that bail will be denied.

Unfortunately, this Justice Department has a record of abusing its detention powers post-9/11 and of making terrorism allegations that turn out to have no merit. It is worth noting that the crime of material support of terrorism, which has been expanded in this bill, is one of the crimes where a suspect is presumptively denied bail. In sum, as with the material support provision, the administration has not met its burden of showing how the expanded pretrial detention provision is necessary and would not impair constitutional rights and protections. It has no place in this bill.

This bill is not perfect. Over time, as the new structure begins to operate, we may find that additional changes are needed. But the conference report takes critically important steps in the right direction. I commend Senators COLLINS and LIEBERMAN for working tirelessly to ensure that this legislation becomes law this year.

Mr. REID. Mr. President, the United States of America today is the greatest military force in history. Our men and women in uniform are second to none. Nobody disputes our military superiority. And yet, military might alone will not win the war on terror.

Military might alone will not win because our enemies will never meet us face to face. Instead, they will try to hit us when we aren't looking. That is why good, solid intelligence is one of our most important weapons in the war on terror.

Our enemies caught us off guard on September 11, 2001. And even as we vowed that it must never happen again, we realized that we needed to make some fundamental changes in our intelligence agencies. The creation of the 9/11 Commission was a major step toward needed change. There was initially some political opposition to this Commission, but mainly because of the unrelenting support of the families of 9/11 victims, we created the Commission.

One of these family members is Denise Keasler of Las Vegas, who lost her daughter, Karol Keasler, in the twin towers. Karol worked on the 89th floor of the World Trade Center. After the first plane hit the north tower, she called her mother to tell her that she was OK. Then the line went dead.

Like many of the people who lost loved ones that day, Denise has dedicated herself to reforming our intelligence system. And was because of the dedication of people like her that the 9/11 Commission was created. Once the Commission was in place, its members rose above partisan politics. They unanimously passed a report that contained comprehensive recommendations to make our intelligence better and our country safer. The Senate responded to the Commission's work and on October 6 overwhelmingly passed a reform bill that enjoyed the support of the commission and the families.

This conference report also enjoys the strong support of the 9/11 Commission, and the families who lost loved ones. Most important of all, it enjoys the strong support of the American people. This bill creates a strong National Intelligence Director and a Counterterrorism Center, as well as an independent board to protect our civil liberties.

These reforms will make it harder for information to slip through the cracks of our intelligence system. They will make it easier for our intelligence officials to connect the dots and see the kind of warnings that could have prevented the tragic events of 9/11. They will make it easier to coordinate the efforts of the 15 different agencies that are responsible for providing the good intelligence we must have to win the war on terror.

Along with the Congressional reforms we achieved in October, we have improved our intelligence operations and followed the key recommendations of the 9/11 Commission.

I appreciate the hard work of the Commission and its co-chairs TOM KEAN and LEE HAMILTON, who endorsed this conference report. I appreciate the House leadership for allowing a vote on this bill, despite opposition from many members of the majority parry. And of course our Nation owes a debt of gratitude to Denise Keasler and all the other Americans who lost loved ones on 9/11, and who fought tirelessly for these reforms.

Denise said today that she is so glad this bill is passing, because she doesn't want a single other American to endure the kind f pain that she has suffered since her daughter was killed on 9/11. That is the goal we all share. This bill will move us closer to making our country safer.

Mrs. FEINSTEIN. Mr. President, I today offer my support for the conference report on the Intelligence Reform and Terrorism Prevention Act of 2004. Simply put, this legislation represents the first, and most critical, step towards bringing our national security structure into the 21st Century.

I begin by offering my thanks, and praise, to Senators SUSAN COLLINS and JOE LIEBERMAN. This bill would never have been done without their extraordinary work. Their effort combined intellectual distinction and adherence to the best traditions of the United States Senate. They were able to construct good, solid law and then build a consensus that crossed party lines in the midst of an intensely political season.

When we speak of how the Senate should work—with a spirit of collegiality and mutual respect—we are talking about Senators COLLINS and LIEBERMAN, and what they did here to make America safer.

This legislation is particularly important to me, for I have been working to bring about the essential reform contained in this law—the creation of Director of National Intelligence to effectively lead the intelligence community—for a long time.

This work began in 2002, when I introduced the Intelligence Community Leadership Act, which would have created a Director of National Intelligence with authority over budget, personnel, and strategy, similar to what is in the bill before the Senate today.

First, the Senate and House Intelligence Committees joined together to create the ''Joint Inquiry into the attacks of September 11th, 2001.'' That inquiry carefully examined the intelligence-related background of the attacks.

The resulting report had, as its very first recommendation, the creation of a Director of National Intelligence. This recommendation was unanimously adopted by both the Senate and House Intelligence Committees.

The following year, the Senate Intelligence Committee examined the intelligence relating to the assertions that Iraq possessed weapons of mass destruction.

As we all know, no such weapons were found, despite prewar intelligence which unambiguously stated that Saddam Hussein both possessed and intended to use such weapons.

The findings of that report illustrated what the Joint Inquiry had found the year before: The failures were in part due to flaws in the intelligence community, most notably the lack of an effective leadership structure.

Even as the Senate Intelligence Committee was completing its work, so too was the 9/11 Commission.

Again, their findings were clear. The Commission found that America's intelligence community needed structural reforms, most important of which was the creation of a single head of the intelligence community, with adequate budget, personnel, and statutory authority. Further, that person could not simultaneously serve as Director of the Central Intelligence Agency.

In the beginning of this Congress, I reintroduced the original 2002 legislation, and soon I was not alone. Senators SNOWE, LOTT, WYDEN, and MIKULSKI joined my effort, along with Senators ROCKEFELLER and GRAHAM, the current and former Vice Chairman of the Intelligence Committee.

In August of 2004, I wrote with Senators SNOWE, GRAHAM, MIKULSKI and WYDEN to the President asking for his ''support and assistance in moving forward with legislation to make needed changes to the structure of our nation's intelligence community.'' I ask unanimous consent that this letter be printed in the RECORD immediately following this statement.

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

(See exhibit 1.)

Mrs. FEINSTEIN. Soon thereafter, Senators COLLINS and LIEBERMAN were given the monumental task of moving forward with the project of intelligence reform. They were certainly the right choice. I provided my legislation to them, and I am pleased that much of it was included in their finished product, which in turn forms the basis for the conference report we are considering today.

Let me now turn to the substance of the law we are about to vote upon, noting that this legislation is just a first step towards reform. It is a top-level structural change that is designed to lay the groundwork for the deep cultural, bureaucratic and operational changes which are needed throughout the intelligence community. The DNI will have a big job to do, and this legislation is just the beginning.

As I have noted, the way our intelligence community is structured is fundamentally flawed. It is unsuited for the 21st century. The old days of the Soviet Union and Communism are over, replaced by a world of asymmetric threats, rogue states, and shifting terror organizations.

The most important of these structural failings is related to what under current law is called the office of the Director of Central Intelligence, known as the DCI. That title involves two separate, and I believe incompatible, jobs—head of the intelligence community and head of the Central Intelligence Agency.

Thus, there is only a nominal head of the intelligence community, who cannot be effective. This is because of two problems built into its structure.

The first problem is that the DCI has two basic, incompatible jobs: Leader of the intelligence community, which includes 15 agencies and departments, and in that role is the principal intelligence adviser to the President; and leader of the Central Intelligence Agency, which is only one of the 15 agencies which make up that big, and sometimes fractured, community.

These two jobs cannot effectively be held by one person. Each is a full time job. They require full and undivided attention.

Perhaps worse, they can be in direct conflict, because what is good for the intelligence community in terms of mission, resources, and strategy, may not be good for the ''troops'' at the Central Intelligence Agency.

Secondly, under the current structure, the DCI lacks basic tools needed to run any large government department—budget, personnel, and statutory authority.

Today, the DCI nominally administers the nuts and bolts functioning of the intelligence community, money and people. I say ''nominally'' because the DCI does not really control all that much of that money, or the people who use that money to run operations, conduct analysis, and build spy systems.

The solution to this problem is to ensure that the position of intelligence community director is provided real budget authority, real personnel authority, and real authority to set strategy and policy, and this bill does that.

This conference report includes compromises that slightly diminish these authorities as they were originally conceived in the Senate bill which overwhelmingly passed in September.

I would have preferred that the DNI have more authority, but I understand and respect the concerns raised by some, including my friend and colleague Senator WARNER of the Armed Services Committee, that we could unintentionally harm the uniformed military.

The result is a compromise, and I think we can and should live with that compromise.

The structure that is set out in the conference report closely tracks what originally was contained in the 2002 Intelligence Community Leadership Act: It creates a Director of National Intelligence, separate from the CIA Director; The DNI is given adequate budget, personnel and strategic planning authority; The DNI can set priorities for intelligence collection and analysis, and manage tasking across all 15 agencies.

It also contains some ideas advanced by the 9/11 Commission which I believe are important. Most important of these is the creation of a National Counterterrorism Center, which will serve under the DNI when engaged in intelligence-related matters. It also includes the creation of a Directorate of Intelligence within the Federal Bureau of Investigation.

What is the bottom line? It is that, with the passage of this bill, we will have taken a critical concrete step towards equipping our Nation to defend against the enemy of the 21st century—terrorists, rogue states and others who would do us harm.

We recognize that what worked in 1947 does not necessarily work today. We create a new intelligence community, and a new leader of that community, with stature and authority to do the job.

I thank my colleagues in this and the other body who worked so hard to bring us to where we are today, prepared to pass a truly historic law which will make everyone safer in an unsafe world.

EXHIBIT 1

U.S. SENATE,
Washington, DC, August 3, 2004.

Hon. GEORGE W. BUSH,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We write to seek your support and assistance in moving forward with legislation to make needed changes to the structure of our Nation's Intelligence Community. We are co-sponsors of the ''Intelligence Community Leadership Act of 2003,'' which was first introduced on January 16, 2003, legislation which we believe is a valuable starting point for this effort.

That legislation closely matches the recommendations recently made by the 9–11 commission, most importantly by ''splitting'' the two jobs held by one person into two: a ''Director of National Intelligence'' to lead the Intelligence Community, and a ''Director of the Central Intelligence Agency'' to provide leadership for the CIA.

You announced yesterday your support for the creation of a Director of National Intelligence to oversee our nation's intelligence agencies. In addition to this fundamental structural change, we agree with many of the Commissioners' most important recommendations concerning additional intelligence reform. We look forward to working with you in implementing these important reforms.

We would welcome the opportunity to discuss the legislation with you, and look forward to working together to address these critical issues.

Sincerely yours,

DIANNE FEINSTEIN,
OLYMPIA J. SNOWE,
BOB GRAHAM,
BARBARA A. MIKULSKI,
RON WYDEN,
United States Senators.

Enclosures as described.

Mrs. MURRAY. Mr. President, I rise today to express my support for the Intelligence Reform and Terrorism Prevention Act of 2004. This landmark legislation will modernize and unify our intelligence community and help ensure the safety of our country.

I strongly support this vital intelligence reform bill. The 9/11 Commission worked incredibly hard to identify how to better protect our country from terrorism and gave us an excellent roadmap to protect our people. We in Washington State are proud of the outstanding work put in by Commissioner Slade Gorton. He has again done his State proud in service to our country.

My colleagues, Senators COLLINS and LIEBERMAN, deserve a great deal of credit for getting us here today. When some thought that real reform of our intelligence community was just a dream, too complicated to be realized, it was their dogged determination to craft a good piece of legislation that carried us through. And when others threw roadblocks in their path, it was their patience and perseverance that allowed us to come together and put the safety and security of our nation before politics.

I especially commend the September 11 families who bravely stood up and spoke out in favor of creating the Commission. They forced our Government to fully examine the terrorist attacks and to find ways to make our people safer. Their brave advocacy has made a difference, and this bill is a fitting tribute to their loved ones.

As a member of both the Homeland Security Appropriations Subcommittee and the Senate's 9/11 Working Group, I have looked closely at these challenges. Over the past few years, I have worked closely with the Department of Homeland Security, including the Coast Guard, FBI, TSA, Border Patrol, as well as the National Guard and local law enforcement throughout Washington State. Through our work together, I have learned first hand the difficulties they face every day in defending our country.

We need clear direction for our country's intelligence community. The Commissioners stressed better coordination between the various intelligence agencies, and this bill accomplishes that and so many other important goals. I am glad that in the same bipartisan spirit that the 9/11 Commission showed throughout their work, we in Congress were able to work through our differences to pass this most important reform bill.

I fully support the steps this bill in taking in several areas, including:

Intelligence—through the creation of a Director of National Intelligence, DNI, this bill restructures and strengthens the intelligence community. The DNI will have the authority and resources to transform the intelligence community into an agile network to fight terrorism.

Information sharing—the 9/11 Commission recommended a new, Government-wide approach to information sharing. This bill will facilitate information sharing among Federal, State, local, tribal, and private sector entities.

Privacy and civil liberties—this bill creates an oversight board that will ensure privacy and civil liberties are appropriately considered as laws regulations, and policies are implemented to protect our country against terrorism. This oversight board will safeguard individual's rights.

Transportation security—the 9/11 Commission highlighted several deficiencies in transportation security. This bill will improve passenger prescreening on airlines and cruise ships and require the TSA to develop better technologies for air cargo security.

Border and immigration enforcement—this bill includes provisions to enhance security of our borders and enforce border and immigration laws. It allows the Secretary of Homeland Security to carry out a pilot program to test advanced technologies that will improve border security between ports of entry along the northern border of the United States. These technologies would be used for border surveillance and operation in remote stretches along the border where resources are stretched thin.

Since the tragedy of September 11, Congress has passed strong legislation to protect the homeland only to see the President fail to request adequate funding to achieve the homeland security mission. We can not play homeland security roulette forever and expect to successfully defeat terrorism. To best protect the American people, we must fund our intelligence and homeland security efforts to swiftly implement these changes.

Today's action is an important step toward achieving a truly integrated national effort in the global war on terror. This bill makes significant changes necessary to meet current and future national security challenges.

I am proud to support this historic legislation, and I look forward to working with all of my colleagues in the Congress and the administration to provide the critical funding needed to achieve the homeland security mission.

Mr. CORZINE. Mr. President, I am pleased today to vote for the Intelligence Reform and Terrorism Prevention Act of 2004. The bill represents a critical step toward improving our intelligence capabilities. If faithfully implemented, it will allow our intelligence community to coordinate its efforts to thwart terrorism and defeat terrorists abroad. The establishment of a Director of National Intelligence is also necessary if we are to successfully prioritize our efforts to fight terrorism, confront threats from nation states, stabilize failed states that act as breeding grounds for terrorists, and stop the proliferation of nuclear and other dangerous weapons. The Director will also be responsible for ensuring that our policies are once again informed by accurate and objective intelligence.

Improving our intelligence capabilities is especially important to the people of New Jersey. More than 700 of New Jersey's citizens died on September 11, 2001. At least two of the 9/11 terrorists lived in New Jersey, and the anthrax that struck Washington in October 2001 originated in New Jersey. Our State is also especially vulnerable to terrorist attack. Our transportation infrastructure, chemical plants and ports are not adequately secured, and one stretch of road has been called by the FBI the most dangerous 2 miles in America.

We would not be passing this bill were it not for the families of 9/11 victims. They turned our national tragedy into meaningful reform. They have inspired us, even as they have helped make us safer. This bill is also a testament to the incredible work of the 9/11 Commission. Under the steady leadership of former New Jersey Governor Tom Kean and former Representative Lee Hamilton, the bipartisan commission put our Nation's safety ahead of politics. The Commission brought the country together in understanding the attacks of 9/11 and the events that preceded the attacks. Through its public hearings and transparent approach, they also rallied the country behind the hard, but critical work of intelligence reform.

The bill itself will not, however, make us safer, unless it is fully implemented in letter and spirit. The success of these reforms is also dependent on the people tasked with carrying them out. As a new member of the Senate Intelligence Committee, I will make sure that the bill is implemented as intended, that our intelligence community has the tools and resources to protect us, and that reforming our intelligence does not result in the infringement of our civil liberties. I will also ensure that our intelligence agencies are led by the best people our country has to offer.

Mr. BIDEN. Mr. president, I wish to speak briefly about section 7109 of the bill, which relates to public diplomacy responsibilities of the Department of State. I commend the conferees for setting forth the important statement that public diplomacy must be integral to American foreign policy. I don't have any doubt that Secretary Powell understands that fact, but it is worth codifying this statement in law.

Section 7109 adds a new section 60 to the State Department Basic Authorities Act of 1956, which, as the name implies, is the main operating statute for State Department activities. Subsection (b) of section 60 instructs the Secretary of State to make every effort to coordinate the public diplomacy activities of the Federal Government, and to coordinate with the Broadcasting Board of Governors to develop a strategy ''for the use of public diplomacy resources.''

The Broadcasting Board of Governors, BBG, is an agency that is separate and distinct from the Department of State. It was established as a separate agency in 1998 for an important reason: to place a ''firewall'' between the foreign policy makers and the journalists who operate our international broadcast services as a means of protecting journalistic integrity. The Board consists of nine members, one of whom is the Secretary of State. Of course, the two agencies do cooperate, as current law already instructs. The State Department has a voice in the Board's activities through the Secretary's seat on the Board, and the Department has a statutory mandate under the U.S. International Broadcasting Act of 1994 to provide ''information and guidance on foreign policy issues to the Board.'' And, by law, the Secretary must be consulted whenever decisions are made about adding or deleting language services.

The requirement for a strategy under section 60 must be read in light of this existing law. It does not breach the firewall. Rather, it recognizes the reality that creating a public diplomacy strategy for the Government will involve collaboration between the State Department and the BBG. The provision in this legislation does not give the Secretary any more authority with regard to the international broadcasting activities of the BBG than he has under current law, nor does it give the BBG any authority over other public diplomacy activities outside of international broadcasting.

Subsection (b) of section 7109 amends current law to further delineate the responsibilities of the Under Secretary of State for Public Diplomacy. Among other things, this subsection tells the Under Secretary to assist the Broadcasting Board of Governors to ''present the policies of the United States clearly and effectively,'' and to ''submit statements of United States policy and editorial material to the [BBG] for broadcast consideration.'' These provisions are consistent with the current practice under which editorial statements of U.S. policy are reviewed by

the Department of State. The language in the bill that material is to be submitted for ''broadcast consideration'' makes clear that final authority about what is to be broadcast rests with the BBG.

Mr. DODD. Mr. President, I rise today to speak about the conference report of the national intelligence reform bill, which is currently pending before this body. I would like first to commend Senators COLLINS and LIEBERMAN, as well as Representatives HOEKSTRA and HARMAN, for their efforts in crafting this legislation.

Let me be clear from the outset. I support the 9/11 Commission's recommendations, as I think do most of us here in the Senate. The Commission was a bipartisan group whose members dutifully dedicated well over a year of their lives to the protection of our Nation. We owe them a great debt of gratitude—not only for the hard work that went into preparing their report, but for their concerted effort since then to keep the issue of intelligence reform at the front of the national agenda.

But as we all know, many months have passed since the 9/11 Commission issued its report. And our Nation's intelligence system remains broken. That is not because the Senate failed to act. I was pleased in October when the Senate came together in a bipartisan fashion to pass the National Intelligence Reform Act of 2004, which closely followed the important recommendations of the 9/11 Commission. I strongly supported that bill.

Had the House's version of that bill followed the 9/11 Commission's recommendations as closely as the Senate's version, we would not have been here today talking about the lingering need to pass intelligence reform. Unfortunately, House Republicans included several provisions in their bill—and insisted on them during conference—that nearly derailed the entire effort.

The 9/11 Commission urged them to drop these provisions. But their pleas fell on deaf ears.

President Bush was also slow to react. Although he has professed his support for intelligence reform, during most of this time, the President sat on the sidelines as members of his own party nearly prevented its implementation.

Having said that, I am pleased that House-Senate conferees worked out their differences over this measure. I voted in support of this conference agreement a short while ago because reform of our intelligence systems is long overdue. It can not be put off any longer.

