

## RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time that has not been used is reserved.

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and other purposes.

## Pending:

Kennedy amendment No. 3263, to prohibit the use of funds for the support of new nuclear weapons development under the Stockpile Services Advanced Concepts Initiative or for the Robust Nuclear Earth Penetrator (RNEP).

Reid (for Leahy) amendment No. 3292, to amend title 18, United States Code, to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts.

Dodd modified amendment No. 3313, to prohibit the use of contractors for certain Department of Defense activities and to establish limitations on the transfer of custody of prisoners of the Department of Defense.

Smith/Kennedy amendment No. 3183, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes.

The PRESIDENT pro tempore. The Senator from Colorado.

## AMENDMENT NO. 3263

Mr. ALLARD. Mr. President, I understand we now have the Defense authorization bill before us and an amendment to that bill, which is the Kennedy-Feinstein amendment; is that the regular order?

The PRESIDENT pro tempore. The Senator is correct.

Mr. ALLARD. I thank the Chair. I yield the floor. The sponsor of that amendment wishes to make a few comments, and I wish to follow with a few comments.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask unanimous consent that Senator AKAKA be added as a cosponsor of the Kennedy-Feinstein amendment No. 3263.

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

Mr. KENNEDY. Mr. President, I understand we have a time allocation of 50 minutes.

The PRESIDENT pro tempore. There is an allocation of 50 minutes on each side on the Kennedy amendment.

Mr. KENNEDY. On our side, the Senator from Michigan, our ranking member, has been allocated 10 minutes.

The PRESIDENT pro tempore. The Senator from Michigan is allocated 10 minutes; the Senator is correct.

Mr. KENNEDY. Mr. President, I yield myself 12 minutes.

We face many different issues in foreign policy, national defense, and the war on terrorism. But one issue is crystal clear: America should not launch a new nuclear arms race.

We want our children and grandchildren to live in a world that is less dangerous, not more dangerous—with fewer nuclear weapons, not more. But that is not the course that the Bush administration is taking. Even as we try to persuade North Korea to pull back from the brink—even as we try to persuade Iran to end its nuclear weapons program—even as we urge the nations of the former Soviet Union to secure their nuclear materials and arsenals from terrorists—the Bush administration now wants to escalate the nuclear threat by developing two new kinds of nuclear weapons for the United States—mini-nukes that can be used more easily on the battlefield, and bunker busters to attack sites buried deeply underground.

As President Reagan would say, “There you go again”—another major blunder in foreign policy. Our goal is to prevent nuclear proliferation. How does it help for us to start developing a new generation of nuclear weapons?

It’s a shameful double standard. As Mohammed El Baradei, the director of the International Atomic Energy Agency, said in an address to the Council of Foreign Relations in New York City said last month, “there are some who have continued to dangle a cigarette from their mouth and tell everybody else not to smoke.”

The specter of nuclear war looms even larger with the ominous statements of senior officials in the Bush administration that they in fact consider these new weapons more “usable.” If the Bush administration has its way, the next war could very well be a nuclear war, started by a nuclear first strike by the United States.

It is hard to imagine a dumber idea. The amendment that the Senator from California and I are offering will put a halt to the Bush administration’s plan to develop these new nuclear weapons. Just as “lite” cigarettes still cause deadly cancer, lower yield nuclear weapons will still cause massive death and destruction. No matter what you call them, a nuclear weapon is a nuclear weapon.

They still incinerate everything in their path. They still kill and injure hundreds of thousands of people. They still scatter dangerous fallout over hundreds of miles. They still leave vast areas that are radioactive and uninhabitable for years to come.

There are few more vivid examples of the misguided priorities of the Bush administration. For the past 15 months, our troops in Iraq have been under fire every day. They were sent into battle without the latest and best bulletproof vests and without armored Humvees. They were placed at greater risk, denied the basic equipment they

needed to protect themselves and do their jobs. Meanwhile, the Bush administration is urging Congress to provide hundreds of millions of dollars for new nuclear weapons.

The mini-nuke has a yield of five kilotons or less. That’s still half the size of the atomic bomb dropped on Hiroshima that killed more than 100,000 people—at least a third of the city’s population. Is it somehow more acceptable to produce a modern nuclear bomb that kills only tens of thousands instead of a hundred thousand?

The Bush administration also has extensive plans to develop the “bunker buster,” or, as the administration calls it, the Robust Nuclear Earth Penetrator. It would carry a nuclear warhead of around 100 kilotons—ten times the size of the bomb dropped on Hiroshima. It would be placed in a hardened cone capable of burrowing deep underground before exploding.

Even with today’s advanced technology, they would still spew thousands of tons of radioactive ash into the atmosphere.

There are more effective ways to disable underground bunkers. Using today’s highly accurate conventional weapons, we can destroy the intake valves for air and water. We can knock out their electricity. And we can destroy the entrances, preventing people and supplies from going in or getting out.

In fact, by rushing to develop these weapons, the Bush administration misses the point. The challenge of destroying deep underground bunkers is not solved with nuclear weapons. It will be solved by developing missile cones that can penetrate deeper into the earth without being destroyed on impact.

The bill before us authorizes a study of these two new nuclear weapons systems. It provides \$9 million for the development of advanced concepts for nuclear weapons, the so-called “mini-nukes,” and more than \$27 million for the robust nuclear earth penetrator, the so-called bunker busters.

Those who support the development of these weapons suggest that it is only research and that the research will have little effect on the rest of the world. The supporters of these weapons argue that since the funds are limited to research, the administration will not go on to produce these weapons without congressional approval. That is what Secretary Rumsfeld claimed when he testified before the House Appropriations Committee in February. He said that what has been proposed is some funds be used to study and determine the extent to which a deep earth penetrator conceivably could be developed, what it would look like, and whether it makes sense to do it. There are no funds in here to do it. There are no funds in here to deploy it since it does not exist.

The administration’s own budget contradicts that statement. Its budget assumes we will spend \$485 million on

these weapons over the next 5 years. It has a detailed plan for their development and production. I have in my hand their projection by the Congressional Budget Office of the development of this program for some \$485 million from now through 2009, and it anticipates the completion of the development phase in fiscal year 2007. We can see it right in their proposals. Then it has the continued development of the program itself.

This is the clear indication of what the administration is intending. It is in their budget. It is \$485 million, and it is right there just with regard to the bunker buster just as it is with regard to the nuke. We will see that it goes on through fiscal year 2009 as well. So if we do not adopt this amendment, we can be confident that the administration will build them. After that, as the administration's own nuclear experts have said, they will ultimately deploy them and use them.

In fact, in our debate 2 weeks ago, my colleague from Arizona described a situation in which he believed they should be used. He claimed conventional bunker busters were incapable of knocking out Saddam Hussein in those early days of the war and that only nuclear weapons could have destroyed his deeply buried hardened bunkers.

If that is the plan for these weapons, then the prospect is even more frightening for our troops, for America, and for the world. Is the Senator from Arizona truly suggesting we should have used a nuclear weapon to hit Saddam Hussein's bunkers last May? Baghdad is a city of over 5 million Iraqis. We would have killed hundreds of thousands of people, including American aid workers and journalists. We would have turned the entire area into a radioactive wasteland. And all to capture the person we captured with conventional means a few months later?

Using a nuclear weapon to strike Saddam Hussein would have inflamed the hatred of America in Iraq and the Arab world far beyond anything we have seen in response to the prison scandal at Abu Ghraib. It would have poisoned our relations with the rest of the world and turned us into an international pariah for generations to come.

The President told us this winter that there is a consensus among nations that proliferation cannot be tolerated. He added that this consensus means little unless it is translated into action. But the administration's idea of action is preposterous. It only encourages a dangerous new arms race and promotes proliferation. By building new nuclear weapons, the President would be rekindling the nuclear arms race that should have ended with the end of the cold war.

He has given inadequate support to nonproliferation efforts with Russia. With the Moscow treaty, the deep cuts in our nuclear arsenals would not be permanent since we could keep a large number of such weapons in storage, ca-

pable of being activated and used in the future.

In January 2002, the Pentagon released a document called the Nuclear Posture Review, and despite subsequent efforts to downplay its significance, its tone of recommendations revealed the dangerous new direction in our nuclear policy. The double standard is clear. The rest of the world must abandon the development of nuclear weapons, but the United States can continue to build new weapons.

As is pointed out in the Nuclear Posture Review, it talks about the second principal finding is the United States requires a much smaller nuclear arsenal under the present circumstances, but first the nuclear weapons are playing a smaller role in U.S. security than at any other time in the nuclear age. Then it goes on to talk about the alternatives that are being developed with the smaller nuclear weapons.

The Bush administration thinks the United States can move the world in one direction while we move in another; that we can continue to prevail on other countries not to develop nuclear weapons while we develop new tactical applications for these weapons and possibly resume nuclear testing.

The PRESIDING OFFICER (Mr. ENZI). The Senator's time has expired.

Mr. KENNEDY. I yield myself 2 additional minutes.

The decision the administration has made on nuclear posture reverses 50 years of bipartisan commitment to arms control. Over the past 50 years, we have halted and reversed the nuclear arms race, and now we are starting to escalate it again. It makes no sense to undermine half a century of progress on nuclear arms control and start going backward. And all for what? To deal with emerging threats we can already handle with conventional weapons.

Even the House Republicans have acknowledged the flaw in the administration's plan. Chairman Hobson eliminated all funding for these mini-nukes and bunker busters, saying that the National Nuclear Security Administration needs to take a time out on new initiatives until it completes a review of its weapons complex in relation to security needs and budget constraints, and the administration's own new plan to eliminate half of our stockpiled warheads. That is the conclusion of the House of Representatives after extensive hearings.

The Bush administration is asking Congress to buy something that we do not need and we will never use, that makes our goals for a peaceful world much more difficult to achieve, and that endangers us by its mere existence.

