Dorgan	Kennedy	Reed
Durbin	Kohl	Reid
Edwards	Kyl	Roberts
Ensign	Landrieu	Rockefeller
Enzi	Lautenberg	Santorum
Feingold	Leahy	Sarbanes
Feinstein	Levin	Schumer
Fitzgerald	Lieberman	Sessions
Frist	Lincoln	Shelby
Graham (FL)	Lott	Smith
Graham (SC)	Lugar	Snowe
Grassley	McCain	Specter
Gregg	McConnell	Stabenow
Hagel	Mikulski	Stevens
Harkin	Miller	Sununu
Hatch	Murkowski	Talent
Hollings	Murray	Thomas
Hutchison	Nelson (FL)	Voinovich
Inhofe	Nelson (NE)	Warner
Inouye	Nickles	Wyden
Johnson	Pryor	

NOT VOTING—2

Jeffords	Kerry

The nomination was confirmed.

NOMINATION OF GENE E. K. PRATTER TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Gene E. K. Pratter, of Pennsylvania, to be U.S. District Judge for the Eastern District of Pennsylvania.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Gene E. K. Pratter, of Pennsylvania, to be U.S. District Judge for the Eastern District of Pennsylvania. The clerk will call the roll.

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

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 117 Ex.]

YEAS—98

Akaka	Corzine	Inhofe
Alexander	Craig	Inouye
Allard	Crapo	Johnson
Allen	Daschle	Kennedy
Baucus	Dayton	Kohl
Bayh	DeWine	Kyl
Bennett	Dodd	Landrieu
Biden	Dole	Lautenberg
Bingaman	Domenici	Leahy
Bond	Dorgan	Levin
Boxer	Durbin	Lieberman
Breaux	Edwards	Lincoln
Brownback	Ensign	Lott
Bunning	Enzi	Lugar
Burns	Feingold	McCain
Byrd	Feinstein	McConnell
Campbell	Fitzgerald	Mikulski
Cantwell	Frist	Miller
Carper	Graham (FL)	Murkowski
Chafee	Graham (SC)	Murray
Chambliss	Grassley	Nelson (FL)
Clinton	Gregg	Nelson (NE)
Cochran	Hagel	Nickles
Coleman	Harkin	Pryor
Collins	Hatch	Reed
Conrad	Hollings	Reid
Cornyn	Hutchison	Roberts
Rockefeller	Smith	Talent
Santorum	Snowe	Thomas
Sarbanes	Specter	Voinovich
Schumer	Stabenow	Warner
Sessions	Stevens	Wyden
Shelby	Sununu	

NOT VOTING—2

Kerry	Jeffords

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

Mr. WARNER. Mr. President, the Senator from Connecticut wants to modify an amendment at the desk. I suggest he lead off. The Senator from Missouri wishes to speak for about 5 or 6 minutes, the Senator from Rhode Island for whatever time he may wish, 5 or 10 minutes, and then Senator DURBIN also would like to speak. So, Mr. President, is that an order which is agreeable to my colleagues?

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

Mr. WARNER. Of course, there will be no more votes tonight. We do anticipate a very active day tomorrow, and the leadership is in the process of working out the sequencing of events tomorrow.

Mr. DODD. Mr. President, what is the pending business?

The PRESIDING OFFICER. Amendment No. 3313, the amendment by the Senator from Connecticut.

AMENDMENT NO. 3313, AS FURTHER MODIFIED

Mr. DODD. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. WARNER. There is no objection, Mr. President.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 3313), as further modified, is as follows:

On page 195, between lines 10 and 11, insert the following:

SEC. 868. PROHIBITIONS ON USE OF CONTRACTORS FOR CERTAIN DEPARTMENT OF DEFENSE ACTIVITIES.

(a) PROHIBITION ON USE OF CONTRACTORS IN INTERROGATION OF PRISONERS.—(1) Notwithstanding any other provision of law and except as provided in paragraph (2), the use of contractors by the Department of Defense for the interrogation of prisoners, detainees, or combatants at any United States military installation or other installation under the authority of United States military or civilian personnel is prohibited.

(2)(A) During fiscal year 2005, the President may waive the prohibition in paragraph (1) with respect to the use of contractors to provide translator services under that paragraph if the President determines that no United States military personnel with appropriate language skills are available to provide translator services for the interrogation to which the waiver applies.

(B) The President may also waive the prohibition in paragraph (1) with respect to any other use of contractors otherwise prohibited by that paragraph during the 90-day period beginning on the date of the enactment of this Act, but any such waiver shall cease to be effective on the last day of such period.

(3) The President shall, on a quarterly basis, submit to the appropriate committees of Congress a report on the use, if any, of contractors for the provision of translator services pursuant to the waiver authority in paragraph (2)(A).

(b) PROHIBITION ON USE OF FUNDS.—No funds authorized to be appropriated by this Act or any other Act may be obligated or expended for the utilization of contractor personnel in contravention of the prohibition in subsection (a), whether such funds are provided directly to a contractor by a department, agency, or other entity of the United States Government or indirectly through a permanent, interim, or transitional foreign government or other third party.

(c) PROHIBITION ON TRANSFER OF CUSTODY OF PRISONERS TO CONTRACTORS.—No prisoner, detainee, or combatant under the custody or control of the Department of Defense may be transferred to the custody or control of a contractor or contractor personnel.

(d) RECORDS OF TRANSFERS OF CUSTODY OF PRISONERS TO OTHER COUNTRIES.—(1) No prisoner, detainee, or combatant under the custody or control of the Department of Defense may be transferred to the custody or control of another department or agency of the United States Government, a foreign, multinational, or other non-United States entity, or another country unless the Secretary makes an appropriate record of such transfer that includes, for the prisoner, detainee, or combatant concerned—

(A) the name and nationality; and

(B) the reason or reasons for such transfer.

(2) The Secretary shall ensure that—

(A) the records made of transfers by a transferring authority as described in paragraph (1) are maintained by that transferring authority in a central location; and

(B) the location and format of the records are such that the records are readily accessible to, and readily viewable by, the appropriate committees of Congress.

(3) A record under paragraph (1) shall be maintained in unclassified form, but may include a classified annex.

(e) REVIEW OF UNITED STATES POLICY ON USE OF CONTRACTORS IN COMBAT OPERATIONS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the Secretary's review of United States policy on the use of contractors in combat operations.

(2) The report under paragraph (1) shall identify and review all current statutes, regulations, policy guidance, and associated legal analyses relating to the use of contractors by the Department of Defense, and by other elements of the uniformed services, in routine engagements in direct combat on the ground, including any prohibitions and limitations on the use of contractors in such engagements.

(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committees on Armed Services, Foreign Relations, and the Judiciary of the Senate and the Select Committee on Intelligence of the Senate; and

(2) the Committees on Armed Services, International Relations, and the Judiciary of

the House of Representatives and the Permanent Select Committee on Intelligence of the House of Representatives.

Mr. DODD. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be added as a cosponsor to Senator DODD's modified amendment.

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

Mr. LEVIN. Mr. President, I ask unanimous consent that Senator CONRAD be added as a cosponsor to amendment No. 3192 which was adopted.

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

FAIRNESS IN PUBLIC-PRIVATE COMPETITIONS

Mr. KENNEDY. Mr. President, I commend Chairman WARNER and Senator LEVIN for working with Senator CHAMBLISS and me to reach a worthwhile bipartisan agreement on this amendment to produce greater fairness in public-private competitions. We face great challenges on national security and national defense in these times. We are doing all we can to meet the needs of our armed forces, and we are proud of their service to our country. The Federal civilian employees of the Department of Defense deserve our strong support, too.

The rules put in place last May by the Office of Management and Budget to implement public-private competition reforms in the Federal Government, including the Department of Defense, are the most sweeping changes in half a century. These rules have been controversial, and Congress has passed important protections over the last year to ensure that competitions to privatize Federal work are fair.

Last year, in the Department of Defense Appropriations Act, a bipartisan Congress guaranteed Federal employees the opportunity to demonstrate that they can do the work better and for a lower cost than private contractors. The fair competition amendment will make these provisions permanent, guaranteeing the use of the most efficient organizations in both streamlined competitions and other A–76 competitions at the Department of Defense. The amendment also reduces the incentive for private contractors to deny health benefits or provide inadequate benefits. Forty-four million Americans are uninsured today, and the cost of health insurance premiums have soared by 43 percent over the last 3 years. Under this amendment, if contractors offer inferior health benefits, comparative savings in health costs will not be counted in assessing their bids.

The amendment corrects a major defect in the OMB rules, which prevent Federal employees form competing effectively for a new work or work conducted by private contractors. The administration opposed a similar amendment in the House that established a pilot program. This amendment addresses the administration's specific concerns about the pilot project, while establishing a process for allowing and encouraging Federal employees to compete for new work and work currently performed by contractors.

The amendment also requires the inspector general to determine whether the Department of Defense has the infrastructure necessary to conduct public-private competitions and administer service contracts.

This amendment deals primarily with competitions in the Department of Defense. We know there is also more work to be done with respect to other Federal agencies.

Given the importance of this issue to my colleagues and me, we will be closely monitoring public-private competitions at the Department of Defense to ensure compliance with the current rules, to improve the law, and to pursue further legislative solutions to ensure fair competition. As we expand the Nation's military budget, we must see that taxpayers and our men and women in uniform are obtaining all of the benefits possible, and I hope very much that Chairman WARNER and Senator LEVIN will retain this important amendment in the conference report.

Mr. CHAMBLISS. I appreciate the hard work of our chairman and ranking member in working with Senator KENNEDY and to approve the fair competition amendment.

The amendment addresses a number of issues about which I am very concerned. One of the key issues is the ability of civilian employees to have the opportunity to compete for new work or work currently performed by contractors. This amendment would encourage the Department of Defense to level the playing field in these areas, improve efficiency, and protect government employees' ability to perform critical skills in key areas. And it does so in a way that addresses the concerns expressed by the administration in its Statement of Administration Policy.

Federal employees should compete in defense of their work, unless national security dictates otherwise. Direct conversion, giving work performed by Federal employees to contractors without competition, disservices Federal employees and taxpayers. The OMB Circular A–76 allows for direct conversions with OMB's approval. But there is evidence that agencies may be undertaking direct conversions without OMB's approval. This amendment ensures that for DoD, the largest agency and the one that does the most contracting out, there will be no direct conversions of any functions performed by more than ten employees, absent the invocation by the Secretary of Defense of a national security waiver. We have also included strong language in the amendment to close loopholes by which DoD could break up functions so that they involve ten or fewer employees or arbitrarily designate the work as new in order to get around this requirement.

Federal employees required to undergo public-private competitions should be able to submit their most competitive bids through the most efficient organization process. This amendment establishes such a requirement for all functions performed by more than ten employees.

Due to the significant costs associated with conducting competitions, contractors should be required to demonstrate that they will be marginally more efficient than Federal employees before taking away work performed by Federal employees. This amendment requires a minimum cost differential for all functions performed by more than ten employees of 10 percent of $10 million, whichever is smaller.

