hidden oil allotments from Saddam, U.N. Assistant Secretary Sevan's name was on a list which included 11 French, 46 Russians, and many other names. These recipients of Saddam's largess were vocal opponents of freeing Iraq from Saddam's chokehold and also were bitter critics of the effects of the embargo on Saddam's regime.

It is ironic that so many of the businessmen and officials who helped skim off the money designed to buy food and medicine for the Iraqi people came from countries that complained the loudest about the U.S.-led effort to oust Saddam from power.

It is imperative that we monitor the U.N. investigation of the Oil-for-Food scandal to make sure it is thorough and transparent. Wrongdoers must be prosecuted, not simply bundled off to retirement. To do any less would greatly compromise the ability of the United Nations to operate future programs with the confidence of the world community. Paul Volcker, who was named by Secretary Kofi Annan to head the investigation into the Oil-for-Food scandal, must receive sufficient personnel, resources, and access to the relevant documents and U.N. officials to carry out his responsibility.

A failed investigation will be a bitter indictment of the United Nations and it would put it on a path that would lead to total—total—obsolescence and irrelevance. The United Nations can be a unifying force in the world, and its resolution on the future of Iraq passed last week is a positive example of this. However, it must also restore its credibility with the people of Iraq who were robbed of over $10 billion in food and medicine while the Oil for Food Program was being administered by the U.N.

It is a critical time for both the future of Iraq and the future of the U.N. In Iraq, it is time to pull together to make it a successful, stable, and democratic country. At the U.N., it is time to show the world that it can be a transparent, accountable, and efficient organization worthy of its noble charter.

We have the unique opportunity to help democracy take root in the Middle East, and we are fortunate that President Bush, Prime Minister Blair, and others have the vision and the courage to recognize this and to do something about it.

Likewise, the United Nations has an opportunity to restore our confidence in its ability to play a meaningful role on the world stage. I hope Secretary General Kofi Annan has the necessary courage to carry his investigation of the Oil for Food scandal to its necessary conclusion, regardless of how difficult it might be.

Let future generations see that neither the United States, nor the United Nations, shirked from the challenges that face us today.

Mr. President, the Oil for Food scandal cannot be taken lightly. We must take this issue seriously to restore credibility to the United Nations, which is headed down a path of total obsolescence if we do not act appropriately and if we do not get to the bottom of this particular and potentially devastating issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I ask the Presiding Officer to advise the Senate with regard to the standing order.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The assistant legislative clerk read as follows:

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

Pending:

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

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

Reed amendment No. 3352, to increase the end strength for active-duty personnel of the Army for fiscal year 2005 by 20,000 to 502,400.

Warner amendment No. 3450 (to amendment No. 3352), to provide for funding the increased number of Army active-duty personnel out of fiscal year 2005 supplemental funding.

Durbin amendment No. 3386, to affirm that the United States may not engage in torture or cruel, inhuman, or degrading treatment or punishment.

AMENDMENT NO. 3313

The PRESIDING OFFICER. The pending question is the Dodd amendment No. 3313, as further modified, on which there shall be up to 30 minutes of debate evenly divided.

Mr. WARNER. I further inquire of the Chair, at the conclusion of the vote on the Dodd amendment, the Senator from Virginia is to be recognized for the purpose of laying down an amendment; am I not correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, may I be notified when 10 minutes have expired so as to leave a few minutes at the end of the debate?

The PRESIDING OFFICER. The Chair will do that.

Mr. DODD. I ask unanimous consent that my distinguished friend and colleague from South Carolina, Senator LINDSEY O. GRAHAM, be added as a cosponsor of the amendment.

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

Mr. DODD. I am pleased to offer this amendment on behalf of myself, Senator GRAHAM, and Senator LEVIN this morning. We had a very good debate a few days ago about this amendment. At the suggestion of my friend, the chairman of the Armed Services Committee, we modified the amendment that is now before this body. The modification, very quickly, deletes the prohibition on using private contractors in combat situations. I will not belabor the point. There are existing statutes that provide for such restrictions, but the suggestion of the chairman was that that provision was going to be a rather complicated matter to deal with here, so we have taken it out—it is no longer part of the amendment. Instead, the amendment as modified would merely ask the Secretary of Defense to review and report to Congress on U.S. laws and policies as they relate to the use of contractors by the Defense Department and the Uniformed Services in combat operations.

What is still part of this amendment is the prohibition on using private contractors for the purposes of interrogation of prisoners. It would, however, give the President some flexibility in phasing in this prohibition by providing limited waiver authority for the use of such contractors in interrogations—both as translators and as actual interrogators. The presidential waiver for translators would be extended for 1 year, and for contractors acting solely as interrogators, the waiver would be effective for 90 days from the date of enactment of this legislation.

Why do I offer this amendment? I didn't bring charts or photographs to the floor of the events that occurred in Abu Ghraib prison late last fall or early this winter. Those photographs are very disturbing and can create their own sense of emotion. I am not interested in doing that today. But suffice it to say, there is ample evidence. So today we know at least that interrogations were conducted by private contractors hired by the Department of the Interior, of all agencies, to do interrogations, intelligence work in Iraq and maybe elsewhere, on Guantanamo or Afghanistan as well. The military believes, I believe, and I think most of us believe that this job of interrogation ought not be done by private contractors. This ought to be inherently a governmental function, and one that is not shopped out or outsourced, if you will, to others, where there is no accountability, no chain of command, no responsibility, and virtual immunity if they do anything wrong under the Uniform Code of Military Justice.

I will cite briefly memos and directives from the Department of the Army strongly urging that we not contract out this function. I strongly agree with these opinions because, first, we obviously have suffered terribly in the public relations field as a result of what happened, and we certainly know that private contracting was part of the problem; and, second, with 135,000 of our troops serving in Iraq, 20,000 serving in Afghanistan, and others serving around the globe today, we do not need to have these young men, and women in many cases, be potentially subjected to reprisals as a result of our mismanagement of the interrogation process in Iraq and possibly elsewhere.