Over the period of this last half century, Democrats and Republicans have pursued sensible arms control, engaged the world in nearly a global commitment to nonproliferation, and demonstrated the will of the United States to pursue counterproliferation when di-

plomacy failed to stop illicit flows of weapons of mass destruction.

President Kennedy started the process that would lead to the nonproliferation treaty, but he could not finish it. President Johnson picked up where he left off and signed it, but he did not have time to ratify it before his term ended. President Nixon ratified it. Presidents Ford, Carter, and Reagan negotiated SALT and START. President Bush signed START I and START II. President Clinton signed START III and led America through the massive post-cold-war reduction in its nuclear arsenal. That is the record: Democrat and Republican alike moving us away from nuclear escalation, and that is what this amendment will continue.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I rise today in opposition to the Kennedy-Feinstein amendment that would strip the authorization for funding for the robust nuclear earth penetrator and the advanced concepts. Again, we have heard the argument of how somehow or another we would have further world peace if we just weakened America, and I could not disagree more with that.

I believe we do have peace through strength, and what we have in this particular legislation is a study to study where the strengths are of our adversaries and where the proper response to those strengths would be. I do not think anybody has any preconceived notion of how this study should come out; we just think we need to know some vital information to make sure America remains strong.

I am disappointed once again by the efforts of those on the other side of the aisle to eliminate altogether this administration's effort to study options for modernizing our nuclear deterrent. To me, it seems that sponsors of this amendment may not fully understand how important it is for the United States to maintain a credible deterrent, or how a modernized deterrent could result in a substantial reduction in our nuclear stockpile.

Over the last several years, the Department of Defense closely examined our nuclear weapons posture. It became apparent that the cold-war paradigm of mutually assured destruction was no longer an appropriate response for the United States. Increasingly, irrational rogue nations and nonstate actors have emerged as a greater threat to U.S. security than historical adversaries. As part of this examination, it was discovered that many of our adversaries are building increasingly hardened and more deeply buried facilities in order to protect high-value targets such as command and control nodes, ballistic missiles, and, in some cases, the actual development of facilities for weapons of mass destruction.

Many of these buried targets are immune to our conventional weapons. Therefore, our ability to deter such undesired activities is greatly eroded.

The need to hold these targets at risk became so apparent that in 1994 U.S. Strategic Command and Air Combat Command issued a mission needs statement for a capability to defeat hardened and deeply buried targets.

In 1997, the Department conducted an analysis of alternatives to address intelligence and strike capabilities related to defeating hardened and deeply buried targets. To almost everyone's surprise, the analysis of alternatives found that not all hardened and deeply buried targets could be defeated by current or conceptual conventional weapons.

Then, in 1999, the Vice Chairman of the Joint Chief of Staff requested that a capstone requirements document for hardened and deeply buried targets be developed. Again, this document provided additional justification for a requirement for both conventional and nuclear weapons capable of defeating these targets.

Meanwhile, during these military studies and analyses, the Clinton administration was already building and deploying an interim nuclear earth penetrator.

I have noticed that the advocates of the Kennedy-Feinstein amendment have tried to place the blame on the Bush administration. But here we are—the Clinton administration building and deploying an interim nuclear earth penetrator. Even he recognized the need and the changing environment in which we must act in order to maintain a strong America.

The modified nuclear weapon was designated the B61-11 and entered service in April 1997. While this weapon provided a limited capability, it does not have capability to defeat all types of hard and deeply buried targets.

With this history in mind, it surprises me that once again we are here to debate whether we should go forward with a feasibility study on a modified nuclear weapon and whether our scientists can explore nuclear weapon concepts.

Let me take a moment to respond to clear up some misconceptions that have been suggested by the supporters of Kennedy amendment.

First, opponents of RNEP argue that conventionally armed "bunker buster" weapons are sufficiently effective to destroy hardened and deeply buried targets. Clearly, advanced conventional earth penetrators are the weapon of choice for most hardened and deeply buried facilities, but according to the Department of Defense, they are not effective against a growing class of hardened and deeply buried targets. Moreover, the precise location of surface support facilities are not always known, and at best, we can only hope to disrupt the operation of a hardened or deeply buried target for a few hours or days at most.

The second argument used by opponents of RNEP is that any modifications to the U.S. nuclear weapons arsenal will encourage other nations to de-

velop new nuclear weapons. This argument suggests that there is a direct correlation between our activities and those of other nations. I could not disagree more with this notion.

Over the last 10 years, we have conducted very little work on new nuclear weapons. Yet Pakistan and India have conducted nuclear tests. Russia and China continue to develop nuclear weapons. And, countries such as Iran and North Korea are secretly working to build new nuclear weapons. All of this activity has taken place without the U.S. taking any action with regard to our nuclear stockpile.

In response to our mini-nukes, first, "battlefield nuclear weapons" would be tactical, not strategic. Second, President George H.W. Bush's Presidential Nuclear Initiative, announced September 27, 1991, did away with all U.S. battlefield nuclear weapons. In fact the Pantex plant in Amarillo, TX, dismantled the last battlefield nuclear weapon, the W-79 artillery shell in 2003. The administration has no plans to change that decision. Nor are there plans by the Department of Defense or Department of Energy to research or develop "battlefield nuclear weapons." The administration believes that nuclear weapons are strategic weapons of last resort.

In fact, if the United States does not show that it is serious about ensuring the viability of our entire military capability, including our weapons of last resort, we might not be able to dissuade potential adversaries from developing weapons of mass destruction and deter those adversaries from using those weapons they already have.

The third argument used by opponents of RNEP is that the administration has already decided to develop, build, and test a new robust nuclear earth penetrator. They point to a Congressional Research Service report that seems to suggest that the RNEP is not merely a study because the budget projections over the next 5 years are nearly \$500 million for the program.

To be clear, it was Congress that directed the Department of Energy to prepare 5-year budget profiles. The nearly \$500 million outlined in the latest profile is only a projection of what the costs might be if the results of the feasibility study are reasonable, the administration opts to proceed, and the Congress approves the development of such a weapon.

We must keep in mind that the administration cannot begin the development, much less build or test, a new robust nuclear earth penetrator without the expressed approval from Congress. Section 3117 of the Fiscal Year 2004 National Defense Authorization bill makes this clear. It specifically states that "the Secretary of Energy may not commence the engineering development phase of the nuclear weapons development process, or any subsequent process, of a Robust Nuclear Earth Penetrator weapons unless specifically authorized by Congress."

The fourth argument used by opponents of RNEP, and perhaps the most egregious, is that the RNEP will lower the nuclear threshold. Crossing the nuclear threshold represents a momentous decision for any President. A nuclear weapon's size or purpose does not alter the gravity of the decision for using a nuclear weapon. No President would use a nuclear weapon unless it was the option of last resort.

Therefore, to suggest that simply modernizing a nuclear weapon automatically lowers the rigor and deliberation in deciding to employ that weapon is unfounded.

The success of our goal of assuring our allies and dissuading potential adversaries is dependent upon a modern, effective nuclear deterrent that can counter today's threats. We must keep in mind that the current U.S. stockpile was developed for very different purposes than the threats that exist today. It was developed for a massive nuclear exchange with one nation. Today, these weapons are too powerful and may result in greater damage than necessary to neutralize a target.

Moreover, these weapons continue to age, making it increasingly more difficult to predict their reliability. We depend upon their reliability, as do our allies and our troops in the field.

We must also recognize that a modernized nuclear stockpile will result in significant reductions in our stockpile. If we have specific weapons that can hold certain targets at risk, it will not be necessary to have a vast inventory of strategic nuclear warheads. This path forward would yield substantial cost savings and, more importantly, demonstrate our country's commitment to reducing nuclear stockpiles around the world.

For over 50 years, we, as a Congress, and every President have agreed that nuclear weapons are a critical element of our national security strategy. They remain so today. I believe a modernized deterrent will help ensure that our adversaries are deterred tomorrow.

Therefore, I will oppose this amendment and urge my colleagues to oppose it as well.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 5 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 5 minutes.

Mr. DORGAN. Mr. President, perhaps I do not understand all I should, and I certainly do not understand the term "modernization of nuclear weapons." We have thousands of nuclear weapons in this world. We control thousands of them in this country. Modernization? It appears now in this debate to be a euphemism for building new nuclear weapons, designer nuclear weapons, usable nuclear weapons, the kinds of weapons you might use, for example, to bust into caves, the ground, bunker busters.

That is the purpose of this amendment, to stop this march toward production of more nuclear weapons. This country ought to be leading in exactly the other direction.

Let me read from Time magazine in March of 2002.

For a few harrowing weeks last fall, a group of U.S. officials believed that the worst nightmare of their lives—something even more horrific than 9/11—was about to come true. In October an intelligence alert went out to a small number of government agencies, including the Energy Department's top-secret Nuclear Emergency Search Team, based in Nevada. The report said that terrorists were thought to have obtained a 10-kiloton nuclear weapon from the Russian arsenal and planned to smuggle it into New York City. The source of the report was a mercurial agent code-named DRAGONFIRE, who intelligence officials believed was of "undetermined" reliability. But DRAGONFIRE's claim tracked with a report from a Russian general who believed his forces were missing a 10-kiloton device. Since the mid-'90s, proliferation experts have suspected that several portable nuclear devices might be missing from the Russian stockpile. That made the DRAGONFIRE report alarming. So did this: detonated in lower Manhattan, a 10-kiloton bomb would kill some 100,000 civilians and irradiate 700,000 more, flattening everything in a half-mile diameter. And so counterterrorist investigators went on their highest state of alert.

"It was brutal," a U.S. official told TIME. It was also highly classified and closely guarded. Under the aegis of the White House's Counterterrorism Security Group, part of the National Security Council, the suspected nuke was kept secret so as not to panic the people of New York. Senior FBI officials were not in the loop. Former mayor Rudolph Giuliani says he was never told about the threat. In the end, the investigators found nothing and concluded that DRAGONFIRE's information was false. But few of them slept better. They had made a chilling realization: if terrorists did manage to smuggle a nuclear weapon into the city, there was almost nothing anyone could do about it.