Privatization reviews should be predicated on agencies' capacity to perform those reviews and then satisfactorily administer any resulting service contracts. Our amendment ensures through its Inspector General reporting requirement that the Congress will know whether DoD has the capacity to conduct the privatization reviews required of it by OMB over the next several years.

I am pleased that this amendment has been accepted by the Senate and look forward to working with my colleagues during conference to include it in law.

Mr. LEVIN. I appreciate the willingness of my colleagues to work with the Chairman and me on this amendment. The amendment addresses a number of important issues that face the Department of Defense's contracting out policies.

For the first time, this amendment would make permanent provisions that require a most efficient organization and a minimum cost differential in almost all competitions. It ensures that contractors do not have incentives to offer inferior health insurance packages as a way to cut costs and make their bids more appealing. And it sets up a process for Federal employees to gain opportunities to conduct new work and work performed by contractors.

The amendment would, on a government-wide basis, put Federal employees and contractors on the same basis with respect to competing to perform new work. Contractors are not required to compete against Federal employees for new work, either under the FAR or A–76. The amendment would eliminate the requirement in A–76 that forces Federal employees to compete for new work or to retain their own work when the scope of that work expands.

Mr. KENNEDY. Given that the one concern identified by OMB in its SAP has been addressed in the amendment, would the Senator anticipate that the amendment will be included in the conference report?

Mr. LEVIN. That is my hope and expectation. I note that the House bill contains a similar provision, so the differences between the two provisions will have to be worked out by the conferees. I commit to working with my colleagues in the conference to ensure that the final language in the conference report achieves the purposes of the amendment.

COMMISSION ON THE FUTURE OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Mr. BINGAMAN. Mr. President, I would like to discuss section 841 of S. 2400, entitled the Commission on the Future of the National Technology and Industrial Base.

Mr. WARNER. Yes. This Commission will examine our national technology and industrial base as it pertains to the national security of the United States. The Commission will make important recommendations to ensure we maintain our technological leadership in a global economy.

Mr. BINGAMAN. I commend the chairman for his advocacy of this important issue. I would like to make the chairman aware of an effort that has been underway at the National Academy of Sciences.

Mr. WARNER. Will the Senator please describe this effort to me?

Mr. BINGAMAN. Yes. For the past 12 years, the Board on Science Technology and Economic Policy at the National Academies, has been evaluating the effects of globalization on key U.S. Industries such as biotechnology, software, telecommunications, semiconductors, flat panel displays, lighting and heavy manufacturing industries such as steel. The board produced a report in 2000 evaluating the effects of globalization on a subset of these industries. They are now in the process of evaluating the effects of outsourcing and globalization trends over the past 4 years on many of these same industries. Many, if not all, of these industries are important to our defense industrial base. I would like to ask the chairman if he believes it is important for the Commission to review the work of Board on Science Technology and Economic Policy as it undertakes its research.

Mr. WARNER. Yes, I believe it is prudent that the Commission fully utilize the expertise that the Board on Science Technology and Economic Policy has developed in evaluating the trends of globalization and outsourcing on the industries you have just discussed.

Mr. BINGAMAN. I thank the chairman for his time in this matter.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 3251

Mr. TALENT. Mr. President, I have an amendment I wish to offer on behalf of Mr. BOND and myself. It is at the desk. I ask it be called up. It is amendment No. 3251.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. TALENT], for himself and Mr. BOND, proposes an amendment numbered 3251.

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

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

The amendment is as follows:

(Purpose: To express the sense of Congress on America's National World War I Museum)

At the end of subtitle G of title X, add the following:

SEC. 1068. SENSE OF CONGRESS ON AMERICA'S NATIONAL WORLD WAR I MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) The Liberty Memorial Museum in Kansas City, Missouri, was built in 1926 in honor of those individuals who served in World War I in defense of liberty and the Nation.

(2) The Liberty Memorial Association, a nonprofit organization which originally built the Liberty Memorial Museum, is responsible for the finances, operations, and collections management of the Liberty Memorial Museum.

(3) The Liberty Memorial Museum is the only public museum in the Nation that exists for the exclusive purpose of interpreting the experiences of the United States and its allies in the World War I years (1914–1918), both on the battlefield and on the home front.

(4) The Liberty Memorial Museum project began after the 1918 Armistice through the efforts of a large-scale, grass-roots civic and fundraising effort by the citizens and veterans of the Kansas City metropolitan area. After the conclusion of a national architectural design competition, ground was broken in 1921, construction began in 1923, and the Liberty Memorial Museum was opened to the public in 1926.

(5) In 1994, the Liberty Memorial Museum closed for a massive restoration and expansion project. The restored museum reopened to the public on Memorial Day, 2002, during a gala rededication ceremony.

(6) Exhibits prepared for the original museum buildings presaged the dramatic, underground expansion of core exhibition gallery space, with over 30,000 square feet of new interpretive and educational exhibits currently in development. The new exhibits, along with an expanded research library and archives, will more fully utilize the many thousands of historical objects, books, maps, posters, photographs, diaries, letters, and reminiscences of World War I participants that are preserved for posterity in the Liberty Memorial Museum's collections. The new core exhibition is scheduled to open on Veterans Day, 2006.

(7) The City of Kansas City, the State of Missouri, and thousands of private donors and philanthropic foundations have contributed millions of dollars to build and later to restore this national treasure. The Liberty Memorial Museum continues to receive the strong support of residents from the States of Missouri and Kansas and across the Nation.

(8) Since the restoration and rededication of 2002, the Liberty Memorial Museum has attracted thousands of visitors from across the United States and many foreign countries.

(9) There remains a need to preserve in a museum setting evidence of the honor, courage, patriotism, and sacrifice of those Americans who offered their services and who gave their lives in defense of liberty during World War I, evidence of the roles of women and African Americans during World War I, and evidence of other relevant subjects.

(10) The Liberty Memorial Museum seeks to educate a diverse group of audiences through its comprehensive collection of historical materials, emphasizing eyewitness accounts of the participants on the battlefield and the home front and the impact of World War I on individuals, then and now. The Liberty Memorial Museum continues to actively acquire and preserve such materials.

(11) A great opportunity exists to use the invaluable resources of the Liberty Memorial Museum to teach the ''Lessons of Liberty'' to the Nation's schoolchildren through on-site visits, classroom curriculum development, distance learning, and other educational initiatives.

(12) The Liberty Memorial Museum should always be the Nation's museum of the national experience in the World War I years (1914–1918), where people go to learn about this critical period and where the Nation's history of this monumental struggle will be preserved so that generations of the 21st century may understand the role played by the United States in the preservation and advancement of democracy, freedom, and liberty in the early 20th century.

(13) This initiative to recognize and preserve the history of the Nation's sacrifices in World War I will take on added significance as the Nation approaches the centennial observance of this event.

(14) It is fitting and proper to refer to the Liberty Memorial Museum as ''America's National World War I Museum''.

(b) SENSE OF CONGRESS.—Congress—

(1) recognizes the Liberty Memorial Museum in Kansas City, Missouri, including the museum's future and expanded exhibits, collections, library, archives, and educational programs, as ''America's National World War I Museum'';

(2) recognizes that the continuing collection, preservation, and interpretation of the historical objects and other historical materials held by the Liberty Memorial Museum enhance the knowledge and understanding of the Nation's people of the American and allied experience during the World War I years (1914–1918), both on the battlefield and on the home front;

(3) commends the ongoing development and visibility of ''Lessons of Liberty'' educational outreach programs for teachers and students throughout the Nation; and

(4) encourages the need for present generations to understand the magnitude of World War I, how it shaped the Nation, other countries, and later world events, and how the sacrifices made then helped preserve liberty, democracy, and other founding principles for generations to come.

Mr. TALENT. Mr. President, I rise today in support of an amendment to designate the Liberty Memorial Museum in Kansas City, MO, as America's World War I Museum. All of us in Missouri are privileged to have such an outstanding museum and memorial to honor those who served during this critical period in our Nation's history.

World War I is, of course, an important part of America's history, and its history ought to be preserved so the generations of the 21st century can understand the role played by the United States in the preservation and advancement of freedom during that crucial time.

The Liberty Memorial Museum is the only public museum in the Nation that exists for the exclusive purpose of interpreting the experiences of the United States and its Allies in the

World War I years, both on the battlefield and on the homefront. It deserves this designation as America's National World War I Museum.

The museum has a truly amazing history. After the guns were silenced in 1918 and the huge celebrations died down, concerned citizens in the United States reflected on the war and the losses sustained. The Liberty Memorial Museum project began after the 1918 armistice through the efforts of a large-scale, grassroots civic and fundraising effort by the citizens and veterans in the Kansas City metropolitan area. In less than 2 weeks, $2.5 million was raised through donations from local citizens. That was in 1918. That gives the Senate some idea of the enormity of the efforts on behalf of this memorial.

After the conclusion of a national architectural design competition, ground was broken in 1921, construction began in 1923, and the Liberty Memorial Museum was open to the public in 1926.

At the dedication on November 1, 1921, the main Allied military leaders spoke to a crowd of close to 200,000 people.

It was the only time in history the leaders of the United States, Belgium, Italy, France, and Great Britain were together at one place. These were the military leaders during World War I and they convened in Kansas City in 1921 to open this museum.

Today, the Liberty Memorial Museum seeks to educate a diverse group of audiences through its comprehensive collection of historical materials, emphasizing eyewitness accounts of the participants on the battlefield and the homefront and the impact of World War I on individuals, then and now. The Liberty Memorial Museum continues to actively acquire and preserve such materials.

The designation of the museum as ''America's National World War I Museum'' is a great opportunity to use the invaluable resources of the Liberty Memorial Museum to teach the lessons of liberty to the Nation's schoolchildren through onsite visits, classroom curriculum development, distance learning, and other educational initiatives.

I am pleased to offer the amendment on behalf of Mr. BOND and myself. I want to thank the chairman and the ranking member for agreeing to include the measure in the underlying bill. It has been cleared on both sides and I look forward to the Senate adding it to this Defense measure.

I yield the floor, and I ask for adoption of the amendment.

Mr. WARNER. Mr. President, the amendment is cleared on both sides.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 3251.

The amendment (No. 3251) was agreed to.

AMENDMENT NO. 3352

Mr. REED. Mr. President, I have an amendment numbered 3352.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside and the clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, Mr. HAGEL, Mr. MCCAIN, Mr. CORZINE, Mr. AKAKA and Mr. BIDEN proposes an amendment numbered 3352.

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

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

The amendment is as follows:

(Purpose: To increase the end strength for active duty personnel of the Army for fiscal year 2005 by 20,000 to 502,400)

On page 59, line 7, strike ''482,400'' and insert ''502,400''.

Mr. REED. Mr. President, it is my intention this evening to spend a few minutes to lay the amendment down and then I presume at the end of the evening, with unanimous consent, I will be given at least an hour of debate tomorrow which I will share with Senators MCCAIN, HAGEL, and others. That is my understanding. I ask the Senator from Virginia if that understanding is correct.