This is an important amendment. We have all been through this recently. Again, I am not charting new ground. As we know, in fact, at hearings chaired last month by the chairman of the committee here, it was made very clear, especially in the testimony and comprehensive report of General Taguba, a number of contractors may have played significant roles as interrogators in the Abu Ghraib prison scandal. Their abusive practices have compromised our interests in Iraq, and it remains to be seen whether they will ever be held accountable. Military people can. But contractors, such as those hired by the Department of Interior, may be outside the scope of legal jurisdictions.

Again, I am not the only one who believes that intelligence functions, particularly gathering intelligence through interrogations, should be carried out by Government personnel rather than contractors.

A December 26, 2000, Department of the Army memo dealing with exempting Army intelligence functions from privatization came to the same conclusion:

> At a tactical level, the intelligence function under the operational control of the Army performed by the military . . . is an inherently Governmental function barred from private sector performance.

They are exactly right. It ought to be an inherently governmental function. Outsourcing, where there is no accountability, where you don't have any ability to subject them to criminal prosecution if they do something wrong, I think, is dangerous business. It is dangerous business in the intelligence area.

The report went on to say:

> At the operational and strategic level, the intelligence function performed by the military personnel and Federal civilian employees is a non-inherently governmental function that should be exempted from private sector performance on the basis of risk to national security from relying on contractors to perform this function.

Nor was this view limited solely to the previous administration in 2000. Thomas White, former Secretary of the Army in the current administration, also expressed his opposition to hiring contractors to question prisoners, stating in an interview that ''the basic process of interrogation . . . should be kept in-house, on the Army side.''

He is right. That is exactly where it ought to be. This is dangerous business to go through. I was stunned to learn that the Department of the Interior the was actually the agency through which some of these contracts were awarded. No one knew to whom these contractors reported, what the chain of command was, or what sort of supervision there was.

We are in a new age since 9/11. You have to get people who can speak the language, who know what they are doing. We are in the world of terrorism. The President had it right last night. There is yet no horizon in this war on terrorism. It is going to be here for a long time. We better wake up, and if we need people to speak a language then we ought to hire them and train them. It is almost 3 years since 9/11. The fact that we need to put ads in the Washington Post to find people who can speak Arabic is ridiculous. We ought to get about the business of hiring people and training them. We need interrogators. We need the human intelligence capacity. I am all for fancy satellites and technology, but if you don't have people on the ground who can talk to these people and understand what they are saying, your intelligence is going to suffer.

Again, this practice of hiring contractors to perform interrogations is simply bad business. It goes beyond just the ugly photographs and the outrageous behavior that has cost us terribly in Iraq and elsewhere in our efforts at winning the hearts and minds of the Iraqi people.

And my amendment is limited in scope. It merely says that with respect to interrogations, the Department of Defense would have to hire people within the governmental framework to do the job.

On the translations, I will give you a year. You can use people outside if you want, but after a year let's get some people within the operations themselves who know what they are doing. The other sections of my amendment deal briefly with the transfer of prisoners.

In September, it will be 3 years since the horrific events of 9/11. It is high time that the administration moved forward to build a capacity, in-house, to ensure that our intelligence gathering capacity, including interrogation personnel, is adequate to meet the threats that we confront.

Giving the administration unlimited access to contractors by extending the waiver for interrogators beyond 90 days does not serve our national interest.

I would remind my fellow colleagues that the world has changed dramatically over the past three years. Part of the current mission in Iraq is a larger and absolutely critical mission that we are going to be confronting every single day for the foreseeable future in Afghanistan, Saudi Arabia, Pakistan, and Spain—and the list goes on and on—and elsewhere around the globe. In order to be prepared for that war, we must have within our own governmental structure the expertise to garner intelligence, including intelligence gleaned through interrogations.

The notion that we can simply outsource this critical responsibility when terrorist incidents spike the demand for interrogation skills by our Government seems to be the height of irresponsibility.

We were sidetracked a bit during the debate on Monday. As I said earlier, the chairman made a very good point in the area of combat missions. It is not a clear line. So we put that aside. But on interrogations, this is inherently a governmental function and we shouldn't be contracting out that function.

That is my point. I hope my colleagues will agree with us. I know the administration has some problems with it, but the fact is, let us get about the business of doing our job here and not endangering our own troops—which is what I worry about. The bottom line, one that I believe I share with every parent, sibling, or child who has a relative or a friend serving in these dangerous zones. I don't want our brave men and women, if they are apprehended, to go through what we saw happen to some of these Iraqi prisoners. These abuses put Americans at risk, in my view, if we don't get this business straight. I am determined to see that we fix this situation.

I hope my colleagues will support this. Let me withhold the remainder of my time.

Mr. WARNER. Mr. President, will the Senator engage in a colloquy with me?

Mr. DODD. Certainly.

Mr. WARNER. First, I would like to lay the predicate. The Senator has brought forth an important concept. He asked for a study. I am prepared to support the study. But I urge my colleague, as I did the other day on another part of the amendment—and he accepted my advice and took that out—we have to look at this interrogation section. There is a trigger mechanism, if you look at the amendment, which says in 90 days every one of these contractors has to discontinue their work.

That is what it says. Am I not correct?

Mr. DODD. The Senator is correct—90 days I think after the——

Mr. WARNER. It is signed into law.

Mr. DODD. Just interrogations.

Mr. WARNER. Mr. President, that cripples America's intelligence system in the middle of a war in Afghanistan, in Iraq, and our operations in Guantanamo.

How can the Senate suddenly withdraw our U.S. military interrogation base in the middle of a war in 90 days? There is no way in the world the military—there is a greater burden on the Army—can hire and train in this short period of time all the replacements that would be required if the Senator's amendment became law.