Our experts thought, based on some evidence from some folks in the intelligence community, that one nuclear weapon was missing from the Russian arsenal and might be detonated in the middle of an American city. Now, there are tens of thousands of nuclear weapons in the world. We think, probably, between 25,000 and 30,000 nuclear weapons. One missing would be devastating. One of them acquired by terrorists would be devastating.

Our job is not to come to the Senate these days with the Defense authorization bill and parrot the line of those who are reckless on this entire subject, saying what we really need to do is to build more nuclear weapons, to build bunker busters, earth-penetrator weapons, to talk about using them, to talk about testing nuclear weapons. That is not our job. It is not our responsibility.

Our responsibility is to move in exactly the opposite direction. It is our responsibility to lead the way to stop the spread of nuclear weapons, especially to stop the spread of nuclear weapons, No. 1; No. 2, to safeguard the stockpiles of nuclear weapons that already exist—yes, with us, with Russia

and elsewhere; and then No. 3, and very importantly, to begin the long march toward the reduction of nuclear weapons.

It ought to be our responsibility as a world leader to say we are going to try to do everything we can to see that a nuclear weapon is never again used in conflict and that we begin to reduce the stockpiles of nuclear weapons in this world.

For months now, as I have heard people in positions of responsibility talk about the potential of designing new lower yield nuclear weapons or earth-penetrator nuclear weapons so that we can use them, I have shook my head and thought, what on Earth are they thinking about? Our job is to provide world leadership to try to find a way to reduce the stockpile of nuclear weapons in this world, to safeguard the stockpile of weapons that already exist, make sure terrorists never get their hands on one, stop the spread of nuclear weapons to other countries and to terrorist organizations and begin the march toward the reduction of the stockpile of nuclear weapons.

If we begin this process to talk about modernization and testing and building new nuclear weapons and building designer nuclear weapons, and finding nuclear weapons that will bust into caves, it will not leave this world a safer place. It will make this world a more dangerous place. It is, in my judgment, a reckless course.

I hope with all my might that the amendment being offered today to stop this march toward the building of new nuclear weapons and the discussion about the plausibility of simply using nuclear weapons as another device in conflict, I hope with all my might we stop it dead in the Senate right now.

We have a responsibility. That responsibility is world leadership.

I mentioned the article in Time magazine. The potential of one 10-kiloton nuclear weapon missing from the Russian arsenal acquired by terrorists to be detonated in an American city was devastating news to an intelligence community that became apoplectic about it, and should have been. That was just one, and there are nearly 30,000 nuclear weapons.

Our responsibility is to make sure not that we build more, to make sure we reduce the stockpile of nuclear weapons and reduce the danger of nuclear weapons.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

As I mentioned before, we have a very proud tradition of moving the United States away from nuclear confrontation. I mentioned the start of that effort by President Kennedy beginning the process of nonproliferation. President Johnson picked up where he left off, although he did not have sufficient time. But President Nixon ratified it. Presidents Ford, Carter, and

Reagan negotiated SALT and START. President Bush signed START and START II and President Clinton START III.

What do they know that this President does not know? Why do we have Republicans and Democrats moving away from the brink of nuclear escalation? What are we talking about? Five kilotons would cause 280,000 casualties, 230,000 fatalities. That is what we are talking about with small nuclear weapons.

This is not just modernization. The Senator from Colorado knows we have a very active program now being reviewed by scientists to make sure we have an adequate deterrent. What is the effect if you dropped a 5-kiloton nuclear weapon on Damascus: 280,000 casualties, 230,000 fatalities.

Just before the first gulf war, the Chairman of the Joint Chiefs of Staff, Colin Powell, commissioned a study of the possibility of the use of small nuclear weapons on the battlefield. He rejected all of them because, he said, "they have no battlefield utility."

If the Senator from Colorado can show us where we had any hearings, where any of the Joint Chiefs of Staff have testified they want this kind of weapon, I am interested. He cannot because we have not had any hearings.

This is a statement from the Administrator of the National Nuclear Security Administration in response to a question on April 8, 2003: I have a bias in favor of the lowest usable yield. I have a bias in favor of things that might be usable.

There it is, a statement from the No. 1 person in the administration.

We have in the RECORD the 5-year program in terms of the development of these weapons, \$485 million. We have in the RECORD the costs of the small nukes, \$82 million. Why are we being asked to go ahead and walk down this path where we have Republican and Democrats and the Chair of the Joint Chiefs of Staff saying this is a mistake?

What in the world does the Senator from Colorado know that these Presidents did not know? Where is the testimony before our Armed Services Committee showing these will be usable?

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, to suggest that somehow or the other this particular President does not want to be a leader in reducing nuclear threats is absurd.

I call to the attention of the Members of the Senate the Moscow Treaty which was put together at the first of this administration. He brought down some 8,000 warheads to 1,700 to 2,200 active warheads.

The result from our potential adversaries is to produce more nuclear warheads. Our adversaries are not necessarily responding to what we do in the United States. Take India and Afghanistan. They are more interested in

how each other's country is responding to that issue. They are not that concerned about what is happening here. Despite that, they continue to be proliferating. And there is always the potential they could be proliferating warheads that could have an impact on us.

We know our adversaries are building hard bunkers, deeply buried. This particular piece of legislation is not putting in place the engineering or development of nuclear warheads. I have just shared that language with my colleagues. But what we are looking at is a study. I think it is foolhardy and irresponsible to not even look at the facts, to not call for a study to see where we are in relation to the rest of the world. We know other countries, other than just Afghanistan, such as North Korea—I don't see a real step-down as far as Russia and other countries around the world. We know Iran, admittedly, is looking at a nuclear weapons program.

So this is an important step in making sure that America remains secure. I think it is a responsible step because we are saying that in order to maintain peace in this world we need to have a strong America. If we want to have some response to terrorism and that flexible threat we have out there, we have to have a more flexible defense posture. We need to look at alternatives. And, yes, I believe terrorists throughout the world have the potential of being a real threat to this country, although the main threat that is recognized today is from many of those countries that I cited.

But that is why it is important to have a study. I think those people in the know—whether they are in the Bush administration or were in the Clinton administration—agree we need to stay on top of this issue. I think the irresponsibility would be for us to bury our heads in the sand and ignore the fact that the world is changing. The fact is, the world is changing, the threat is changing, and for us to deal with those potential threats, we need to look at modernizing our ability to deal with those changing threats. That is what the provision in this particular bill is all about.

Mr. President, I yield the floor.

Mr. AKAKA. Mr. President, I rise today in support of the amendment offered by Senators KENNEDY and FEINSTEIN to prohibit the use of funds for the support of new nuclear weapons development.

Passage of this amendment would ensure that the United States will not develop new nuclear weapons while at the same time asking other nations to give up their own weapons development programs.

Unfortunately, today we live in a world where governments and terrorists are seeking to create and acquire weapons of mass destruction. I am deeply concerned that we are not doing enough to stop the potential flow of weapons and weapon materials to terrorist organizations. Rather than de-

voting scarce resources to researching new nuclear weapons we should be securing nuclear material already in existence.

The administration's plans to develop new weapons and modify old types of weapons will compromise U.S. security by undermining efforts to make worldwide cooperation on non-proliferation of nuclear and other weapons of mass destruction, WMD, more effective.

The first Bush administration prohibited work on nuclear weapons then under development and halted nuclear testing except for safety and reliability, effectively bringing work on new weapons types to a close.

In contrast, I believe this administration's nuclear initiatives are creating a new kind of arms race by expanding our weapon development programs.

The United States pledged in the Nuclear Nonproliferation Treaty "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament." This is still a worthy objective.

However, instead of strengthening nonproliferation efforts, the administration has requested \$27.6 million for the Robust Nuclear Earth Penetrator, RNEP, for fiscal year 2005. The request would continue a study to modify an existing weapon to penetrate completely into the ground before detonating, increasing its ability to destroy buried targets.

The RNEP is a bad idea for a number of reasons. First, it is a common misconception that a weapon detonated a few meters underground creates less fallout. In fact, a weapon detonated at a shallow depth would actually create more fallout than if it were detonated on the surface.

Nuclear testing done in the 1960s demonstrated that weapons detonated deep underground can produce large amounts of fallout. In order to prevent this during underground testing done at the Nevada Test Site, detonations were required to be at least 600 feet underground, with no vertical shaft open to the atmosphere. This scenario cannot happen in a battlefield situation.

We do not have the ability to drive a weapon down to the depths that would be required to prevent huge quantities of fallout from occurring, and even if we did, the hole created by the weapon would allow the fallout to escape to the atmosphere. Even a low-yield RNEP would kill large numbers of people from both the blast and from the inevitable fallout that would follow.

The RNEP study was initially projected to cost \$45 million—\$15 million a year for fiscal year 2003–2005. It is now projected to cost \$71 million, which is too much money to research a weapon that in many ways duplicates what conventional weapons can do already.

Additionally, the budget request includes figures through fiscal year 2009 that total \$484.7 million and includes placeholders for both the development-

engineering and production-engineering phases. This may indicate that the RNEP study is more than just a study and is in fact being undertaken with the foregone conclusion that the weapon will go into development. This amendment would effectively stop funding for this weapon.

The administration argues that these weapons programs are needed to increase deterrence from a new kind of threat. I do not believe these weapons will deter other nations or terrorists. If other nations see the U.S. developing new nuclear weapons, they are likely to think that they need new weapons for their security as well.

We already know that terrorists are trying to acquire nuclear weapons. Director of Central Intelligence, George Tenet, warned the Armed Services Committee once again in March of al-Qaida interest in chemical, biological, radiological and nuclear, CBRN, weapons.

Director Tenet said, "Acquiring these remains a 'religious obligation' in Bin Ladin's eyes, and al-Qaida and more than two dozen other terrorist groups are pursuing CBRN materials. Over the last year, we've also seen an increase in the threat of more sophisticated CBRN. For this reason, we take very seriously the threat of a CBRN attack." We cannot afford this risk.