In part, this bill achieves some important objectives set out by the 9/11 Commission. It establishes the position of Director of National Intelligence, DNI, the person who, hopefully, will help coordinate the flow of intelligence to the President, as well as set budgetary priorities for a fair amount of our Nation's intelligence activities. Among other things, this bill will also establish a national counterterrorism center, and direct the Transportation Security Administration to take steps to strengthen our transportation security efforts.

But I also have strong reservations about certain aspects of this conference report.

First, the new Director of National Intelligence, DNI, would not be directly in charge of day-to-day intelligence-gathering operations. Indeed, this bill—whose language, in some crucial places, is disturbingly vague—provides that the DNI will not in practice head up the intelligence pyramid providing recommendations to the President.

Instead, the DNI will now have competition from the CIA Director, as well as the Director of the newly created National counterterrorism Center—both of whom will be presidential appointees requiring confirmation by the Senate. Rather than simplification and consolidation, it is possible that this could have the effect of creating new bureaucracies and increasing confusion.

We should remember that among the purposes of creating a DNI was to consolidate intelligence coordination efforts in one person who could craft a suitable budget, ensure sharing of information among agencies, and consolidate information for presentation to the President. It is by no means certain that this purpose will be achieved by this legislation.

Second, although the DNI would have control over much of America's total intelligence budget—roughly $40 billion—he or she would not have control over approximately 30 percent of this total, including certain tactical military intelligence operations. The Department of Defense, DOD, would retain control over those operations and funds.

Why is this a problem? Because these DOD intelligence collection agencies provide three-quarters of our Nation's military and international intelligence. Leaving aside operational control, if the DNI doesn't have budgetary authority over three-quarters of some of our most important intelligence activities, how will that person be able to effectively carry out their job of protecting the American people?

Also of concern are provisions which could affect Americans' civil liberties. For example, this bill will create an FBI intelligence directorate, and it will require the FBI to specifically train and dedicate a group of its agents to gather domestic intelligence against suspected terrorists. Obviously, we need to prevent terrorists from reaching our shores and root them out if and when they are here. But we will have to keep close watch to ensure that Americans' civil liberties are not violated as part of these efforts.

That is why I am so concerned that although this legislation creates a panel to protect civil liberties and to prevent privacy abuses, this panel will not have subpoena power, and its members will serve at the pleasure of the President. This situation calls into question whether, in practice, the panel will be able to fulfill its role of protecting Americans from the excesses of power exercised by their Government.

Despite these reservations, I voted in support of this conference report. We have already waited too long—3 years and 3 months—and the process of intelligence reform must begin. This legislation is a beginning.

The tragedy of 9/11 continues to echo today with each family that lost a loved one that horrible day. No legislative reforms can alleviate that loss or wash away the heart-wrenching pain felt by these families. But if done right, reforms might help prevent another such tragedy from happening again.

That is why I would also offer a word of advice to the administration, to the officials who are eventually confirmed for these posts, and to those whose jobs will be to root out terrorists within our borders. The American people will be watching you, as will Congress. And together, we will make every effort to ensure that the process of reform continues and that Americans' constitutionally guaranteed rights are protected.

Mrs. CLINTON. Mr. President, today is a historic day. We are coming to the end of a process that began immediately after the September 11 attacks and is ending with a historic reorganization of the intelligence community. Today's vote, coming after months of testimony before the 9/11 Commission, weeks of hearings on Capitol Hill and tough negotiations in Congress, represents a signal accomplishment in reforming our government to protect our homeland and fighting the war on terror.

Today's accomplishment, the Intelligence Reform and Terrorism Prevention Act of 2004, would not have been possible without the courage, dedication and hard work of the families of the victims of September 11. It was the persistence and resilience of these brave family members who lost their loved ones on September 11 that led to the creation of the 9/11 Commission. And it was their continued resolve that helped to keep the heat on Congress to insure that those recommendations were put into law. While not every recommendation of the 9/11 Commission is included in this bill, the bill makes historic changes in the way our government will collect and analyze intelligence so that we hopefully never again have to live through a day like September 11.

In the aftermath of September 11, and as the 9/11 Commission report so aptly demonstrates, it is clear that our intelligence system is not working the way that it should. The Commission report, following on the work of prior commissions that have studied the

issue, details how we have 15 different intelligence agencies who are not sharing information, not communicating with one another and missing important linkages. This legislation, through the creation of a Director of National Intelligence, DNI, breaks down the artificial barriers in the intelligence community and insures that there is a high level official, answerable to the President, who is working to insure that our intelligence agencies are sharing information and communicating with one another.

This legislation gives the DNI budget authority over the intelligence community which will allow him or her to exercise proper control over the coordination among agencies. In Washington, budget authority means real authority and strengthening the DNI is a major accomplishment of this bill. He or she will also be responsible for budget execution and have the authority to reprogram funds and transfer personnel. These powers will allow the DNI to establish objectives and priorities for the intelligence community and manage and direct tasking of collection, analysis, production, and dissemination of national intelligence.

This legislation also establishes a Privacy and Civil Liberties Oversight Board, as the 9/11 Commission recommended. The creation of this Board is intended to ensure that at the same time we enhance our Nation's intelligence and homeland defense capabilities, we also remain vigilant in protecting the civil liberties of Americans. Our civil liberties define us as Americans. As the 9/11 Commission said, ''Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.'' The conference report being considered today essentially charges the Board with primary executive branch responsibility for ensuring that privacy and civil liberty concerns will be appropriately considered in the implementation of provisions designed to protect us against terrorism. While the legislation that initially passed the Senate explicitly provided the Board with subpoena powers, the conference report that we are voting on today does not. That omission is unfortunate, and I will work with my colleagues in Congress to address this issue and provide such powers in the future, so that the Board will have the tools it will need to help us maintain the proper balance between our Nation's security and our liberties.

The legislation calls for dramatic improvements in the security of our Nation's transportation infrastructure, including aviation security, air cargo security, and port security. Through this legislation, the security of the northern border will also be improved, a goal I have worked toward since 2001. Among many key provisions, the legislation calls for an increase of at least 10,000 border patrol agents from fiscal years 2006 through 2010, many of whom will be dedicated specifically to our northern border. There will also be an increase of at least 4,000 full-time immigration and Customs enforcement officers in the next 5 years.

While I look forward to a productive debate on immigration issues in the next Congress, I am pleased that there are a number of key immigration reform provisions in this legislation, including those addressing the process of obtaining U.S. visas.

I am also pleased that the legislation addresses the root causes of terrorism in a proactive manner. This is an issue that I have spent a good deal of time on in the past year because I believe so strongly that we are all more secure when children and adults around the world are taught math and science instead of hate. The bill we are voting on today includes authorization for an International Youth Opportunity Fund, which will provide resources to build schools in Muslim countries. The legislation also acknowledges that the U.S. has a vested interest in committing to a long-term, sustainable investment in education around the globe. Some of this language is modeled on legislation that I introduced in September, the Education for All Act of 2004, and I believe it takes us a small step towards eliminating madrassas and replacing them with schools that provide a real education to all children.

But we are being shortsighted if we limit our educational investments to countries with predominantly Muslim populations, and if we focus solely on expanding the number of U.S.-run schools in these areas, as the Intelligence Reform and Terrorism Prevention Act does. Instead, the U.S. should work with the global community to create strong incentives for developing countries to build universal, public education systems of their own. Only then will our investments have the maximum impact because only then will they result in systemic change.

We do not know where the next Afghanistan will spring up, but we do know that extremism will flourish where educational systems fail.

The 9/11 Commission, and the commissions before it, including the Homeland Security Independent Task Force of the Council on Foreign Relations, chaired by former Senators Warren Rudman and Gary Hart—Hart-Rudman Commission—and the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, chaired by former Gov. James Gilmore III—Gilmore Commission—called for dramatic improvements in the sharing of intelligence information. In the immediate aftermath of the 9/11 terrorist attacks, I worked with a number of my colleagues bipartisan basis in focusing on the need for greater sharing of terrorist-related information between and among Federal, State and local government agencies. The sharing of critical intelligence information is vitally important if we are to win the war against terrorism. We need to ensure that our frontline solders in the war against terrorism here at home—our local communities and our first responders—are as informed as possible about any possible threat so that they can do the best job possible to protect all Americans. I am pleased that this legislation mandates major improvements in this regard.

Contained in title VII of the act are provisions from the 9/11 Commission Implementation Act of 2004, legislation introduced by Senators MCCAIN and LIEBERMAN and for which I am proud to have been an original cosponsor. Among its provisions are those that address homeland security preparedness, including a call for a unified incident command system and significantly enhancing interoperable communications between and among first responders and all levels of government. Title VII also speaks to the need for allocation of additional spectrum for first responder needs and to assess strategies that may be used to meet public safety telecommunication needs, an issue that I have focused on intensely as co-chair of the E–911 Caucus.

I am extremely disappointed, however, that this legislation does not specifically mandate an improvement in how the Federal Government allocates critical homeland security funds to States and local communities around the country. As many of my colleagues know, I have repeatedly called upon the administration and my colleagues to implement threatbased homeland security funding to ensure that the homeland security resources go to the States and areas where they are needed most. I have introduced legislation in this regard and even developed a specific homeland security formula for administration officials to consider.

But threat-based funding is not only important to me and to the New Yorkers whom I represent; it was also a primary recommendation of the 9/11 Commission. Specifically, in its report, the Commission stated:

> We understand the contention that every state and city needs to have some minimum infrastructure for emergency response. But federal homeland security assistance should not remain a program for general revenue sharing. It should supplement state and local resources based on the risks or vulnerability that merit additional support. Congress should not use this money as a pork barrel.

The 9/11 Commission also recommended that an advisory committee be established to advise the Secretary on any additional factors the Secretary should consider, such as benchmarks for evaluating community homeland security needs. As to these benchmarks, the Commission stated that ''the benchmarks will be imperfect and subjective, they will continually evolve. But hard choices must be made. Those who would allocate money on a different basis should then defend their view of the national interest.'' In short, the Commission made unequivocally clear that the current method of allocating the majority of federal homeland security resources, i.e., on a

per capita basis alone, must be changed.

Not only did the 9/11 Commission recommend that such changes be made in how Federal homeland security funds are allocated, but commissions before it, such as the Rudman Commission, have strongly recommended it as well. Indeed, the Rudman Commission stated more than a year and a half ago that ''Congress should establish a system for allocating scarce resources based less on dividing the spoils and more on addressing identified threats and vulnerabilities. . . . To do this, the federal government should consider such factors as population, population density, vulnerability assessment, and presence of critical infrastructure within each state.''

Both the Senate and House-passed intelligence reform bills that were reconciled in this conference report contained language that sought to effectuate this important recommendation but, unfortunately, such language was not included in the conference report. As the 9/11 Commission, Rudman Commission, many other homeland security experts, and I have repeatedly asserted, there are few issues more important to our nation's homeland defense than homeland security preparedness and the proper allocation of the resources to achieve that preparedness. Therefore, I will continue to work as hard as I can with my colleagues on a bi-partisan basis to make the 9/11 Commission's call for threat and risk-based funding a reality.

At the end of the day, this legislation has the capacity to improve our security and make us safer. I would especially like to note the dogged persistence of Senators COLLINS and LIEBERMAN, who were unflinching in their work on this important bill. However, passage of this legislation is just the beginning. We have now given our Government the tools to make a difference. But as with anything in our system, success depends on the independence and accountability of those appointed to carry out these reforms. It is critical that the American people, and we in Congress, insist upon accountability from those whom we are asking to implement these reforms. I look forward to working with my colleagues in the Senate in that effort.

Once again, thank you to the 9/11 families, the 9/11 Commission and all those who have worked to make this legislation a reality. Now the hard work of implementing these reforms begins.

Mr. KYL. Mr. President, today we vote on the conference report on the intelligence reform bill, S. 2845/H.R. 10. As did the House, we will approve it and send it on to the President for his signature.

I strongly believe that our intelligence community must be reformed and appreciate the hard work in support of that objective of those Senate and House Members who have worked on the problem.

Nonetheless, I have mixed feelings about this legislation. I am neither convinced that it will fix the core problems in our intelligence community, nor that it will do no harm. Particularly in time of war, prudence demands Congress fully understand the consequences, both positive and negative, of its actions, and be cautious about mandatory change. At the same time, there are some positive reforms that can be easily implemented. I note the inclusion in the conference report of a number of much-needed provisions, which will help to ensure we have the legal authorities and resources we need to effectively fight terror. In fact, title VI includes about half of the provisions of the Tools to Fight Terrorism Act, S. 2679, an omnibus antiterrorism bill that I introduced earlier this year with several other members of the Judiciary Committee and Senate leadership.

This is the second time the intelligence reform measure comes before the Senate. We previously considered the Senate version in October, prior to the Presidential election. I voted for it to ensure a modified version could be worked out in conference, and, in the interest of allowing it to move quickly, withdrew an amendment on privacy and civil liberties oversight about which I felt very strongly. I did so with great reservations because of the many deficiencies in the Senate bill, but was assured that my concerns would be addressed in the House-Senate conference. I know that a number of my Senate colleagues voted for the bill with a similar understanding.

Unfortunately, I don't believe that some of the commitments to address Members' concerns were fully honored, and I regret that our vote for the bill was used by Senate conferees to suggest almost unanimous Senate support in order to influence House conferees to support the Senate version. The Senator from Maine said the following on October 20: ''I'm very proud of the fact that the Senate produced a bill that passed with only two dissenting votes, and I hope that we can likewise produce a product from this conference that will be signed into law shortly.'' In retrospect, it would have been better to have voted against the flawed Senate bill so House conferees would have understood that it did not enjoy universal support.

Over the last 2 months, I pressed my case on privacy and civil liberties oversight and other issues with the Members of the conference committee, the White House, and others. I know that some of my colleagues have done the same. I have studied carefully the final product on which we will vote, and, though some changes have been made, I still have serious reservations that I will discuss today.

To summarize: Regarding the central thrust of the bill, reorganization does not necessarily equal reform. This bill does reorganize; but it remains to be seen whether this reorganization will improve or damage the system we currently have in place that gets timely intelligence to our warfighters on the ground. Second, though some changes have been made to the language originally adopted by the Senate, I continue to have serious concerns about the effect of the privacy and civil liberties oversight provisions on the ability of our intelligence officers to perform their missions. I am concerned that the manner in which this oversight will be conducted will exacerbate the problem of risk aversion identified by the 9/11 Commission and the Congressional inquiry on the 9/11 attacks. Third, while I am pleased that some House provisions to reform immigration, as well as a provision I offered as an amendment to the Senate bill, were included in the final conference report, I am very disappointed that we have passed up an opportunity to do more in this area to protect our country.

Fourth, while noting my concerns about the intelligence reorganization portion of this conference report, I do want to recognize the inclusion of some important provisions from my Tools to Fight Terrorism Act.

During the debate on the Senate version of the intelligence reform bill, I discussed in detail the shortcomings of the 9/11 Commission's recommendations, on which that bill and this conference report are based. Former Secretary of Defense James Schlesinger aptly summarized what I believe to be the key problem: ''[The Commission] has . . . proposed a substantial reorganization of the intelligence community—changes that do not logically flow from the problems that the Commission identified in its narrative.''

A number of former officials also cautioned Congress from acting hastily to pass legislation without a complete understanding of the problems. For example, the Center for Strategic and International Studies released a statement before the original Senate vote on S. 2845, which warned: ''Rushing in with solutions before we understand all of the problems is a recipe for failure.'' The statement was endorsed by: former Senators David Boren, Bill Bradley, Gary Hart, Sam Nunn, and Warren Rudman; former Secretaries of Defense Frank Carlucci and William Cohen; former Deputy Secretary of Defense John Hamre; former Director of Central Intelligence Robert Gates; former Secretary of State and National Security Advisor Henry Kissinger; and former Secretary of State George Shultz.

In recent weeks, the editorial pages of several major papers, while not necessarily sharing the same substantive positions, have strongly urged Congress to begin a new process next year to pursue intelligence reform, rather than rush to pass legislation this year. The Wall Street Journal in a November 22 editorial commented: ''If this reform is really so vital, it will get done, but better to do it in a more considered fashion next year.'' Similarly, in response to Congress not considering the

conference report before Thanksgiving, the Washington Post ran an editorial which stated: ''. . . the legislation's failure strikes us as a benefit. More time and more careful deliberation is needed before such sweeping changes are enacted.'' And the Washington Times ran an editorial on November 30 which advised: ''Intelligence reform is necessary, and reasonable people can disagree on what constitutes a good bill without being insulted. Rather than getting it now, we urge Congress to focus on getting it right.''

I don't believe we can say with reasonable certainty that we are getting it right. In large part, this conference report sets up a new bureaucratic structure. It does not, however, tackle the more difficult issue of resolving cultural problems within the intelligence community, including risk aversion, group think, and a failure of leadership. These problems, along with other matters, like immigration reform and legal tools and resources for fighting terror, all identified by the 9/11 Commission, must be addressed if we are to improve our ability to predict and prevent future terrorist attacks. Indeed, those who say that this bill is needed to prevent another 9/11 can no more guarantee that result than those who advocate the status quo, reason being that neither scenario really gets at the core issues.

Additionally, and as I already mentioned, we should be mindful of the fact that we are making drastic changes to the structure of our intelligence community and the process by which it operates, while our country is fighting a war. I discussed these concerns on the floor of the Senate during the floor debate on S. 2845, the Senate version of the intelligence bill, stating:

In his testimony, Secretary Rumsfeld discussed in detail his concerns about how intelligence community reorganization could potentially adversely affect the Defense Department. He expressed his strong reservations about the national collection agencies—the NSA, NGA, and NRO—being removed from the Defense Department (where they are now located) and aligned under the direct leadership of the National Intelligence Director. He stated:

''We wouldn't want to place new barriers or filters between the military Combatant Commanders and those agencies when they perform as combat support agencies. It would be a major step to separate these key agencies from the military Combatant Commanders, which are the major users of such capabilities.''

The Defense Department worked tirelessly in the decade after the first Gulf War to ensure that the speed and scope of intelligence support to military operations would be improved for future conflicts. It was General Schwartzkopf's view that the national intelligence support during Desert Storm was not adequate. Now, as we've seen from the success of our military operations in Afghanistan, Iraq, and the broader War on Terror, ''gaps and seams,'' as Secretary Rumsfeld refers to them, have been drastically reduced.

General Myers, Chairman of the Joint Chiefs of Staff, also expressed his concerns on the subject during his testimony to the Senate Armed Services Committee, stating:

''. . . for the warfighter, from the combatant commander down to the private on patrol, timely, accurate intelligence is literally a life and death matter every day. . . . As we move forward, we cannot create any institutional barriers between intelligence agencies—and of course that would include the National Security Agency, the National Geospacial-Intelligence Agency, and the National Reconnaissance office and the rest of the warfighting team.''

I am concerned that the reorganization package before the Senate places this effective system in jeopardy.

In S. 2485, the NSA, NGA, and NRO remain within DOD; but this is somewhat deceiving. These national collection agencies will also be within the newly defined ''National Intelligence Program.'' The Committee-reported bill would essentially remove the Secretary of Defense from any meaningful management role over these agencies.

First, the National Intelligence Director would have the authority to appoint the heads of these agencies, albeit with the concurrence of the Secretary of Defense. What makes this unusual and potentially problematic? Well, consider the fact that the Director of the National Security Agency, a General Officer, is dual-hatted as the Deputy Commander for Network Attack, Planning, and Integration at Strategic Command, or that the Director of the National Reconnaissance Office also serves as an Under Secretary of the Air Force. These positions truly support the mission of the Defense Department.

Second, the National Intelligence Director would have the authority to execute the budgets of these agencies. It is one thing to say that the NID should manage the entire budget for the National Intelligence Program, and, therefore, to help develop agencies' budgets and even receive their appropriation. It is quite another to altogether remove the Secretary of Defense from the loop by requiring that the NID suballocate funding directly back to the agencies. This effectively removes the Secretary from the management loop.

I have studied the Defense Secretary's testimony to the Senate Armed Services Committee, as well as the testimony of other experts. I am also aware that there were some good amendments in the Committee markup to help preserve the Defense Department's equities. But I am still not convinced that we are doing no harm. As General Myers commented during the course of the Senate Armed Services Committee's discussion on the subject, ''[T]he devil's in the details.''