Mr. DODD. Mr. President, first, I don't believe necessarily that the military doesn't have the capacity to do

this. But the idea that the Department of the Interior is contracting out to private firms to conduct this function, when we have seen already the results when this matter gets out of hand because you have rogue elements doing it—we have suffered terribly as a result of this tremendous abuse that has gone on. I don't buy the idea that we can't get this straight. I think we can get it straight. There are plenty of people within the military services who can perform this function. And I don't put the same limitations on translators. I am giving a year to get that in shape.

The idea that somehow the military shouldn't be doing this—I didn't make this up; this isn't made out of whole cloth. The military themselves, going back several years, has said that this function should not be performed by outside contractors.

In fact, the most recent former Secretary of the Army said this.

Mr. WARNER. That has been stated twice by the Senator. Those are facts and valid opinions. But I am looking at the very practical effect—that under this amendment when the President's signature goes on the bill, in 90 days we are out of business.

Let me point out a few statistics. Take Guantanamo Bay: Right now we have 140 translators of which over 100 are contractors.

Mr. DODD. Translators are not an issue.

Mr. WARNER. Nevertheless, eventually they have to be taken inhouse.

Mr. DODD. That would be over a year from today.

Mr. WARNER. I understand that. That is the very point I wish to make. You give us a year in which to cure that problem, but then you go to the analysts and interrogators, 60 analysts of which 35 are contractors.

Mr. DODD. Interrogators.

Mr. WARNER. They are part of the system—40 interrogators of which 20 are contractors. In 90 days, 50 percent roughly of the operation in Guantanamo ceases to function.

I will tell you that practically there is no way in the world the military can go out and hire and recruit and put into uniform or civilian capacity that number of individuals.

Mr. DODD. I don't ascribe to that. First, the analysts are not included; it is just the interrogators.

The idea that you are going to have people who are immune from prosecution, accountable to no one, with little supervision, or literally none in many cases, I think is a far more inherently dangerous problem than the difficulty in finding 30 or 40 people within the military structure to perform interrogations.

I would point out this job posting, which is from the Web site of CACI International, one of the companies that does interrogations for the Department of Defense. This is what it says you ought to be: The position requires a bachelor's degree, or equivalent, of 6 or 7 years of related experience—whatever that is—preferably in the intelligence field; requires a clearance, strong writing and briefing skills, with competency in automation research in basic software.

This is hardly the job description of someone who is so unique that we can't find the personnel within our own uniformed services.

Mr. WARNER. Mr. President, there is a problem. The Senator has identified it. I acknowledge it. I do not think it is as great as the Senator portrays it, but nevertheless there is a problem.

What I am saying to my colleagues who are momentarily going to be asked to vote is that we cannot in any way possible solve it in the 90-day period, and we are in the middle of a war. The Senator is going to basically dismantle 50 or more percent of our intelligence interrogation, and it is from these interrogations that our troops today are getting valuable information to protect their lives on the battlefronts primarily of Afghanistan and Iraq.

I say to Members, when you come and are asked to vote, if you vote in support of this amendment, then I simply say you are pulling the plug on our intelligence system and the interrogation system and severely dealing them a crippling blow. It is as simple as that.

Does my colleague acknowledge that in 90 days the interrogation is out of business? Am I correct?

Mr. DODD. No. They are not out of business at all. The interrogations would have to be done by governmental authorities. You can bring back military people to do it. There are plenty of guys who can do it, if we put them back on active duty. This is not an overly burdensome problem.

The question is, here we are debating the Defense authorization bill and we have been confronted which a huge problem that galvanized the world's attention only a few days ago. We know that part of the problem was because we had people who were not being held accountable and who have little or no supervision. At least we know that much already. In the midst of this debate, should we step up and try to do something about that problem?

If the argument is that we have no in-house capacity to fill 40 or 50 slots in Guantanamo, or maybe an equal amount in Iraq with 135,000 U.S. forces there and 20,000 in Afghanistan, the idea that we can't find people within the military services to fill 40 or 50 slots, then I don't accept it as a legitimate argument against this amendment.

They may want to keep contracting and have these contractors go through the Department of the Interior, but that is wrong, in my view, and I think it is dangerous. The military has said—I am not opposed to what their thinking is—categorically it ought not be done there. It is dangerous. It causes us problems and it is causing our military personnel problems. It ought to be changed.

I don't buy for a single second, with thousands of people serving in that theater, the idea we can't find people within our own ranks to do this job.

Mr. WARNER. The simple reply is, you can't take an individual, no matter how many degrees they might have, in 90 days, or less, and train them to be an interrogator. Most of the contractors now performing this work are former U.S. military individuals—people who served in the interrogation field, primarily during the cold war when the U.S. military had a significant requirement for interrogators, both in the European theater and the Korean theater.

I see my colleague from Alabama. Does my colleague seek recognition?

Mr. SESSIONS. I would like to speak on this subject.

Mr. WARNER. I yield the floor.

Mr. SESSIONS. Mr. President, I share Chairman WARNER's view.

Mr. WARNER. I yield such time as my colleague requires. Would the Chair advise as to the time on both sides?

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Virginia has 6 minutes. The Senator from Connecticut has 5 minutes 23 seconds.

Mr. WARNER. I need a minute or two to wrap up.

Mr. SESSIONS. I will try to keep it to 2 minutes.

I share the concerns of the Senator from Virginia, the chairman of the Armed Services Committee. I note there is nothing inherently wrong with using trained, skilled, and capable contractors. If there is a problem, it may be that we did not supervise contractors well and maybe did not select them well.

To prohibit the utilization of contractors to do interrogations in life-and-death situations is a mistake. We may need the very best interrogator in the United States of America to interrogate someone who has the ability to give information that could save thousands of lives in this country. To say that we have to use the military personnel I believe is clearly wrong. A young MP who is just out of training school should not be, in my view, as good an interrogator as a retired MP who worked in the detective division of the New York Police Department or a retired CIA agent or retired military person who did interrogations for years and had experience and maybe even knows the language.