I urge my colleagues to support the Kennedy-Feinstein amendment to stop funding new nuclear weapons development programs.

Mr. BIDEN. Mr. President, I support the amendment offered by Senator KENNEDY and Senator FEINSTEIN to prohibit the use of funds for the Robust Nuclear Earth Penetrator and for the development of new nuclear weapons concepts.

Both the administration's policy of pre-emptive war and the suggestion, reportedly included in the Nuclear Posture Review, that it might use nuclear weapons against non-nuclear countries undercut U.S. non-proliferation pronouncements. And these policies form the context in which we must evaluate administration proposals for new nuclear weapons research.

Moves to make nuclear weapons just another part of the U.S. arsenal of usable weapons send a strong and unmistakable message to other countries: the only way to deter the United States is to have nuclear weapons of your own.

The President's agenda for a new generation of nuclear weapons is included in the bill before us today, which funds the Robust Nuclear Earth Penetrator, the Advanced Concepts Initiative—which could include low-yield nuclear weapons—and the Modern Pit Facility. Funds for the Robust Nuclear Earth Penetrator, known as RNEP, or the bunker buster, are supposed to cover a "study" of turning existing nuclear bombs into earth penetrators. But what a robust study this is. The 5-year budget required by Congress and submitted by the Department of Energy funds the "study" at \$27.6 million

in fiscal year 2005, but the 5-year total balloons to \$484.7 million.

Last year, Congress passed amendments that required congressional authorization before later phases and developmental engineering of RNEP could take place. The price tag suggests that the administration sees RNEP as far more than a study; it is clearly looking ahead to the development and fielding of a new nuclear weapon. If so, the Congressional Research Service warns that the 5-year cost is far from the total price tag for this program.

It is impossible to provide an estimate of total program cost because of the difficulty of the task at hand.

The current nuclear earth penetrator, the B61-11, can penetrate only to 20 feet in dry earth. According to physicist Rob Nelson from Princeton University, even an extremely small bunker buster with a yield of one-tenth of a kiloton must penetrate 140 feet underground to be contained. It is hard to imagine the technical feat required to penetrate into hardened targets to the depth necessary to prevent massive fallout from a nuclear weapon with the RNEP's yield, which is said to be far in excess of 5 kilotons. In fact, preventing the spread of fallout from an RNEP is impossible—and tens of thousands or hundreds of thousands of casualties could result from the nuclear fallout from such a weapon.

U.S. nuclear tests from the 1960s and 1970s illustrate the point. The 1962 "Sedan" test exploded a 100-kiloton weapon 635 feet underground. It produced a gigantic cloud of fallout and left a crater a quarter mile in diameter. To destroy a deeply buried target, an even larger weapon would be needed—and an RNEP would be lucky to penetrate more than 50 feet underground. The fallout would be immense.

The bill before us also includes \$9 million for the Advanced Concept Initiative that could lead to the development of new nuclear weapons, including low-yield nuclear weapons.

This program raises further concerns: Will the new weapons require a resumption of nuclear testing, leading others to test as well? Will the new weapons erode the current gap between nuclear and conventional weapons, which helps to make nuclear war "unthinkable" and to deter other countries from developing such weapons?

The Robust Nuclear Earth Penetrator and low-yield nuclear weapons are not like regular nuclear weapons. Regular nuclear weapons are designed to deter an adversary; the massive destruction and civilian casualties they cause make nuclear weapons unlike even other weapons of mass destruction, with the possible exception of smallpox. But these nuclear weapons are different. They bridge the gap between conventional weapons and the city-busting weapons of the cold war. They offer the lure of a better way to destroy point targets.

Supporters of new nuclear weapons argue that they, too, could deter an ad-

versary, and that is true. All nuclear weapons have a deterrent function. But the deterrence benefits that low-yield weapons provide are far outweighed by both the risk that they will actually be used and the dangerous signal that they send to other countries—whether intentionally or not—that we intend to fight nuclear wars.

These nuclear weapons blur the distinction between nuclear and conventional war. They begin to make nuclear war more "thinkable," as Herman Kahn might have said. But Herman Kahn's book was "Thinking About the Unthinkable." He understood that nuclear war was unthinkable, even as he demanded that we think about how to fight one if we had to. Looking at the foreign and defense policies of the current administration, I fear that they have failed to understand that vital point. They want to make nuclear war "thinkable."

And that failure of understanding could lead to bigger failures: a failure to understand how to keep other countries from developing nuclear weapons; a failure to view nonproliferation as a vital and workable policy objective; and perhaps even a failure to avoid a nuclear war, which would do horrible damage to our country.

Building bunker busters and low-yield nuclear weapons is not a path to non-proliferation. Neither is a program to do R&D on such weapons, while Defense Department officials press our scientists to come up with reasons to build them.

Neither is a program to test those weapons—which would surely be necessary to develop new low-yield weapons; and which would just as surely be the death knell not only of the Comprehensive Test-Ban Treaty, but also of the Nuclear Non-Proliferation Treaty.

Consider what the administration has said regarding nuclear weapons: The Nuclear Posture Review of December 2001 spoke of reducing U.S. reliance upon nuclear weapons. But it also reportedly listed not only Russia and China, but also North Korea, Iraq, Iran, Syria, and Libya as potential enemies in a nuclear war.

It spoke of possibly needing to develop and test new types of nuclear weapons, gave that as a reason for increasing our nuclear test readiness, and said that nuclear weapons might be used to neutralize chemical or biological agents. And in the run-up to the Iraq war, the administration proclaimed a doctrine of preemption against any potential foe that acquired weapons of mass destruction.

Now, if you were a North Korean leader, or an Iranian or Syrian one, which part of those reports would you act on? The part that reduces reliance on nuclear weapons? Or the part that names you as a possible target for nuclear preemption?

So far, we have one positive answer—from Libya, which is giving up its WMD program.

But from North Korea and Iran, the response is much more disturbing. The

Washington Post reported last month that a new National Intelligence Estimate would likely conclude that North Korea has approximately eight nuclear bombs, instead of two; and that its secret uranium enrichment program would be operational by 2007 and produce enough weapons-grade uranium for another six bombs per year. Iran was accelerating its nuclear weapons program, when disclosures and IAEA inspections exposed it and disrupted Iran's efforts. It pursued two means of uranium enrichment—centrifuges and lasers—and experimented with separating plutonium.

Even countries that are our friends and allies worry about—and react to—these U.S. policies. Just last week, Brazil's new Ambassador reiterated his country's intent to limit the access of the International Atomic Energy Agency to Brazil's uranium enrichment plant. One rationale he used was Brazil's unhappiness that the Bush administration would consider using nuclear weapons against non-nuclear countries.

How shall we stem the spread of nuclear weapons? For a while, it seemed as though the administration's approach would be to declare war on every adversary that dared to go nuclear. But do we really intend to go to war with North Korea, if the price is the slaughter of hundreds of thousands of South Korean civilians? In fact, we appear now to be withdrawing half our ground combat forces from South Korea to send them to Iraq; and there are rumors that those forces will not return to Korea.

Do we intend to go to war with Iran, when we cannot guarantee security in Iraq? The list of countries that we accuse of having weapons of mass destruction is long. Will we take them all on? And what do we do when Indian officials cite our Iraq war arguments as justification for a possible attack on Pakistan that could risk a nuclear war? Is this the world we want?

Nobody ever said that nonproliferation was easy.

I don't have a silver bullet; and I don't expect the President to have one, either. But you have to keep your eye on the ball. When conservatives opposed the Comprehensive Test-Ban Treaty, they said that countries would build nuclear weapons for their own strategic reasons. That is right.

It means that if we want to prevent proliferation, or roll it back, we have to affect those strategic calculations. Nonproliferation policy gives us a framework for those efforts.

The Nuclear NonProliferation Treaty gives us international support, and affects the calculations of countries whose neighbors sign and obey the treaty. The Nuclear Suppliers Group buys more time, by restricting exports of nuclear or dual-use materials and equipment. But in the end, it still comes down to other countries' strategic calculations.

For lasting nonproliferation, we must treat the regional quarrels that



drive countries to seek nuclear weapons. We were able to do that with Argentina and Brazil. As South Africa moved away from apartheid, we were able to do that there, as well. We are making a real effort to help India and Pakistan step back from the brink, and we must continue that effort. But we also have to address security concerns in East Asia, including North Korea's concerns, if we are to keep that whole region from developing nuclear weapons. And we have to pursue peace in the Middle East.

Nor is there really an alternative to working with the international community.

We don't have the ability to inspect sites in Iran; the International Atomic Energy Agency does have that ability. Its inspections have revealed much about the extent of Iran's nuclear program and have made it harder for Iran to pursue that program.

We cannot close down proliferation traffic all by ourselves. The case of North Korea shows how much we need the help of other countries. The cooperation of other countries, especially including Russia and China, is essential. That is why the Proliferation Security Initiative is so important, as is our adherence to international law in implementing that initiative.

Those are the paths to nonproliferation. They are long and difficult paths, and we do not know whether we will succeed. But we can see where we want to go, and we can see how working those issues will help get us there.

Building a new generation of nuclear weapons will only take us on the opposite path. So I urge my colleagues to support the Kennedy-Feinstein amendment to prohibit funding for those counterproductive weapons.

Mr. LAUTENBERG. Mr. President, I rise today to discuss a critical national security amendment that I have cosponsored. I commend the leadership of Senator KENNEDY and FEINSTEIN and I join them today in offering an amendment that will eliminate funds in this year's budget for research and development on nuclear bunker buster. This amendment also deletes funding for the advanced concepts programs—money authorized for research on small nuclear weapons.