Mr. WARNER. Mr. President, we will work that out along those lines.

Mr. REED. Mr. President, I understand from the chairman that he will offer a second-degree amendment at the appropriate time. At this juncture, I would like to briefly explain the amendment and then have the opportunity to discuss it in more detail tomorrow with my colleague.

Mr. WARNER. Mr. President, I understand it is in order to forward a second-degree amendment to the pending amendment.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

AMENDMENT NO. 3450 TO AMENDMENT NO. 3352

Mr. WARNER. I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3450 to amendment No. 3352.

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

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

The amendment is as follows:

(Purpose: To provide for funding the increased number of Army active-duty personnel out of fiscal year 2005 supplemental funding)

Strike line 2 and insert the following:

''502,400, subject to the condition that the costs of active duty personnel of the Army in excess of 482,400 shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation''.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. My amendment will increase the end strength of the Army to meet the incredible mission that has been thrust upon them in the wake of the war on terror and the operations in Afghanistan and the operations in Iraq. I believe it is incumbent that we formally increase the end strength of the Army and we incorporate within the Army budget the requirements for these additional soldiers.

At this juncture, the Army is being increased on an emergency basis through supplemental appropriations. I think that is not the appropriate way to do it. I think we have to recognize that the struggles we are engaged in are long term; they are not temporary. We have to have an end strength within the authorization bill that reflects that long-term effort we are engaged in.

I also believe we have to have within the Army budget the baseline established so that if a supplemental is delayed or is not sufficient to cover these additional troops, the Army does not have to go among its own programs and root about and find moneys to pay for these troops.

These troops are necessary. It is expedient that we should in fact engage and correct this discrepancy between the missions and the men and women who are serving our Army so well.

This is a quick glimpse of our soldiers who are committed throughout the world: 310,000 soldiers in 120 countries. The most significant, of course, are operations in Afghanistan and in Iraq. There are 13,000 in Afghanistan and 126,000 in Iraq. There are soldiers all across the globe and I think we all understand the stresses of these operations are wearing our Army down rapidly.

Some of the indications that we have too few troops can be cited very quickly. First, literally a few days ago the Army announced a stop-loss policy that would prevent soldiers from leaving the Army 90 days before their unit deploys into Iraq. We are essentially telling volunteers that they cannot leave at the end of their enlistment. That is an obvious indication we have too few troops.

Second, we are withdrawing troops from Korea. There might be strategic reasons to pull troops out of Korea. There might be logistical reasons. Technology might be aiding them. But, frankly, this is an indication of, again, the shortage of troops within the Army, because we have huge risks in North Korea. This is a regime that has announced they have nuclear weapons. This is a regime that has been involved in on-and-off negotiations with us for a matter of many months to see if we can resolve the situation peacefully.

The signal we are sending to the North Koreans, albeit unwittingly, is this is not a major priority; we are actually taking troops away.

When troops are taken away, we may still have the ability to deter the North Koreans from attacking South Korea but, frankly, our mission over there is no longer just deterrence, it is disarmament, and that requires diplomacy backed up by force. We hope diplomacy works, but we are weakening our hand.

One of the most interesting and insightful indications of the shortage of

troops is we are actually beginning to take apart the training infrastructure of the U.S. Army. Recently it was announced that troops from our training centers, the 11th Army Cavalry Regiment, which serves as the op force, the enemy force, in training our units, is being notified for deployment overseas. In addition to that, the 1st Battalion of the 509th Infantry, which acts as the opposition force to train our troops at Fort Polk, LA, is also on notice.

What can be more demonstrative of the shortage of troops than the fact we are, in a sense, dismantling our training structure? That in the long term is going to do great harm to the service. We need more troops.

I am sure those who are opposed to the amendment will say we have authorized in this bill again access to emergency authorization and supplemental funding, but that is not doing it the right way, doing it up front, doing it in a straightforward manner, increasing end strength statutorily, and putting this into the regular budget process.

I hope tomorrow we can debate this bill. I am unaware of the second-degree amendment. I will get with the chairman to see what his language is. I feel very strongly that this is the way to do it, and I am joined in that by my colleagues Senators MCCAIN, HAGEL, CORZINE, AKAKA, BIDEN, and many others who feel very strongly this is the way to do it and it should be done. I hope it will be done tomorrow.

With the expectation and the understanding that we will have at least an hour tomorrow on my side to engage in debate on this issue, at this point I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I say to my good friend from Rhode Island that this has been an issue he has expressed concern about for better than a year or more in the course of our hearings in the Armed Services Committee, where my colleague is a very valuable member. He also draws on his own experience as a distinguished West Point graduate and Army officer himself. He speaks against a background of experience and knowledge.

Yes, the bill at the moment has a provision in it which gives the flexibility to the Secretary of Defense, the Secretary of the Army, and others to increase on a temporary basis—actually we go up to 30,000 if they need it, whereas the Senator from Rhode Island does 20,000. We will work this out tomorrow. But I express two concerns tonight, as we lay down the preliminary record. I pose this question to the Senator from Rhode Island. You do not provide in your amendment any means by which to pay for it; am I not correct?

Mr. REED. The Senator is correct.

Mr. WARNER. Then my next question would be, you know from your experience on the committee that the Department of the Army primarily—it could be it comes from other areas of the defense budget, but the Department of the Army might have to get over $2 billion out of its current budget to meet these added costs. Would that not be correct?

Mr. REED. If I may respond to the chairman, he is quite right about the offset. I have some ideas from where the money could come. It is my feeling it should come from funds outside the Army. I think what we have done is we have increased it, but we haven't offset it by Army programs. So there is the possibility—I hope the likelihood—the offset would come from other programs.

Mr. WARNER. As I think the Senator will see—I think I have sent a copy of my amendment over to him. It is very brief. It just specifies that the funding will come from areas other than the Department of the Army budget or elsewhere in the defense budget. Has the Senator had an opportunity to look at the amendment?

Mr. REED. I have had an opportunity to read the amendment. It seems, in keeping with the Senator's commitment to be constructive and helpful, to be very constructive and very helpful, on first examination.

Mr. WARNER. We will work on this tomorrow. But I think for the purposes of tomorrow's debate, we framed the parameters in which the debate is likely to occur. I am optimistic that we can work this out together. I commend the Senator. He has been a lead, with Senator MCCAIN and others, from the very beginning.

At this point in time, the leadership, tonight, in consultation with Senator LEVIN and myself, will work out the sequence of events tomorrow. The Senator believes he needs a full hour on his side?

Mr. REED. Yes. Myself, Senator HAGEL, and Senator MCCAIN wish to speak.

Mr. WARNER. Fine. I will indicate to the leadership I will not need a full hour to speak to the second-degree amendment and to my concern about the permanency of it. But the reality is I think this will move tomorrow. I thank the Senator.

Mr. President, I see the distinguished Senator from Illinois seeking recognition. It is my hope and expectation we can work this matter out. How much does he wish to address it tonight?

Mr. DURBIN. Mr. President, I say to the chairman, who I respect so much, I agree tomorrow we will take 30 minutes equally divided before the vote on this amendment. My hope this evening is, in the span of perhaps 20 minutes, to give a longer statement so it will not be necessary to repeat it tomorrow and save us some time so we can move more quickly. I know the Senator has been extremely patient.

Mr. WARNER. We have all been patient. I thank the Senator. I think that is very helpful. If the Senator will proceed along those lines, I will be working on the finalization of the unanimous consent request to put in tomorrow. At the conclusion of the Senator's remarks, this amendment will just be among the pending amendments?

Mr. DURBIN. That is correct.

Mr. WARNER. We may be able to work it out tomorrow such that we do not require a recorded vote.

Mr. DURBIN. I might say to the chairman, because of the serious nature of this amendment, I think we will want a recorded vote.

Mr. WARNER. That is the Senator's prerogative.

Mr. DURBIN. I hope we can work on this tomorrow, and I will confer with the chairman on that aspect.

I come to the floor today to offer amendment to the Defense Department authorization bill.

The amendment would reaffirm a very important, long-standing position of our nation: that the United States shall not engage in torture or cruel, inhuman or degrading treatment. This is a standard that is embodied in the U.S. Constitution and in numerous international agreements which the United States has ratified.

The amendment would require the Defense Secretary to issue guidelines to ensure compliance with this standard and to provide these guidelines to Congress. The Defense Secretary would also be required to report to Congress on any suspected violations of the prohibition on torture or cruel, inhuman or degrading treatment. The amendment specifically provides that this information should be provided to Congress in a manner and form that would protect national security.

Let me also explain what this amendment would not do. It would not impose any new legal obligations on the United States. It would not limit our ability to use the full range of interrogation techniques that are outlined in the Army interrogation manual. It would not affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

It would only reaffirm and ensure compliance with our long-standing obligation not to subject detainees to torture or cruel, inhuman and degrading treatment.

The amendment is supported by a broad coalition of organizations and individuals, including human rights organizations like Human Rights Watch and Amnesty International, religious institutions such as the Episcopal Church, and military officers, such as retired Rear Admiral John Hutson.

Admiral Hutson was a Navy Judge Advocate for 28 years and from 1997–2000, he was the Judge Advocate General, the top lawyer in the Navy. In a letter in support of this amendment, he wrote:

It is absolutely necessary that the United States maintain the high ground in this area and that Congress take a firm stand on the issue. . . . It is critical that we remain steadfast in our absolute opposition to torture and [cruel, inhuman or degrading treatment]. Senator DURBIN's proposed amendment is a critical first step in that regard.

In the aftermath of 9/11, some have called for the United States to abandon this commitment. But President Bush has made it clear that he does not support this position. On June 26, 2003, the International Day in Support of Victims of Torture, the President said:

The United States is committed to the world-wide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.

I commend the President for standing behind our treaty obligations. Now the Congress must do no less. The world is watching us. They are asking whether the United States will stand behind its treaty obligations in the age of terrorism. With American troops in harm's way, we need to tell the world and the American people that the United States is committed to treating all detainees humanely.

As we mourn the passing of President Ronald Reagan, we should recall his vision of America as a shining city upon a hill—a model of democracy, freedom and the rule of law that people around the world look to for inspiration. As President Reagan said in his Farewell Address to the Nation:

After 200 years, two centuries, [America] still stands strong and true on the granite ridge, and her glow has held steady no matter what storm. And she's still a beacon, still a magnet for all who must have freedom.

President Reagan was right. Our city upon a hill must hold steady in defense of our principles no matter what storm. Despite the threat of terrorism, we must stand by our opposition to torture and other cruel treatment.

In fact, it was President Reagan who first transmitted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Senate with his recommendation that the Senate ratify the treaty.

We are in the process of defining our values as a country in the age of terrorism. We need to make it clear that we will not compromise principles that have guided us and other civilized nations for hundreds of years.