We cannot have everyone in the military perfectly trained to do all these things and speak every language in the world and do these interrogations.

This would be a terrible deal. We should not agree to this. We should not limit the military from using contract employees. If we need to control them better and do a better job of supervising it, I would support that.

I don't want to use any more time. I know others want to speak.

I yield the floor.

Mr. WARNER. I simply say to colleagues we are putting on them a considerable burden in a very short period of time.

I ask a very clear question of the proponent of this amendment, the Senator

from Connecticut. In 90 days we have to dismantle a great deal of our interrogation—in Afghanistan, in Iraq and Guantanamo Bay—right as this country is in the middle of combat operations, right at a time when men and women of our Armed Forces, of our coalition forces, are at great personal risk.

A few interrogators at this point in time are implicated in the tragic events in the prison situation. As the Senator well knows, the Armed Services Committee is probing that as quickly as we can given the limited time we have had. This bill has been on the floor of the Senate, but we had to temporarily set aside our work. We hope, once I consult with the leadership and members of the committee, to resume that. The point being, this is not the time to put a 90-day jackhammer that severs our ability to continue our interrogation of prisoners with the use of contractors. Several of them did perform in a manner that, hopefully, they can be brought to account in the Abu Ghraib situation, but hundreds of other contractors are carefully and professionally doing their work in interrogation. This amendment would stop that in 90 days.

I see the Senator from Colorado.

Mr. ALLARD. I would like to be recognized to speak against the amendment.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I join my colleague from Virginia and my colleague from Alabama in opposing the Dodd amendment.

I will take one part of our interrogating process and look at Guantanamo Bay. We have 140 translators, of which 105 are contractors; 60 analysts there, of which 35 are contractors; and 45 interrogators, of which 20 are contractors. If we pass this amendment, we shut off the interrogation process and we lose the opportunity to gather vital information that could be valuable to what we are doing in Iraq. We would lose 50 percent of intelligence. Generally, these individuals are well qualified, and they have been carefully vetted as contractors.

I join my colleagues in opposing the Dodd amendment.

Mr. WARNER. I will reserve 1 minute to follow the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. First of all, let me respond to my friend from Colorado. My amendment grants the President waiver authority in the case of translators for over a year.

We are about to graduate from the training school for Army intelligence in Arizona this year 539 interrogators within the Army. Here we are talking about 20 or 40 positions in Guantanamo Bay of interrogators—but we have 539 people this year who are going to graduate within the Army as interrogators. We know that at least some of the private contractors hired through Department of Interior contracts for interrogations are not well trained. A bachelor of arts degree will get you a job as interrogator. This situation is a mess. We know it is a mess. We have 539 people—double the number from last year—graduating this year. Why are we continuing a system that does not work where the Army themselves have said, stop it? We need to listen and stop it.

One of the most outrageous examples is the effort in Iraq. An outrageous situation occurred just days ago because the system has fallen apart. Do not tell me we will lose our capacity to interrogate people. That is hyperbole when you have 539 people about to graduate in addition to the ones we have in uniform today to do the job.

We know that having private contractors participate in interrogations is a problem. The Army has said that it is a problem. The most recent Secretary of the Army said it is a problem, and to stop it. The question is, will we do it here, today? Do we understand what happened here just a few days ago? Do we understand the problems it has caused?

A recent public opinion poll by the Coalition Provisional Authority in Iraq shows us that a majority of Iraqis believe that all Americans conduct themselves in the way they saw in the photographs taken at Abu Ghraib. But that is not us.

I know people in uniform do a better job than someone who has been plucked off the street under a contract by the Department of Interior to do the job of intelligence. This is intelligence capacity. You do not outsource and farm that out to an unaccountable contractor with little or no experience in interrogations. Don't Members understand what happened here a few days ago, how much trouble our country is in?

We have 539 people about to graduate in the military services to conduct interrogations, and you are telling me we do not have enough and we cannot train people in uniform to do the job? I don't believe it. The American people do not, the international community does not.

This is not a complicated amendment. Let's wake up.

The PRESIDING OFFICER. The Senator has 2 minutes 49 seconds remaining.

Mr. DODD. I reserve the remainder of my time.

Mr. MCCAIN. Mr. President, I am voting today in opposition to Senator DODD's amendment, No. 3313 that would prohibit the Department of Defense from using contractors to carry out certain activities, mostly related to interrogations. While I believe that this amendment would not solve the problems so vividly illustrated by the Abu Ghraib prison abuses, there should be no doubt that the issue it seeks to address is extremely serious. We are all concerned about the grave misconduct of anyone involved in interrogations of Iraqi detainees. The individuals who committed atrocities have marred the reputation of our country and have made the lives of American personnel in Iraq more dangerous and difficult.

It is essential to ensure that there is proper oversight when employing contractors in interrogations or any other military-related function. There must also be clear rules for bringing to justice those who violate our laws or treaty obligations. And, ultimately, I believe that interrogations and other functions should be conducted by uniformed personnel, working directly for the United States government and subject to the web of rules that governs military personnel.

While this should be our ultimate goal, I am concerned that this amendment would bring to a halt a number of critical functions currently carried out by contractors. The reality is that the U.S. armed forces are currently dependent on contractor support to carry out their missions, including interrogations. The Army now has approximately 500 military interrogators, a number far below the number needed to meet our requirements in Afghanistan, Iraq, and elsewhere. Over the next five years, the number of trained interrogators will grow to over 1,200, but in the meantime, we rely on contractors to make up the difference. In addition, over 50 percent of interrogator, interpreter, and analyst positions at Guantanamo Bay are currently filled by contractors. This amendment would cripple intelligence gathering operations there.