Mr. President, I am disappointed that this administration has requested these programs for this year's Department of Energy Budget. First and foremost, the development of these new weapons are not needed; the U.S. already has 6,000 deployed nuclear weapons. But most importantly, a U.S. decision to proceed with a new generation of nuclear weapons will undercut international non-proliferation efforts and undermine the United States' credibility on global security.

We are currently facing a new type of national security challenge; our greatest goal is to prevent the nexus of terrorists and weapons of mass destruction. As such, it is imperative that this country's defense and foreign policy re-

flect a firm commitment to every aspect of non-proliferation and arms control. Destroying and preventing the spread of current nuclear warheads remains a critical component of this commitment. So too is preventing the development of new types of nuclear weapons and materials, however small they might be and however limited their use.

We invaded Iraq to change a regime that we were told posed an imminent threat to global security. The administration assured us that not only had Saddam amassed an arsenal of biological and chemical weapons, but he was also actively pursuing nuclear weapons as well. We have so far lost 840 American men and women in this effort but have yet to uncover traces of WMD programs in Iraq. I find it truly bizarre and hypocritical that the administration would plan to build new types of nuclear weapons at the same time it pursues military operations abroad with the purported objective of destroying similar materials.

In our global war on terror, the last thing we need is more nuclear weapons. What we need are more troops on the ground protecting Iraqis and providing stability. What we need is better intelligence and law enforcement and enhanced efforts to collaborate with our allies on both priorities.

Instead, the administration has decided that researching and developing new types of nuclear weapons is a priority. How we can credibly ask North Korea and Iran to stop their own nuclear programs while at the same time we develop mini nukes and bunker busters?

Let me respond to three points the administration makes in support of its dangerous nuclear requests:

First, the administration says the Pentagon must study bunker busters for the war on terrorism; only the Robust Nuclear Earth Penetrator (RNEP), it claims, could be used against suspected underground bunkers containing weapons of mass destruction. They say our amendment will tie the Pentagon's hands in the war on terrorism. This is not true. The administration's scenario in which the new nuclear explosives are used against suspected underground bunkers containing biological, chemical or nuclear weapons is highly improbable. Our intelligence about the location of WMD materials is not precise enough to destroy it this way. Just imagine launching nuclear bunker busters based on weapons intelligence as unreliable as that circulating before the Iraq war. Even if underground sites were accurately identified, the resulting nuclear explosions could spread the blast, radiation, and toxins over populated areas.

Moreover, current conventional weapons in our arsenal can destroy these materials. And if we really care about the threat of WMD, then the proposed research money ought to be going to fund better weapons intelligence and improved conventional

methods for putting these WMD sites out of commission, like blocking air intakes and external energy sources.

Second, administration officials claim that the bunker buster funding and the mini nuke funding is just for feasibility studies and research and development, not for use. They claim that we are opposing the important scientific advances involved in researching these weapons.

With nuclear weapons, any materials researched and developed must be tested. You cannot understand the physics of nuclear weapons without tests. Currently, the U.S. is a signatory of the Comprehensive Test Ban Treaty, which prohibits testing nuclear weapons. If we test our new weapons, even at an early non-useable stage of development, we are immediately breaking this treaty and inviting other countries that are signatories to break this treaty as well.

Finally, the proponents of the nuclear funding say that the administration's request only deals with a small amount of money—\$9 million for the mini nukes and around \$30 million for the bunker busters. Relative to a Defense Budget for 2005 projected to surpass \$440 billion dollars, they say that the sum in question—the sum our amendment will delete—is insignificant.

This is also patently wrong. First, the Fiscal Year 2005 budget contains \$9 million for mini nukes, which is a 50 percent increase from last year's request. What's more important is not the sum, but the intent. The administration has made it clear that it wants this money to create—and I quote the Pentagon "a more useable" nuclear weapon. This funding, however small, sends a dangerous message to other members of the nine country nuclear club that the U.S. is intending to use our nuclear arsenal.

Second, with the bunker buster, in May 2003, Secretary Rumsfeld said that the Robust Nuclear Earth Penetrator program "is a study. It is nothing more and nothing less." This study was planned to cost \$15 million for fiscal years 2003–2005. Yet this year, the Administration requested \$27.6 million for the study, and suddenly revealed that it planned to spend \$485 million over the next five years. That is not insignificant at all.

I just returned from attending a celebration of the 60th anniversary of D-Day in Normandy, France. The most important military and political lesson learned from the D-Day battles was the necessity of international cooperation. I believe that this great example of multi-lateral cooperation should be remembered and applied to current events, in Iraq and elsewhere. The world watched in awe as young, dedicated soldiers from several countries fought side by side on those beaches and cliffs that launched the events that would rid the world of fascism.

Today, the administration's unilateral foreign policy and marginalization

of the United Nations has fractured this alliance of democracies. Our relations with Europe are tense and our public standing in the world an all-time low. I believe that funding nuclear weapons in this year's budget will only provoke further antagonism between the United States and our allies.

I urge my colleagues to support the Kennedy-Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, I believe I have 10 minutes allocated to me.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Mr. President, I very much support the pending amendment because I believe if this country is going to have any credibility in our argument that countries such as Iran should not be allowed to obtain nuclear weapons, we ourselves must reduce our own reliance on nuclear weapons and not move in the direction of new nuclear weapons.

We undermine our position when we put money into a budget which says we are going to start doing and continue research on new types of weapons and on advanced concepts for nuclear weapons, when we have been a party to a treaty called the Nuclear Non-Proliferation Treaty, which says:

Each of the Parties to the Treaty—

That includes us—

undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty of general and complete disarmament under strict and effective international control.

We have told the Indians, we have told the Pakistanis: Do not move down that nuclear road.

We have told the Iranians: We are not going to let you go down that nuclear road. We are going to take actions to prevent you from acquiring nuclear weapons. This is at the same time this administration is moving this country toward additional reliance on nuclear weapons, new types of nuclear weapons, and new uses for nuclear weapons.

It is totally inconsistent for us to be moving in the direction we talk about when it comes to other countries but in the direction that we literally live out when we come to our own activity. Too often this country has been portrayed as saying that the rules that apply to everybody else do not apply to us. We have seen too much evidence of that approach recently. It has dramatically weakened our position in this world and strengthened the terrorists' position when we say we are not governed by the same rules by which everybody else is governed. There is a non-proliferation treaty out there, Iran. You are a member of that treaty, and you have to live up to it.

Now, of course, Iran can pull out of that treaty. They can withdraw from that treaty, too, just as we withdrew

from the ABM Treaty. But they are a member of that nonproliferation regime now. So we tell them: You have to live up to that regime. We are not going to sit by and allow you to get nuclear weapons.

That is what we say over here. But over here we put millions of dollars into doing research on new types of nuclear weapons and new uses for nuclear weapons which already are in the inventory.

This is a grave danger to us. We undermine our own security when we talk out of the right side of our mouth when it comes to what other people can do, and out of the left side of our mouth when it comes to our own activity.

The effort to move toward more usable nuclear weapons is what this argument is all about. This is what Administrator Brooks talked about in answer to a question by Senator REED, when he says:

And I accept Senator Reed's point that . . . I have a bias in favor of things that might be usable.

Here is the Administrator of the National Nuclear Security Administration talking about that we have to move toward more usable nuclear weapons. And why do we need these weapons? We are told because there are underground bunkers that might be the targets, and that those bunkers might not be reachable except through nuclear weapons.

Can we just imagine having dropped nuclear weapons going after Saddam Hussein? We had this intelligence that said he was in an underground bunker. And that underground bunker, we were told, was something we could hit with a conventional weapon at the time. It was one of, apparently, 50 airstrikes that we used against the high-value targets in Iraq, including Saddam Hussein and his sons.

Well, according to the press, there were about 50 of those airstrikes. Not one of them was successful. It turns out there apparently was not even a bunker at the one we were sure Saddam Hussein was in. But if there was a bunker, he was not in it. According to this report in the New York Times of June 13, a Central Intelligence Agency officer reported that Hussein was in that underground bunker at that site. So we went after him. We directed the airstrikes against that bunker.

But then, after the main part of this war was over, we went and inspected where we had struck based on intelligence that there was an underground bunker containing Saddam Hussein. And lo and behold, not only wasn't there Saddam Hussein—we knew that already—but there wasn't even a bunker at the location.

And the suggestion that we are going to design nuclear weapons to go after bunkers, despite the huge result in terms of human loss when nuclear weapons are used, assumes we have intelligence which is so reliable that we can, with great certainty, reach a leader who otherwise would not be reach-

able with conventional weapons. If anything has been demonstrated recently during this Iraq war, it is that our intelligence is not only not particularly accurate but it is wildly inaccurate at times.

The idea that we project to the world that we are going to design nuclear weapons to go after bunkers—nuclear weapons which have yields which will kill tens of thousands of people if they succeed with their low yield—it seems to me is not only a message which undercuts our position against proliferation and our position in support of the nonproliferation treaty but a message which totally weakens us, which opens us up to the attacks of the terrorists who would kill us, that the United States lives by one set of rules when it comes to its own activities at the same time it wants to apply another set of rules to the rest of the world.

The administration's Defense Science Board, last year, called for a strategic redirection of the stockpile stewardship priorities in favor of nuclear weapons that previously had not been provided for and supported.

The legislative justification for the administration's position on this matter says we should be exploring weapons concepts that could offer greater capabilities for precision and earth penetration and weapons which are more "relevant." More relevant nuclear weapons is what this is all about, relevant and usable nuclear weapons. A more relevant stockpile, according to their definition, will have reduced efficient yield.

But when you look at what the real yield is of these so-called reduced weapons, reduced yields, a 1-kiloton nuclear weapon detonated at a depth of 25 to 50 feet would eject more than 1 million cubic feet of radioactive debris into the air and leave a crater about the size of the World Trade Center. A 100-kiloton weapon that was detonated 635 feet below ground in Nevada formed a crater 320 feet deep and 1,200 feet in diameter. If a target were so deeply buried that a conventional weapon could not effectively harm a target, neither could a low-yield nuclear weapon. To successfully reach one of those targets would require a large yield and a large yield cannot be contained.