The chairmen of the House and Senate Armed Services Committees, as well as other Members of the House and Senate, have played a vitally important role in conference negotiations to make sure that intelligence support to our combatant commanders will not be disrupted. They worked tirelessly to see that changes, some of which the Chairman of the Joint Chiefs of Staff said were needed, would be included in the conference report. I applaud their efforts, and appreciate the changes that conferees were willing to make.

Many of the potential defense-related pitfalls of the reorganization that I discussed in the context of the Senate bill have been improved upon. One crucial change is the following provision intended to ensure that the military chain of command is protected: ''The President shall issue guidelines to ensure the effective implementation and execution within the executive branch of the authorities granted to the Director of National Intelligence by this title and the amendments made by this title, in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments of the United States Government concerning such departments . . .''

Despite the improvements that have been made, and the protections that have been added, I still believe that we simply don't know for sure how the changes we are making will affect the system we currently have in place to support our men and women in uniform. For that reason, we must commit to carefully monitor this legislation's implementation, specifically, the DNI's authority to transfer military personnel within the National Intelligence Program, authority to reprogram and transfer funds, and the role of the DNI in intelligence acquisition programs managed largely by the Defense Department—and be prepared to make changes if necessary.

Perhaps the key concern I have with this conference report is its privacy and civil liberties oversight provisions, which are totally extraneous to any problem related to 9/11 and will exacerbate the cultural problems in the intelligence community, in particular, the problem of risk aversion.

Risk aversion, which plays out not only in the intelligence community, but also in foreign policy decisionmaking, economics, business investments, and so on, is the tendency to avoid action which might be criticized after the fact because of a poor outcome. There are many potential causes a particular action might have adverse, unintended consequences, might get one into trouble with one's superiors, or might simply draw unwanted attention. When an individual or a Government acts, there is always a calculation of risk; but some Governments and some individuals are more willing to take chances than others. This is a product of both leadership and environment. Risk aversion has contributed to numerous intelligence failures, including the September 11 attacks, according to the 9/11 Commission.

One contributor to risk aversion is the belief that third parties, including congressional committees, will challenge decisions after the fact. The Privacy and Civil Liberties Oversight Board included in the Senate bill is just such an institution.

I introduced an amendment to the Senate bill which would have modified the privacy and civil liberties oversight provisions because I strongly believed that the bill would have exacerbated the problem of risk aversion by creating a redundant oversight bureaucracy and an unaccountable oversight Board with inappropriate authority over Government officials and private individuals. The bill went far beyond the recommendation of the 9/11 Commission, which was to create an executive branch board to oversee privacy and civil liberties and advise the

President. The President created such a board through Executive order in August.

In summary, the Senate bill would have established: two officers within the National Intelligence Authority, one responsible for privacy, the other for civil rights and civil liberties; an inspector general within the National Intelligence Authority, who, in part, would monitor and inform the National Intelligence Director of any violations of civil liberties and privacy; an Ombudsman within the National Intelligence Authority to protect against so-called ''politicization'' of intelligence; a Privacy and Civil Liberties Oversight Board with extensive investigative authorities; and privacy and civil liberties officers within the Departments of Justice, Defense, State, Treasury, Health and Human Services, and Homeland Security, the National Intelligence Authority, the Central Intelligence Agency, and any other department, agency, or element of the Executive Branch designated by the Privacy and Civil Liberties Oversight Board to be appropriate for coverage.

While I believe that privacy and civil liberties should be protected, I do not believe that oversight should be conducted in a manner that causes intelligence officers to be more worried about getting into trouble than about performing their missions. The question is whose civil liberties are jeopardized by improvement of our intelligence capabilities? The Taliban? Al-Qaida? Saddam Hussein? Not American citizens. The attacks of 9/11 were not caused by civil liberty deprivation; but by inadequate intelligence and immigration law deficiencies. So why hobble intelligence capabilities because of a perceived problem that has never been identified and was in no way involved in the 9/11 attacks? To the extent there is concern about laws such as the Patriot Act, they can be dealt with in the reauthorization of that Act. Such concerns have nothing to do with intelligence reorganization.

My amendment would have eliminated some of the redundancy, for example, by paring back the number of officers within the office of the National Director of Intelligence responsible for privacy and civil liberties oversight, and altered the power of the Privacy and Civil Liberties Oversight Board by eliminating subpoena authority and the Board's authority to compel executive branch compliance with its requests.

In the interest of allowing the intelligence bill to move forward quickly through the Senate, and noting that the House bill's provisions on the subject were more reasonable, I withdrew this amendment with a verbal understanding that my concerns would be addressed in the House-Senate conference. I pressed my case firmly in writing with the conferees, outlining my concerns and suggesting various ''fixes.''

Some improvements have been made in the conference report. For example, the conference report consolidates the positions within the office of the National Director of Intelligence responsible for privacy and civil liberties oversight into one. But the authorities of the Privacy and Civil Liberties Oversight Board, which was contained in the Senate bill but not in the House bill, remain problematic. Subpoena authority over private individuals, which would have been entirely inappropriate, particularly given the location of the Board in the Executive Office of the President, was removed, and the Board will now be accountable to the President. But the authority to compel executive branch compliance with Board requests remains. And this is the real problem.

Departments and agencies are required to comply with any Board request unless a waiver is exercised by the National Director of Intelligence or the Attorney General. This places an additional burden on two key officials, whose attention should be directed toward other issues, including preventing a future terrorist attack. It also will likely foster an environment in which our intelligence officers are increasingly cautious, or risk averse, about completing the very tasks that are required to fulfill their missions. Just because a Board request to a Department-head does not necessarily rise to the level of reasonably exercising a waiver does not mean that it does not act as a deterrent or a distraction to those serving honorably in the intelligence community.

Consider this example: The International Red Cross complains that terrorists captured in Pakistan are treated poorly and convinces the Civil Liberties Board to investigate. The Board demands that our CIA station chief in Pakistan testify about what he knows. The DNI demurs on grounds of national security, or doesn't. The hue and cry about ''secrecy'' and ''cover-up'' cause the DNI to allow the Board to interrogate the CIA official. Can anyone deny the national security implications, let alone the resulting risk aversion that would settle into the entire intelligence community? It would be disastrous.

I intend to monitor closely the action of this Board once it is put into place to ensure that its investigations and public reporting requirements do not adversely affect our intelligence community, and will urge further limitations on its authority. Fighting terrorists abroad means spying, gathering intelligence. Civil liberties for terrorists should not be high on the list of U.S. reforms for intelligence collection. Again, 9/11 was caused by intelligence failures, not insufficient attention to terrorists' civil rights. A sense of perspective would have eliminated the most egregious features of the conference report.

With regard to the immigration provisions included, or not included, in the final bill, I am pleased that a provision I authored requiring mandatory interviews for non-immigrant visa applicants was retained. I am also pleased that some other immigration reform provisions were included in the conference report, including an authorization for an increase in Border Patrol agents by 2,000 in each of fiscal years 2006–2010; an increase of Immigration and Customs Enforcement agents by 800 in each of fiscal years 2006–2010; an increase in detention beds by 8,000 in each of fiscal years 2006–2010, with priority for the use of these beds to detain aliens charged with inadmissibility or deportability on security grounds.

I am also pleased that a requirement to develop and implement a plan to require a passport or other document, or combination of documents, sufficient to denote citizenship and identity for all travel into the U.S. by U.S. citizens and nationals from Western Hemisphere countries, for whom such requirements have previously been waived, is included in the conference report. And that a provision requiring a detailed plan from the Department of Homeland Security, within 180 days, about how to accelerate the full implementation of the biometric document requirement of the Border Security Act that Senators FEINSTEIN, KENNEDY, BROWNBACK, and I authored, will be included. There are other good provisions.

I am very troubled, however, that many of the important immigration reform provisions included in the House-passed bill were either altered significantly or left out of the conference report. I understand that Members have been assured that such provisions will be considered next year. As the chairman of the Senate Judiciary Subcommittee on Terrorism and a senior member of the Immigration Subcommittee, I have witnessed many times the opportunities for real immigration reform slip through our fingers. This conference measure represents one example.

There is no real substantive reason that these important provisions, which were described as immigration reforms but can also be accurately be described as counterterrorism measures, should not have been included in the final bill. The primary goal of this legislation, is to better enable the U.S. Government to prevent future terrorist attacks like that which occurred on 9/11. Many of the House-passed immigration provisions ultimately excluded from the final conference report would have enhanced the Government's ability to prevent entry of, and find, terrorists who wish harm to our country.

The public and media debate about immigration reform and the intelligence conference report has focused on driver's license standards and whether States should be prevented from issuing such documents to illegal aliens. The answer is unequivocally yes, and I will discuss this matter again. There are additional important immigration/terrorism reforms that the conference negotiators refused to

accept, and by doing so, I believe the bill was seriously, dangerously weakened. I will mention only a handful of them.

Importantly, the House-passed bill included a section that would have required aliens in the United States to use only a Department of Justice- or Department of Homeland Security-issued document, or a valid passport, to establish identity to a U.S. Governmental official or worker. This would have effectively prohibited the use of the matricula consular identification card for identification purposes for Federal identification. The conference measure eliminated this section of the bill, and instead provides only for a process for determining minimum standards that passengers will have to present to board a commercial aircraft in the United States.

Additionally, the House would have expanded the use of expedited removal by requiring its use in the U.S. as well as along the U.S. border, currently expedited removal is used only at U.S. ports of entry. The conference measure strikes this provision.

The House-passed bill would also have overturned a Ninth Circuit precedent that has effectively barred immigration judges from denying asylum claims on the basis of credibility. The Government is barred from asking foreign governments what evidence they have about the terrorist activities of asylum applicants. So the only evidence the Government can use in opposing an asylum request is to argue that the applicant is lying. The Ninth Circuit precedent barring immigration judges from denying asylum claims on the basis of credibility would have been overturned if the conference report retained the House-passed provision; but it was eliminated from the conference measure.

Additionally, the Ninth Circuit has been granting asylum to applicants on the basis that their government believes they are terrorists, and, therefore, they deserve asylum because they are being persecuted on account of the political beliefs of the relevant terrorist organization. The House-passed bill overturned this precedent and would have required aliens to show they qualify for asylum based upon the currently protected grounds for receiving such, but conference negotiators refused to accept this provision.

Instead, what the final version of the bill included is a Government Accountability Office, GAO, study on the weaknesses in the U.S. asylum system that have been exploited by aliens connected to terrorism.

The House version of the bill included a provision to close an existing loophole in immigration law that allows foreign nationals whose visas or other travel documents have been revoked by the State Department on terrorism grounds, to remain in the United States until their visa, or DHS-approved time here, expires, despite the revocation. The current conference report retains that provision, which makes revocation of a visa on terrorism grounds a legal ground for the deportation of the visa holder. However, the conferees created another loophole through which a potential terrorist could remain in the United States despite a visa revocation, by adding language that would allow judicial appeal of any visa revocation decision. Allowing judicial appeal of such decisions will only create another avenue through which a potential terrorist can legally remain in the United States for an undetermined amount of time. Currently all decisions regarding visa issuance by Consular Officers are final, they are not subject to judicial review. The same should be true of visa revocation decisions. A number of Senators, including Senators GRASSLEY, SESSIONS, CHAMBLISS, ENSIGN, and I fully supported this provision and contemplated offering as a similar amendment during Senate consideration of the bill. I am disappointed to learn that language was added to allow individuals whose visas have been revoked on terrorism grounds to appeal the State Department's decision.

Finally, while increasing the number of Customs and Immigration enforcement officers is important and is accomplished in the conference report, another important House-passed provision, requiring that half of any new immigration investigators be focused on enforcing restrictions on illegal immigrants in the workforce, was not included in the final version of the bill.

As I mentioned in the beginning of my comments about the immigration-related sections, an important provision dealing with identity standards in the Federal context was struck from the conference measure. While that measure wasn't necessarily perfect, it certainly represented a good beginning for development of a necessary standard of identification in this country. The House-passed driver's license standards section also represented a very good attempt at eliminating the opportunity for illegal immigrants to obtain driver's licenses, which we all know allows illegal immigrants to live as though they were here legally.

While I would very much like to discuss the negative ramifications on the workplace, and States generally, of the illegal immigrant population having such easy access to driver's licenses and other documents that allow them to live as though they are here legally, I will instead focus on how important documentary validity is to preventing terrorists from entering and living in the United States. Both the House and Senate, after reviewing the 9/11 Commission's recommendation, voted to apply some form of standardization to the driver's license. The question really is, Is the Congress willing to get to the root of the problem and prevent illegal immigrants from obtaining such licenses? True, most of the 9/11 hijackers had ''valid,'' but improperly issued, visas. Hopefully, now, the State Department is following the law and making it harder for individuals who shouldn't possess U.S. visas from obtaining them. But that still leaves millions of individuals who enter the country illegally, some of whom could be terrorists, able to obtain the document that will allow them to blend easily into our neighborhoods, workplaces, churches, and mosques, let alone board airplanes or otherwise gain access to sensitive areas. The conference report only requires that States include the following: the person's full legal name; the person's date of birth; the person's gender; the person's driver's license or identification number; a digital photograph; the person's address of principal residence; and the person's signature. And a carve-out was included for States in order that any documentary requirements ''may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification from that State.'' The driver's license provision included in the final bill will not do much to better secure the license, and will continue to allow illegal immigrants to obtain such documentation.

As I have said, there are a number of immigration-related provisions in the conference report that will make a difference, including the section of the bill that requires in-person interviews of non-immigrant visa applicants, an authorization for an increase in consular officer positions, and others. But we also had an opportunity to include other security-related immigration reforms, and we failed. I will work in the 109th Congress to ensure their consideration, and the consideration of other important immigration reform measures. Such consideration is important to the future of our country, from a security perspective and from an economic perspective, and the course we take over the next year or two will, in part, contribute to our success at preventing future terrorist attacks and shape the future of our Nation. I will work to get it right and look forward to working with my colleagues on all of these important issues.

As I mentioned, one bright spot in the bill before us today is title VI, which provides new tools to law enforcement to investigate and prosecute terrorist crimes. Title VI includes about half of the provisions of the Tools to Fight Terrorism Act, S. 2679, an omnibus antiterrorism bill that I introduced earlier this year with several other members of the Judiciary Committee and the Senate leadership. Obviously, I am pleased that these important provisions are included in the final legislation.

Subtitles A and F through K of title VI of the conference report mirror parallel provisions in the Tools to Fight Terrorism Act. And TFTA itself consists of all or part of 11 other bills that currently are pending in the House and Senate. Collectively, these other bills have been the subject of 9 separate

hearings before House and Senate committees and have been the subject of 4 separate committee reports. In addition, the entire TFTA was reviewed in a September 13 hearing before the Senate Subcommittee on Terrorism, which heard testimony from Justice Department witnesses Barry Sabin, Chief of the counterterrorism Section of the Criminal Division, and Dan Bryant, Assistant Attorney General for the Office of Legal Policy, as well as George Washington University law professor Jonathan Turley.

These hearings and reports provide a substantial legislative backdrop to title VI of the present bill. The statement that follows is my attempt to provide some guide to navigating this legislative thicket. Of course, one might well ask whether it is an inherent contradiction to rely on legislative history supplied by a judicial conservative, since judicial conservatives tend not to believe in legislative history. The short answer would be that in moments of litigation crisis, every lawyer tends to believe in whatever talismans are available. One might as well help him find them. With that disclaimer, I offer the following effort to illuminate the origins and objectives of the TFTA provisions in title VI.

Subtitle A, section 6001, Lone-Wolf FISA Authority ''Moussaoui Fix,'' this section amends FISA to allow orders for surveillance of foreign visitors to the U.S. who appear to be involved in international terrorism but are not affiliated with a known terror group. The need for this provision is explained in Senate Committee Report No. 108–40, which accompanies a bill that Senator SCHUMER and I introduced at the beginning of this Congress. I quote the relevant passages from that report at length:

The September 11, 2001 terrorist attacks on the people of the United States underscored the need for this legislation. Several weeks before those attacks, federal law enforcement agents identified one of the participants in that conspiracy as a suspected international terrorist. These agents sought to obtain a FISA warrant to search his belongings. One of the principal factors that prevented the issuance of such a warrant was FISA's requirement that the target be an agent of a foreign power. Even if federal agents had been able to demonstrate that this person was preparing to commit an act of international terrorism, based on the suspicious conduct that had first brought him to the attention of authorities, the agents would not have been able to obtain a warrant to search him absent a link to a foreign power. As a result, these federal agents spent three critical weeks before September 11 seeking to establish this terrorist's tenuous connection to groups of Chechen rebels—groups for whom we now know this terrorist was not working.

It is not certain that a search of this terrorist would necessarily have led to the discovery of the September 11 conspiracy. We do know, however, that information in this terrorist's effects would have linked him to two of the actual September 11 hijackers, and to a high-level organizer of the attacks who was captured in 2002 in Pakistan. And we do know that suspending the requirement of a foreign-power link for lone-wolf terrorists would have eliminated the major obstacle to federal agents' investigation of this terrorist—the need to fit this square peg into the round hole of the current FISA statute.

FISA allows a specially designated court to issue an order authorizing electronic surveillance or a physical search upon probable cause that the target of the warrant is ''a foreign power or an agent of a foreign power.'' 50 U.S.C. Sec. 1805(a)(3)(A), 1824(a)(3)(A). The words ''foreign power'' and ''agent of a foreign power'' are defined in 1801 of FISA. ''Foreign power'' includes ''a group engaged in international terrorism or activities in preparation therefor,'' 1801(a)(4), and ''agent of a foreign power'' includes any person who ''knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power.'' 1801(b)(2)(C).

Requiring that targets of a FISA warrant be linked to a foreign government or international terrorist organization may have made sense when FISA was enacted in 1978; in that year, the typical FISA target was a Soviet spy or a member of one of the hierarchical, military-style terror groups of that era. Today, however, the United States faces a much different threat. The United States is confronted not only by specific groups or governments, but by a movement of Islamist extremists. This movement does not maintain a fixed structure or membership list, and its adherents do not always advertise their affiliation with this cause. Moreover, in response to the United States' efforts to fight terrorism around the world, this movement increasingly has begun operating in a more decentralized manner.

The origins and evolution of the Islamist terrorist threat, and the difficulties posed by FISA's current framework, were described in detail by Spike Bowman, the Deputy General Counsel of the FBI, at a Senate Select Committee on Intelligence hearing on the predecessor to S. 113. Mr. Bowman testified:

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

''[W]e are increasingly seeing terrorist suspects who appear to operate at a distance from these [terrorists] organizations. In perhaps an oversimplification, but illustrative nevertheless, what we see today are (1) agents of foreign powers in the traditional sense who are associated with some organization or discernible group (2) individuals who appear to have connections with multiple terrorist organizations but who do not appear to owe allegiance to any one of them, but rather owe allegiance to the International Jihad movement and (3) individuals who appear to be personally oriented toward terrorism but with whom there is no known connection to a foreign power.

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

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

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

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

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

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

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

The Committee notes that when FISA was enacted in 1978, the Soviet invasion of Afghanistan had not yet occurred and both Iran and Iraq were considered allies of the United States. The world has changed. It is the responsibility of Congress to adapt our laws to these changes, and to ensure that law enforcement and intelligence agencies have at their disposal all of the tools they need to combat the terrorist threat currently facing the United States. The Committee concludes that enactment of S. 113's modification of FISA to facilitate surveillance of lone-wolf terrorists would further Congress's fulfillment of this responsibility.

[In a separate statement of additional views on S. 113, Senator Feingold expresses concerns about the constitutionality of allowing surveillance of lone-wolf terrorists pursuant to FISA. He suggests that by allowing searches of persons involved in international terrorism without regard to whether such persons are affiliated with foreign powers, S. 113 ''writes out of the statute a key requirement necessary to the lawfulness of such searches.'' In order to address Senator Feingold's concerns, the Committee attaches as Appendix E to this report a letter presenting the views of the U.S. Department of Justice on S. 2586, the predecessor bill to S. 113.