The prohibition on torture and other cruel treatment is deeply rooted in our history. In 15th and 16th Century England, the infamous Star Chamber issued warrants authorizing the use of torture against political opponents of the Crown. Supporters of the Star Chamber claimed that torture was necessary to protect the security of the state. Blackstone, the English jurist who greatly influenced the Founding Fathers, said: ''It seems astonishing that this usage of torture should be said to arise from a tenderness to the lives of men.'' Those words still ring true today.

In 1641, the Star Chamber was abolished and the use of torture warrants ended. A prohibition on torture and cruel treatment developed in English common law. The English Bill of Rights of 1689, which served as a model for our Bill of Rights, contained a ban on ''cruel and unusual punishments.''

This history carried great weight with the Framers of our Constitution. During the Constitutional Conventions, Patrick Henry, in a statement that typified the Founders' views, said: ''What has distinguished our ancestors? That they would not admit of tortures, or cruel and barbarous punishment.''

During the Constitutional Convention, George Mason, who is known as ''the Father of the Bill of Rights,'' explained that the 5th Amendment ban on self-incrimination and the 8th Amendment ban of cruel and unusual punishment both prohibit torture and cruel treatment.

Our history makes clear that these principles also guided us during times of war. During the Civil War, President Abraham Lincoln asked Francis Lieber, a military law expert, to create a set of rules to govern the conduct of U.S. soldiers in the field. The Lieber Code prohibited torture or other cruel treatment of captured enemy forces. It became the foundation for the modern law of war, which is embodied in the Geneva Conventions.

In the early twentieth century, the emergence of large police departments in the United States was accompanied by a dramatic increase in the abuse of suspects in police custody. President Hoover appointed the National Commission on Law Observance and Enforcement, also known as the Wickersham Commission, to review law enforcement practices. In 1931, the Commission's findings shocked the nation and permanently transformed the nature of American law enforcement.

The Commission concluded:

The third degree is the employment of methods which inflict suffering, physical or mental, upon a person, in order to obtain from that person information about a crime. . . . The third degree is widespread. The third degree is a secret and illegal practice. When all allowances are made it remains beyond a doubt that the practice is shocking in its character and extent, violative of American traditions and institutions, and not to be tolerated.

The commission catalogued and condemned ''third degree'' methods, including, physical brutality, threats, sleep deprivation, exposure to extreme cold or heat—also known as ''the sweat box''—and blinding with powerful lights and other forms of sensory overload or deprivation.

The commission also discussed practical reasons to reject the ''third degree'':

The third degree involves the danger of false confessions. . . so many instances have been brought to our attention during this investigation that we feel convinced not only of its existence but of its seriousness.

The third degree impairs police efficiency. . . . It tends to make [police] less zealous in the search of objective evidence.

The third degree brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public. Probably the third degree has been a chief factor in bringing about the present attitude of hostility on the part of a considerable portion of the population toward the police and the very general failure of a large element of the people to aid or cooperate with the police in maintaining law and order.

Over the next two decades, numerous Supreme Court opinions cited the Wickersham Commission report and condemned the use of various third degree methods as unconstitutional.

As the landscape of American policing was being reshaped, the horrific abuses of Nazi Germany began to come to light. This reinforced American opposition to torture and other forms of cruel treatment.

One of the counts in the Nuremberg indictment of Gestapo officials detailed official orders approving the application of ''third degree'' techniques, including ''[a] very simple diet (bread and water)[,] hard bunk[,] dark cell[,] deprivation of sleep[,] exhaustive drilling[,] . . . [and] flogging (for more than 29 strokes a doctor must be consulted)'' as a means of obtaining evidence, or ''information of important facts'' regarding subversion. One of the defenses raised by Gestapo officers was that such actions were necessary to protect against Resistance terrorism.

After World War II, in the aftermath of Nuremberg and the disclosure of Nazi Gestapo tactics, the United States and our allies created a new international legal order based on respect for human rights.

One of its fundamental tenets was a universal prohibition on torture and cruel, inhuman, or degrading treatment. The United States took the lead in establishing a succession of international agreements that ban the use of torture and other cruel treatment against all persons at all times. There are no exceptions to this prohibition.

Eleanor Roosevelt was the Chair of the U.N. Commission that produced the Universal Declaration on Human Rights in 1948. The Universal Declaration states unequivocally, ''No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.''

The United States, along with a majority of countries in the world, is a party to the Geneva Conventions, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all of which prohibit torture and cruel, inhuman, or degrading treatment.

Army regulations that implement these treaty obligations state:

Inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice (UCMJ). All prisoners will receive humane treatment without regard to race, nationality, religion, political opinion, sex, or other criteria. The following acts are prohibited: murder, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishments, execution without trial by proper authority, and all cruel and degrading treatment. All persons will be respected as human beings. They will be protected against all acts of violence to include rape, forced prostitution, assault and theft, insults, public curiosity, bodily injury, and reprisals of any kind This list is not exclusive.

Some people may be asking, ''What is, 'cruel, inhuman or degrading treatment.' '' How can the United States be bound by such an uncertain standard?

The United States Senate debated this question before ratifying the International Covenant on Civil and Political Rights and the Torture Convention. In response to this concern, we filed reservations to both of these agreements. A reservation is a statement filed by the Senate that clarifies our obligations under international agreements.

These reservations state that the United States is bound to prevent ''cruel, inhuman or degrading treatment'' only to the extent that that phrase means the cruel, unusual and inhumane treatment or punishment prohibited by the U.S. Constitution. In other words, ''cruel, inhuman or degrading treatment'' is defined by the U.S. Constitution, and the United States is only prohibited from engaging in conduct that is already unconstitutional.

This provides certainty and clarity. In 1990, the Senate Foreign Relations Committee held a hearing on the Torture Convention and an official from the first Bush administration explained the reservation:

> We have proposed this reservation because the terms ''cruel, inhuman or degrading treatment or punishment'' used in this Convention are vague and are not evolved concepts under international law. . . . On the other hand, the concept of cruel and unusual punishment under the United States Constitution is well developed, having evolved through court decisions over a period of 200 years.

The current administration has confirmed that it stands by this reservation. Last year, Defense Department General Counsel William Haynes said:

> ''[C]ruel, inhuman or degrading treatment or punishment'' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States. United States policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with this commitment.

Aside from our legal obligations, there are also important practical reasons for standing by our commitment not to engage in torture or other cruel treatment.

Torture is an ineffective interrogation tactic because it produces unreliable information. People who are being tortured will often lie to their torturer in order to stop the pain.

Resorting to torture and ill treatment of detainees would make us less secure, not more. It would create anti-American sentiment at a time when we need the support and assistance of other countries in the war on terrorism.

Finally, and most importantly, if we were to engage in torture or ill treatment of detainees, we would increase the risk of subjecting members of the Armed Forces to torture if they are captured by our enemies.

The U.S. Army fully recognizes these practical downsides. The Army Field Manual on Intelligence Interrogation states:

> Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. Revelation of use of torture by U.S. personnel will bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort. It may also place U.S. and allied personnel in enemy hands at a greater risk of abuse by their captors.

As the great American patriot Thomas Paine said: ''He that would make his own liberty secure must guard even his enemy from oppression.''

Sadly, the ''third degree,'' which was condemned by the Wickersham Commission in 1931 and in subsequent Supreme Court decisions, has reemerged in modern times with a new name: ''stress and duress.'' ''Stress and duress'' tactics, which are also known as ''torture lite,'' include extended food, sleep, sensory, or water deprivation, exposure to extreme heat or cold, and ''position abuse,'' which involves forcing detainees to assume positions designed to cause pain or humiliation. ''Stress and duress'' tactics clearly constitute torture or cruel, inhuman, or degrading treatment.

As the Supreme Court explained in Blackburn v. Alabama, a 1960 case:

> [C]oercion can be mental as well as physical . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition. A number of cases have demonstrated, if demonstration were needed, that the efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of ''persuasion.''

Let's take one example: sleep deprivation. In Ashcraft v. Tennessee, a 1944 case, the Supreme Court held that a confession obtained by depriving a suspect of sleep and continuously questioning him for 36 hours was involuntarily coerced. For the majority, Justice Hugo Black wrote:

> It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired [quoting the Wickersham Commission]. . . . We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear.

As explained in a recent New York Times article by Adam Hochschild, sleep deprivation was widely used in the Middle Ages on suspected witches—it was called tormentum insomniae. Stalin's secret police subjected prisoners to the ''conveyer belt,'' continuous questioning by numerous interrogators until the prisoner signed a confession. Former Israeli Prime Minister Menachem Begin wrote about his experience with sleep deprivation in a Soviet prison in the 1940's:

> In the head of the interrogated prisoner a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep, to sleep just a little. . . . Anyone who has experienced this desire knows that not even hunger or thirst are comparable with it. . . . I came across prisoners who signed what they were told to sign, only to get what the interrogator promised them . . . uninterrupted sleep!

Another example is ''position abuse.'' In 2002, in a case called Hope v. Pelzer, the Supreme Court addressed this issue. Hope, a prisoner, was handcuffed to a ''hitching post'' for seven hours in the sun and not allowed to use the bathroom. The Court held that this violated the 8th Amendment prohibition on cruel and unusual punishment. The Court said:

> The obvious cruelty inherent in this practice should have provided [the prison guards] with some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment. Hope was treated in a way antithetical to human dignity—he was hitched to a post for an extended period of time in a position that was painful, and under circumstances that were both degrading and dangerous.

In the 1930s, Stalin's secret police forced dissidents to stand for prolonged periods to coerce confessions for show trials. In 1956, experts commissioned by the CIA documented the effects of forced standing. They found that ankles and feet swell to twice their normal size within 24 hours, the heart rate increases, some people faint, and the kidneys eventually shut down.

For many years, the United States has characterized the use of ''stress and duress'' by other countries as ''Torture and Other Cruel, Inhuman and Degrading Treatment.'' The State Department's ''Country Reports on Human Rights Practices,'' which are submitted to Congress every year, have condemned ''beatings,'' ''threats to detainees or their family members,'' ''sleep deprivation,'' ''depriv[ation] of food and water,'' ''suspension for long periods in contorted positions,'' ''prolonged isolation,'' ''forced prolonged standing,'' ''tying of the hands and feet for extended periods of time,'' ''public humiliation,'' ''sexual humiliation,'' and ''female detainees . . . being forced to strip in front of male security officers.''

The Army Field Manual on Intelligence Interrogation characterizes ''stress and duress'' as illegal physical and mental torture. The Manual states that ''acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or an aid to interrogation'' are ''illegal.'' It defines ''infliction of pain through . . . bondage (other than legitimate use of restraints to prevent escape),'' ''forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time,'' ''food deprivation,'' and ''any form of beating,'' as ''physical torture'' and defines ''abnormal sleep deprivation'' as ''mental torture'' and prohibits the use of these tactics under any circumstances.