The abuses at Abu Ghraib prison did not occur only at the hands of civilian contractors—soldiers have been implicated as well. It is critical to ensure accountability for everyone who may have been involved, and prevent any reoccurrence of such abuses. Throughout the hearings in the Senate Armed Services Committee and in my review of the annexes and documents in the Taguba Investigation, I have observed a lack of sustained focus on the basic principles of leadership at Abu Ghraib. While I believe that immediately prohibiting the use of contractors is not the way to proceed, we need to look comprehensively at a number of facets of our military operations, including the long-term use of contractors, failures of leadership, and the overall size of our armed forces.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I ask my colleague a question. This graduating class to which the Senator refers, am I not correct it is enlisted and 18- to 20-year- olds?

Mr. DODD. All I have here is that the Pentagon has asked the school to boost its output dramatically and expects to graduate 539 interrogators this year, up from 237 in 2003.

Mr. WARNER. I say to my colleague, there are basically young enlisted men with no field experience, in no way a

comparison to the seasoned cadre of contractors now performing this invaluable service.

I wish to move to table, but I will not do it until my colleague has the opportunity.

Mr. DODD. Does my colleague from South Carolina want to take 15 seconds?

Mr. GRAHAM of South Carolina. I appreciate the Senator yielding.

I saw Senator DODD this morning at breakfast. I am sympathetic to what he was trying to do. I said, put me down. I did not look at the substance. I apologize. The Senator is absolutely right in what he is trying to do.

I agree with the chairman that these people coming out of school are not ready to perform this work. But I promise the Senator from Connecticut you will have a Republican ally if we have a transition period that is more reasonable—if not on this bill, we will do it some other time. It bothers me greatly that our interrogation system is being outsourced. We do not know who is interrogating the people in prison because we do not know who they are and who they answer to.

I apologize to the Senator from Connecticut for not being able to live up to my word. I told him I would support the amendment, but I did not look at the amendment. I will never do that again. However, I do want to help—if not on this bill, we will do it soon.

Mr. DODD. Mr. President, I thank my colleague.

I yield 30 seconds to my distinguished ranking member.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I commend the Senator from Connecticut. I think this amendment is essential if we are going to make a statement about who is going to do the interrogating of prisoners. We are bound by treaties, and when these treaties are ignored, this country is damaged.

We cannot have contractors where there is no accountability. You can fire a governmental employee. You can demote a governmental employee. You can discharge someone who is in the military who is doing the interrogating. When a contractor does this, there is no accountability except criminal law with all of its difficulties.

An Army memorandum dated December 26, 2000, that is still in effect today, made the express determination that gathering tactical intelligence is an inherently governmental function. According to our law, ''Contracts shall not be used for the performance of inherently governmental functions.''

We must make a critically important statement here today: We are going to hold people accountable for the kind of abuse that occurred. The only way you can do that is by having governmental employees—either uniformed or civilian—carry out these interrogations.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Now, Mr. President, I inquire of the desk, I think the other side has slightly gone over their time. I wonder if we might accommodate the chairman of the Intelligence Committee and ask that he be permitted to speak for 2 minutes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have no objection to that. We have a little more time on our side. But I ask unanimous consent that Senator DODD have 2 minutes to close following Senator ROBERTS.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Reserving the right to object, and that the Senator from Virginia be recognized for the purpose of the tabling motion following Senator DODD.

Mr. REID. Of course.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Virginia will have 2 minutes and the Senator from Connecticut will have 2 minutes.

Mr. WARNER. Mr. President, I yield my 2 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, I thank my distinguished chairman.

I rise to join the senior Senator from Virginia in opposing the Dodd amendment. I agree with the concern raised by the Dodd amendment, but let me point out that, as far as I am aware, no committee has held a hearing on how to lessen our reliance on contractors. Our armed services and our other agencies do rely very heavily on contractors.

The distinguished chairman has held three open hearings in regard to all of the incarceration problems and the problems that have been so heavily publicized. We have had three hearings in the Intelligence Committee that have been closed. We are going to follow up with a report by General Fay and others. In the Intelligence Committee, we have asked for the legal memoranda from the Justice Department on this whole issue.

I think this amendment attempts to prejudge the important work we would like to do on issues that are related to contractors and also detainees; yes, the military police; yes, the military intelligence.

Now, let's not forget that while some contractors—or for that matter, MPs, or military personnel—have been highly publicized in actions that nobody wants to see, contractors are saving lives right now in Iraq and Afghanistan, and they are giving their lives in the war on terrorism. So the problems that have come to our attention, it seems to me, my colleagues, are not necessarily inherent simply to contracting, but they are resulting from very poor management and also supervision.

We can address the problems as raised by the distinguished Senator from Connecticut, but we ought to do it in the right way. I do not think the Senate should act hastily on an important area. We are on top of it. We are conducting oversight.

So I must oppose this amendment and urge other Members to do the same.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I think I have made the case. I will just summarize it for you here.

Since September 11, we have been in a different world. Developing our capacity and our ability to conduct interrogations, to be able to understand the languages of other peoples so we understand what is going on, is critically important.

And our ability to have inhouse, within our military services, the capacity to conduct one of the most important functions—that is, to conduct interrogations and gather intelligence that protects our men and women in uniform—should not be outsourced to people whose major qualification is a bachelor of arts degree.

These young people who are being trained in the military may be young, but they are trained interrogators. That is what we ought to be doing. We have 539 new ones, in addition to the ones who exist today, coming out of school soon. We ought to be saying—as the military has asked us now for 4 years—do not contract this out. This administration's most recent Secretary of the Army said: Do not contract this out.

This ought to be an inherently governmental function: to conduct interrogations, to gather intelligence, to protect our men and women in uniform, and to advance our cause. The idea, somehow, that this is going to slow us down or make us incapable of doing our job is foolishness. We all know what is going to happen. If we have a partisan debate here that rejects the idea that we ought to have an in-house capacity in intelligence areas, then the Army, or some in the military, will read that as a signal that they can continue doing what they are doing.

That is dangerous, in my view, dangerous when you have a Department of the Interior agency actually doing the contracting out to private companies, where the desired capability, according to their own Web site, is not much more than a bachelor of arts degree. That is it.