The Department of Justice's letter provides a detailed analysis of the relevant Fourth Amendment jurisprudence, concluding that the bill's authorization of lone-wolf surveillance would ''satisfy constitutional requirements.'' The Department emphasizes that anyone monitored pursuant to the lone-wolf authority would be someone who, at the very least, is involved in terrorist acts that ''transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.'' (Quoting 50 U.S.C. Sec. 1801(c)(3).) Therefore, a FISA warrant obtained pursuant to this authority necessarily would ''be limited to collecting foreign intelligence for the international responsibilities of the United States, and the duties of the Federal Government to the States in matters involving foreign terrorism.'' (Quoting *United States* v. *Dugan*, 743 F.2d 59, 73 (2d Cir. 1984).) The Department concludes ''the same interests and considerations that support the constitutionality of FISA as it now stands would provide the constitutional justification for S. 2568.'' The Department additionally notes that when FISA was enacted it was understood to allow surveillance of groups as small as two or three persons. The Department concludes that ''[t]he interests that the courts have found to justify the procedures of FISA are not likely to differ appreciably as between a case involving such a group . . . and a case involving a single terrorist.'']

A provision substantially the same as section 6001 first was introduced as a bill, S. 2586, by Senators SCHUMER and me on June 5, 2002. The Senate Intelligence Committee held a hearing on S. 2586 on July 31, 2002. Witnesses included James Baker, Counsel for Intelligence Policy with the Office of Intelligence and Policy Review, Department of State; Marion ''Spike'' Bowman, Deputy General Counsel, National Security Law Unit, Office of the General Counsel, FBI; and Fred Manget, Deputy General Counsel, CIA.

The same provision was reintroduced in the 108th Congress by me and Senator SCHUMER as S. 113 on January 9, 2003. S. 113 was unanimously reported by the Judiciary Committee on March 11, 2003. The Committee issued Report No. 108–40 for S. 113 on April 29, 2003. S. 113 was approved by the Senate by 90–4 on May 8, 2003. The same provision also was included in H.R. 3179, which was introduced by House Judiciary Chairman SENSENBRENNER and House Intelligence Chairman Goss on September 25, 2003. The House Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 3179 on May 18, 2004. Witnesses at the hearing included Dan Bryant, Assistant Attorney General, Office of Legal Policy, Department of Justice; Thomas Harrington, Deputy Assistant Director, FBI; and Bob Barr, former Congressman. The same provision also was introduced as H.R. 3552 by Representative KING on November 20, 2003.

Subtitle F, section 6501, Sharing Grand-Jury Information With State and Local Governments, this section amends current law to authorize the sharing of grand-jury information with appropriate state and local authorities.

I do not think that one can overstate the importance of information sharing, of tearing down the walls that prevent different parts of the Government from exchanging intelligence and working together in the war on terror. A graphic illustration of the importance of streamlined information sharing is provided by another pre-September 11 investigation. Like the Moussaoui case, this investigation also came tantalizing close to substantially disrupting or even stopping the 9/11 plot, and also ultimately was blocked by a flaw in our antiterror laws. The investigation to which I refer involved Khalid Al Midhar, one of the suicide hijackers of American Airlines Flight 77, which was crashed into the Pentagon, killing 58 passengers and crew and 125 people on the ground.

An account of the investigation of Midhar is provided in the 9/11 Commission's staff Statement No. 10. That statement notes as follows:

> During the summer of 2001 [an FBI official] . . . found [a] cable reporting that Khalid Al Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar's visa application—what was later discovered to be his first application—listed New York as his destination. . . . The FBI official grasped the significance of this information.
>
> The FBI official and an FBI analyst working the case promptly met with an INS representative at FBI Headquarters. On August 22 INS told them that Mihdhar had entered the United States on January 15, 2000, and again on July 4, 2001. . . . The FBI agents decided that if Mihdhar was in the United States, he should be found.

These alert agents immediately grasped the danger that Khalid Al Midhar posed to the United States, and immediately initiated an effort to track him down. Unfortunately, at the time, the law was not on their side. The Joint Inquiry Report of the House and Senate Intelligence Committees describes what happened next:

> Even in late August 2001, when the CIA told the FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Hazmi, and two other ''Bin Laden-related individuals'' were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers. . . . FBI attorneys took the position that criminal investigators ''CAN NOT'' (emphasis original) be involved and that criminal information discovered in the intelligence case would be ''passed over the wall'' according to proper procedures. An agent in the FBI's New York field office responded by e-mail, saying: ''Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.''

The 9/11 Commission staff report assesses the ultimate impact of these legal barriers:

> Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except follow him onto the planes. We believe this is incorrect. Both Hazmi and Mihdhar could have been held for immigration violations or as material witnesses in the Cole bombing case. Investigation or interrogation of these individuals, and their travel and financial activities, also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

Congress must do what it can now to make sure that something like this does not happen again—that arbitrary, seemingly minor bureaucratic barriers are not allowed to undermine our best leads toward uncovering an attack on the United States. Section 6501 is a substantial step in that direction.

The change made be section 6501 previously was enacted by the Homeland Security Act, but that change never went into effect because the Federal Rule of Criminal Procedure amended by the HSA was revised by the Supreme Court shortly after the enactment of the HSA, and the amendment made by HSA presupposed the earlier text of the Federal rule. The same provisions were introduced as part of S. 2599 by Senators CHAMBLISS and me on June 24, 2004.

Subtitle G, sections 6602 and 6603, and section 5402, Receiving Military-Type Training from and Providing Material Support to Terrorists, section 6602 makes it a crime to receive military-type training from a foreign terrorist group, and section 5402 makes aliens who have received such training deportable from the United States. Section 6603 broadens the jurisdictional bases of the material-support statute. It also clarifies the definitions of the terms ''personnel,'' ''training,'' and ''expert advice or assistance'' in response to concerns expressed in recent court decisions. Furthermore, this section clarifies the knowledge required to violate the statute, and specifies that nothing contained in the statute shall be construed to abridge free-speech rights. All of these sections apply extraterritorially to U.S. nationals, permanent residents, stateless persons whose habitual residence is the United States, and persons who are brought into or found in the United States.

In the final version of this legislation, all immigration- and border-related provisions were placed in a new title V, and thus the part of the military-type-training provision making terror trainees deportable ended up in that title as well, as section 5402. The new 5402, rather than referencing the definition of military-type training in 6602, simply duplicates the key part of that definition, a precaution against the event that the now-distant 6602 be repealed or never enacted.

Nevertheless, despite their now far-flung nature, these sections still should be read together. Thus 2339D(c)'s definitions of ''serious bodily injury'' and ''critical infrastructure'' should guide the use of those terms in 5402, even though, unlike the definition of ''military type training,'' those definitions are not copied in the deportation section. The extraterritorial scope of 6602, as articulated in 2339D(b), also should

inform the application of 5402. The deportation provision is articulated in terms of conduct, which is the same thing everywhere—rather than offenses—which are a particular creature of each jurisdiction. And obviously, Congress is just as anxious to remove from this country those aliens who trained at an al-Qaida camp in Afghanistan as those who trained in the United States.

In two key respects, however, the deportation provision operates differently than the criminal provision. First, the knowledge requirement imposed by the second sentence of 2339D(a) was not imposed in 5402. While scienter is a traditional part of a criminal offense, it was not thought a necessary consideration in deciding which alien visitors should be allowed to remain in this country. If someone trained at a terrorist camp, they should be removed forthwith, regardless of what they claim to have known about their host terror group. Second, 5402 will apply immediately at the time that deportation proceedings are initiated, regardless of the date of the triggering training. As the Supreme Court has noted, deportation ''looks prospectively to the respondent's right to remain in this country in the future.'' *INS* v. *Lopez-Mendoza*, 468 U.S. at 1038. Under 5402, the only thing that need have occurred ''at the time the training was received'' is that the training or sponsoring organization have been defined as a terrorist organization. Since there is no reasonable ''reliance'' on any U.S. law whatsoever in attending an al-Qaida or other terrorist training camp, 5402 applies regardless of when the training was received, so long as the group was defined at that time as a terrorist organization.

The animating example behind this provision is the alien visitor in the United States who is discovered to have attended an al-Qaida camp in Afghanistan in the summer of 2001. In the judgment of Congress, such a person is a danger to the United States. And under 5402, that person, once discovered, will be immediately deportable.

The Justice Department testified in favor of a provision similar to section 6602 at the Terrorism Subcommittee's hearing on the TFTA earlier this year. The joint statement of Messrs. Sabin and Bryant notes that:

> It is critical that the United States stem the flow of recruits to terrorist training camps. A danger is posed to the vital foreign policy interests and national security of the United States whenever a person knowingly receives military-type training from a designated terrorist organization or persons acting on its behalf. Such an individual stands ready to further the malicious intent of the terrorist organization through terrorist activity that threatens the security of United States nationals or the national security of the United States. Moreover, a trainee's mere participation in a terrorist organization's training camp benefits the organization as a whole. For example, a trainee's participation in group drills at a training camp helps to improve both the skills of his fellow trainees and the efficacy of his instructors' training methods. Additionally, by attending a terrorist training camp, an individual lends critical moral support to other trainees and the organization as a whole, support that is essential to the health and vitality of the organization.

And George Washington University law professor Jonathan Turley had the following to say about TFTA's parallel provision to section 6602 in his testimony before the Terrorism Subcommittee:

> This proposal would fill a gap in our laws revealed by recent cases, like that of Jose Padilla, where citizens have trained at terrorist camps. . . . The proposed crime has been narrowly tailored to require a clear knowledge element as well as a reasonable definition of military-type training. The United States has an obvious interest in criminalizing such conduct and to deter citizens who are contemplating such training. In my view, it raises no legitimate issue of free association or free speech given the criminal nature of the organization. Most importantly, given the use of these camps to recruit and indoctrinate such citizens as Padilla and John Walker Lindh, this new criminal offense is responsive to a clear and present danger for the country.

With regard to section 6603, the Justice Department had the following to say about the parallel provision in TFTA at the Terrorism Subcommittee hearing earlier this year:

> The [provision] . . . improves current law by clarifying several aspects of the material support statutes. This is another key tool in preventing terrorism. As the Department of Justice has previously indicated, ''a key element of the Department's strategy for winning the war against terrorism has been to use the material support statutes to prosecute aggressively those individuals who supply terrorists with the support and resources they need to survive . . . . The Department seeks to identify and apprehend terrorists before they can carry out their plans, and the material support statutes are a valuable tool for prosecutors seeking to bring charges against and incapacitate terrorists before they are able to cause death and destruction.''

Professor Turley, in his Terrorism Subcommittee testimony on TFTA, said of the parallel section to 6603 that ''[t]his proposal would actually improve the current Federal law by correcting gaps and ambiguities that have led to recent judicial reversals. In that sense, the proposal can be viewed as a slight benefit to civil liberties by removing a dangerous level of ambiguity in the law.''

The need for a stronger material-support statute and its application to terrorist training camps were the subject of a hearing before the Senate Judiciary Committee on May 5, 2004. Witnesses included Chris Wray, Assistant Attorney General, Criminal Division, Department of Justice; Dan Bryant, Assistant Attorney General, Office of Legal Policy, Department of Justice; Gary Bald, Assistant Director, Counterterrorism Division, FBI; David Cole, law professor, Georgetown University Law Center; and Paul Rosenzweig, Senior Legal Research Fellow, Heritage Foundation.

Subtitle G, Section 6604, Concealment of Terrorist Financing, this section amends current law to prohibit concealing having provided financing while knowing that it has been or will be provided to terrorists. This provision first appeared as part of S. 1837, which was introduced by Senator GRASSLEY on November 6, 2003. The Senate Judiciary Committee held a hearing on the need to better combat terrorist financing on November 20, 2002. Witnesses included Robert J. Conrad, U.S. Attorney for the Western District of North Carolina; Jimmy Gurulé, Under Secretary for Enforcement, Department of Treasury; David Aufhauser, General Counsel, Department of Treasury; Nathan Lewin, Lewin & Lewin, LLP; Allan Gerson, Professorial Lecturer In Honors, George Washington University; Jonathan Winer, Alston & Bird, LLP, member, Council on Foreign Relations; and Salam Al-Marayati, Executive Director, Muslim Public Affairs Council.

Subtitle H, section 6702, Punishment for Hoaxes about Terrorism or Deaths of U.S. Soldiers, this section imposes criminal penalties for conveying false or misleading information, perpetrating hoaxes, about terrorist crimes or the death or injury of a U.S. soldier under circumstances where such information may reasonably be believed.

The Justice Department has commented on the harm caused by false information and terrorist hoaxes. In its TFTA testimony on a parallel provision to 6702 earlier this year, the Department noted:

> Since September 11, hoaxes have seriously disrupted people's lives and needlessly diverted law-enforcement and emergency-services resources. In the wake of the anthrax attacks in the fall of 2001, for example, a number of individuals mailed unidentified white powder, intending for the recipient to believe it was anthrax. Many people were inconvenienced, and emergency responders were forced to waste a great deal of time and effort. Similarly, in a time when those in uniform are making tremendous sacrifices for the country, several people have received hoax phone calls reporting the death of a loved one serving in Iraq or Afghanistan.

And Professor Turley, also at the Terrorism Subcommittee hearing on TFTA, commented on the provision similar to 6702:

> This new provision would create a serious deterrent to a type of misconduct that routinely places the lives of emergency personnel at risk and costs millions of dollars in unrecouped costs for the federal and state governments. Since a terrorist seeks first and foremost to terrorize, there is precious [little] difference between a hoaxster and a terrorist when the former seeks to shut down a business or a community with a fake threat. . . . This provision responds to the increase in this form of insidious misconduct and correctly defines it as criminal conduct.

The key elements of section 6702 were introduced as H.R. 3209 in the 107th Congress by Representative LAMAR SMITH on November 11, 2001. H.R. 3209 was the subject of a hearing before the House Subcommittee on Crime, Terrorism, and Homeland Security on November 7, 2001. Witnesses included

James Jarboe, Section Chief, Counterterrorism Division, Domestic Terrorism, FBI; and James Reynolds, Chief, Terrorism and Violent Crime Section, Criminal Division, Department of Justice. H.R. 3209 was reported by the House Judiciary Committee on November 29, 2001. The Judiciary Committee issued Report No. 107–306 for H.R. 3209 on the same day. H.R. 3209 was unanimously approved by the House of Representatives on December 12, 2001.

A provision similar to 6702 also was introduced as H.R. 1678 in the 108th Congress by Representative LAMAR SMITH on April 8, 2003. H.R. 1678 was the subject of a hearing before the House Subcommittee on Crime, Terrorism, and Homeland Security on July 10, 2003. Witnesses included Susan Brooks, the U.S. Attorney for the Souther District of Indiana; James McMahon, Superintendent, New York State Police; and Danny Hogg, a target of a war-time hoax about a family member serving in Iraq. H.R. 1678 was ordered reported by the House Judiciary Committee by voice vote on May 12, 2004. The Judiciary Committee issued Report No. 108–505 for H.R. 1678 on May 20, 2004. The key provisions of section 6702 also were introduced as S. 2204 by Senator HATCH on March 11, 2004.

Subtitle H, section 6703, Increased Penalties for Obstruction of Justice in Terrorism Cases, this section increases from 5 years to 8 years the penalty for obstruction of justice in terror investigations. It also instructs the Sentencing Commission to increase the guidelines range for making false statements in relation to a terrorism investigation. A provision similar to section 6703, albeit increasing the penalty to 10 years instead of just 8, has in the past been included as part of the above-described anti-hoax bills.

Subtitle I, sections 6802 and 6803, Expanded WMD Prohibitions, section 6802 expands the jurisdictional bases and scope of existing prohibitions on use of weapons of mass destruction, and includes chemical weapons within the prohibition for the first time. Section 6803 amends the Atomic Energy Act to more broadly prohibit directly and willfully participating in the development or production of any special nuclear material or atomic weapon outside of the United States. This section also makes it a crime to participate in or provide material support to a nuclear weapons program, or other weapons of mass destruction program, of a designated terrorist organization or state sponsor of terrorism. And the offense created by this provision applies extraterritorially.

In his TFTA testimony about parallel provisions to sections 6802 and 6803 before the Terrorism Subcommittee earlier this year, George Washington University law professor Jonathan Turley stated:

[Section 6802, the WMD-statute provision] would close current loopholes in the interest of national security and does not materially affect civil liberty interests.

[Section 6803] would criminalize the participation in programs involving special nuclear material, atomic weapons, or weapons of mass destruction outside of the United States. This new crime with extraterritorial jurisdiction is an obvious response to recent threats identified by this country and other allies like Pakistan. The obvious value of such a law would be hard to overstate. . . . It is important for the purposes of our extraterritorial enforcement efforts to have a specific crime on the books to address this form of misconduct.

These sections are substantially the same as H.R. 2939, which was introduced by Representative FORBES on July 25, 2003, and S. 2665, which was introduced by Senator CORNYN on July 15, 2004.

Subtitle J, sections 6901–11, Prevention of Terrorist Access to Special Weapons, this subtitle is designed to deter the unlawful possession and use of certain weapons, Man-Portable Air Defense Systems, MANPADS, atomic weapons, radiological dispersal devices, and the variola virus, smallpox, whose potential misuse are among the most serious threats to homeland security. MANPADS are portable, lightweight, surface-to-air missile systems designed to take down aircraft. Typically they are able to be carried and fired by a single individual. They are small and thus relatively easy to conceal and smuggle. A single attack could kill hundreds of persons in the air and many more on the ground. Atomic weapons or weapons designed to release radiation, ''dirty bombs,'' could be used by terrorists to inflict enormous loss of life and damage to property and the environment. Variola virus is the causative agent of smallpox, an extremely serious, contagious, and often fatal disease. Variola virus is classified by the CDC as one of the biological agents that poses the greatest potential threat for public-health impact and has a moderate to high potential for large-scale dissemination. There are no legitimate private uses for these weapons.

Current law allows a maximum penalty of only 10 years in prison for the unlawful possession of MANPADS or an atomic weapon. No statute criminalizes mere possession of dirty bombs. Knowing, unregistered possession of the variola virus is subject only to a maximum penalty of 5 years.

Sections 6903–06 make unlawful possession of MANPADS, atomic weapons, radiological devices, or variola virus a crime with a mandatory minimum sentence of 25 years to life. Use, attempts to use, or possession and threats to use these weapons are a crime with a mandatory minimum sentence of 30 years to life. Use of these weapons resulting in death is subject to a mandatory minimum sentence of life imprisonment. These penalties should especially help to deter middlemen and facilitators who are essential to the transfer of these weapons.

Section 6907 amends current law to add the criminal offenses created by this subtitle as federal wiretap predicates. Section 6908 amends current law to include these new offenses in the definition of ''Federal crime of terrorism.'' Section 6909 amends current law to include these new offenses in the definition of ''specified unlawful activity'' for purposes of the money laundering statute. And section 6910 amends the Arms Export Control Act by adding the offenses created by this subtitle to the provision specifying crimes for which a conviction or indictment is a ground for denying an arms-export application.

In his Terrorism Subcommittee testimony on TFTA earlier this year, Professor Turley said the following about a provision parallel to subtitle J:

Given the enormous threats to our country from such weapons, these increased penalties are manifestly reasonable. . . . While it is certainly possible that a defendant could be in possession of a MANPADS as part of arms trafficking or some other motive than terrorism, this is clearly one of the most likely forms of terrorist conduct.

Subtitle J is the same as S. 2664, which was introduced by Senator CORNYN on July 15, 2004.

Subtitle K, section 6952, Presumption of No Bail for Terrorists, this section would add terrorist offenses to the list of offenses, such as drug crimes, that are subject to the statutory presumption of pretrial detention. Under current law, a criminal suspect will be denied bail in Federal court if the Government shows that there is a serious risk that the suspect will flee, obstruct justice, or injure or threaten a witness or juror. The judge must presume this showing is present if the suspect is charged with a crime of violence, a drug crime carrying a potential sentence of 10 years or more, any crime that carries a potential sentence of life or the death penalty, or the suspect previously has been convicted of two or more such offenses. This section would add terrorist offenses that are subject to a maximum penalty of at least 10 years to this list, judges would be required to presume that facts requiring a denial of bail are present. This is only a presumption, the terror suspect still could attempt to show that he is not a flight risk or potential threat to jurors or witnesses.