The Army Field Manual provides very specific guidance about interrogation techniques that may approach the

line between lawful and unlawful actions. Before using a questionable interrogation technique, an interrogator is directed to ask whether ''If your contemplated actions were perpetrated by the enemy against U.S. [prisoners of war], you would believe such actions violate international or U.S. law. . . . If you answer yes . . . do not engage in the contemplated action.''

This is the Army's version of ''the golden rule''—do unto others as you would have them do to you. It is an important reminder that the prohibition on torture and other cruel treatment protects American soldiers as much as it does the enemy. If enemy forces used stress and duress tactics on American soldiers, we would condemn them. We must hold ourselves to the same standard.

The United States is not alone in condemning ''torture lite.'' In Israel, a country that has grappled with terrorism for decades, the Supreme Court held that ''stress and duress'' techniques violate international law and are absolutely prohibited. As the Court explained:

These prohibitions are ''absolute.'' There are no exceptions to them and there is no room for balancing. Indeed violence directed at a suspect's body or spirit does not constitute a reasonable investigation practice.

For all of these reasons, it is vitally important that the Congress affirm the United States' commitment not to engage in torture or cruel, inhuman or degrading treatment.

Our commitment to principle, even during difficult times, has made America a special country. In the age of terrorism, we may be tempted by the notion that torture is justified. But to sacrifice this principle would grant the terrorists a valuable victory at our expense.

The Israeli Supreme Court has explained:

Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognition of an individual's liberty constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and allow it to overcome its difficulties.

The brutal slaying of Nicholas Berg reminded us that our enemies do not respect any rules in their relentless quest to kill Americans. But that is what distinguishes us from the terrorists we fight. There are some lines that we will not cross. Torture and cruel, inhuman or degrading treatment are inconsistent with the principles of liberty and the rule of law that underpin our democracy.

As President Reagan reminded us, our city upon a hill must stand firm. The eyes of the world are upon us.

I urge my colleagues to support the amendment.

It has been suggested to me by staff that perhaps I would offer the amendment this evening and then ask unanimous consent it be set aside while we work things out with Chairman WARNER and other Senators who are interested in this issue.

If there is no objection, with the understanding that I will not call up the amendment this evening and will wait until a decision from the chairman and the ranking member as to my place in line, I offer the amendment and merely at this point ask it be reported by the clerk.

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

AMENDMENT NO. 3386

Mr. DURBIN. I send to the desk amendment No. 3386.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Illinois, [Mr. DURBIN], proposes an amendment numbered 3386.

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

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

The amendment is as follows:

(Purpose: To affirm that the United States may not engage in torture or cruel, inhuman, or degrading treatment or punishment)

At the end of subtitle F of title X, insert the following:

SEC. 1055. HUMANE TREATMENT OF DETAINEES.

(a) FINDINGS.—Congress makes the following findings:

(1) After World War II, the United States and its allies created a new international legal order based on respect for human rights. One of its fundamental tenets was a universal prohibition on torture and ill treatment.

(2) On June 26, 2003, the International Day in Support of Victims of Torture, President George W. Bush stated, ''The United States is committed to the world-wide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.''.

(3) The United States is a party to the Geneva Conventions, which prohibit torture, cruel treatment, or outrages upon personal dignity, in particular, humiliating and degrading treatment, during armed conflict.

(4) The United States is a party to 2 treaties that prohibit torture and cruel, inhuman, or degrading treatment or punishment, as follows:

(A) The International Covenant on Civil and Political Rights, done at New York December 16, 1966.

(B) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

(5) The United States filed reservations to the treaties described in subparagraphs (A) and (B) of paragraph (4) stating that the United States considers itself bound to prevent ''cruel, inhuman or degrading treatment or punishment'' to the extent that phrase means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th amendment, 8th amendment, or 14th amendment to the Constitution.

(6) Army Regulation 190-8 entitled ''Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees'' provides that ''Inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice (UCMJ).... All prisoners will receive humane treatment without regard to race, nationality, religion, political opinion, sex, or other criteria. The following acts are prohibited: murder, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishments, execution without trial by proper authority, and all cruel and degrading treatment.... All persons will be respected as human beings. They will be protected against all acts of violence to include rape, forced prostitution, assault and theft, insults, public curiosity, bodily injury, and reprisals of any kind.... This list is not exclusive.''.

(7) The Field Manual on Intelligence Interrogation of the Department of the Army states that ''acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or an aid to interrogation'' are ''illegal''. Such Manual defines ''infliction of pain through... bondage (other than legitimate use of restraints to prevent escape)'', ''forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time'', ''food deprivation'', and ''any form of beating'' as ''physical torture'', defines ''abnormal sleep deprivation'' as ''mental torture'', and prohibits the use of such tactics under any circumstances.

(8) The Field Manual on Intelligence Interrogation of the Department of the Army states that ''Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. Revelation of use of torture by U.S. personnel will bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort. It may also place U.S. and allied personnel in enemy hands at a greater risk of abuse by their captors.''.

(b) PROHIBITION ON TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—(1) No person in the custody or under the physical control of the United States shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.

(2) Nothing in this section shall affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

(c) RULES, REGULATIONS, AND GUIDELINES.—(1) Not later than 180 days after the date of enactment of this Act, the Secretary shall prescribe the rules, regulations, or guidelines necessary to ensure compliance with the prohibition in subsection (b)(1) by the members of the United States Armed Forces and by any person providing services to the Department of Defense on a contract basis.

(2) The Secretary shall submit to the congressional defense committees the rules, regulations, or guidelines prescribed under paragraph (1), and any modifications to such rules, regulations, or guidelines—

(A) not later than 30 days after the effective date of such rules, regulations, guidelines, or modifications; and

(B) in a manner and form that will protect the national security interests of the United States.

(d) REPORT TO CONGRESS.—(1) The Secretary shall submit, on a timely basis and not less than twice each year, a report to Congress on the circumstances surrounding any investigation of a possible violation of the prohibition in subsection (b)(1) by a member of the Armed Forces or by a person providing services to the Department of Defense on a contract basis.

(2) A report required under paragraph (1) shall be submitted in a manner and form that—

(A) will protect the national security interests of the United States; and

(B) will not prejudice any prosecution of an individual involved in, or responsible for, a violation of the prohibition in subsection (b)(1).

(e) DEFINITIONS.—In this section:

(1) The term ''cruel, inhuman, or degrading treatment or punishment'' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th amendment, 8th amendment, or 14th amendment to the Constitution.

(2) The term ''Geneva Conventions'' means—

(A) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(B) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(C) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(D) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(3) The term ''Secretary'' means the Secretary of Defense.

(4) The term ''torture'' has the meaning given that term in section 2340 of title 18, United States Code.

Mr. WARNER. Would the Senator from Illinois clarify this?

Mr. DURBIN. I offered the amendment and asked unanimous consent that it be set aside pending a decision by the chairman and Senator LEVIN and other Senators.

Mr. WARNER. I wonder if the Senator might withhold until Senator REID, with whom I am working tonight, will give me some advice. What we will be doing—Senator REID could draw his up—we are going to incorporate this into the agreement.

The PRESIDING OFFICER. The amendment has already been reported.

Mr. DURBIN. I ask unanimous consent the amendment be set aside until there is an agreement between Senator WARNER, Senator LEVIN, Senator REID, and others as to the time that it may be considered.

Mr. WARNER. I was under the understanding we would do it differently. I have not had a chance to discuss this with Senator LEVIN. I understood you were just going do speak to this and not propose it. What is done, is done.

Mr. DURBIN. I asked unanimous consent to set it aside, and it will not be considered until you, Senator WARNER, and Senator LEVIN say it is appropriate, whatever that time may be.

Mr. WARNER. What was the decision we made with respect to Senator REED?

We have to have some equality of how we are handling these things.

The PRESIDING OFFICER. The Reed amendment has been called up and is now set aside by the Durbin amendment.

Mr. WARNER. This amendment would then have the same status of being a pending amendment.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. I thought by asking unanimous consent that it be set aside, it would not in any way supersede any other Members' rights.

Mr. WARNER. We get so many gatekeeping amendments up here we could encounter difficulty tomorrow morning.

Mr. DURBIN. You have been so cooperative and helpful, I ask unanimous consent that my amendment be withdrawn and I will offer it tomorrow. I want to do whatever the chairman wishes.

Mr. REID. Mr. President, will the distinguished Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. REID. The Senator from Illinois is willing to have his amendment set aside. He is certainly not trying to take advantage of anyone. I think it does not solve our problem if he withdraws his amendment.

Mr. WARNER. I just want to treat—Senator REED was here momentarily, and we worked with him. Anyway, I want to be fair to all Senators.

Mr. REID. We have a queue that is tentatively going to be set up to handle all this tomorrow.

Mr. WARNER. We will work this out tonight, hopefully.

Mr. LEVIN. The Senator from Illinois has indicated—if I could just ask whoever has the floor to yield?

Mr. DURBIN. I yield.

Mr. LEVIN. His amendment will be back in order when the chairman and ranking member so designate it. He is not trying to use his amendment as a gatekeeper. Why don't we just leave it pending and then set it aside?

Mr. WARNER. If he will withdraw it, we can include it in the unanimous consent tonight.

Mr. REID. We do not need to have him withdraw it.

Mr. WARNER. I beg your pardon?

Mr. REID. We do not need to have him withdraw it.

Mr. WARNER. Well, I am going to rely on your assurances.

Mr. REID. Because the Senator from Illinois has said he is not trying to take advantage of anyone, not trying to be a gatekeeper, that it is up to the two managers of the bill when the amendment of the Senator from Illinois is acted upon.

Mr. LEVIN. Mr. President, may I suggest this. If I could have the chairman's attention, if we have a unanimous consent agreement that is entered into tonight, and if we include Senator DURBIN's amendment in that list, that would supersede whatever status that amendment has at this point. Would that be agreeable to everyone?

Mr. WARNER. That is agreeable.

Mr. DURBIN. That is agreeable to me, as well.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am curious, having offered the amendment, whether I need to make a unanimous consent request to make it clear what has been agreed upon?

The PRESIDING OFFICER. No.

Mr. DURBIN. It appears it has become part of the legend and lore of the Senate, and I cannot add anything to it.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3167, AS MODIFIED

Mr. WARNER. Mr. President, the Senator from Michigan and myself will now proceed to do some cleared amendments. Domenici amendment No. 3167 was inadvertently approved by the Senate yesterday without a modification that was agreed to by both the majority and minority. I send to the desk a modified amendment No. 3167, as agreed to, as a substitute for the original amendment and ask unanimous consent that it be substituted for the version agreed to yesterday.

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

The amendment (No. 3167), as modified, was agreed to, as follows:

(Purpose: To require a report on the availability of potential overland ballistic missile defense test ranges)

At the end of subtitle C of title X, add the following:

SEC. 1022. REPORT ON AVAILABILITY OF POTENTIAL OVERLAND BALLISTIC MISSILE DEFENSE TEST RANGES.

The Secretary of Defense shall submit to Congress a report assessing the availability to the Department of Defense of potential ballistic missile defense test ranges for overland intercept flight tests of defenses against ballistic missile systems with a range of 750 to 1,500 kilometers.