According to Sidney Drell, a noted physicist at Stanford University and a member of the NNSA advisory panel, a target buried at 1,000 feet would take a nuclear weapon with a yield greater than 100 kilotons to do any damage.

This body is again faced with a decision: Do we want to continue to walk down a road which we are urging and demanding that others not walk? The greatest fight we must wage is against proliferation of weapons of mass destruction that could reach the hands of terrorists.

The determination to develop new nukes and new uses for nuclear weapons undermines that fight. It weakens us in that fight and it makes us less secure in the war against terrorism.



I strongly urge that the pending amendment be adopted.

Mr. KENNEDY. Will the Senator yield?

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

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. There is 18 minutes on the Democratic side and 33 minutes on your side.

Mr. INHOFE. When are we scheduled to have our vote?

The PRESIDING OFFICER. At the conclusion of the use or yielding back of the time.

Mr. INHOFE. I see there are those wanting to be heard on the other side. Let me make a couple comments.

We are talking as if this is some program that we are putting together. This is a feasibility study. This is something to determine what the costs would be, what risks are out there, what the potential threat is that we could be guarding against. We are talking about a defensive system. I have heard all of the arguments.

Since we do have some time, I will let them use some of their time, and then I would like to respond so we can stay on schedule.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 15 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I am very happy to join with Senator KENNEDY in support of this amendment. I come at this from a passionate, moral point of view so my arguments are going to reflect that. We have been hearing for 2 years now that this is just a study. Yet the Congressional Research Service has shown in its reports that, in fact, it is much more than a study. This is the reopening of the nuclear door and the development of a new generation of nuclear weapons.

We, the strongest and most technologically proficient military on Earth now see fit to reopen that door and begin to study and develop a new generation of nuclear weapons: One, the robust nuclear earth penetrator, a 100-kiloton bunker buster, which at present cannot be developed to drive deeply enough into the ground to prevent the spewing of massive amounts of radioactive debris; two, something called advanced concepts initiative, which is the development of low-yield nuclear weapons, under 5 kilotons, to be used as strategic battlefield nuclear weapons; and three, the development of a plutonium pit facility with enough capacity to create up to 450 plutonium pits per year, which are the trigger devices in a nuclear weapon.

I strongly believe that to proceed on this path is folly because by doing so we are encouraging the very nuclear proliferation we are seeking to prevent. In other words, we are telling other

countries, don't do what we do, do what we say. We are practicing the ultimate hypocrisy. And there is now emerging evidence that others are going to follow this course.

When I stood on the floor last week, I mentioned the report that India is beginning the development of battlefield nuclear weapons. You can be sure Pakistan will follow. We also know Brazil is looking at that opportunity as well. In April of this year, Brazil refused to allow IAEA, the International Atomic Energy Agency, inspectors to examine a uranium enrichment facility under construction. They insisted that the facility will only produce low-enriched uranium, which is legal under the Nuclear Nonproliferation Treaty, so long as it is safeguarded. They also refused to fully cooperate with the IAEA's investigation into the nuclear black market operated by Pakistani scientist A.Q. Kahn.

These are all the signs. We saw them in North Korea as well. Brazil appears to be rebelling against what it perceives to be a double standard in the global nuclear proliferation regime. It views President Bush's proposals, which significantly curtail the sharing of potentially peaceful nuclear technology, as a radical departure from the standards agreed to under the NPT. I am quoting from a statement issued by the former Foreign Minister of Great Britain, Robin Cook, and former Secretary of State Madeleine Albright in a document entitled "A Nuclear Nonproliferation Strategy for the 21st Century." We know that other countries follow the example of the United States. Why are we doing this?

There is good news. Last week the House Appropriations Subcommittee on Energy and Water eliminated all funding for these programs, everything—for the pit facility, for the advanced weapons concepts, and for the nuclear bunker buster. That was a wise decision. I believe the action of the House is a reflection of the growing bipartisan concerns that I know many of my colleagues share about this administration's nuclear weapons programs. That is why the Senator from Massachusetts and I and the Senator from Michigan and others have offered our amendment to eliminate funds for programs to develop new nuclear weapons capabilities, including the robust nuclear earth penetrator.

This administration continues to argue that no new weapons production is currently planned. But again, the facts belie this statement.

Ambassador Linton Brooks, head of the National Nuclear Security Administration, stated in a recent interview that it is important, in his view, to maintain a manufacturing and scientific base so that the United States can meet the goal of "being able to design, develop, and begin production of a new warhead within 3 to 4 years of a decision to enter engineering development."

That is the ball game—the development of a new warhead. It is not just a study; it is development.

I mentioned the Congressional Research Service report. I was staggered when I saw that it concluded that the administration's long-term budget plans, including \$485 million for the robust nuclear earth penetrator between 2005 and 2009, casts doubt on the contention that the studies of a new nuclear weapon are, in fact, just studies. Why would the administration be including \$485 million in future funds in its long-term budget for a robust nuclear earth penetrator if it was just a study? The fact is, they would not. The study doesn't cost \$485 million. The answer is that they are planning to go into the engineering and the development phases.

What I find most troubling with the administration's approach is the suggestion that we can make nuclear weapons more usable.

I strongly believe it must be a central tenet of the U.S. national security policy to do everything at our disposal to make nuclear weapons less desirable, less available, and less likely to be used.

According to press reports, the 2001 Nuclear Posture Review cited the need to develop a new generation of nuclear weapons and suggested a "new triad" which blurred the lines between conventional and nuclear forces. I keep mentioning that because this paper is often postulated as a throwaway—don't pay attention to it—but it is a very important statement of administration policy.

As early as 2001, this administration was creating a new triad of strategic forces, and one part of that would be the nuclear triad—in other words, the creation of new weapons that could be used along with conventional weapons.

This document also names seven countries—not all of them possessing nuclear weapons—against which we would consider launching a nuclear first strike.

So this new triad, with its emphasis on the offensive capability of these weapons—even in first-strike scenarios—represents a radical and dangerous departure from the idea that our strategic nuclear forces are primarily intended for deterrence. This is significant. We have always looked at our nuclear arsenal as a deterrent arsenal. This is now changing to an offensive arsenal. If you think about how the robust nuclear earth penetrator would be used, how low-yield nuclear weapons would be used, they would not be used in a defensive posture; they would be used as part of an offensive thrust.

A recent report of the Pentagon's Defense Sciences Board argues that "nuclear weapons are needed that produce much lower collateral damage," precisely so these weapons can be more "usable" and integrated into war-fighting plans.

Now, the problem in all of this is that there is no such thing as a "clean"

or usable nuclear bomb. A lot of studies have been done.

A leader in this effort is Dr. Sidney Drell, a physics professor at Stanford University. He points out how the effects of a small bomb would be dramatic. A 1-kiloton nuclear weapon detonated 20 to 50 feet underground would dig a crater the size of Ground Zero in New York and eject 1 million cubic feet of radioactive debris into the air.

The depth of penetration of the robust nuclear earth penetrator is limited by the strength of the missile casing. The deepest our current earth penetrator can burrow is 20 to 35 feet of dry earth.

Casing made of even the strongest material cannot withstand the physical force of burrowing through 100 feet of granite to reach a hard or deeply buried target—much less the 800 feet needed to contain the nuclear blast.

So if a nuclear bunker buster were able to burrow into the earth to reach its maximum feasible penetration depth of 35 feet, it would not be able to be deep enough to contain even a bomb with an explosive yield of only 0.2 kilotons, let alone a 100-kiloton bomb like the robust nuclear earth penetrator.

So given the insurmountable physics problems associated with burrowing a warhead deep into the earth, destroying a target hidden beneath 1,000 feet into rock will require a nuclear weapon of at least 100 kilotons. So anything short of 800 feet will not contain a fallout. A fireball will break through the surface, scattering enormous amounts of radioactive debris—1.5 million tons for a 100-kiloton bomb—into the atmosphere. Is that what we want to be doing as a Nation?

The 1962 Sedan nuclear test at the Nevada Test Site illustrates the enormous destructive effects of a 100-kiloton nuclear blast detonated 635 feet below the surface of the Earth—far deeper than any robust nuclear earth penetrator can be engineered to go. The radioactive cloud it produced continued to rise as debris settled back to Earth, and the base surge of the explosion rolled over the desert. Even at 635 feet below the ground, the blast could not be contained.

On the floor of the Senate last week, my friend, the distinguished Senator from Arizona, Mr. KYL, argued that because conventional earth-penetrating munitions failed to knock out Saddam Hussein in his underground bunker on the eve of the Iraq war, “only nuclear weapons can address the deeply buried targets that are protected by man-made, or even hard geology.”

I usually, on security matters, agree with my friend. But consider the implications of this statement. If we had used a nuclear earth penetrator, we might have killed Saddam Hussein—that is, assuming we had the right location in the first place, and clearly our intelligence was not right—but at the same time the United States would have used a nuclear weapon against a nonnuclear weapon state, detonating it

in the middle of a city of 5 million people. Would leveling Baghdad have been the right way to liberate an oppressed people from a brutal dictator? Of course not.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I have one sentence before yielding to the Senator from New Mexico. This is a feasibility study. That is all it is. You can keep saying over and over that it is more, but it is not. In the 5-year plan, which says in the event the feasibility study recommends it, and in the event the President recommends it, in the event we authorize it in both the House and Senate, then you can go forward with it. Right now, it is a feasibility study.

With that, I yield the floor.

Mr. WARNER. Mr. President, at the conclusion of the remarks of our distinguished colleague from New Mexico, I ask unanimous consent that the Senator from Virginia be recognized for about 6 or 7 minutes for the purpose of a colloquy with the Senator from Utah.

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

Mr. INHOFE. I yield to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I thank Senator INHOFE for the opportunity to speak.