The Justice Department testified as to the importance of this provision at the Terrorism Subcommittee hearing on TFTA:

Current law provides that federal defendants who are accused of serious crimes, including many drug offenses and violent crimes, are presumptively denied pretrial release under 18 U.S.C. §3142(e). But the law does not apply this presumption to those charged with many terrorism offenses. To presumptively detain suspected drug traffickers and violent criminals before trial, but not suspected terrorists, defies common sense.

This omission has presented authorities real obstacles to prosecuting the war on terrorism, as Michael Battle, U.S. Attorney for the Western District of New York, testified before this subcommittee on June 22. In the recent ''Lackawanna Six'' terrorism case in

his district, prosecutors moved for pre-trial detention of the defendants, most of whom were charged with (and ultimately pled guilty to) providing material support to al Qaeda. It was expected that the defendants would oppose the motion. What followed was not expected, however. Because the law does not allow presumptive pre-trial detention in terrorism cases, prosecutors had to participate and prevail in a nearly three-week hearing on the issue of detention, and were forced to disclose a substantial amount of their evidence against the defendants prematurely, at a time when the investigation was still ongoing. Moreover, the presiding magistrate judge did in fact authorize the release of one defendant, who, it was later learned, had lied to the FBI about the fact that he had met with Usama Bin Laden in Afghanistan. The Lackawanna Six case illustrates the real-life problems the absence of presumptive pre-trial detention has posed to law enforcement. But this shortcoming in the law has also enabled terrorists to flee from justice altogether. For example, a Hezbollah supporter was charged long ago with providing material support to that terrorist organization. Following his release on bail, he fled the country.

The suspect described above eventually was recaptured by the United States six years after his escape. During that time, he was not a participant in a terrorist attack against the United States, but he could have been.

Law Professor Jonathan Turley also commented on the legislative ancestor of section 6952 in his testimony at the Terrorism Subcommittee hearing on TFTA. He stated:

[Section 6952] would create a presumption against bail for accused terrorists. Under this amendment, such a presumption could be rebutted by the accused, but the court would begin with a presumption that the accused represents a risk of flight or danger to society. This has been opposed by various groups, who point to the various terrorist cases where charges were dismissed or rejected, including the recent Detroit scandal where prosecutorial abuse was strongly condemned by the Court. I do not share the opposition to this provision because I believe that, while there have been abuses in the investigation and prosecution of terrorism cases, the proposed change sought by the Justice Department is neither unconstitutional nor unreasonable.

This proposal would not impose a categorical denial of bail but a presumption against bail in terrorism cases. Congress has a clearly reasonable basis for distinguishing terrorism from other crimes in such a presumption. In my view, this would be clearly constitutional.

While I have been critical of the policies of Attorney General John Ashcroft, I do not share the view of some of my colleagues in the civil liberties community in opposition to this change. There is currently a presumption against pretrial release for a variety of crimes in 18 U.S.C. § 3142(e), including major drug crimes. It seems quite bizarre to have such a presumption in drug cases but not terrorism cases.

Section 6952 is substantially the same as the main provision of H.R. 3040, which was introduced by Representative GOODLATTE on September 9, 2003. I introduced the same bill as S. 1606 on September 10, 2003. S. 1606 was the subject a hearing before the Senate Subcommittee on Terrorism, Technology, and Homeland Security on June 22, 2004. Witnesses included Rachel Brand, Principal Deputy Assistant Attorney General, Office of Legal Policy, Department of Justice; Michael Battle, U.S. Attorney, Buffalo, NY; and James K. Robinson, former Assistant Attorney General, Criminal Division, Department of Justice.

I have spent considerable time reviewing this conference report and thoughtfully considering its provisions. I have serious reservations and agree with the many experts in this field who have urged a more thorough study of the intelligence community's problems and, likewise, a careful matching of those problems to solutions. Though I appreciate the hard work of the 9/11 Commission to help Americans understand how 9/11 happened, the Commission's recommendations—on which it spent far less time than on the narrative it took some 18 months to assemble—are not the final answer to the intelligence community's problems.

I intend to support this conference package, noting the improvements that have been made since Senate consideration, but I intend to closely monitor its implementation. I also strongly believe that Congress needs to focus its attention next year on resolving the more difficult problems in the intelligence community and, more broadly in the homeland security arena, like immigration, not addressed in this legislation. I will work with my colleagues in the House and Senate to ensure this happens.

Mr. CORNYN. Mr. President, I rise to express my support for the conference report accompanying S. 2845, the Intelligence Reform and Terrorism Prevention Act of 2004. I highlight three specific terrorism prevention provisions in the conference report, provisions on which I have worked particularly hard to incorporate into this new bill, provisions which I am pleased to see enacted into law. These provisions make important improvements to our Federal criminal law, improvements that are critical to strengthening our ability to fight and win the war against terrorism.

The first two provisions involve strengthening our efforts to ensure that weapons of mass destruction do not get into the hands of terrorists. Earlier this year, I introduced two bills, S. 2664 and S. 2665. I am pleased to see that both of those bills have now largely been adopted by the conference.

S. 2664, also known as the Prevention of Terrorist Access to Destructive Weapons Act, can be found at Title VI, Subtitle J of the new bill reported by the conference. This provision creates new federal prohibitions and strengthens current federal prohibitions against the possession of four categories of destructive items: (1) Man-Portable Air Defense Systems, known as ''MANPADS'', (2) atomic weapons, (3) radiological dispersal devices, known as ''dirty bombs'', and (4) the variola virus, the virus that causes smallpox. There is no legitimate private purpose for possessing these items. Moreover, the potential for terrorist use of these items is among the most serious threats to our homeland security. By prohibiting the unauthorized possession of these items, and by imposing strong penalties on violators, these provisions will play a major role in preventing and disrupting future terrorist attacks, by depriving terrorists of access to some of the most highly destructive and dangerous items civilized society has ever faced.

Specifically, these provisions would punish unlawful possession as well as unlawful production or transfer of these items, and includes attempts, threats, and conspiracies related to such acts. These provisions generally impose tough, mandatory minimum sentences of 25 years, and in some cases impose sentences up to and including life imprisonment. Tough penalties like these are appropriate for the most dangerous threats our nation faces, and that is exactly the kind of threat that these items pose. We may not be able to deter the most dedicated of our terrorist enemies around the world from wanting to harm us, but we can deter individuals who serve at lower levels in terrorist organizations, and we can deter those who might try to profit from terrorism by supplying terrorists with such items.

I would like to spend just a brief moment highlighting the particular problem of MANPADS. MANPADS are lightweight, surface-to-air missile systems designed to take down aircraft. MANPADS fire an explosive or incendiary rocket or missile equipped with a guidance system designed to target low-flying aircraft, typically around the time of landing or departure. They can be carried and fired by a single individual, from a distance. Because they are small, they are easy to conceal and smuggle. They are relatively cheap—ranging from $25,000 to $80,000 each—take only seconds to prepare, require minimal training, and have a flight time of just three to ten seconds.

By some estimates, there are at least 500,000 MANPADS in circulation around the globe. Although most MANPADS are thought to be under the control of an established military, as many as a thousand MANPADS are believed by some to be in the hands of al-Qaeida and other terrorist groups. Coalition forces reportedly captured nearly 5,600 missiles during the post–9/11 invasion of Afghanistan. Defense Secretary Donald Rumsfeld reported last year that MANPADS ''are widely available in the world and do have the ability to shoot down aircraft and helicopters, and from time to time it happens in various locations.'' He said there are ''enormous numbers'' of such weapons still in Iraq—''have to be more than hundreds. . . . There are weapon caches all over that country. They were using schools, hospitals, mosques to hide weapons.''

A 2000 State Department report stated that ''one of the leading causes of

loss of life in commercial aviation worldwide has been from MANPADS . . . attacks, with over 30 aircraft lost.'' According to a Congressional Research Service report issued last year, there have been at least 36 known missile attacks on commercial planes in the last 25 years; 35 of those incidents took place in war-torn areas, mainly in Africa. For example, in 1983 and 1984, Angolan rebels shot down two Boeing 737s. In the first incident, all 130 people on board died, but in the second attack, the plane managed to land without fatalities after being hit at an altitude of 8,000 feet. In 1998, a Boeing 727 was shot down in the Democratic Republic of Congo, killing 41. And in November 2002, in Mombasa, Kenya, two missiles were launched against a chartered Israeli Boeing 767 just after take off for Tel Aviv, Israel. The pilot reported spotting smoke trails near his plane, and some of the 261 passengers said they heard an explosion. The attempted attack has been linked to al-Qaida, and occurred on the same day as an al-Qaida-linked bombing of a nearby resort hotel. Shoulder-launched missiles also brought down several smaller aircraft during the invasion of Iraq, including a Chinook helicopter that crashed last November, killing 16. In January, an Air Force C–5 transport plane carrying 63 troops was struck by a surface-to-air missile as it left Baghdad Airport, but it landed safely.

Accordingly, MANPADS are widely recognized as one of the greatest threats to civil aviation today. And just last year, the President agreed with other world leaders at a G–8 conference to a series of controls on MANPADS. S. 2664 is a critical part of the President's effort to control and combat the proliferation of MANPADS, and I am pleased that the conference has seen fit to incorporate the provisions of that bill into its report.

In addition to MANPADS, S. 2664 also targets three other destructive devices. No one questions the obvious danger posed by allowing atomic weapons and radiological dispersion devices, or dirty bombs, to get into the hands of terrorists. In addition, the variola virus is the causative agent of smallpox—an extremely serious, contagious, and often fatal disease. In fact, the Centers for Disease Control has classified variola as one of the biological agents that poses the greatest threat for public health impact. It has a high potential for large-scale dissemination. Accordingly, it may be attractive to terrorists as a biological weapon. These provisions, I am pleased to see, have also been incorporated into the conference report.

I will just add a quick word about S. 2665, also known as the Weapons of Mass Destruction Prohibition Improvement Act. The provisions of S. 2665 can be found at Title VI, Subtitle I of the new bill. Those provisions generally expand current federal criminal prohibitions against the use and proliferation of WMD, both domestically and abroad, and fills a number of gaps in current law.

They amend the current federal weapons of mass destruction statute by criminalizing all WMD attacks on foreign government property in the United States, as well as U.S. government property, and expanding the current prohibition on the use of WMD to include any acts affecting interstate commerce in a variety of ways. They also amend the federal biological agents and toxins law by extending the prohibition to possession by agents of terrorist nations or terrorist organizations.

With respect to foreign WMD threats, the bill amends a provision of the Atomic Energy Act to prohibit participation outside of the United States in the unauthorized development as well as production of nuclear material, and creates a new criminal code section to forbid the provision of material support to, or any other participation in, any WMD program of a terrorist organization or terrorist nation.

The third and final provision I want to highlight involves the perpetration of cruel hoaxes against the families of military personnel and terrorism hoaxes generally. I am pleased to be an original co-sponsor of S. 2204, also known as the Stop Terrorist and Military Hoaxes Act, and pleased to see that provisions of those bills have been incorporated into the conference report.

It is disturbing to think that anyone would want to engage in the false impersonation of a military officer in order to harass, terrify, or otherwise cause mental distress to military families. I cannot fathom why a human being would want to conduct a crank call to the family of a member of the Armed Forces and falsely inform them that their loved one has been killed in the line of duty.

Yet during the recent war in Iraq, that is precisely what happened. Several families reportedly received hoax telephone calls informing them that a family member serving the military in Iraq had been killed or captured. Not surprisingly, the families who received these calls were terribly distressed. It must have been a cruel experience indeed to have to wait and work to confirm that their family member was actually alive and safe.

Hoaxes against military families and terrorism hoaxes must be punished, because they utilize scarce resources that need to be focused on combating terrorism, and distract the attention of our law enforcement and our military away from our terrorist enemies. But that's not the only reason. Hoaxes are cruel. They are mean-spirited. And they can be very dangerous. I want to read a portion of a letter from one dutiful U.S. serviceman to his uncle. The letter is dated April 18, 2003, and it reads: ''One guy died bringing me a sat. phone so I could call Dad to let him know I was alive. It made me think of 'Saving Private Ryan.' Was it worth his life and the risk of the others to bring me a phone? I know it was a relief to all of you to hear I was okay. Now I feel I must make my life worth his. I don't know if I can do that.'' No one should have to die in the line of duty in order to correct a hoax. And no one should have to live with the emotional pain that this serviceman so eloquently describes in this poignant letter.

Under current law, acts of impersonation are illegal only if the person demands or obtains something of value from the victim. That does not include military family hoaxes like the ones described here. In addition, many terrorism hoaxes fall outside the definitions of current law. S. 2204 fills these major gaps in the law, and I am pleased to see these provisions incorporated into the conference report.

Mr. LAUTENBERG. Mr. President, I rise to express my approval of this much-delayed 9/11 intelligence reform bill. As a conferee on this important legislation, I am proud of what we produced. The terrible consequences of the 9/11 attack will never be forgotten, but with the passage of this bill future generations will be safer from terrorist attack.

On a personal basis, I, like so many from my State of New Jersey and our region, knew people who perished, families who were torn apart, people who still feel the pain of their loss.

I want to thank Senators COLLINS and LIEBERMAN, and Representatives HOEKSTRA and HARMAN for their efforts to get a strong bill. This was a roller coaster conference, but well worth the effort.

The 9/11 Commissioners also deserve our appreciation for their steady leadership and thoughtful input during this process.

Last, and most importantly, I want to salute the 9/11 families for their dedication to getting this legislation done. I especially want to thank the Steering Committee of 9/11 Families and the so-called ''Jersey Girls.'' Had it not been for you 3 years ago, the 9/11 Commission would have never been established. And were it not for you now, this bill would have never passed.

Mr. President, we can finally look the 9/11 families in the eye and say: ''We have delivered.''

This 9/11 bill is the most significant piece of intelligence legislation we have passed in 50 years.

The last major reform was the National Security Act of 1947, signed into law by President Truman.

While the process of compromise resulted in a bill that did not adopt all of the recommendations of the 9/11 Commission, this new law will bring significant improvements in our intelligence system for the better.

Mr. President, the 9/11 Commission recognized a need to have one person in charge of our intelligence community, to prevent the kind of miscommunica-

tion that occurred before 9/11. This bill addresses this important issue by creating a Director of National Intelligence (DNI) with real authority over America's 15 intelligence-gathering agencies.

This bill gives this intelligence director principal authority over the estimated $40 billion intelligence budget and gives that person the power to establish clear priorities for the intelligence community. The bill makes clear: the buck stops with the DNI.

This bill also creates a National Counterterrorism Center that will lead our counterterrorism efforts. It will be staffed by terrorism experts from the CIA, FBI, and the Pentagon. The Center will coordinate terrorism intelligence from throughout the government, breaking down the walls that have too frequently prevented agencies from sharing important information in a timely manner.

The bill bolsters border security, particularly improving aviation, air cargo, and maritime security. It also strengthens border surveillance, increases the number of border patrol agents and immigration and customs enforcements investigators.

This bill also has some provisions to safeguard our civil liberties by establishing a ''Privacy and Civil Liberties Oversight Board.'' Although I do not believe that this board has quite the independence and power that I wanted, I am hopeful that the Board will help ensure that new regulations and policies do not violate privacy rights or civil liberties.

Mr. President, despite the bipartisan support for this bill, it has faced a difficult road. To be honest, we were ready for a vote on November 20. A strong majority of the conference committee approved this bill and we were ready to go. I signed my name to the conference report at that time.

But later that same day, we found out that the House Republican leadership would not move forward on the bill. The reason? Because two Republican Congressmen didn't like the conference report.

Mr. President, in my view, the delay in passing this bill was unnecessary and unwise. Every day this bill was dragged out was a day that made our communities less safe.

The House Republican leadership nearly snatched defeat from the jaws of victory. But thankfully, in the end the families and the 9/11 Commission made their voices heard, and we have reached this milestone today.

Mr. President, my home State, New Jersey, lost 700 of its citizens on 9/11. There is little we in Congress can do to heal their pain. But today, at least we can do something to help prevent such a tragedy in the future.

Mr. GRAHAM of Florida. Yesterday was the anniversary of Pearl Harbor, which is remembered as one of the greatest intelligence failures in our country's history. The desire to prevent future Pearl Harbors helped lead to the creation of our national intelligence community in 1947.

In the 15 years since the fall of the Berlin Wall, there has been a growing awareness that our national intelligence community is in need of serious reform. Despite frequent reviews of the intelligence community's failures and structural problems—including the Hart-Rudman Commission; the Gilmore Commission; the Bremer Commission; the Congressional Investigation of 9/11; and the 9/11—there has been continued reluctance and resistance to reform.

Recent intelligence failures—most notably the failure to detect the September 11 plot, and the massive intelligence failures that led us to war in Iraq—have given new exposure to the problem and new momentum to reform efforts. I am extremely pleased that we are now in a position to enact serious intelligence reform legislation for the first time in over 50 years. I consider this legislation to be one of the most important enactments of my 18 years in the U.S. Senate. There are several elements of this legislation which warrant more detailed comment.

One of the most important aspects of this legislation is the element that Senator ROBERTS was just discussing—the need to centralize the intelligence agencies is not an end in itself, but a platform from which we can move to decentralize.

As the United States military transformed itself from the military of San Juan Hill and the World Wars, it first needed to centralize, under the National Security Act of 1947, consolidating the secretaries of the Army and Navy into the Department of Defense, and then to decentralize, under the Goldwater-Nichols Act in 1986 into the joint commands of the modern military. Our intelligence community needs to transform itself and move from being designed around functions—such as electronic eavesdropping, or satellite surveillance—to a focus on missions, such as counterterrorism or counterproliferation.

This legislation makes the appropriate and necessary first step of centralizing the intelligence community under a Director of National Intelligence. It also lays the foundation for the next step, which is decentralizing the intelligence community through the establishment of mission-based intelligence centers. Two are established by statute—Counterterrorism and Counterproliferation—and the legislation gives the DNI the power to establish other centers, to focus on those current or emerging threats he or she deems to be of priority importance.

Among the shortcomings referred to earlier, one of the first and foremost is obviously an underdeveloped capacity for gathering human intelligence. Our intelligence community has come to rely too heavily on electronic eavesdropping and satellite surveillance, and human intelligence has been neglected. A case could be made that both the war in Afghanistan and the war in Iraq were the products of our inadequate human intelligence capabilities. We must make a major effort to rebuild our capabilities, and this legislation begins to address that problem.

One of the most important elements of a human intelligence program is a corps of skilled and dedicated linguists. Unfortunately, while our intelligence agencies still possess a more-than-adequate number of Russian speakers, they lack individuals proficient in the Middle Eastern and Central Asian languages that are of obvious current importance. This legislation, along with language in the Defense authorization bill that establishes a Reserve Officers Training Corps counterpart for the intelligence community, helps to address this problem as well.

The third intelligence-related item deserving particular attention is the issue of excessive classification. I want to comment senator WYDEN and Senator LOTT, who were very involved in this aspect of the legislation. Our intelligence community has developed an unhealthy obsession with secrecy, and this has often led to bad analysis and bad decisions. This obsession with secrecy prevented intelligence agencies that had knowledge of various elements of the 9/11 plot from ''connecting the dots'' and realizing that a major terrorist operation was being plotted on American soil. This obsession with secrecy contributed to inadequate scrutiny of intelligence relating to Iraq, and as a result we went to war because of weapons that did not exist, and terrorist connections that appear to have been imaginary.

This obsession with secrecy poses a serious and continuing threat to our national security. As the late Senator Daniel Patrick Moynihan said, ''Secrecy is for losers.'' If we do not want to lose in our struggle with the various threats we face today, we must abandon this unhealthy obsession. This legislation addresses this problem by directing that more rational guidelines for intelligence classification be established, and that an independent board be empowered to review these decisions. This is an important first step toward abandoning this dangerous obsession, and making sure that secrecy decisions are made for reasons of national security, rather than agencies trying to bury their mistakes.

Madam President, what we are doing today is an important step, but it is not by any means the last step. Some of these steps are rather tangential to the issue of intelligence reform. For example, this legislation includes a provision requiring face-to-face interviews with visa applicants. If we are to implement this provision effectively we must seriously consider increasing the capacity of our consular service. Currently, in Brazil, visa applicants must travel to one of three large cities in order to get a visa for travel to the United States.