Mr. WARNER. 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.

AMENDMENTS NOS. 3395; 3392, AS MODIFIED; 3402, AS MODIFIED; 3346, AS MODIFIED; 3326, AS MODIFIED; 3349, AS MODIFIED; AND 3385, AS MODIFIED, EN BLOC

Mr. WARNER. Mr. President, I send a package of amendments to the desk and ask that they be considered en bloc.

The PRESIDING OFFICER. Is there objection to considering the amendments en bloc?

Mr. LEVIN. No objection.

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

Is there further debate? If not, without objection, the amendments are agreed to.

The amendments were agreed to, as follows:

AMMENDMENT NO. 3395

(Purpose: to encourage the Secretary of Defense to achieve maximum cost effective energy savings)

On page 195, between lines 10 and 11, insert the following:

SEC. 868. ENERGY SAVINGS PERFORMANCE CONTRACTS.

The Secretary of Defense shall, to the extent practicable, exercise existing statutory authority, including the authority provided by section 2865 of title 10, United States Code, and section 8256 of title 42, United States Code, to introduce life-cycle cost-effective upgrades to Federal assets through shared energy savings contracting, demand management programs, and utility incentive programs.

AMENDMENT NO. 3392, AS MODIFIED

(Purpose: To clarify the duties and activities of the Vaccine Healthcare Centers Network)

On page 147, after line 21, add the following:

SEC. ___. VACCINE HEALTHCARE CENTERS NETWORK.

Section 1110 of title 10, United States Code, is amended by adding at the end the following:

''(c) VACCINE HEALTHCARE CENTERS NETWORK.—(1) The Secretary shall carry out this section through the Vaccine Healthcare Centers Network as established by the Secretary in collaboration with the Director of the Centers for Disease Control and Prevention.

''(2) In addition to conducting the activities described in subsection (b), it shall be the purpose of the Vaccine Healthcare Centers Network to improve—

''(A) the safety and quality of vaccine administration for the protection of members of the armed forces;

''(B) the submission of data to the Vaccine-related Adverse Events Reporting System to include comprehensive content and follow-up data;

''(C) the access to clinical management services to members of the armed forces who experience vaccine adverse events;

''(D) the knowledge and understanding by members of the armed forces and vaccine-providers of immunization benefits and risks.

''(E) networking between the Department of Defense, the Department of Health and Human Services, the Department of Veterans Affairs, and private advocacy and coalition groups with regard to immunization benefits and risks; and

''(F) clinical research on the safety and efficacy of vaccines.

''(3) To achieve the purposes described in paragraph (2), the Vaccine Healthcare Centers Network, in collaboration with the medical departments of the armed forces, shall carry out the following:

''(A)(i) Establish a network of centers of excellence in clinical immunization safety assessment that provides for outreach, education, and confidential consultative and direct patient care services for vaccine related adverse events prevention, diagnosis, treatment and follow-up with respect to members of the armed services.

''(ii) Such centers shall provide expert second opinions for such members regarding medical exemptions under this section and for additional care that is not available at the local medical facilities of such members.

''(B) Develop standardized educational outreach activities to support the initial and ongoing provision of training and education for providers and nursing personnel who are engaged in delivering immunization services to the members of the armed forces.

''(C) Develop a program for quality improvement in the submission and understanding of data that is provided to the Vaccine-related Adverse Events Reporting System, particularly among providers and members of the armed forces.

''(D) Develop and standardize a quality improvement program for the Department of Defense relating to immunization services.

''(E) Develop an effective network system, with appropriate internal and external collaborative efforts, to facilitate integration, educational outreach, research, and clinical management of adverse vaccine events.

''(F) Provide education and advocacy for vaccine recipients to include access to vaccine safety programs, medical exemptions, and quality treatment.

''(G) Support clinical studies with respect to the safety and efficacy of vaccines, including outcomes studies on the implementation of recommendations contained in the clinical guidelines for vaccine-related adverse events.

''(H) Develop implementation recommendations for vaccine exemptions or alternative vaccine strategies for members of the armed forces who have had prior, or who are susceptible to, serious adverse events, including those with genetic risk factors, and the discovery of treatments for adverse events that are most effective.

''(4) It is the sense of the Senate—

''(A) to recognize the important work being done by the Vaccine Healthcare Center Network for the members of the armed forces; and

''(B) that each of the military departments (as defined in section 102 of title 5, United States Code) is strongly encouraged to fund the Vaccine Healthcare Center Network.''.

AMENDMENT NO. 3402, AS MODIFIED

(Purpose: To express the sense of Congress that the elimination of the drug trade in Afghanistan should be a national security priority for the United States, and to require a report on related efforts)

On page 272, after the matter following line 18, insert the following:

SEC. 1055. DRUG ERADICATION EFFORTS IN AFGHANISTAN.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States engaged in military action against the Taliban-controlled Government of Afghanistan in 2001 in direct response to the Taliban's support and aid to Al Qaeda.

(2) The military action against the Taliban in Afghanistan was designed, in part, to disrupt the activities of, and financial support for, terrorists.

(3) A greater percentage of the world's opium supply is now produced in Afghanistan than before the Taliban banned the cultivation or trade of opium.

(4) In 2004, more than two years after the Taliban was forcefully removed from power, Afghanistan is supplying approximately 75 percent of the world's heroin.

(5) The estimated value of the opium harvested in Afghanistan in 2003 was $2,300,000,000.

(6) Some of the profits associated with opium harvested in Afghanistan continue to fund terrorists and terrorist organizations, including Al Qaeda, that seek to attack the United States and United States interests.

(7) The global war on terror is and should remain our Nation's highest national security priority.

(8) United States and Coalition counterdrug efforts in Afghanistan have not yet produced significant results.

(9) There are indications of strong, direct connections between terrorism and drug trafficking.

(10) The elimination of this funding source is critical to making significant progress in the global war on terror.

(11) The President of Afghanistan, Hamid Karzai, has stated that opium production poses a significant threat to the future of Afghanistan, and has established a plan of action to deal with this threat.

(12) The United Nations Office on Drugs and Crime has reported that Afghanistan is at risk of again becoming a failed state if strong actions are not taken against narcotics.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the President should make the substantial reduction of drug trafficking in Afghanistan a priority in the war on terror;

(2) the Secretary of Defense should, in coordination with the Secretary of State, work to a greater extent in cooperation with the Government of Afghanistan and international organizations involved in counterdrug activities to assist in providing a secure environment for counterdrug personnel in Afghanistan; and

(3) because the trafficking of narcotics is known to support terrorist activities and contributes to the instability of the Government of Afghanistan, additional efforts should be made by the Armed Forces of the United States, in conjunction with and in support of coalition forces, to significantly reduce narcotics trafficking in Afghanistan and neighboring countries, with particular focus on those trafficking organizations with the closest links to known terrorist organizations.

(c) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report that describes—

(1) progress made towards substantially reducing the poppy cultivation and heroin production capabilities in Afghanistan; and

(2) the extent to which profits from illegal drug activity in Afghanistan fund terrorist organizations and support groups that seek to undermine the Government of Afghanistan.

AMENDMENT NO. 3346, AS MODIFIED

(Purpose: To reduce barriers for Hispanic-serving institutions in defense contracts, defense research programs, and other minority-related defense programs)

At the end of subtitle G of title X, add the following:

SEC. 1068. REDUCTION OF BARRIERS FOR HISPANIC-SERVING INSTITUTIONS IN DEFENSE CONTRACTS, DEFENSE RESEARCH PROGRAMS, AND OTHER MINORITY-RELATED DEFENSE PROGRAMS.

Section 502(a)(5)(C) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)(C)) is amended by inserting before the period the following: '', which assurances—

''(i) may employ statistical extrapolation using appropriate data from the Bureau of the Census or other appropriate Federal or State sources; and

''(ii) the Secretary shall consider as meeting the requirements of this subparagraph, unless the Secretary determines, based on a preponderance of the evidence, that the assurances do not meet the requirements''.

AMENDMENT NO. 3326, AS MODIFIED

(Purpose: to clarify the authorities of the Judge Advocates General)

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATES GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 3037 of this title, the General Counsel''.

(2)(A) Section 3037 of such title is amended to read as follows:

''§ 3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties

''(a) POSITION OF JUDGE ADVOCATE GENERAL.—There is a Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Judge Advocate General's Corps. The term of office is four years, but may be sooner terminated or extended by the President. The Judge Advocate General, while so serving, has the grade of lieutenant general.

''(b) APPOINTMENT.—The Judge Advocate General of the Army shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

''(c) DUTIES.—The Judge Advocate General, in addition to other duties prescribed by law—

''(1) is the legal adviser of the Secretary of the Army, the Chief of Staff of the Army, and the Army Staff, and of all offices and agencies of the Department of the Army;

''(2) shall direct and supervise the members of the Judge Advocate General's Corps and civilian attorneys employed by the Department of the Army (other than those assigned or detailed to the Office of the General Counsel of the Army) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Army;

''(4) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

''(5) shall perform such other legal duties as may be directed by the Secretary of the Army.

''(d) POSITION OF ASSISTANT JUDGE ADVOCATE GENERAL.—There is an Assistant Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Army who have the qualifications prescribed in subsection (b) for the Judge Advocate General. The term of office of the Assistant Judge Advocate General is four years, but may be sooner terminated or extended by the President. An officer appointed as Assistant Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

''(e) APPOINTMENTS RECOMMENDED BY SELECTION BOARDS.—Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or under subsection (d) for appointment as the Assistant Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.''.

(B) The item relating to such section in the table of sections at the beginning of chapter 305 of such title is amended to read as follows:

''3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties.''.

(b) DEPARTMENT OF THE NAVY.—(1) Section 5019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 5148 of this title, the General Counsel''.

(2) Section 5148 of such title is amended—

(A) in subsection (b), by striking the fourth sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate.''; and

(B) by striking subsection (d) and inserting the following:

''(d) The Judge Advocate General, in addition to other duties prescribed by law—

''(1) is the legal adviser of the Secretary of the Navy, the Chief of Naval Operations, and all offices, bureaus, and agencies of the Department of the Navy;

''(2) shall direct and supervise the judge advocates of the Navy and the Marine Corps and civilian attorneys employed by the Department of the Navy (other than those assigned or detailed to the Office of the General Counsel of the Navy) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Navy or Marine Corps;

''(4) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

''(5) shall perform such other legal duties as may be directed by the Secretary of the Navy.''.

(c) DEPARTMENT OF THE AIR FORCE.—(1) Section 8019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 8037 of this title, the General Counsel''.