It is the 21st century. The war is on terrorism. Let's wake up. I urge my colleagues to support the amendment and reject the tabling motion.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I simply say, this is not a vote or debate on a partisan issue. We both feel this issue has to be corrected. I simply plead for

reasonable time within which to do it, hopefully, to give greater security to our fighting men and women.

Mr. President, I move to table the amendment.

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

The PRESIDING OFFICER (Mr. CORNYN). Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 118 Leg.]

YEAS—54

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

NAYS—43

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

NOT VOTING—3

Bingaman	Edwards	Kerry

The motion was agreed to.

Mr. WARNER. I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I will suggest the absence of a quorum. I wish to advise Senators we are making progress. We are working out a UC request right now, and I hope to resume the bill very shortly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. WARNER. Madam President, the UC request is still under consideration. Very clear and forthright efforts are going forward on both sides. But in order to proceed on the bill, I ask unanimous consent that we turn to the Senator from Illinois, who will speak for a few minutes, and then it is my understanding a voice vote will be acceptable on his amendment. Following the adoption of that amendment, we will turn to the distinguished Senator from Kentucky for the McConnell-Bunning amendment.

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

AMENDMENT NO. 3386

Mr. DURBIN. Madam President, I ask at this point for consideration of amendment No. 3386.

The PRESIDING OFFICER. That amendment is pending.

Mr. DURBIN. Thank you very much, Madam President.

Madam President, I thank the chairman of the committee, Senator WARNER of Virginia, and my close friend and colleague on the Democratic side, Senator CARL LEVIN of Michigan, for their support of this amendment.

I think this amendment comes at the right moment in history. All across the world, many who are our friends and those who are not question whether the United States is abandoning its time-honored commitment to oppose torture, cruel, inhuman, and degrading treatment of detainees and prisoners.

The scandal at Abu Ghraib touched the heart of every American because it sent entirely the wrong message about the values of this country. We are not a country that will look the other way when it comes to this sort of horrific treatment. This amendment is a reaffirmation of our statement as Americans that we are committed, as every administration has been going back to President Abraham Lincoln, to oppose torture and the kind of inhuman conduct and treatment that we saw at Abu Ghraib prison.

I think this amendment also makes it clear to the Department of Defense that we want them to take this seriously, to establish guidelines consistent with our Constitution, with the laws of the land, and with the treaties that have been signed by Presidents, Democrat and Republican alike. These guidelines will be clear signals for every member of the U.S. military in terms of acceptable conduct when it comes to the interrogation and treatment of detainees.

The third step in this amendment says that any violations that are noted by the Department of Defense will be reported to Congress consistent with national security. Should there be a circumstance where classified or secret information would jeopardize the security of this country, it can be reported in that context to the appropriate committee and in no way diminish the security of this Nation.

I hope this overwhelming support for this amendment at this moment in time will say to those of us across America who feel it is important to send this message, and to those listening around the world, that the United States still stands strong by its commitments to oppose torture and the cruel and inhuman and degrading treatment of prisoners and detainees.

I thank the Senator from Virginia for his cooperation in this regard. I thank the Senator from Michigan for cosponsoring this along with Senator SPECTER of Pennsylvania.

Madam President, I ask that the Senate, at this point, accept the amendment which I have offered.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, the Senator from Illinois and myself and others were here well into the night last night as the Senator gave a very detailed dissertation on this subject.

I find the amendment basically recites this administration's policy. The unambiguous policy of this and preceding administrations is to comply with and enforce this Nation's obligations under international law. These obligations are embedded in American domestic law, including the Uniform Code of Military Justice, which explicitly incorporates the law of war.

President Bush has recently stated:

> We are a nation of law. We adhere to laws.

Secretary Rumsfeld, on June 13, stated:

> There is no wiggle room in my mind or the President's mind about torture. That is not something that's permitted under the Geneva Conventions or the laws of the United States. . . . It's required that people in custody be treated in a humane way.

So I think it is very appropriate that we do the codification, as the Senator recommends. I am hopeful that in the conference status Senator LEVIN and I can work to incorporate basically this amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, first, let me congratulate our good friend from Illinois for his leadership and determination to offer an amendment which will reflect our best instincts, our best values and our laws, both domestic and international laws to which we have subscribed. This amendment reaffirms the military's high standards, which are embodied in the Army's own field manual. Army regulations, which are cited in the ''findings'' sections of this amendment, explicitly require that all prisoners will receive humane treatment. They prohibit, among other things, torture and all cruel and degrading treatment.

The high standards in the manual, which are reinforced by this amendment, protect American soldiers. It is not just the right thing; it is not just

representing our own values. This protects American soldiers. If we lower our standards, it is only going to encourage others to engage in the torture or mistreatment of American prisoners of war in enemy custody.

The reaffirmation of our commitment to treat detainees humanely preserves our ability to demand full protections for American prisoners of war. This amendment is a clear way of reaffirming to the American people and to the world that the United States recognizes it is legally bound by international agreements. Indeed, we have promoted, we have been the leader in producing many of those international agreements relative to torture. We are going to comply with those obligations. There is one rule that applies to all. It applies to us. It applies to every other country. And we accept—indeed, we promote and proclaim—the wisdom of that rule.

I congratulate the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I ask unanimous consent that Senators LEVIN, SPECTER, FEINSTEIN, LEAHY, and KENNEDY be added as cosponsors of the amendment.

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

Mr. DURBIN. Madam President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 3386.

The amendment (No. 3386) was agreed to.

Mr. DURBIN. Madam 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.