Since Brazil is the size of the continental United States, and these three

cities are located close together, this is the equivalent of telling Americans who wish to secure a visa to Mexico that they must first travel to either Dallas, Chicago, or Cleveland. While it is probably not cost-effective to open new consulates in every city that might need visa services, we should at lest open more visa offices, so that these interviews can be conducted without unduly inconveniencing our foreign guests.

This legislation also includes a section addressing the United States' relationship with Saudi Arabia. It points out, and I quote, that ''the Government of Saudi Arabia has not always responded to promptly or fully to United States requests for assistance in the global war on Islamist terrorism,'' and particularly cities the Saudi government's inattention to the problem of terrorist financing. I would add that we have compelling evidence to believe that Saudi interests actually played a role in financing insurgents in Iraq and earlier the 9/11 hijackers. The extent of Saudi involvement in 9/11 was detailed in a twenty-seven page section of our 2002 joint House-Senate Intelligence Committees report on the attacks of September 11, 2001. Unfortunately, every one of those twenty-seven pages was classified. This means that the American people have, in that and other instances, been denied important information about our relationship with Saudi Arabia. I hope that this intelligence reform legislation calling for more dialogue on the U.S.-Saudi relationship is heeded, and that increased attention to this relationship will lead to greater transparency and candor.

Madam President, as I said in my farewell speech yesterday, in a quote from Winston Churchill, ''This is not the end, nor is it the beginning of the end, but it is perhaps the end of the beginning''. This Churchillian wisdom also applies to what we are accomplishing today. There is more that still needs to be done as we move beyond the end of the beginning of intelligence reform.

Let me start with the President's responsibilities. The President will have the responsibility for making a series of critical appointments, and he must appoint creative, dynamic and extremely hard-working people who can be effective in the challenging new roles that we are creating. He must also ensure that the people he appoints promote a value system that is conducive to open, honest and effective intelligence gathering and analysis. And he must also manage the relationships between the new DNI and existing department and agency heads—most notably the Secretary of Defense—in order to ensure that the goals of intelligence reform are realized.

The new DNI will also have tremendous responsibility. He or she will have to establish clear priorities for the intelligence community, and this will be reflected in the National Intelligence Centers that are created to work, alongside the National Counterterrorism and Counterproliferation Centers. The DNI must also revise current budget priorities, such as the research and development budgets, and establish community-wide personnel policies that support the recruitment, training and retention of effective intelligence community personnel.

Finally, there will be a responsibility here on the Congress. In the Senate we have taken steps to reform our oversight of intelligence. Terms limits on the Intelligence Committee have been removed. By creating a new appropriation subcommittee for intelligence we have freed the intelligence budget from its previously unbreakable link to the defense budget. These are good starts. But we will also have to look at the culture of the congressional oversight committees, and make sure that they direct their attention to the front windshield of the future, and the threats that are coming at us, and spend relatively less of their time on looking through the rear view mirror at accidents that have already occurred.

By its nature, the intelligence community is going to create accidents from time to time. They need to be reviewed. But we cannot afford for them to consume all of our oversight responsibility. It is in the future that new threats are to be found, and it is our responsibility to be able to assure the American people that our intelligence community is capable of identifying those threats, and of providing information to the appropriate decision makers, in order to prevent those threats from becoming the next Pearl Harbor, or the next 9/11.

Madam President, in conclusion, I would like to note that this bill would not have been possible without an extraordinary effort by dozens of members of Congress, the Joint House-Senate intelligence inquiry members and staff, the 9/11 Commission, and, particularly, the families of the victims of 9/11.

Today is a celebration of the success of urgently needed reform, finally overcoming the inertia of the status quo. But, this is only the end of the beginning. The President, the Congress, those Americans who do and will serve the intelligence community, bear the responsibility of ensuring that the promise of enhanced security through reformed intelligence is achieved. The fulfillment of this promise will be neither quick nor easy. The most important undertakings seldom are. But the goal is worthy of our most steadfast commitment to its attainment.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I ask unanimous consent that a list of my staff members who worked so hard on this bill over so many months be printed in the RECORD at this point.

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

Michael, Bopp, Jane Alonso, Deborah Barger, Don Bumgardner, Jen Burita, Elissa Davidson, Ann Fisher, Jason Foster, Jennifer Gagnon, Priscilla Hanley, Johanna Hardy, Jennifer Hemingway, Keith Janssen, David Kass, Bruce Kyle.

Gordon Lederman, Lesley Leger-Kelley, James McKay, Bill Murray, Jon Nass, Amy Newhouse, Bill Priestap, Alec Rogers, Kate Scontras, Amber Smith, Heather Smith, Cornelius Southall, Michael Stern, Sarah Taylor, Monica Wickey, and Keith Herrington.

Ms. COLLINS. Mr. President, I also want to list the conferees on this bill. Contrary, perhaps, to the implications of what we have just heard, this was an extraordinarily open conference, where Democrats and Republicans negotiated side by side in every single meeting. It was a bipartisan effort.

Senators LOTT, ROBERTS, VOINOVICH, COLEMAN, SUNUNU, DEWINE, LEVIN, ROCKEFELLER, DURBIN, GRAHAM of Florida, and Senator LAUTENBERG were the Senate conferees on this important bill. I thank each of them personally for how hard they worked. Each of them contributed greatly to the final product, and I am very grateful for their support.

I wish to also respond to the concept that somehow this issue was rushed. The fact is there have been numerous reports and commissions that have urged intelligence reform going back to 1954. Over and over again, problems were identified in our intelligence structure, even as our country became more vulnerable to asymmetric threats, such as terrorist groups.

The 9/11 Commission, which did, in my view, an outstanding job, reviewed more than 2.5 million pages of documents, interviewed more than 1,200 individuals, held 19 days of hearings, and took public testimony from 160 witnesses. Congress held 44 hearings on the 9/11 Commission's report and recommendations.

The Governmental Affairs Committee, which I am honored to chair, alone held 8 days of hearings and marked up this legislation for 2 full days. We were on the Senate floor for nearly 2 weeks. We considered hundreds of amendments to this bill. The conference on the bill lasted nearly 2 months and received a great deal of attention.

I note that we have made substantive changes to only two provisions in the conference report since November 20 when the conference agreement almost came to the Senate floor.

The November 20 language was widely circulated. It included being provided to the staff of the distinguished senior Senator from West Virginia.

I assert that this was an extraordinarily inclusive process, and all the Members of the Senate have had ample time to review the conference report since, with just two exceptions, which have been highly publicized. It is the same language, for the most part, except for technical changes, as we reported it on November 20.

I wanted to make those points. I know there are other Members desiring

to speak. I will yield the floor, but I reserve the remainder of my time.

Finally, Mr. President, I note that the Senator from New Hampshire, Mr. SUNUNU, wishes to speak in favor of the conference report. I am prepared to yield him some of my time, but I am not certain how much time I have remaining. If I could be informed by the Presiding Officer as to how much time I have remaining, that would be helpful.

The PRESIDING OFFICER. The Senator has 10 minutes remaining.

Ms. COLLINS. I will yield at the appropriate time 5 of my remaining minutes to the Senator from New Hampshire. I thank the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I yield myself 5 minutes of the time of the Senator from West Virginia.

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

Mr. NELSON of Florida. Mr. President, I rise to state that I enthusiastically support this legislation. If I had to sum up in one sentence what would be one of the most powerful statements as to why we need to pass this legislation, it would be from the television interview of Governor Kean, the Chairman of the 9/11 Commission, when he said: This bill will pass. It is just a question of will it pass now or will it pass after the next terrorist attack.

His statement was full of so much meaning because of all the deliberation and the factfinding that the 9/11 Commission had brought to the light of day in showing how the intelligence apparatus of this country had failed us in alerting that we were about to be attacked.

We do not have the luxury of two big oceans protecting us as we have had in the past, for we now have a new kind of enemy who deals with stealthiness. Our ability to protect ourselves is having the information ahead of time so we can thwart the attack.

It was also very revealing in the 9/11 Commission Report when they concluded that we are safer than September 11, but we are not safe.

I commend the chair of the committee and her ranking member, as they have done an extraordinary job in the crucible of legislative give and take to stand on their principles and to insist on those principles that a reorganization be done under which there would be accountability instead of the separate and multifaceted intelligence communities that we have seen in the past that do not talk to each other.

My hat is off to the chair of the committee and to the ranking member. My hat is also off to them because they have shown legislative dealmaking at its best. They have done it with aplomb, with respect, with bipartisanship, with dignity, and that is the standard that has been so much a part of the historical tradition of the Senate. And the two of them, Senator COLLINS and Senator LIEBERMAN, have shown us that standard. This Senator from Florida is very grateful.

There will be other issues that we have to address in the future. Some of these additional questions on immigration are absolutely critical to our future protection, and we can do that in the context of a big immigration bill. We simply cannot be safe if thousands of people continue to come across the Mexican border, as we have heard in testimony in our Commerce Committee—specifically with our chairman, JOHN MCCAIN—having witnesses telling us how many people are coming across the Mexico-Arizona border each week. It absolutely staggers the imagination how we can have this porous border and protect ourselves from this new threat of terrorism. So we have to deal with that issue.

In part, this committee has dealt with it in giving new border agents and Customs officials, and for that I am grateful. With more coastline than any other State, save for the State of Alaska, my State of Florida is a place that is ripe for infiltration, and we need that extra protection.

I am looking forward to the continuing debate and offering some observations from the perspective of the State of Florida as we get into that debate. But for the time being, the reorganization of the intelligence apparatus, where there will be accountability and where there will be a centralized budget, is very important for the future protection of this country. That is why I support this bill, and I will be voting for this bill when we vote on it today.

Mr. President, on behalf of Senator BYRD, I yield 5 minutes of his time to Senator LIEBERMAN, and I would then yield back Senator BYRD's time, except for 5 minutes under Senator BYRD's control.

The PRESIDING OFFICER (Mr. SUNUNU). Is there objection?

Mr. WARNER. Mr. President, I do not understand. I ask the Presiding Officer to advise the Senate with regard to the current parliamentary situation. When I left the floor earlier today, there was an informal arrangement that Senator STEVENS and Senator WARNER would follow Senator BYRD. That is my recollection. I yield to the managers.

Mr. NELSON of Florida. Mr. President, do I have the floor?

The PRESIDING OFFICER. The Chair can clarify. There is no specific order to that effect. Does the Senator from Florida wish to clarify his unanimous consent request?

Mr. NELSON of Florida. To my good friend, the chairman of the Armed Services Committee, I am yielding back Senator BYRD's time. He still has time left. I stated specific parameters, 5 minutes for Senator LIEBERMAN and the additional 5 minutes that I stated.

The PRESIDING OFFICER. Is there objection?

Ms. COLLINS. Mr. President, I do want to clarify apart from this issue that I believe there was an informal—I thought we had made it formal—understanding that Senator STEVENS would follow Senator BYRD's remarks, and Senator WARNER would follow Senator STEVENS' remarks. But all the Senator from Florida is trying to do—and I very much appreciate his endorsement of the bill—is to yield back the remainder of Senator BYRD's time at the request of Senator BYRD.

The PRESIDING OFFICER. Is there objection?

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Parliamentary inquiry: It is my understanding that part of the time was to be yielded to another Senator.

The PRESIDING OFFICER. The request was to allot Senator LIEBERMAN 5 minutes of the remaining time.

Mr. STEVENS. At this time?

Mr. NELSON of Florida. No. If the Chair will clarify my statement.

The PRESIDING OFFICER. I believe I just did. The request was to yield back the remainder of Senator BYRD's time with the exception of 5 minutes to be granted to Senator LIEBERMAN and 5 minutes retained by Senator BYRD. So there would be 10 minutes reserved on the minority's time.

Without objection, it is so ordered.

The Senator from Alaska.

Mr. STEVENS. Mr. President, I rise to discuss this national intelligence reform bill with some reluctance, because as a member of the Governmental Affairs Committee I was also involved, as the chairman of the Appropriations Committee, in the enormous omnibus bill and I have not been able to pay the attention to this bill that I should have. I regret that some of my feelings about the bill reflect the fact I was not there to participate in those meetings. I do commend my colleagues in both Houses of the Congress for their hard work in coming to an agreement on this bill. As with every conference, each voice is heard but none can dominate, and compromise is absolutely required.

I commend Senator COLLINS and Senator LIEBERMAN for their attention to the concerns of the people of this Nation and for this bill that addresses those concerns in the wake of September 11. I do not believe this bill fully resolved all of those concerns, but the American people should know that Congress has indeed passed a bill to reform our intelligence community.

This process has been a long and arduous one. I voted for the Senate version of this bill, when it passed the Senate, with reservations. I was concerned about the needs of the warfighters and the publication of the top line numbers of the intelligence community and the broad authorities granted to the Director of National Intelligence. It was my hope that these concerns would be addressed, and they have been partially met by this bill.

I still believe that some of the sections of the bill grant such authorities

to the Director of National Intelligence that place him or her above those of any member of the President's Cabinet, and by passing this bill we will have created an intelligence czar whose authorities will far exceed any governmental official other than the President himself. I believe this should be of some concern to every Member of the Senate, and Senator BYRD has outlined some of those concerns.

This Director of National Intelligence is not an elected official and is not directly accountable to the American people. The Director of National Intelligence will only be able to be reined in by the President himself, and that, I believe, puts an overwhelming burden on the President of overseeing this official and the actions of the Director of National Intelligence on a daily basis. No one else has any way to control this official.

The intelligence community has also provided support to the President, to the administration itself, and to the Congress. I fear this bill goes far beyond that role. When an individual or an organization is given such broad authorities, the lines between policymaking and information gathering become blurred. This is particularly true in the intelligence field, and I continue to have reservations as to how this new organization will integrate these duties with the overall governmental structure and particularly with those of the Secretaries of State, Defense, and Homeland Security.

These are extraordinary authorities that will be given to the Director of National Intelligence. That person will exercise power far beyond those I have seen even in wartime. In my years in the Senate, I have known 12 Directors of Central Intelligence. It has been my privilege to know each one of them personally. My roots in the intelligence community go back to World War II when I flew the OSS plane in China. Since then, I have had a great deal of interest in and contact with members of the intelligence community and continue to have a great interest in the operations of intelligence for our National Government.

Clearly, I believe I know a little history of intelligence. I challenge anyone to name any official of a friendly or adversarial intelligence service over the past century who has been granted the broad authority that this National Intelligence Director will have.

What this requires, in my judgment, is persistent oversight by the Congress. Each committee of the Congress with oversight of intelligence matters must scrutinize the actions of the intelligence community, and in particular this Director, to ensure there are checks and balances in this system that are required by our Constitution. We must aggressively remain attuned to assure that none of the freedoms we celebrate are hampered by this new entity or its Director.

Now, having said that, as I informed the President previously, I will vote for this bill, but it is my intention to ask that each general counsel in the intelligence community and the Department of Defense report to the next Congress, at least on a periodic basis, their interpretation and the subsequent implementation of this legislation in their Departments to ensure that these concerns of mine and those that have been expressed by other Senators on the floor do not come to fruition.

Again, this is a bill that is needed, authority that is needed in the post-9/11 period. I believe still, as I have stated repeatedly on the floor, there are many Members of the Senate who do not realize how much has been accomplished since 9/11, and I assume this bill will be interpreted in terms of the intelligence system as it exists today and not based upon the intelligence system that existed on September 11, 2001.

I thank the Chair.

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

The Senator from Virginia.

Mr. WARNER. Mr. President, I ask the Presiding Officer to advise me when there is but 5 minutes remaining on my time such that I can allow that time to be used by another Senator, and I would hope the managers would yield to Senator CORNYN, if that is possible.

Before my distinguished colleague from Alaska departs the floor, I associate myself with his goals in this forthcoming legislation and would like to cosponsor that with him. I think that is very much needed. I do not join or do that in any criticism of the distinguished work done by the managers of this bill. They certainly were given a daunting challenge to perform in a very short period of time, but I hope the managers and others recognize the need for oversight, perhaps in some respect by my committee, the Intelligence Committee, and the Governmental Affairs Committee, because of the enormity of the power that this one individual has.

As it relates to my specific concerns, that is of the chain of command and the operation of the new Director to involve himself in some way in those decision processes, as that order comes down from the President through the JCS to the combatant commanders, we have to watch the execution of those powers very carefully.

So I commend my distinguished colleague, and I wish to thank our distinguished majority leader for the very openminded and fair manner in which he dealt with those of us who had some concerns about this throughout. He was joined, I think in some respects, by the Democratic leader. Together with Senator STEVENS, Senator BYRD, Senator SESSIONS, Senator KYL, Senator ALLARD, Senator CORNYN, and Senator BURNS, and I will let them speak for themselves, but I thought their contributions to this Senator, and I think from the conversations with the Senator from Alaska, were very helpful as I began to work my way through what I perceived as my responsibility with regard to this legislation in the capacity as chairman of the Senate Armed Services Committee.

On Monday this week, I joined, at his invitation, Chairman DUNCAN HUNTER of the House Armed Services Committee, indicating that I planned to support this conference report, and that was predicated largely on the achievements of Chairman HUNTER and, to some extent, myself and others working with the managers in providing a deletion of certain words in the conference report and in their place providing others that, in my judgment, give a greater degree of protection to the time-tested concept of chain of command within our military forces.

Again, I have been working, and I think it is important for the legislative history to set forth a chronology, on the chain of command language over several months. I am particularly grateful to the Vice President, with whom I had consultations, and his staff, with whom I had continued conversations, for their guidance and assistance on this vital issue as I worked with Chairman DUNCAN HUNTER. The issue was of great importance. I believe, as a matter of fact, it was critical that a clear record be laid out of the chronology of events that led to this new language.

Back in August and September of this year, when intelligence reform legislation was being developed, the White House, on September 16, provided draft legislation to the Congress. The process was somewhat informal. I mean some of the processes throughout this legislative consideration were somewhat unusual. But, anyway, they provided draft legislation. It suggested legislation contain—and I refer to section 6 on preservation of authority. That is another definition of chain of command. This legislation would ensure the protection of the chain of command as proposed by the President. The bottom line is Cabinet officers remain responsible for managing their departments and would remain accountable for the actions of their departments.

I was advised at that time that this preservation of authority section was drafted, indeed, with the personal involvement of the President and that he had expressed to his immediate associates the importance of this concept to the President.

Legislation reported to the Senate by the Government Affairs Committee did not include this section. That, of course, was the chronology that the managers can provide if they deem necessary.

The administration felt strongly enough to appeal for the inclusion of this provision of preservation of authority language during the Senate floor consideration of the bill. And in

the Statement of Administration Policy, dated September 28, 2004, the administration urged the Senate to include section 6 of their proposed legislation in the Senate bill.

On October 1, 2004, I introduced an amendment during the floor debate to accomplish this very purpose, as established by the administration in their communications. Unfortunately, after lengthy discussions with the floor managers and the administration, I was just not able to effect what I believed was a compromise that would meet the goals that I had set out and, if I may say, I felt the goals that the administration had set out. Consequently, the amendment was not considered and was withdrawn.

I remained concerned about preserving the authority of Cabinet officers to manage their departments and to remain accountable for the performance of their departments as well as protecting the integrity of the chain of command, from the President to the Secretary of Defense to battlefield commanders.

In a statement on the Senate floor on October 4, 2004, during the course of that debate, before final passage, I clearly indicated I would vote for the bill, but I had sufficient confidence that the process would once again take into consideration the positions of the Senate and the House on the position of chain of command, and that the conferees would see the wisdom of incorporating that provision as desired by the administration and along the lines of the amendment that I had considered.

Clearly, this chain of command issue has been of significant concern over the past few weeks. It was one of the reasons the House of Representatives was not able to reach a decision to proceed with a vote on this conference report prior to Thanksgiving. The record reflects with clarity that it was important that this issue should be resolved. It was not a trivial matter—I repeat, it was not a trivial matter, as has been suggested in press reports, attributing those quotes to others.

Each time our President sends the U.S. Armed Forces into harm's way to defend our Nation, a series of events happens, including specific orders to our combat support agencies, the Defense Intelligence Agency, the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency, to provide very specific supports to combatant commanders at specific times and places.