The Feinstein-Kennedy amendment would prevent the NNSA from studying alternative technologies for our nuclear stockpile. It would also prevent the NNSA and DOD from studying earth-penetrating capability, which many military experts believe is an area where our existing arsenal does not provide sufficient deterrence.

The robust nuclear earth penetrator is a study to determine how or if the existing B-61 and existing B-83—those are the names of nuclear weapons—might be modified to provide an added capability of underground penetration. At present, our military is unable to provide credible deterrence against deeply buried targets.

Included in the President's fiscal year 2005 budget is \$27.6 million in funding to undertake a feasibility study for the RNEP. With this research—and I stress research—we may be able to solve the complex engineering challenges and identify capabilities for both nuclear and conventional weapons to address the evolving tactical challenges. This is research not intended to replace any conventional weapon. It would only serve to transition from relying on large megaton city busters with more precise weapons, also providing funding for the NNSA to evaluate modification to existing weapons. It does not imply a commitment to build these weapons. Section 3117 of the Defense Authorization Act of 2004 requires that specific congressional authorization be ob-

tained to move beyond a feasibility study. That has not been repealed and has not been changed.

Last year, the Energy and Water appropriations bill contained language that prevents the NNSA and the Department of Defense from moving beyond a feasibility study without congressional approval. I am the chairman of that committee, and I intend to include similar language again this year.

The Advanced Concepts Initiative will examine emerging or alternative technologies that could provide this country with an improved nuclear deterrence.

In 2001, the Nuclear Posture Review suggested that we should keep our nuclear scientists engaged and thinking about what the nuclear stockpile of the future should look like. By denying our scientists the opportunity to investigate this technology and the options for our stockpile, we will also neglect critical research into improving the safety, reliability, and security of the existing aging stockpile. It makes absolutely no sense to ignore technology and innovation when it comes to nuclear security and deterrence. I guarantee other countries are not limiting themselves to what they know today but are focusing on new possibilities for tomorrow.

This is not an attempt to build brand-new weapons and add to the stockpile. I am very supportive of reducing the number of weapons we have deployed, and I support the President's recently announced efforts to take a dramatic step in that direction. I support a much smaller, more flexible stockpile that can respond to a variety of threats in the post-cold-war era.

Last year, the Appropriations Energy and Water Development Subcommittee included a requirement that the President send to Congress a nuclear stockpile report that underlines the size of the stockpile of the future. This classified report is complete and defines the size and mission of our future stockpile. It goes beyond reductions contemplated by the Clinton administration. The plan proposed by the President would reduce the number of deployed weapons to levels consistent with the Moscow Treaty and its lowest level in several decades.

But even with these reductions, we must constantly adapt to provide a credible deterrence to the post-cold-war era. It is not realistic to think we can put the nuclear genie back into the bottle. We cannot hope that if we ignore the evolving nuclear threat that it will go away. History tells us a different story.

Despite the U.S. adopting a testing moratorium, several countries, including France, India, and Pakistan have tested weapons. Countries such as Libya, Iran, and North Korea have ignored international pressure to stop the development of a nuclear capability.

The fact is, countries will pursue what is in their sovereign best interests, and the U.S. should not believe

that we are in any different position. It is in our Nation's best interest to ensure that our weapons serve as a credible deterrent to a wide range of threats.

I remain hopeful that we will only use our stockpile as a deterrent to other nuclear states. However, to be an effective deterrent, it must evolve to address the changing threats. We also must maintain a group of experts at our national labs that understand the complex science to support the engineering and physics to ensure our stockpile is a viable deterrent and is safely stored at home.

To ensure we have an effective deterrent, we are doing the following:

We are maintaining our nuclear deterrent. That sends a clear and convincing signal to our allies and our enemies that our nuclear capability is sufficient to deter most threats.

We are maintaining our test readiness that allows us to hedge against the possibility that we may someday need to conduct a test to confirm a problem or verify that we resolved a problem within the stockpile.

We are using the RNEP study to examine whether or not existing weapons could be adapted to improve our ability to hold at risk deeply buried facilities that our enemies occupy.

We are challenging our scientists to think of a wide variety of options and face challenges to ensure that our nuclear deterrent is flexible and responsive to evolving threats. Failure to challenge our physicists and engineers will limit our capabilities in the future.

It is disingenuous of our opponents to argue that these policies put us on an irreversible course of new weapons development. Nothing could be further from the truth. Congress has the ultimate responsibility in determining whether or not to proceed with full-scale development.

I urge my colleagues to oppose this shortsighted amendment that would prevent our weapons scientists from investigating the best available options. This research is critical to ensuring this country has an effective and safe stockpile that will serve as a credible deterrent to all existing and potential threats.

I hope that in the process of discussing this issue, we will arrive at a conclusion that makes it eminently clear that the statement I have made regarding the 1-year feasibility study will be what we are talking about and what we will adopt.

I thank the Senator. I yield the floor.

Mr. INHOFE. Mr. President, may I inquire as to the time remaining?

The PRESIDING OFFICER. The Senator has 26 minutes.

Mr. INHOFE. And the other side?

The PRESIDING OFFICER. There is 3 minutes.

Mr. INHOFE. Under our unanimous consent agreement, we will recognize the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, our distinguished colleague from Utah wishes to have a colloquy with me. The colloquy represents a number of days of careful deliberations on a point and issue in last year's bill which is of great importance to him. I will follow my colleague after he makes his remarks.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I intend to oppose the Kennedy-Feinstein amendment even though I am sympathetic with many of the arguments they make. I am in agreement with the idea that this is a feasibility study only and that the study should go forward, but my primary concern is that there be no nuclear testing of this particular device or any aspect of this particular device while the study is going on.

It is my understanding that is part of the law accepted previously, but I want to make it absolutely sure. For that purpose, I intend, following this vote, some time during the debate, to call up my amendment which makes it clear that there can be no nuclear testing under the cover of a study of the RNEP as it is so called. That amendment is offered not only for myself and my colleague from Utah, Senator HATCH, but we are joined by Senator COLLINS of Maine and Senator DOMENICI of New Mexico.

I wish to make it clear that my goal is to see to it that there be no nuclear testing in the name of the study unless there is a specific congressional vote with respect to that testing. I do not believe it will be necessary, but if some future administration 5, 10, 15 years from now were to decide they needed to do some nuclear testing, that there was a compelling case to do that, I want that future administration to have to come to the Congress and make the compelling case to the Congress. My amendment goes in that direction with that as its goal.

Mr. WARNER. Mr. President, it is my understanding there are others who have associated with the Senator on this matter; am I not correct in that?

Mr. BENNETT. That is correct. As I said, Senator HATCH, Senator COLLINS, and Senator DOMENICI have cosponsored the amendment, and there are some others who indicated they will as well.

Mr. WARNER. Mr. President, I thank my colleague. I think the observations of the Senator from Utah, Mr. BENNETT, are important ones. I will work with my colleagues on the other side of the aisle to see if we cannot accept this amendment eventually because it, in all likelihood, clarifies the language that I put in the bill last year.

I think the amendment helps to clarify the intent of the language last year, which in its verbiage requires a specific authorization by Congress to proceed with the engineering development phase or subsequent phase of the robust nuclear earth penetrator and, in

my view, that includes a full-scale underground nuclear test on the robust nuclear earth penetrator if such test, in the judgment of the technical community, is deemed necessary.

So I think the amendment can be helpful, and I will work with my distinguished colleagues on the other side, most specifically the ranking member, Senator LEVIN, to see whether we can adopt it.

I thank my colleague.

Mr. BENNETT. Mr. President, I thank the chairman for his courtesy and look forward to working with him and Senator LEVIN to see if we can indeed get this amendment adopted.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. At this point, I yield to the junior Senator from Texas for such time as he may consume.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I thank the Senator from Oklahoma for his courtesy in allowing me to speak briefly against this amendment which, as we have heard, prohibits any funding both for a feasibility study on the robust nuclear earth penetrator and for the advanced concepts initiative. My concern is the premise upon which this amendment is offered. If the events of the last decade have taught us anything, it is that weakness invites aggression by those who see that as an opportunity to terrorize or otherwise wreak havoc on innocent civilians in this country and elsewhere.

The concept that we should somehow prohibit important research—and this amendment would eliminate research because, of course, production is prohibited by current law—the suggestion and the logic, if there is any, that by somehow blinding ourselves to the threat and the means to overcome the threats that surround us in an ever dangerous world is beyond me. If we have learned anything in the last decade from the time of the bombing of the World Trade Center in 1993 to the bombing of our American embassies in Africa to the Khobar Towers incident to the bombing of the USS *Cole*, it is that weakness in the eyes of terrorists and rogue nations invites aggression.

I wonder from where the sense of moral equivalency comes that we often hear in this debate. There are those who have said time and again that if we are to try to reduce the proliferation of nuclear weapons around the world, how can America then conduct research on the robust nuclear earth penetrator and on those areas covered by the advanced concepts initiative? But I wonder if those who are making these statements truly believe America's research on such weapons systems to protect ourselves and to defend ourselves is somehow the equivalent of the actions of rogue states and terrorists. Moral equivalency is simply wrong.

There are those who suggest that somehow by conducting essential research into hardened weapons like the

robust earth nuclear penetrator, that may perhaps be able to protect our country and assist us in exposing hardened bunkers, which can contain command and control or perhaps even biological or other weapons of mass destruction research facilities, that we will start a new arms race. I detect a hint of perhaps the old cold war mentality that somehow they believe we will enter into some sort of arms race which will endanger the world.

The truth is, America, as a fraction of its GDP, spends more on defense than the next 20 nations in the world. We are the only superpower that exists in the world and there is no risk of an arms race such as we saw occur with the former Soviet Union. So this is merely a matter of allowing us to do the basic research into weapons that would allow us to protect ourselves against hardened and deeply buried targets where laboratories could store or produce weapons of mass destruction. We can conduct research on these weapons as a way to protect ourselves and indeed make America safer.