AMENDMENT NO. 3438

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. BUNNING], for Mr. MCCONNELL, for himself and Mr. BUNNING, Mr. BINGAMAN, Mr. GRASSLEY, Mrs. CLINTON, Mr. DOMENICI, Ms. CANTWELL, Mr. VOINOVICH, Mr. SCHUMER, Mr. ALEXANDER, Mr. KENNEDY, Ms. MURKOWSKI, Mrs. MURRAY, Mr. DEWINE, and Mr. TALENT, proposes an amendment numbered 3438.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. BUNNING. Madam President, I rise today to offer an amendment cosponsored by Senator BINGAMAN and 16 other Senators including Senators GRASSLEY, CLINTON, DOMENICI, KENNEDY, STEVENS, CANTWELL, VOINOVICH, SCHUMER, ALEXANDER, MURKOWSKI, MURRAY, DEWINE, TALENT, DURBIN, BOND, and FEINSTEIN.

This amendment will fix the problems with the Department of Energy's compensation program for sick and injured cold-war workers at Energy sites throughout the country.

Since the end of World War II, workers at Department of Energy sites across the country helped our Nation face threats from our enemies by creating and maintaining our Nation's nuclear weapons.

Many of these workers sacrificed their health and safety and were exposed to harms unknown at the time in their work to preserve our freedoms.

In 2000, as part of the DOD authorization bill, Congress enacted the Energy Employee Occupational Illness Compensation Act.

This act was intended to give timely and reasonable compensation to Department of Energy employees suffering from diseases caused by working in the nuclear weapons program.

This program was split into two parts.

Subtitle B of the program is run by the Department of Labor for those workers with diseases from radiation and beryllium; and

Subtitle D of the program is currently run by the Department of Energy for those workers made ill from toxic substances.

Subtitle B of the program has been running well. The Department of Labor has completely processed more than 95 percent of the 54,000 cases it has received.

Subtitle D of the program, however, is completely broken and the Department of Energy has done an abysmal job running it.

For almost 4 years now, the Department of Energy has failed to process and pay claims of workers who were made ill by their work.

The Energy Committee has held 3 hearings on this issue which revealed the DOE's failure at administering this program. I should note that both the chairman and the ranking member of the Energy Committee are cosponsors of this amendment.

GAO has also studied this issue and found the DOE's performance subpar.

More than 24,000 workers or survivors have filed claims with the DOE for compensation for their illnesses.

DOE has now received $95 million for this program from Congress and only four claims have been paid.

Further, the program under the DOE has an uncertain process for compensating workers. Even if a worker is found to have an eligible claim, DOE has not identified an entity for all claimants who will pay those claims and serve as a ''willing payer.''

DOE's miserable job with this program is particularly troubling because of the Kentucky workers at the Paducah gaseous diffusion plant, where the uranium shipped to sites throughout the country was refined.

Under DOE's program, out of almost 3,000 former Paducah workers who have filed for compensation for their illnesses. Zero workers have received any compensation for their illnesses.

The Department of Energy's current track record for slow processing of claims makes me believe that it lacks the capability to handle the compensation program effectively.

The amendment transfers subtitle D claims processing operations from the Department of Energy to the Department of Labor, who is currently handling thousands of similar claims under subtitle B of the program.

The Department of Labor is one of the largest and most efficient claims operations in the country.

Payments will be made directly by DOL to the worker or survivor. This solves the current issue of no willing payer for all eligible claims.

The funds continue to be subject to annual appropriations as they currently are today.

CBO anticipates only minor costs associated with the transfer of the program to DOL.

This amendment fulfills the promise that Congress made to DOE workers in 2000 to provide payment and benefits for their illnesses due to toxic substances.

Many of these workers are dying and should not have to wait any longer for the Department of Energy to get its act together to process and pay the valid claims in a timely manner.

The current DOE program's lackluster performance is not what Congress envisioned when it passed this act in 2000.

It is imperative that we protect those workers who risked their health and safety to help us win the cold war.

I urge you to support this amendment and I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, I rise to speak in strong support of the Bunning-Bingaman amendment, of which I am a proud cosponsor.

At the outset, I want to thank Senator BUNNING and Senator BINGAMAN for their leadership and hard work on this amendment, and in bringing this to the floor. I also want to thank Senator GRASSLEY, Senator DOMENICI and the many other members who have worked on this amendment. The full list of cosponsors is a long, bipartisan list: BUNNING, BINGAMAN, GRASSLEY, CLINTON, DOMENICI, CANTWELL, VOINOVICH, SCHUMER, ALEXANDER, KENNEDY, MURKOWSKI, MURRAY, DEWINE, FEINSTEIN, TALENT, DURBIN, STEVENS, and BOND.

The purpose of our amendment is simple: We're here to help fulfill the promise that Congress made 4 years ago to some of our Nation's cold warriors. In 2000, thanks to the leadership of Senators VOINOVICH, KENNEDY, and many others, Congress passed the Energy Employees Occupational Illness Compensation Act as part of the FY

2001 Defense Authorization Act. That law was both a recognition of the Government's responsibility for exposing energy program workers to deadly radiation, and a promise that the Government would provide timely assistance and compensation to workers who were harmed by exposure to radiation and other toxic substances.

I think it is worth briefly revisiting some of the findings of that 2000 act, because I think it sets the context for this amendment. The findings of that act stated:

Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.

The policy of the Department of Energy has been to litigate occupational illness claims, which has deterred workers from filing workers' compensation claims and has imposed major financial burdens for such employees who have sought compensation. Contractors of the Department have been held harmless and the employees have been denied workers' compensation coverage for occupational disease.

Over the past 20 years, more than two dozen scientific findings have emerged that indicate that certain of such employees are experiencing increased risks of dying from cancer and non-malignant diseases. Several of these studies have also established a correlation between excess diseases and exposure to radiation and beryllium.

To ensure fairness and equity, the civilian men and women who, over the past 50 years, have performed duties uniquely related to the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies should have efficient, uniform, and adequate compensation for beryllium-related health conditions and radiation-related health conditions.

Although the findings of the 2000 act still stand, its promise of efficient, uniform and adequate compensation simply has not been met. That is what this amendment is about—Congress needs to make good on the promise it made in 2000.