This support is critical to the success of virtually all military operations, and those decisions often have to be made on a real time, instantaneous basis. There can be no ambiguity in the statutory framework or regulations about these orders and the ability to execute them. And there can be no conflicting directions to the implementers of that intelligence to provide it and provide it expeditiously for the men and women of the Armed Forces. The lives of our uniformed personnel are at risk, and the success of our military efforts can often hang in the balance.

The language contained in the November 20 draft conference report potentially inserted the newly created Director of National Intelligence into this chain of command with the authority to direct military intelligence assets to what the DNI—that is the acronym for the Director of National Intelligence—considered higher priorities, thereby possibly putting him in conflict with the Secretary of Defense and the combatant commanders. Such a situation would clearly, I judged, violate the time-tested principle of continuity, of unity of command.

The new law, however, as now redrafted, will presumably go forward for many years. Although soldiers will come and go, personalities will be different. Consequently, these potential ambiguities are best removed now. I think the new language achieves, in large measure, that goal.

Our Armed Forces are the finest in the world and one of the reasons for their excellence is an unambiguous, time-tested chain of command. Consequently, I was very concerned, as was my friend and colleague DUNCAN HUNTER of the House Armed Services Committee, that the draft conference report, if it became law, would not be drafted in such a way as to disrupt the integrity of our chain of command, or even possibly have the ambiguity that gave rise to the ability for such disruption.

Chairman HUNTER exhibited strong, determined leadership as a House conferee on this issue, and I was privileged to work with him. We have shared such responsibilities, the two of us working together, over more than two decades of service in our respective memberships on the committees of the armed services of the Senate and the House.

On Monday this week, after consultations with the White House, the Chairman of the Joint Chiefs of Staff, Chairman HUNTER, and several conferees, an agreement was reached on the language that protects the integrity of this chain of command, in my estimate, and preserves the authority of heads of government departments to effectively manage their departments and remain accountable for the performance of all elements of their departments. The final language is a significant change, which allays concerns of the Members, which I expressed publicly on December 3 in a press statement.

Other colleagues had approached me with the same basic concerns. I think, and I have assured them in conversations, that they have largely been met and that this proposed conference report, which will eventually become statutory law, has been greatly improved.

Therefore, I ask unanimous consent that a copy of the preservation of authority provision for the November 20 draft conference report, as well as the final version be printed in the RECORD.

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

NOVEMBER 20, FINAL LANGUAGE PROPOSED BY CONFERENCE BIG 4

SEC. 1018. PRESERVATION OF AUTHORITY AND ACCOUNTABILITY.

Not later than 120 days after the date of the appointment of the first individual appointed as the Director of National Intelligence, the President shall, and on an ongoing basis, issue guidelines to ensure the effective implementation within the executive branch of the authorities granted to the Director of National Intelligence by this title and the amendments made to this in a manner that maintains, consistent with the provisions of this Act, the statutory responsibility of the head of the departments of the United States Government with respect to such departments, including, but not limited to:

(a) the authority of the Director of the Office of the Management and Budget, or

(b) the authority of the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under—

(1) Section 199 of the Revised Statutes (22 USC 2651);

(2) Title II of the Department of Energy Organization Act (42 USC 7131);

(3) State Department Basic Authorities Act of 1956, as amended;

(4) Section 102(a) of the Homeland Security Act of 2002 (6 USC 112(a)); and

(5) Sections 301 of title 5, 113(b) and 162(b) or title 10, 503 of title 28, and 301(b) of title 31, United States Code.

INTELLIGENCE REFORM CONFERENCE

EVOLUTION OF CHAIN OF COMMAND ISSUE

Current law, as established by the Goldwater-Nichols Defense Reorganization Act of 1986, provides for a clear and unambiguous military chain of command. This was a key aspect of the reform legislation to ensure that combatant commanders were provided with the unity of command necessary for successful execution of military operations.

10 USC 162

SEC. 162. COMBATANT COMMANDS: ASSIGNED FORCES; CHAIN OF COMMAND.

(a) ASSIGNMENT OF FORCES.—

(4) Except as otherwise directed by the Secretary of Defense, all forces operating within the geographic area assigned to a unified combatant command shall be assigned to, and under the command of, the commander of that command. The preceding sentence applies to forces assigned to a specified combatant command only as prescribed by the Secretary of Defense.

(b) CHAIN OF COMMAND.—Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs—

(1) from the President to the Secretary of Defense; and

(2) from the Secretary of Defense to the commander of the combatant command.

10 USC 164

SEC. 164. COMMANDERS OF COMBATANT COMMANDS: ASSIGNMENT; POWERS AND DUTIES.

(c) COMMAND AUTHORITY OF COMBATANT COMMANDERS.

(1) Unless otherwise directed by the President or the Secretary of Defense, the authority, direction, and control of the commander of a combatant command with respect to the commands and forces assigned to that command include the command functions of—

(A) giving authoritative direction to subordinate commands and forces necessary to

carry out missions assigned to the command, including authoritative direction over all aspects of military operations, joint training, and logistics;

(B) prescribing the chain of command to the commands and forces within the command;

(C) organizing commands and forces within that command as he considers necessary to carry out missions assigned to the command;

(D) employing forces within that command as he considers necessary to carry out missions assigned to the command;

(E) assigning command functions to subordinate commanders; and

(F) coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training) and discipline necessary to carry out missions assigned to the command.

In recognition of the possible conflict between the new authorities being provided to the National Intelligence Director and existing chain of command statutes, the Bush Administration's September 16 legislative proposal to implement the 9–11 Commission recommendations contained a specific provision to ensure protection of existing chain of command authorities.

SEC. 6. PRESERVATION OF AUTHORITY AND ACCOUNTABILITY.

Nothing in this Act or amendments made by this Act shall be construed to impair or otherwise affect the authority of: (1) the Director of the Office of Management and Budget; or (2) the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under section 199 of the Revised Statutes (22 USC 2651), Title II of the Department of Energy Organization Act (42 USC 7131), the State Department Basic Authorities Act of 1956, as amended, section 102(a) of the Homeland Security Act of 12002 (6 USC 112(a)), and sections 301 of title 5, 113(b) and 162(b) of title 10, 503 of title 28, and 301(b) of title 31, United States Code.

The November 20 conference proposal contained inadequate protection of the chain of command provisions as it subordinated these sections of law to the new authorities vested in the Director of National Intelligence. This proposal was opposed by Chairman Duncan Hunter.

SEC. 1018. PRESERVATION OF AUTHORITY AND ACCOUNTABILITY.

Not later than 120 days after the date of the appointment of the first individual appointed as the Director of National Intelligence, the President shall, and on an ongoing basis, issue guidelines to ensure the effective implementation within the executive branch of the authorities granted to the Director of National Intelligence by this title and the amendments made to this title in a manner that maintains, consistent with the provisions of this Act, the statutory responsibility of the head of the departments of the United States Government with respect to such departments, including, but not limited to:

(a) the authority of the Director of the Office of the Management and Budget; or

(b) the authority of the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under—

(1) Section 199 of the Revised Statutes (22 USC 2651);

(2) Title II of the Department of Energy Organization Act (42 USC 7131);

(3) State Department Basic Authorities Act of 1956, as amended;

(4) Section 102(a) of the Homeland Security Act of 2002 (6 USC 112(a)); and

(5) Sections 301 of title 5, 113(b) and 162(b) or title 10, 503 of title 28, and 301(b) of title 31, United States Code.

The proposed December 6 agreement between Senate conferees and Chairman Hunter provides necessary protection of chain of command statutes.

SEC. 1018. PRESIDENTIAL GUIDELINES ON IMPLEMENTATION AND PRESERVATION OF AUTHORITIES.

The President shall issue guidelines to ensure the effective implementation and execution with the executive branch of the authorities granted to the Director of National Intelligence by this title and the amendments made by this title, in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments of the United States Government concerning such departments, including, but not limited to:

(1) the authority of the Director of the Office of Managements and Budget; and

(2) the authority of the principal offices of the executive departments as heads of their respective departments, including, but not limited to, under—

(A) section 199 of the Revised Statutes (22 USC 2651);

(B) title II of the Department of Energy Organization Act (42 USC 7131 et seq.);

(C) the State Department Basic Authorities Act of 1956;

(D) section 102(a) of the Homeland Security Act of 2002 (6 USC 112(a)); and

(E) sections 301 of title 5, 113(b) and 162(b) of title 10, 503 of title 28, and 301(b) of title 31, United States Code.

Mr. WARNER. It has been clear, especially after the July report issued by the Senate Intelligence Committee under the leadership of Chairman ROBERTS and Chairman ROCKEFELLER, about weapons of mass destruction in Iraq and the valuable contribution of the 9/11 Commission and the comments and thoughts of many others, that led to the impetus for the United States to have had major reform of our national intelligence system. That was needed.

The Governmental Affairs Committee was given this challenge and accepted it. They have worked to the best of their ability, and their final work product brings us to this point today where I presume there will be a strong vote to endorse that workmanship.

It has been my position during this process, however, to ensure that we do no harm to the immeasurably improved intelligence system that has been built for our battlefield commanders over the past 15 years since shortcomings were identified during and after the Persian Gulf war. Senator STEVENS commented on that. That is one of the reasons we were associated in working on this language change. A much improved system exists today, and it will continually evolve in becoming more improved.

It has been the goal of the Senate Armed Services Committee, working with other committees of the Senate during this deliberative process on this intelligence reform, to ensure that intelligence support to the President, the Congress, senior policymakers, and tactical commanders is enhanced. The agreement we reached on Monday is crucial in accomplishing that goal.

The new language in the conference report before us today is a substantial improvement. President Bush, in his letter to the Congress on December 6, 2004, stated that it is his intention to develop guidelines and regulations using the statutory guidance provided in this provision ''to ensure that the principles of unity of command and authority are fully protected.''

With this agreement, it is now time to move forward to approval of this bill, and I shall vote for it. Earlier today, the distinguished majority leader made reference to this bill as ''not a perfect bill.'' I associate myself with his opinion because there are several issues about which I remain concerned; namely, the authorities of the Director of National Intelligence to establish personnel policy for military personnel and transfer them within the National Intelligence Program; the ability of the Director of National Intelligence to transfer and reprogram funds; the role of the Director of National Intelligence in major intelligence acquisition programs managed largely by the Department of Defense; and the relationship between the DNI and the Director of the CIA, and between the DNI and the Director of the National counterterrorism Center.

At this point, I say thanks to Senator STEVENS. I have worked closely with the Central Intelligence Agency and the Directors of that organization for these many years. The principal headquarters is in my State. I am privileged to have had a long series of close personal relationships with not only the Directors but many of the associate directors and others—indeed, the employees. I think overall they have stood the test of time and done their very best to provide America with the best intelligence, and most particularly the men and women of the Armed Forces.

Consequently, I will join others in this Chamber to carefully monitor oversight implementation of this legislation over the coming months, and will, if deemed necessary, offer such legislation, an example being what the distinguished Senator from Alaska just mentioned, when appropriate to further strengthen this law to alleviate any unintended consequences of this legislation.

Again, I congratulate the managers of this bill. I look forward to working with them as we implement these reforms and build an intelligence system that provides the best possible support for our national decisionmakers, and most particularly to those in uniform serving on the distant battlefields and ramparts of the world.

I ask unanimous consent to have printed in the RECORD a working document on the chain of command issue which Chairman HUNTER and I used during our deliberations on this issue, and in response to questions that were directed to us, as well as a chronology of events associated with consideration of chain of command language during deliberations of this bill.

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

CHRONOLOGY PRESERVATION OF AUTHORITY/ CHAIN OF COMMAND PROVISIONS IN THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

July 22, 2004—9/11 Commission Report released.

August 2004—relevant committees of Congress conduct hearings.

September 16, 2004—White House provides suggested legislation on intelligence community reform to relevant committees of Congress, which includes a section 6 on ''Preservation of Authority'' for heads of executive departments to manage their departments and remain accountable for their performance.

September 23, 2004—Government Affairs Committee reports S. 2845 to the full Senate for consideration, without ''Preservation of Authority'' provision.

September 28, 2004—White House submits Statement of Administration Policy supporting S. 2845, but expressing concern about several issues including the lack of a ''Preservation of Authority'' provision stating, ''The Administration supports inclusion of this provision [Section 6, Preservation of Authority and Accountability, of the Administration's proposal] in the Senate bill.''

October 1, 2004—Senator Warner submits Amendment No. 3876 to S. 2845, to preserve the authority of heads of executive departments to manage and remain accountable for the performance of their departments.

October 4, 2004—Debate on Warner ''Preservation of Authority'' amendment ends with no agreement. Modified language jointly drafted by White House and Senator Warner is rejected. Amendment is withdrawn.

October 6, 2004—S. 2845 is passed by the Senate, but without a section on ''Preservation of Authority.'' Senator Warner voices support for the overall legislation but cites continuing concerns, including the lack of a ''Preservation of Authority'' clause, and indicates his intent to try to resolve these concerns during the conference process.

October 10, 2004—H.R. 10 is passed by the House.

October 16, 2004—Conference begins.

October 18, 2004—Director, OMB, and National Security Advisor send joint letter to conference chairmen expressing administration views on conference issues, including urging conferees to include section 6 of the original administration proposal on ''Preservation of Authority,'' and indicate this section is one of President Bush's three core principles for the bill.

October 20–November 19, 2004—Conferees exchange approximately 12 offers and counteroffers on ''Preservation of Authority'' language.

November 20, 2004—Conference managers propose final language. Chairman Hunter indicates his objection to the language believing it would potentially insert the DNI into the chain of command. Senate conferees approve draft conference report 13–2. House conferees defer action on conference report.

November 21, 2004—House and Senate adjourn without taking action on the conference report.

November 22–December 5, 2004—consultations between Chairman Hunter, Chairman Warner, Vice President Cheney, several conferees, and General Richard B. Myers, Chairman of the Joint Chiefs of Staff, on appropriate language to ensure the integrity of the chain of command.

December 6, 2004—Agreement is reached between administration, conference managers, Chairman Hunter, and other concerned Members of Congress, on revised ''Preservation of Authority'' language that directs the President to issue guidelines for implementation that, ''shall respect and not abrogate the statutory responsibilities of head of the departments of the United States Government. . . .''

Mr. WARNER. Madam President, I yield the floor. Again, I yield such time as I might have remaining to Senator CORNYN.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from New Hampshire is recognized.

Mr. SUNUNU. I thank the Chair.

It is a pleasure to stand in support of the intelligence reform bill.

In my remarks today in support of the bill, I want to first emphasize that there is no real way we can know exactly and precisely what all of the benefits might eventually occur due to the reforms made by this bill. I think both the House and Senate went through a good-faith effort to try to develop a better, a better intelligence organization, better rules for sharing information than we currently have, changes that conform in many ways to some of the difficulties identified, and recommendations made by the September 11 Commission. But the real motivator for reform I think began even prior to September 11.

I think the impetus for change in our intelligence organization begins with the fall of the Iron Curtain, the end of the Cold War, the disintegration of the Soviet Union, and the emergence of terrorism—now the greatest national security threat that faces America and our allies—and concerns over the proliferation of weapons technology to terrorists around the world. That was obviously brought to the forefront with the attacks of September 11. But the fact that we have a new set of threats and a new set of risks to American security is what calls on us to review the structure of our intelligence agencies and to make the recommendations for change that are embodied in this bill.

With this legislation, we will improve the budget process for intelligence agencies by giving more power and authority to the Director of National Intelligence, the DNI. The DNI will coordinate where the funds and resources should be allocated among the 15 various agencies that have responsibility for intelligence gathering in the United States and around the globe.

We reform the standard of accountability by having an independent Director of National Intelligence. I think there is, to borrow a phrase from the previous speaker, a clearer chain of command for responsibility and accountability in setting priorities and setting goals for the President of the United States and all of those in the Government who rely on our intelligence-gathering operation.

We reform the process of coordinating between these 15 agencies. We have a new counterterrorism Center that will be the central focus for gathering information threats from law enforcement and intelligence agencies around the country.

We now have a much better understanding of the degree with which critical pieces of information can come from local or State law enforcement, and not just from the sophisticated apparatus of a national intelligence organization.

We have to coordinate and collect that information and then disseminate it and do a better job of sharing that information.

A final area of reform I would underscore is that with this legislation we set clear guidelines, a clearer process, and in many ways an easier process, for getting key pieces of information to the decisionmakers that will act on that information.

We saw, unfortunately, time and again in the wake of September 11 moments where there existed important information, but for a variety of reasons that information wasn't placed in the right hands at the right time. So information sharing, as simple as it may sound, is a critical piece of the reform element in this bill.

For all of those reasons, I am very pleased to support the legislation because I think it will create a much better framework for understanding where we are successful and where we need to continue to improve our intelligence gathering. Not every objective, not every goal, will be attained in the next year or the next 2 years. But this organizational structure, the rules for intelligence sharing, this budget process, all will make our intelligence organization much more effective.

A lot of concerns have been raised about the legislation. A lot of people point out the obvious—that it is not a perfect piece of legislation. I don't think anyone has ever come to the floor of the Senate or the House of Representatives claiming they had finally written the perfect piece of legislation. But a lot of those criticisms as well are on a weak foundation; concerns, for example, about the process, the speed and the timing with which this legislation was written.

The suggestion was made earlier last month that the Senate had rushed through this piece of legislation, that we moved it through too quickly, that there was not enough time taken for deliberations and hearings. I think of all the criticisms, that is probably the weakest I have heard.

The Chair well knows through a number of hearings we collected information—not just from the September 11 Commission and all the work they did on these issues, not just from the families of those who were lost on September 11, but from intelligence-gathering organizations, from the FBI, from local law enforcement, information that was critical to developing legislation before the Senate today.

The criticism of the process that somehow the conference between the House and Senate was done in secret is simply without foundation. The conference negotiations were extremely inclusive. In many ways I argue they were inclusive because they included me. When the conference negotiations

and the discussion about the final legislative language is inclusive enough to make available a role for the 95th most senior Member of the Senate, it is a pretty inclusive process. There were Democrats in the room at the most sensitive times as well as Republicans. It was bipartisan discussion and negotiation.

Obviously, not everyone got everything they wanted in the final bill. When the process is criticized for being exclusive or it was rushed, that criticism is most often made by someone who just did not quite get everything they wanted in the bill.

There is a criticism that we should have included more immigration or law enforcement provisions. This bill does deal with immigration in a direct and substantive way: increasing customs agents and beds for detainees; better information sharing that will make a huge difference for the INS and for others engaged in securing our borders. But it does not have every provision recommended by the House of Representatives, so it should come as no surprise we will deal with many of these issues, perhaps with a more comprehensive immigration reform bill, in the next session of Congress.

What is in the bill improves the status quo, improves the current situation. That is something for which we can all be pleased.

We have a lot of work to do on oversight in the coming session. We have a lot of work to do to make sure this legislation does what we intended it to do. But it is an outstanding effort. I commend the work of the chairman and the ranking member on the Governmental Affairs Committee as well as the House conferees.

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

The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank the Chair. Senator MCCAIN is on the way.

While Senator SNOWE is in the Chamber and is the Presiding Officer, I thank the Senator from New Hampshire for the extraordinary contributions he made to this bill and to the conference both on what used to be the Governmental Affairs Committee—I suppose it still is—and now the Homeland Security and Governmental Affairs Committee, particularly on the conference.

Senator SUNUNU was an extraordinarily important member, very steadfast in support of genuine reform, and very skillful as a legislator, both within the Senate conference and without, on the occasional missions on which he would be dispatched to the other body where, I gather from the record, he previously served and still has some people listen to him when he goes over there. The Senator from New Hampshire should feel the great pride and gratitude of the Senator from Maine and this Senator for all he contributed to this historical decision.

I yield to Senator COLLINS.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Maine.

Ms. COLLINS. Mr. President, let me make a brief comment in response to the recent discussion on the chain of command language.

First, I am very pleased we were able to reach agreement with the chairman of the House and Senate Armed Services Committee on this language. Since I did not see the documents that the chairman put into the RECORD, I state very clearly for the record that nothing in the final language in this bill in any way weakened the authority of the new National Intelligence Director.