Finally, this amendment would eliminate the advanced concepts initiative. It is important to reiterate what that initiative will do. The initiative focuses on increasing the reliability, safety, and security of our existing nuclear weapons stockpile. It focuses on assessing the capabilities of our adversaries to ensure we avoid a technological surprise. It focuses on thinking up innovative methods for countering our adversaries' weapons of mass destruction and developing weapons systems requirements, and it focuses on evaluating concepts to meet future military requirements.

I fail to see the wisdom of our willingness to blind ourselves to emerging threats in a very dangerous world. As I say, our weakness, our willingness to disarm ourselves and blind ourselves to the danger that surrounds us is an invitation to those who see that as a means for them to use terrorism to accomplish their political goals in this world in which we live.

I urge my colleagues to oppose the amendment today. I thank the manager of the bill for this time and I yield back any remaining time to him.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I understand the other side has 3 minutes remaining, and I think the Senator from Massachusetts wants to wind up. It would be our intention to yield back our time unless somebody comes to the floor who has not been heard. So at this point I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Finally, Mr. President, my friend from Texas does not state our amendment correctly. We are only dealing with the mini nuke and the bunker buster, not the safety of the stockpile or the study of information that happens in other countries. The

fact of the matter is, this administration does have a plan for the development of the bunker buster and the small nuclear weapon. There is no doubt about it. It says so in its Nuclear Posture Review.

It puts in motion a major change in our approach to the role of nuclear offensive forces in our deterrent strategy and presents a blueprint for transforming our strategic posture. That is the beginning of a new arms race.

It is not what I say; it is in their budget request that goes on for 5 or 7 years and asks for \$485 million for the bunker buster and \$84 million for the small nukes. That is what the administration basically wants. This is what their principal responsible officials in the administration have said.

Linton Brooks:

I have a bias in favor of things that might be usable. I think that's just an inherent part of deterrence.

Fred Celec, former deputy assistant to the Secretary of Defense: If a hydrogen bomb can be successfully designed to survive a crash through hard rock or concrete and still explode, "It will ultimately get fielded."

There it is. That is what we are dealing with. We believe, if we go this route, it is going to make it more difficult to achieve arms control in the area of nuclear arms. It is going to make our goals harder to realize and make the possibility of nuclear war more likely.

Interestingly, the House of Representatives, in their conclusions on this same issue, provides no funds for advanced concepts research and the robust nuclear earth penetrator. Our bill does provide a significant increase in weapons dismantlement, and for security upgrades in the weapons complex for nuclear nonproliferation, the committee provides the request for \$1.3 billion. We spend the resources on other high-priority nonproliferation needs.

That is the conclusion of the Republican House of Representatives. They seem to get it.

Rather than start into a new arms race with nuclear weapons, let us accept our amendment and rely on what we have relied on, which the Secretary of State, former Chairman of the Joint Chiefs of Staff, Colin Powell, recognized—that these were not small nukes and were not battlefield weapons. They did not have a place in our military. That is what the former Chairman of the Joint Chiefs of Staff said. No one is suggesting that he hasn't had a life and career in terms of security of this country.

We have the best in terms of conventional forces. Why go ahead and see nuclear proliferation in terms of weapons that will create increased dangers for the American people?

I yield the remaining time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, it is our intention to yield our time. However, I repeat: This is a feasibility study. It is

nothing more than that. You can quote all these other people whose opinion is we should have this. It doesn't make any difference. If the feasibility study says we should go into R&D and production, we can do that. If the 5-year plan says they come up with that recommendation, we can do that. But, first, the feasibility study would have to be done. Then the President would have to make a request, and both Houses of Congress would have to authorize it. This is just a feasibility study. We voted on this last year. I have sent for the vote. We will have it down here to remind people how they voted. Nothing has changed.

I yield the remainder of our time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. WARNER. Mr. President, I think we have had a very good debate. I thank colleagues on both sides of the aisle for participating in the debate this morning—the Senator from Oklahoma, Mr. INHOFE; Senator ALLARD; the Senator from Texas; and many of us.

While the vote had been scheduled for a little later to accommodate the needs of several Senators, I ask the desk to recognize that all time has been yielded.

The PRESIDING OFFICER. All time has expired.

Mr. WARNER. Therefore, if it is agreeable with my colleague from Michigan, we will have a vote.

Mr. LEVIN. Mr. President, we have no objection. However, there may be some Senators who relied on this vote starting later, and we ought to accommodate them and keep the vote open a little longer.

Mr. WARNER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) would vote "yea."

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

The result was announced—yeas 42, nays 55, as follows:

[Rollcall Vote No. 113 Leg.]

## YEAS—42

Akaka	Dayton	Lautenberg
Baucus	Dodd	Levin
Biden	Dorgan	Lieberman
Bingaman	Durbin	Lincoln
Boxer	Edwards	Mikulski
Breaux	Feingold	Murray
Byrd	Feinstein	Pryor
Cantwell	Graham (FL)	Reed
Carper	Harkin	Reid
Chafee	Inouye	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden

## NAYS—55

Alexander	Domenici	Murkowski
Allard	Ensign	Nelson (FL)
Allen	Enzi	Nelson (NE)
Bayh	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Graham (SC)	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Campbell	Hatch	Snowe
Chambliss	Hollings	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Kyl	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	
Dole	Miller	

## NOT VOTING—3

Jeffords	Kerry	Leahy
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The amendment (No. 3263) was rejected.

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

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

The motion to lay on the table was agreed to.

## UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. WARNER. Mr. President, I thank the Senator from Colorado and all others who participated in what I felt was one of the better debates we have had in some time on a very serious issue. I commend the Senator from Massachusetts and others for the manner in which we conducted the debate.

Mr. President, I will now propound a unanimous consent request.

I ask unanimous consent that the time from 2:15 to 3:40 be equally divided between the opponents and proponents of the Smith amendment No. 3183; provided further, that at 3:40, the Senate proceed to executive session for the consideration en bloc of the following nominations: Virginia Hopkins, Ricardo Martinez, and Gene Pratter.

I further ask unanimous consent that there be 20 minutes of debate equally divided between the chairman and ranking member of the Judiciary Committee, or their designees, and that at 4 o'clock today the Senate proceed to a vote in relation to the Smith amendment No. 3183, with no amendments in order to the amendment prior to the vote.

I further ask that following that vote, the Senate then proceed to consecutive votes on the confirmation of Executive Calendar Nos. 563, 564, and 566, with 2 minutes of debate equally divided prior to each vote. I finally ask

that following these votes, the President be immediately notified of the Senate's action and the Senate resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, following this series of votes, we will return to the Defense bill. At that time, there has been an agreement—at least it is my understanding that a Crapo amendment will be laid down.

Mr. WARNER. Mr. President, that is correct.

Mr. REID. That amendment would be set aside and Senator CANTWELL would lay down an amendment, and we will do our best to work out a time to vote on those amendments.

Mr. WARNER. The Senator is correct.

Mr. REID. Following the offering of the Cantwell amendment, the next one in order is the amendment by Senator DURBIN on our side, so people understand that.

Mr. DODD. Mr. President, if I may inquire, we have a pending amendment. What is the plan for dealing with amendments that have been offered and set aside? Do we try to resolve these matters in negotiation, or is there a schedule by which we will vote on these?

Mr. WARNER. The issue I am familiar with is the one the Senator from Connecticut and I debated which has sections (a) and (b).

Mr. DODD. Correct, the contractors.

Mr. WARNER. Mr. President, did the Senator reach any conclusions as to whether he wants to amend his amendment?

Mr. DODD. We may very well. I have not had a chance to speak with staff. I will be happy to speak with them in the next hour.

Mr. WARNER. I am hoping we can act on that amendment.

Mr. LEVIN. If whoever has the floor will yield, I understand we have now received the documents. We received the documents which we sought from the Army. I have not read them yet, and I do not know if the Senator has had a chance to review them.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. REID. No objection.

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

Mr. WARNER. I thank the Presiding Officer. I think we will go to the standing order to place the Senate in recess.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 1 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. Under the previous order, the time until 3:40 p.m. will be equally divided between the proponents and opponents on the Smith amendment.

Who yields time?

The Senator from Virginia.

## AMENDMENT NO. 3183

Mr. WARNER. Mr. President, it is my understanding that the time is equally divided between the distinguished Senator from Oregon on this side and the Senator from Massachusetts on the other. Am I correct on that?

Mr. LEVIN. As I understand it, Mr. President, both are proponents of the amendment. I do not know who would be controlling the opponents' time. Is there opposition? If so, I wonder if the chairman knows who the opponents are who would be controlling the time.

Mr. WARNER. Mr. President, the distinguished Senator from Michigan does raise a valid point. I will provide the Senate with the individual that controls the opponents' time momentarily.

Mr. LEVIN. In terms of the proponents' time, I understand that will be divided between the Senator from Oregon and the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Oregon will control the time.

The Senator from Oregon.

Mr. SMITH. Mr. President, first may I express my appreciation to those who have agreed to this time agreement about an issue that is long overdue for our Senate to take up once again and to vote on its merits. This is the issue of hate crimes. This is an issue that is much in the news of late because it is an issue that too often is visited on the American people, or classes of Americans within the American community.

We are in the midst of a war on terror, and as we fight that war on terror abroad, it is important we not forget the war on terror at home. What Senator KENNEDY and I are trying to do in this bill is to simply remind the American people that there are classes of Americans who are uniquely vulnerable, who are singled out for violence, and for whom we need to do something.

It is a fact that hate crimes statutes are on the books of well over 30 States in America. They are even on the books of the U.S. Government. The Federal Government now has authority to pursue, prosecute, and punish those who commit hate crimes on the basis of race, religion, or national origin. What we are proposing to do in this bill is to add a few categories.

There is one category, one class of Americans that is the problem in this amendment, as some view it a problem, and that is the gay and lesbian community.

Now, many may wonder why we are bringing up this issue on a Defense authorization bill. And the answer is simply because some of the worst hate