(2) Section 8037 of such title is amended—

(A) in subsection (a), by striking the third sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of lieutenant general.''; and

(B) in subsection (c)—

(i) by striking ''General shall,'' in the matter preceding paragraph (1) and inserting ''General,'';

(ii) by redesignating paragraphs (1) and (2) as paragraphs (4) and (5), respectively, and, in each such paragraph, by inserting ''shall'' before the first word; and

(iii) by inserting after paragraph (1) the following new paragraphs:

''(1) is the legal adviser of the Secretary of the Air Force, the Chief of Staff of the Air Force, and the Air Staff, and of all offices and agencies of the Department of the Air Force;

''(2) shall direct and supervise the members of the Air Force designated as judge advocates and civilian attorneys employed by the Department of the Air Force (other than those assigned or detailed to the Office of the General Counsel of the Air Force) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Air Force;''.

(d) EXCLUSION FROM LIMITATION ON GENERAL AND FLAG OFFICER DISTRIBUTION.—Section 525(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(9) An officer while serving as the Judge Advocate General of the Army, the Judge Advocate General of the Navy, or the Judge Advocate General of the Air Force is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general or rear admiral under paragraph (1) or (2), as the case may be.''.

AMENDMENT NO. 3349, AS MODIFIED

(Purpose: To modify the authority to convey land at Equipment and Storage Yard, Charleston, South Carolina)

On page 365, between lines 18 and 19, insert the following:

SEC. 2830. MODIFICATION OF AUTHORITY FOR LAND CONVEYANCE, EQUIPMENT AND STORAGE YARD, CHARLESTON, SOUTH CAROLINA.

Section 563(h) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 360) is amended to read as follows:

''(h) CHARLESTON, SOUTH CAROLINA.—

''(1) IN GENERAL.—The Secretary may convey to the City of Charleston, South Carolina (in this section referred to as the 'City'), all right, title, and interest of the United States in and to a parcel of real property of the Corps of Engineers, together with any improvements thereon, that is known as the Equipment and Storage Yard and consists of approximately 1.06 acres located on Meeting Street in Charleston, South Carolina, in as-is condition.

''(2) CONSIDERATION.—As consideration for the conveyance of property under paragraph (1), the City shall provide the United States, whether by cash payment, in-kind contribution, or a combination thereof, an amount that is not less than the fair market value of the property conveyed, as determined by the Secretary.

''(3) USE OF PROCEEDS.—Amounts received as consideration under this subsection may be used by the Corps of Engineers, Charleston District, as follows:

''(A) Any amounts received as consideration may be used to carry out activities under this Act, notwithstanding any requirements associated with the Plant Replacement and Improvement Program (PRIP), including—

''(i) leasing, purchasing, or constructing an office facility within the boundaries of Charleston, Berkeley, and Dorchester Counties, South Carolina; and

''(ii) satisfying any PRIP balances.

''(B) Any amounts received as consideration that are in excess of the fair market value of the property conveyed under paragraph (1) may be used for any authorized activities of the Corps of Engineers, Charleston District.

''(4) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under paragraph (1) and any property transferred to the United States as consideration under paragraph (2) shall be determined by surveys satisfactory to the Secretary.

''(5) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under paragraph (1) as the Secretary considers appropriate to protect the interests of the United States.''.

AMENDMENT NO. 3385, AS MODIFIED

(Purpose: To exempt procurements of certain services from the limitation regarding service charges imposed for defense procurements made through contracts of other agencies)

On page 163, between lines 19 and 20, insert the following:

''(c) INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

''(1) Printing, binding, or blank-book work to which section 502 of title 44 applies.

''(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 114 Stat. 2187; 2 U.S.C. 182c).

Mr. WARNER. 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.

Mr. GRASSLEY. Mr. President, I am pleased to be joined by my colleague Senator FEINSTEIN in support of amendment No. 3402 to S. 2400, the Department of Defense Reauthorization bill. We hope this resolution expressing Congress's expectations will encourage the Department to do more to address narcotics trafficking in Afghanistan.

This resolution calls upon the President to make the elimination of drug trafficking in Afghanistan a priority in the global war on terror; encourages the Secretary of Defense to increase cooperation and coordination with the Government of Afghanistan and our allies to assist in providing a secure environment for counterdrug personnel operating in Afghanistan; and calls upon the Armed Forces to work with our allies against the regional illicit narcotics trade.

These are not original observations. In testimony before both committees in both Chambers, several officials from the Department of Defense have affirmed that there is a strong, direct connection between terrorism and drug trafficking. We know from this testimony and other evidence that some of the profits generated by narcotics trafficking support terrorists.

This resolution is needed, because there is some inconsistency between the direction that we are providing to our troops in Afghanistan and the narco-terrorist connection. I do not believe that we will see long-term success in the global war on terror until the financial underpinnings of terrorists are eliminated, and I do not believe that Afghanistan can avoid becoming a narco-state if the drug trafficking there is not addressed. To avoid these potential pitfalls, we must step up our counter-narcotics activities in Afghanistan. I hope the administration, and particularly the Department of Defense, will heed this resolution.

Narcotic trafficking is not only a source of funding for terrorist organizations, but its production poses a threat to the future stability of Afghanistan. President Karzai has stated repeatedly that he believes opium production poses a significant threat to the future of Afghanistan. His concerns are echoed by the United Nations Office on Drugs and Crime, which recently warned that Afghanistan is at risk of again becoming a failed state if strong actions are not taken against narcotics. If we are going to assist the people of Afghanistan in their efforts to create a stable country, we cannot ignore their pleas for greater action against the narco-terrorists operating in the region.

Mr. President, I believe that our current policy in Afghanistan does not square with these observations about the threat that narcotics pose to the future of Afghanistan. Attempts are being made to separate anti-terror operations from anti-drug operations, despite the acknowledged link between the two. We know that drug trafficking is a war industry of terrorism. If we are going to be successful, we must eliminate the financial underpinnings of terrorism just as effectively as the organizations themselves.

Those who sell and trade opium in Afghanistan are narco-terrorists. They support terrorists and insurgents who oppose the legitimate government. By supporting terrorists and insurgents, they become legitimate targets for the Combined Forces Command-Afghanistan. Just as ball bearing factories in Nazi Germany were important military targets during World War II, drug labs, and those who facilitate the drug trade, should also be considered viable military targets as we prosecute the War on Terror.

I believe that the United States should treat narcotics traffickers no different than others suspected of cooperating with terrorists. The connection is real, and cannot be ignored. I urge my colleagues to join us in supporting this resolution.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Grassley-Feinstein amendment, which calls upon the President to make the decimation of the Afghanistan heroin trade one of his highest national security priorities, asked the Defense Department to devote more time, energy and resources to anti-drug efforts in Afghanistan, and asks for a study into whether profits from the illegal drug trade continue to fund terrorists and others who upset the stability of that nation.

Afghanistan has long been the world's major supplier of heroin, providing the global market as much as 80% of all the heroin consumed each year.

This is a grave problem—not just because heroin is a bad thing in and of itself, but because profits from the heroin trade in Afghanistan have historically been funneled, in large part, to terrorists bent on doing America harm or those that aid and protect those terrorists.

Indeed, it has been estimated that millions of dollars—even hundreds of millions of dollars—in drug profits have been funneled to al-Qaida and other terrorist organizations throughout the world. Those organizations, in turn, can use the money to run terrorist training camps; to buy guns, bombs and other supplies; to recruit; and to fund terrorist operations throughout the world.

Needless to say, this is a major problem. If we continue to allow terrorist organizations to rake in hundreds of millions of untraceable dollars, the war on terror is going to go quite poorly for us indeed.

This is not the first time I have raised these concerns. Last May, for instance, I expressed concern that this administration had made a decision to allow warlords and others in Afghanistan to continue to grow poppy and to produce opium, in the hopes of maintaining relationships and alliances with those who were trafficking in drugs. In other words, the administration was essentially turning a blind eye to drug production, in order to work more closely with those who were profiting from it.

This was not acceptable then, and it remains unacceptable now. The very reason we went to Afghanistan—to remove al-Qaida's means of support—will be lost if we continue to allow these drug lords to fund al-Qaida and those that hide them, protect them, fund them and help them in other ways.

More than two years after we went into Afghanistan, we don't have bin Laden. We have not stopped the terrorist attacks. We do not control the countryside in Afghanistan. And now we are standing by while the drug trade flourishes beyond levels experienced even before 9/11.

I know this is not an easy problem to solve. Farmers in Afghanistan, like in many other nation's involved in illegal drug production, often find that growing poppy is far more profitable than the country's other staples—cereals, wheat, barley, rice, and so on.

So combined with Afghanistan's foreboding terrain and chaotic political and security situation, it is not a simple matter to eliminate drug production.

Many farmers survive either solely on poppy production or by growing a mix of legal, and illegal crops.

There is hope—poppy production represents only about 8% of Afghanistan's crop production (in volume). So many farmers do grow alternate crops, and they make a living doing it.

But we need to make better efforts to provide farmers good alternatives; to deter production; and, most importantly, to eradicate the crops on the ground.

Eradicating poppy is not easy—particularly in a nation where the central government has so little control over its distant—and even not-so-distant—provinces.

Only with military assistance can anti-drug operatives go into an area and take out the poppy fields. Some of these warlords have virtual armies at their disposal—helicopters, rocket launchers, you name it. This is not your local marijuana field in someone's backyard. This, truly, is akin to war.

The war in Iraq has certainly hindered the Defense Department's ability to assist in these operations—there is only so much manpower and equipment to go around. This is one reason why so many questioned the advisability of going into Iraq before the job in Afghanistan was finished.

But tough as it may be to solve, this issue is simply too important to ignore, and we cannot wait any longer.

Recent estimates put Afghanistan's poppy production this year at more than 5,000 metric tons—more than 50 percent higher than last year.

Even if the most aggressive current efforts at eradication succeed in every respect, only 25 percent of the crop this year will be destroyed.

This means that no matter what, more heroin will be produced this year

than last. The value of that heroin could easily exceed three billion dollars. Farmers only get about a penny on the dollar. Where is the rest of the money going? Best estimates are that much of it goes to terrorists or their protectors.

This simply cannot continue if we hope to win the war on terror. This amendment calls upon the Defense Department to better assist in protecting drug eradication efforts and to work to disrupt and destroy those who aid terrorist activity through the drug trade.

I urge my colleagues to support this amendment. I yield the floor.

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate resume the Defense authorization bill on Wednesday, there be 30 minutes equally divided for debate in relation to the Dodd amendment, No. 3313, as further modified. I further ask that following that time, the Senate proceed to a vote in relation to the amendment, with no amendments in order to the amendment prior to the vote. I further ask that following the disposition of the Dodd amendment, the Senator from Virginia, Mr. WARNER, or his designee, be recognized to offer the next first-degree amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

COMMISSION ON THE FUTURE OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Mr. BYRD. Mr. President, as we are considering the National Defense Authorization Act, I thank my colleagues, Senators WARNER and LEVIN, the Chairman and ranking Member of the Armed Services Committee, for so graciously agreeing to accept an amendment that I and several of my colleagues have proposed to modify Section 841 of that bill to enhance the work of the new ''Commission on the Future of the National Technology and Industrial Base,'' which is being established by this legislation. This amendment is the result of collaboration between myself and Senators SNOWE and KERRY, Chairman and ranking Member of the Committee on Small Business and Entrepreneurship, as well as Senators ALLEN and COLEMAN.