In fact, the Director of National Intelligence will have significant budgetary and other authorities and that makes sense. We do not want to create just another layer of bureaucracy. We do not want to create a figurehead. We want to empower this individual with the authority to be able to marshal the resources to counter the very serious threats we face both today and in the future.

In my judgment, nothing in this bill has ever hindered military operations or readiness, but I am pleased we were able to draft some additional language that has provided some comfort to those who were concerned.

All Members have our first priority to the brave men and women who are fighting on the front lines of freedom. That is why this bill was very carefully drafted to keep tactical and joint military intelligence programs under the exclusive control of the Pentagon but to make sure those national assets which serve multiple customers—including the President's National Security Council, our covert agents in the CIA, as well as our military—to ensure that those assets are controlled by the Director of National Intelligence just as today they are controlled by the Director of the CIA in his role as head of the intelligence community.

I am told by those who have worked entire careers with the CIA that the Department of Defense has always been very happy with the relationship that allows a priorities committee to work out and resolve any conflicts in the use of these national assets. Certainly, this language and this bill as a whole, the reorganization as a whole, will improve the quality of intelligence that is provided to our troops, as well as making civilians at home safer. That is our goal. That is what this legislation achieves.

Mr. President, the Senator from Arizona has arrived. He has been a stalwart proponent of reform. He has worked very closely with Senator LIEBERMAN and me. I am very grateful for his leadership and support.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I came here to applaud the enormous efforts of my two colleagues, Senator COLLINS and Senator LIEBERMAN. This has been a task that has been, in the view of many, insurmountable. This piece of legislation was declared dead on numerous occasions. It was through their tenacity, hard work, and willingness to compromise that we now have perhaps one of the most significant and important reorganizations of the Federal Government certainly since 1947 when we created the Department of Defense.

It is all very good news. No one could describe it better than my two colleagues who point out this is a law that has to be translated into action. We have to change the reorganization of the boxes, but we also have to change the culture, a culture that led the President of the United States to proceed to war on the assumption that Saddam Hussein had weapons of mass destruction, which apparently he did not; an assumption that caused our Secretary of State to testify before the U.N. Security Council that Saddam Hussein was amassing weapons of mass destruction, an assumption that, unfortunately, misled other intelligence agencies throughout the world, not only that of the United States of America. But, as always, America leads. So I applaud their outstanding work. As they said, this is the beginning of a beginning, but it is an important beginning. Without this legislation, I do not believe we could make significant progress.

I would like to thank the families of 9/11 who have steadfastly supported this legislation. Without their support, it would still be sitting at the desk as it was the day Senator LIEBERMAN and I proposed it. I think their work is not over as well, because one of the failures of this body has been a total lack of congressional oversight reorganization. Still, there are numerous committees of congressional oversight. There has been no coordination, there has been no consolidation, and in the words of my friend, John Lehman, a member of the 9/11 Commission, in his words: The old bulls are more interested in protecting their turf in Congress than they are in national security.

That is a tough indictment, but I think it is true; there is no meaningful congressional oversight because of our failure to implement even the most modest reforms of congressional oversight, with the exception of permanent membership on the Intelligence Committee.

I want to point out and just talk for a minute about what has caused the holdup here the last month or so; that is, the immigration issues.

First, I always believed this legislation was about reorganization of our intelligence capabilities and not about immigration. I think I can state with some confidence that the issue of illegal immigration is one of overwhelming importance.

My State has been devastated in a broad variety of ways by the effects of illegal immigration, ranging from people dying in the desert, to overwhelming our health care facilities, to shootouts on our freeways, to other terrible things that are happening all

across the State of Arizona. We passed a ballot initiative this last election which, although I opposed, was certainly an expression of the frustration that the people of my State feel. But I would also point out, if anyone believes that simply strengthening our borders is the answer to our Nation's illegal immigration problem, they do not understand the problem.

Fifteen years ago, we declared a war on drugs, and we decided we would stop the flow of drugs across our borders which was poisoning the bodies and minds of our young Americans. The fact is, the cost of an ounce of cocaine on the street in Phoenix today is less expensive than it was 15 years ago. Why? Because there was a demand, and where there is a demand, there is going to be a supply.

There is a demand for workers for jobs that Americans will not do. What we have to have is comprehensive immigration reform that certainly entails strengthening our borders, increasing Border Patrol, and having better laws and better enforcement.

The issue of driver's licenses has to be discussed and debated because we are heading down—in a little straight talk—we are heading down a path toward a national ID card. I think that is something we ought to discuss and debate at some length before we take that step as a necessary one, if it is, in the war on terrorism.

So we have to have a comprehensive approach to immigration reform, and I hope that will be a top priority agenda item.

I say again that I am committed, and I know the President of the United States is committed, to overall, comprehensive immigration reform. I look forward to working with my friends on the other side of the aisle. This has to be a bipartisan issue, but it must be addressed because we can never assure the American people that they are safe from terrorists if our borders are penetrated, as they are today, by people who can easily come across illegally. But, overall, we also owe it to all men and women who live and work in this Nation to have certain protections.

I look forward to working with my colleagues, and, again, my congratulations to them.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend, the Senator from Arizona, for his kind words. I was just thinking, as I was listening to Senator MCCAIN, he is known as a straight talker, but he is also a great doer. When he sees something that is wrong, and nobody is doing anything about it, you are just not going to stop him until he gets it right. When he sees a need that is unmet, you are just not going to stop him until he figures out how to convince our Government to meet it.

In this case, within a month after September 11, 2001, JOHN MCCAIN and I were together somewhere and he raised the subject that there ought to be an independent, nonpartisan investigation of how this outrageous attack on the United States by Islamist terrorists could have happened and what we can do to make sure, to the best of our God-given ability, it never happens again.

We put the bill together in a commission. We had opposition. Every step was tough, but ultimately it was adopted and filled brilliantly by a group of citizens. Both parties rose to the occasion and presented a report that was a scathing indictment of the status quo, an intelligence community without anybody in charge, where people with information in the FBI, CIA, and other agencies were not sharing it with each other, and the gnawing conclusion that if the intelligence community had been better organized and the dots had been connected, we could have prevented September 11 from happening.

JOHN MCCAIN and I welcomed that report which came out at the end of July. We began to work together to draft into legislation all of the recommendations of the 9/11 Commission. He was persistent in driving to put those out there. His staff and mine worked very hard. We did so right after Labor Day. I am pleased to say, once again, as a result of the persistence and patriotism of the Senator from Arizona, most of the contents of that original legislation are in this conference report. Not just the establishment of the Director of National Intelligence and the counterterrorism Center but a remarkable host of constructive and progressive recommendations from the 9/11 Commission, which, frankly, most of the country does not even know about yet, which I believe and have confidence they will feel good about as they find out about them because they go not just to transportation security, not just for aviation, but for all modes, for border security, civil liberties, and privacy.

In an age of terrorism, when the Government will have to be more actively involved in our lives, we want to protect the freedom that defines us as Americans.

There is a very progressive, farsighted section which says ultimately we are going to do everything we can, hopefully with the assistance of a greatly improved and organized intelligence community—and do everything we can to capture and kill the terrorists themselves—but ultimately we are going to win this war on terrorism by draining the swamps of poverty and tyranny and totalitarianism in which the terrorism has grown. We recommend and now put, with the force of law, aggressive steps for outreach to the Muslim world. We call for economic development in the Muslim world, for the extension of freedom's range in the Muslim world, for the increase of exchange programs—students, faculties, others—between the United States and predominantly Muslim countries, which is the ultimate hope for a secure future.

So I thank the Senator from Arizona for his kind words, and I return them to him. I hope it does not hurt his reputation, but in addition to being a straight talker, he is a great doer as well.

Mr. President, as the Senate stands poised now to adopt this 9/11 Commission recommendation bill, I believe we are at the brink of a turning point in our governmental history. It reflects the turning point that occurred, tragically, outrageously, on September 11, when we were attacked by 19 Islamist terrorists who, as someone else has said, hated us more than they loved their own lives, and so they killed themselves to express that hatred and took with them 3,000 innocent Americans.

With this vote, we in Congress are saying that one era in our history, in our national security history, has ended and another one has begun when we search for better and different ways to protect ourselves from our sworn enemies. We are changing from one national security strategy to another, from a Cold-War strategy to a strategy fit to bring us to victory in a war against terrorism.

Our purpose in this legislation all along, from its drafting through its hearings, through the extensive negotiations and now with its passage, was to advance a new vision of how to protect the American people in an unfortunately new world with different dangers, where our enemies don't distinguish between soldiers and citizens or foreign and domestic military targets. The brilliant work of the 9/11 Commission informed us that a lack of what they called the unity of effort, strong leadership, accountable leadership, allowed good intelligence to slip through our grasp, enabling the terrorists of September 11 to evade our defenses.

I have said before and I will say it again—it is a homely analogy or metaphor—the American intelligence community today is like a very good football team with great players but no quarterback. This bipartisan proposal we are about to vote on will create a quarterback, a strong quarterback. It will upend the status quo which failed us on September 11 and on other occasions in our recent history by reorganizing many of our intelligence agencies to create a unified command and control structure so that one person, the new Director of National Intelligence, will be in charge and accountable for the Nation's intelligence operations.

When somebody asks in the future, ''Who is in charge?'' the question will not be met with the same blank stares and nonanswers that greeted the 9/11 Commission when they asked that question. The answer will be, ''the DNI is in charge,'' the Director of National Intelligence, is in charge and responsible. That, we are confident, will make this Nation and its people safer.

The urgency of our times has demanded prompt action, but it has not been so prompt as to negate thoughtful consideration of just about every sentence and word in this conference report; prompt because we are, after all, a nation at war. A war like none other we have ever fought, a war in which we must maximize our resources, begin anew to meet our enemy and defeat them and find better ways to utilize the enormously capable human intelligence assets we have and the extraordinary technological assets we have as well to transform our ability to defend ourselves.

It never hurts to quote Sun Tzu, the classic Chinese strategist of war, who said:

> If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle . . . but if you know the enemy and know yourself, you need not fear the result of a hundred battles.

The American people know themselves. We know our strengths. We know our purpose. We know our principles. As a result of this bill, I am confident we will better know our enemy and, therefore, have much less cause for fear.

I want to say a final word about the families, the survivors of September 11, because they truly were our inspiration throughout this journey to reform. They insisted on the creation of a 9/11 commission and they insisted that its recommendations be acted upon by Congress and supported by the President. That is exactly what has happened, across party lines, across Chambers, the executive branch and legislative branch, working together. This is an accomplishment which everyone here involved, and those involved at the White House, can celebrate. But ultimately it is a victory for the American people and particularly for these survivors of 9/11. Their self-sacrificing courage brings us to this historic moment of reform.

I said before, the American people know themselves. If you want to know the American people, meet the families and friends of those we lost on September 11. They represent the best of our country. They reflect our strength, our resilience, our values, our patriotism, our sense of purpose, our commitment and optimism. No matter what the obstacles, America and the American people will go on and will prevail. We will prevail because we represent a cause, the cause of freedom, the cause of opportunity. I hope and pray the passage of this legislation will help the families of 9/11 find some peace, as I am confident it will help all Americans find cause for greater confidence in our Nation's future security.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, we are on the verge of voting on historic legislation, landmark legislation that will reform our intelligence structure to allow us to better fight the war against terrorism and to counter future security threats. We will be taking a structure that is characterized by stovepipes, by a lack of sharing of information, that was so indicated in the 9/11 Commission Report as being a major cause of intelligence failures. The 9/11 Commission, over and over again, described the good people in our Government straining against structures that did not allow them to communicate effectively vital information; thus, no one assembled the pieces of the puzzle that might have allowed us to detect the hijackers' plot against our country.

We have reorganized the intelligence agencies into a new structure where one person clearly will be accountable and responsible. The new Director of National Intelligence will be able to marshall the resources we need to counter the threat to our citizens. We have a National Counterterrorism Center, a National Counterproliferation Center designed to bring together analysts from all the agencies so they can pool their talents, analyze the intelligence, and produce better informed reports.

This legislation will help make America more secure, and that is what this entire debate is all about. As my colleague, Senator LIEBERMAN, has eloquently stated: The status quo failed us. Our bill may not be perfect. As the Presiding Officer indicated, no bill is. But it represents an enormous improvement over the status quo.

We cannot turn away from the intelligence failures that have cost the lives of thousands of American citizens. We have to act. I am very proud that the Senate today will approve historic legislation that will make our country more secure.

Mr. President, I know Senator FRIST plans to come down and speak right before the vote, and he has arrived on cue. I do want to take this opportunity to request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Ms. COLLINS. I thank all of my colleagues for their help and support.

Mr. FRIST. Mr. President, as we approach this truly historic vote, I want to once again thank those who have labored so hard to get to this point over the last days, weeks, and literally months.

Senators COLLINS and LIEBERMAN, the chair and ranking member, deserve our highest praise—we oftentimes say that, but I mean it literally—for their professionalism, dedication, persistence, and bipartisanship, which is something that we stressed up front from day one, when Senator DASCHLE and I first talked after the 9/11 Commission recommendations came. It has been there throughout. I say thank you.

JOHN MCCAIN also stands out as someone who endeavored to give the 9/11 Commission life and to add many key elements to the Senate bill, many of which are in this legislation, all of which work toward the implementation of those 9/11 Commission recommendations. Senator WARNER and Senator STEVENS both labored to make sure we got the intelligence support to the military right, to make sure we did this in the correct way. JON KYL, part of our leadership team, worked hard on issues. I thank PAT ROBERTS for his diligent and persistent efforts. A whole host of Members on both sides of the aisle have participated.

I want to mention DENNY HASTERT, who played a critical role in bringing this legislation to fruition, which played out before the American people over the last several weeks. We would not be here right now without the unflagging leadership of President Bush to fight the war on terror and to meet the greatest challenge of our time. His commitment has been steady. It has involved direct participation. He made it clear to me from day one that it is his highest priority to make America safer.

This bill moves America into a position where we can say—once he signs the bill—that America will be safer.

Lastly, I thank the 9/11 families, without whom much of the momentum simply would not have been there to see this bill all the way through. They inspired us, they turned their personal tragedies into action, and it is manifested in the bill.

In the 3 years since the 9/11 attacks, we learned a lot about our Nation's vulnerabilities, our strengths, and the steps that we must take, many of which we are taking today in this bill. The bill will certainly make our Nation safer. Much more needs to be done, and we all recognize that; but this is a major leap forward.

As I said earlier, strengthening America at home and abroad, moving America forward in the pursuit of freedom and prosperity, and protecting the American people in our homeland have been the driving motivations of the 108th Congress, and they are captured in this bill.

Mr. President, I believe we are ready to proceed to a vote. At this juncture, I will yield back all time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the conference report to accompany S. 2845, the Intelligence Reform and Terrorism Prevention Act of 2004.

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

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent, the Senator from Missouri, Mr. BOND, the Senator from Colorado, Mr. CAMPBELL, the Senator from Utah, Mr. HATCH, the Senator from Mississippi, Mr. LOTT, the Senator from Oklahoma, Mr. NICKLES, and the Senator from Oregon, Mr. SMITH.

Further, if present and voting, the Senator from Utah, Mr. HATCH, would have voted ''yea.''

Mr. REID. I announce that the Senator from Iowa (Mr. HARKIN), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. HARKIN) would vote ''aye.''

The PRESIDING OFFICER (Mr. COLEMAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 2, as follows:

[Rollcall Vote No. 216 Leg.]

YEAS—89

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

NAYS—2

Byrd	Inhofe

NOT VOTING—9

Bond	Hatch	Lott
Campbell	Hollings	Nickles
Harkin	Inouye	Smith

The conference report was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

E-RATE PROGRAM

Mr. NELSON of Florida. Mr. President, as we are awaiting the final moments of this session of Congress, there are deliberations going on in the Capitol about an agreement to come forth with legislation—my understanding, already passed by the House—that will allow Internet service to be provided to schools and libraries. This is the very popular and widely acclaimed E-Rate Program that had been set up back in the nineties. The idea was that we lower the cost of providing Internet to schools and libraries so that students who would not otherwise have an opportunity of experience on the Internet would be able to get it at school.

I visited such a school last week in Tallahassee, FL. It is a school that is state of the art in all of the electronic provisions but yet, as part of the school system of that county, Leon County, is able to afford it because virtually all of their schools do have the Internet provided. This particular school, Roberts Elementary, in a rural section outside of Tallahassee in Leon County, has a diverse student population. It spans the socioeconomic spectrum and, indeed, there are a number of students at this school who, if they did not have Internet experience at school, would not have the opportunity to learn how to use the Internet and have available to them the services on the Internet.

The long and short of it is we would be depriving, because of socioeconomic status, a significant part of our student population an equal opportunity to an education, and that is a standard we all hold up as something that is worthwhile to strive for.

It all comes down to tonight. The E-Rate Program is going to stop, not because there is any diabolical movement here to take it away, because there certainly is not—it is widely acclaimed and widely popular—but because of a new accounting glitch in one of our agencies. I won't go into the details of this new method of accounting. It is, in essence, saying you are going to have to take away the fund that would supply the Internet to schools at a reduced rate. The alternative to that is—and this is not a very palatable alternative—that telephone rates for the Universal Service Program are going to go up to provide this money to continue to provide Internet service to schools and libraries.

It can all be taken care of so easily—and I do not know of any disagreement on the substance of the issue—if we pass this bill tonight. It is my understanding there are a couple of Senators who have a hold on this for completely different reasons unrelated to any of this subject matter. There are discussions going on in this U.S. Capitol Building right now over the lifting of those objections so at the last few minutes, the clock is showing, of this session of the Senate, we can take up the House bill and pass it. That is all we have to do and do it by unanimous consent with no objections.

If we do not do this tonight, then we are going to have to come back and go through the whole process again—pass it in the House, pass it in the Senate—and in the meantime have schools such as Roberts Elementary in Tallahassee, FL, be concerned whether they are going to have an e-rate, at the same time threatening telephone subscribers by thinking their bills are going to go up in order to pay for this worthwhile program, and none of that is necessary.

I call on cooler heads to prevail and allow this program that is so necessary for the education of so many of our children to achieve that objective we all embrace, which is an equal opportunity for an education for all children.

Before I yield the floor, Mr. President, I see the Senator from Montana has just come in. Just so I may inform him, I have just given this Senator's impassioned plea for the E-Rate Program and why we need to pass this bill tonight. I have laid out the reasons, and I want the Senator from Montana to know a specific example of a school I visited last Friday, Roberts Elementary in Tallahassee, FL.

The Senator well knows not only universal service and the importance of universal service to the rural areas of his State, as I do with mine—no matter how long the lines are that have to be run out there—but that in that Universal Service Program is this funding mechanism for providing Internet service to schools and libraries.

The final point I wish to make for the Senator, who missed my remarks earlier, is that this is so important because there are many students whose families cannot afford Internet at home, and, therefore, their only experience of this is going to be getting it at school. That was clearly evident to me at Roberts Elementary in Tallahassee, FL.

It is my hope that now with the mellifluous and golden tones coming forth from the Senator from Montana, that he would bring us some good news about the negotiations of passing this bill tonight.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I appreciate what Senator NELSON had to say, also, on this legislation. This Congress should not go sine die without passing these three pieces of legislation. All three of them are very important. In fact, I would say the E–911, the enhanced 911 bill, is probably the most glaring public safety legislation we have worked on in many years. One would think this legislation that says we are going to take the money that is collected and it has to be spent in our PSAPS—in other words, our communications centers—to upgrade their technology, so that when a 9–1–1 call comes in from a cell phone we can locate the caller. We have that in wired lines, but we do not have it so much in wireless phones. I think it is time that we do that.

This is a great piece of public safety legislation, and we have been working on it for about 4 years. One would think that would be a no-brainer. It took us long enough to pass legislation to make a 9–1–1 call go into the nearest first responder. It used to be if one was out of their home territory and their phone was in roam, they could dial 9–1–1 and they were apt to get the 600 Cafe in Miles City, MT. That does not do one a lot of good when they are on the outskirts of Tallahassee, FL. It did not know where to go, and now it does.

So we think this is very important legislation. The E–911 caucus was established by folks who work in public safety and public communications every day. We keep hearing what we