First of all, our amendment will require this new Commission to consider carefully the problem of current or potential shortages of critical technologies in the United States. It will also require the Commission to examine the issue of existing or future shortages of the raw materials that are essential to the production of these technologies.

America's national security continues to be threatened by dwindling supplies of U.S.-made components and raw materials. Our Nation's industrial base can be expected to experience a decline in the production of certain technologies and the raw materials necessary to create them, as more and more small and medium-sized U.S. firms shift their production overseas. To the extent that these firms specialize in the manufacture of unique components, or are ''sole source'' producers of materials needed to supply the U.S. defense industry, their departure from the U.S. market leaves manufacturers of America's critical technologies with a dearth of reliable suppliers.

The amendment that my colleagues and I offer today requires the Commission to examine whether, and in which areas, the United States now suffers, or might suffer in the future, shortages of critical technologies and their raw material inputs. The amendment also accelerates the deadline by which the report must be issued, requiring that it be issued on March 1, 2007, rather than a year later. Further, it requires the Commission to make recommendations addressing these shortages, so that our Nation can attempt to alleviate, ahead of time, any adverse impact that such shortages might have on the national security of the United States.

We cannot wait to discover whether our Nation will be confronted with these shortages. Once they are upon us, it will be too late. If we wait until confronted with the fact that our Nation can no longer access the materials it needs to feed its technological advancement or maintain its industrial base, the consequences could be disastrous. An ounce of prevention is worth a pound of cure, and we hope that by requiring this Commission to examine today possible shortages that could affect our Nation's technology and industrial base tomorrow, we can enhance and protect the national security of the United States.

I would note, in closing, that our amendment will also make certain that representatives of small business can join labor representatives and others associated with the defense industry as members of this new Commission. I ask my colleague from Maine, the distinguished Chair of the Small Business Committee, how exactly will this provision make certain that the Commission has the benefit of obtaining a broad range of diverse opinions drawn from a wide cross-section of America?

Ms. SNOWE. I thank the distinguished Senator from West Virginia for his question. Just like its previous version which I introduced on June 3, this amendment is intended to ensure that small business interests are represented in the Commission's composition and in the subjects of the Commission's activities.

As I stated before, the Commission's activities will be incomplete without taking into account small business contributions to our Nation's defense. The most recent data from the Department of Defense suggests that more work needs to be done to secure small business access to national defense contracts. Representatives of small business contracting concerns would make important contributions to the work of the Commission. In addition, the Commission would benefit from participation by the Chief Counsel for Advocacy of the Small Business Administration or his representative. Congress and President Bush endowed the Chief Counsel's Office of Advocacy with the unique mandate to represent America's small businesses before the agencies of our government. The Chief Counsel's trained staff of economists, analysts, and lawyers would provide much needed perspectives for the Commission deliberations.

I thank Senator BYRD, Chairman WARNER and Senator LEVIN for their work for America's small business. I also wish to thank the esteemed Senators ALLEN, COLEMAN, and KERRY for their support.

Mr. BYRD. I commend the distinguished Chair SNOWE for her tireless efforts on behalf of America's industrial base.

Ms. MIKULSKI. Mr. President, last night the Senate accepted two very important amendments to level the playing field for Federal employees whose jobs are being contracted out. I am so pleased that we agreed to the Kennedy-Chambliss amendment to fix the worst problems with DoD's contracting out process, and the Collins amendment to—at long last—give Federal employees the right to protest contracting out decisions to an independent entity.

DoD is pursuing a political agenda masquerading as management reform. DoD's zeal for privatization costs money, it costs morale, it costs the integrity of the civil service, and now it's costing our reputation in Iraq. I was shocked to hear about about the role of contractors in the appalling abuse of prisoners at Abu Ghraib. DoD is taking contracting out too far. How can you contract out the interrogation of prisoners?

America needs an independent civil service. Our Federal employees are on the front lines every day working hard for America. At a time when we are fighting terrorism and struggling with chaos in Iraq, how does the administration thank DoD employees? By forcing them into unfair competitions. Forcing them to spend time and money competing for their jobs instead of doing their jobs.

Make no mistake. I am not opposed to privatization. In some instances privatization works well. Look at Goddard, in my State of Maryland 3,000 government jobs and 9,000 private contractors. I am proud of them both. What I am opposed to is the Bush administration stacking the deck against Federal employees to pursue an ideologically-driven agenda.

The Kennedy-Chambliss amendment fixes the worst problems with DoD's procedures for contracting out to make competitions more fair for DoD employees. The Kennedy-Chambliss amendment does six things to level the playing field. It guarantees employees the right to submit their own ''best bid'' during a competition. It requires contractors to show that they are actually saving money. It makes sure privatization doesn't come at the expense

of health benefits for employees. It closes loopholes that allow DoD to contract out jobs without a competition. It establishes a process for allowing and encouraging Federal employees to conduct new work and work currently performed by contractors. And it makes sure that DoD has the infrastructure in place to effectively conduct competitions and oversee the contracts.

This amendment is so important. Civilian employees at the Defense Department work hard to support our troops and to protect our country. If we are going to contract out Defense Department work, we need to be very cautious. It's a matter of national security. Can we trust a private company to do the job? What if the company goes out of business? What if it is bought by a foreign company? How do we know a private company will have the same mission—and the same motive as U.S. military personnel?

The Bush administration's rules do just the opposite. They're reckless. They give private contractors the edge—whether they deserve it or not. 75 percent of Federal jobs that were contracted out in 2002 and 2003 were DoD jobs. And DoD is targeting 240,000 more jobs for privatization. More than 20 percent of DoD employees who lost their jobs to contractors never had the chance to compete for their own jobs.

I want to know why the Bush administration is trying to undermine our Federal workforce—pushing a process so clearly stacked in favor of private contractors. Civilian Defense Department employees are not the enemy. Who are these employees? They are the shipbuilders at Naval Academy in Annapolis, they are intelligence analysts, and they are the electricians at the Pentagon—who know every nook and cranny of top secret buildings.

These Federal employees are on the front lines. They lost their lives in the Pentagon on September 11. They are committed to making sure our soldiers are ready to protect us. These men and women are dedicated and duty driven. They are not political strategists. They cannot be bought. Why are some trying to make Federal employees the enemy? They aren't part of the problem, they are part of the solution. I know what Federal employees do, how hard they work. I know they think of themselves first as citizens of the United States of America, second as workers at mission driven agencies.

The way the Defense Department pursues contracting out is irresponsible and dangerous. DoD is pushing contracting out even when it just doesn't make sense, even when it puts our Nation's security at risk, or the integrity of our Armed Forces on the line. They are pushing contracting out even when it costs more to conduct competitions than it saves in the long run.

I know DoD isn't used to holding fair competitions. Look at their track record—no-bid contracts for cronies like Halliburton. But we can't let the Defense Department's zeal for privatization get in the way of the ability of our Armed Forces to carry out their duties. And we can't let them replace our civil service with cronyism and political patronage. That means putting some checks and balances on privatization.

I also want to say a few words about an amendment that Senator COLLINS offered to give Federal employees the right to appeal unfair contracting out decisions to GAO. This legislation is long overdue. Contractors have always been allowed to appeal to GAO or to the Court of Federal Claims when they lose a competition. Yet Federal employees can only appeal within their agency—the same agency that's trying to contract them out. That is unfair.

Giving Federal employees the right to appeal is vital to level the playing field during competitions, to hold agencies accountable for conducting fair competitions, and to make sure taxpayers are getting the best deal.

The Collins amendment is a compromise. It doesn't give employees the exact same rights as contractors. For instance, they can't appeal to the Court of Federal Claims. And it creates hurdles for allowing unions to represent their members in an appeal. I am sick of union busting. I think we can do more for employees. I hope we fix these problems as the process moves forward. But we can't let the perfect be the enemy of the good. I support the Collins amendment because it is a good compromise, and it would—finally—allow employees to appeal when an agency makes a mistake.

MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

125TH ANNIVERSARY OF COLUMBIA, SOUTH DAKOTA

Mr. DASCHLE. Mr. President, this week marks the 125th anniversary of the settlement of one of my state's oldest towns. Columbia, SD, located in Brown County in the northeastern part of my State, has a long and rich history that represents the spirit of hard work and community that defines what it means to be from South Dakota.

In mid-June, 1879, a group of wagons loaded with supplies arrived at the spot that would one day become Columbia, South Dakota. Under the leadership of Byron M. Smith of Minneapolis, the settlers took advantage of the Elm River's abundant water supply, and began work on the new town. Once the first post office was built and officially recognized, the town of Columbia was born.

Today, residents of Columbia proudly reflect on a 125-year history, and the seemingly endless string of goals they have accomplished—and hardships they have had to endure—along the way. From the establishment of the post office in 1879 to the dam that was built 3 years later—creating Lake Columbia—to the construction of the town's first school, courthouse, and roller-skating rink, Columbia's first decade saw its inhabitants lay the groundwork for the future of the community. More than a century has passed since then, during which Columbia has survived fire, drought, dust storms, blizzards, and even a tornado on the town's 99th birthday. After 125 years of both good times and bad, the people of Columbia have emerged as strong and united as ever.

Truly, it is the people who have enabled Columbia to reach this remarkable milestone. The legacy of those original settlers has been carried proudly to this day, and its reach is not limited to the corner of South Dakota where the town resides. In fact, Ralph Herseth, a graduate of Columbia High School and a former Governor of South Dakota, is the grandfather of our State's newest representative, STEPHANIE HERSETH. I am proud to join Representative HERSETH and Senator JOHNSON in congratulating Columbia on its 125th birthday.

ON THE RETIREMENT OF ROYCE FEOUR

Mr. REID. Mr. President, I rise today to honor Royce Feour who recently retired after reporting on boxing and sports for the Las Vegas Review-Journal for nearly 37 years.

Royce is a legend in Nevada sports reporting. He started his career in journalism half a century ago at age 14 when he covered prep sports for the Review Journal and the High School Sports Association.

He continued writing about sports at the University of Nevada-Reno with the support of two journalism scholarships. He became the editor of the school paper, and a correspondent for the Reno Evening Gazette and the Nevada State Journal.

After he graduated, Royce worked for 5 years at Las Vegas Sun, where he became sports editor. He reported on the first football and baseball games at what was back then the Nevada Southern University—now UNLV. At that first football game, it was so dark by the end of the game that no one in the press box could tell if the winning kick was good.

Royce covered the recruitment of UNLV basketball coach Jerry Tarkanian, who lost his first game and offered to quit that same night. The offer was declined, and Tarkanian went on to win 509 games in 19 seasons, and an NCAA championship in 1990.

Royce was a sportswriter, but he was also a newspaper man. So when an earthquake struck San Francisco and rocked the upper deck of Candlestick Park while he was covering game 3 of