Before I describe the amendment in detail, I want to make it clear that this amendment is a compromise. It does not contain everything that I would have liked to include, and I know that it reflects compromises on both sides. But there is no question in my mind that it will help workers in New York, and virtually everywhere else that our nuclear weapons production facility workers are found, and therefore I strongly support it.

As Senator BUNNING has described, Subtitle D of the 2000 act required DOE to review evidence to determine if a worker's illness was caused by exposure to toxic substances in their DOE work. Claimants with positive findings from the DOE physician panels were to be assisted by DOE in filing for and receiving State workers' compensation benefits due to them.

Processing of claims by DOE has been extremely slow. In 4 years, only 3 percent of claims have been processed by DOE. Eighty percent of subtitle D claims are languishing in the DOE system at the very earliest stages of development or with no work begun on them at all. There have been three Senate hearings in recent months examining the DOE's failed operation of Subtitle D of the EEOICPA program. GAO has studied DOE's efforts under subtitle D and found significant problems with both DOE's claims review process and DOE's ability to pay valid claims.

The bottom line is that after 4 years and more than $90 million in administrative funding, DOE admits that they have only provided compensation to four claimants of the more than 24,000 that have applied for assistance under the Subtitle D program. Our amendment addresses this problem by transferring claims processing operations to the Department of Labor, one of the largest and most efficient claims operations in the country. DOL is already processing thousands of similar claims under Subtitle B of EEOICPA and has already processed more than 90 percent of their claims. Our amendment assures that benefits due to workers or survivors will be paid according to the State laws covering the worker or survivor. The payments will be made directly by DOL to the worker or survivor. Benefits will be paid with appropriated funds, just as they would have been had DOE performed as expected. The Department of Labor's operation of this program is likely to be significantly more efficient and less expensive than DOE's current claims processing operation.

Although I would have preferred to see a uniform benefit established under subtitle D in this amendment, I believe that moving the subtitle D program to the Department of Labor will be a very significant improvement.

The amendment also corrects a significant problem associated with subtitle B of the 2000 Act. Under subtitle B of the Energy Employees Occupational Illness Compensation Program Act, workers are eligible for a payment of $150,000 and medical coverage for expenses associated with the treatment of certain illnesses resulting from exposure to radiation at atomic weapons plants. This part program is administered by the Department of Labor, and though its administration has been far better than the subtitle D program administered by DOE, it has had its share of problems as well. One of the problems is that workers who became sick from working in contaminated atomic weapons plants after weapons production ceased are not eligible to apply for benefits under subtitle B of the Act.

Recognizing that this was a potential oversight in the 2000 act, Congress directed the National Institute of Occupational Safety and Health to study the issue and report back to Congress. In 2003, NIOSH finished its study, entitled ''Report on Residual Radioactive and Beryllium Contamination in Atomic Weapons Employer and Beryllium Vendor Facilities.'' The report concluded potential for significant residual radioactive contamination existed in many of these plants for years and decades after weapons production ceased, posing a risk of radiation-related cancers or disease to unknowing workers.

In fact, the report found that: 97, 44 percent, covered facilities have potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred; 88, 40 percent, such facilities have little potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred; and 34, 16 percent, such facilities have insufficient information to make a determination.

In my State of New York, 16 of 31 covered facilities were found to have the potential for significant contamination, 10 had little potential for significant contamination, and 5 of the 31 had insufficient information. In other words, more than half of the New York Atomic Weapons Employer Facilities in New York were contaminated after weapons production ceased. As a result, workers were exposed to radiation, and deserve to be eligible for benefits under EEOICPA.

But this is not just a New York issue. The 97 facilities where NIOSH found the potential for significant residual radioactive contamination outside the periods during which weapons-related production are spread across 16 States. I want to briefly list these States for the benefit of my colleagues. They are California, Connecticut, Florida, Illinois, Indiana, Kansas, Massachusetts, Maryland, Michigan, Missoiuri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, and Texas.

Once the NIOSH report came out, it was clear that the law needed to be changed. The fact is that many of the facilities remained contaminated after weapons production ceased, and workers continued to be unwittingly exposed to radiation. That is why I introduced the Residual Radioactive Contamination Compensation Act, RRCCA, earlier this year, and I am pleased that with some modifications, it has been incorporated into this amendment.

The most important change that this provision will accomplish is that it will provide eligibility for benefits under subtitle B to workers who were employed at facilities where NIOSH has found potential for significant radioactive contamination. This just means that these workers will be eligible to

apply for benefits like the workers who were exposed to radiation during weapons production. We are not automatically granting them benefits. We are just saying that they ought to be eligible to apply. And that is only fair.

In addition to expanding eligibility to workers employed at facilities where NIOSH has found potential for significant radioactive contamination, the amendment would require NIOSH to update the list of such facilities by 2006. This addresses the fact that there was insufficient information for NIOSH to characterize a number of sites in its 2003 report.

As I pointed out earlier, fixing this so-called ''residual contamination'' oversight in the 2000 act will be very helpful to a small number of deserving workers in my State, particularly in western New York. And it will be similarly helpful to workers in the other 15 States that I mentioned.

Due to the efforts of Senator SCHUMER, the amendment would also establish a center in western New York to help people navigate the claim system. I want to applaud his work on this provision which will also be extremely helpful to New Yorkers. These are steps forward, and paired with the changes to the workers compensation portion of the program that Senator BUNNING has outlined, represent significant improvements.

Before I close, I want to make several additional points.

First, this is a modest amendment. The Congressional Budget Office estimates that making workers who were exposed to residual contamination eligible for benefits under subtitle B of the act, as I have described, will cost only $2.9 million per year over 10 years. The changes to subtitle D, the workers' compensation component of the program, are also relatively inexpensive. CBO anticipates the program will need an appropriation of an additional $2 million in FY 05 from the current program to pay for these changes, and that annual costs in future years will be on the order of $25 million per year annual costs. This is very close to the current scored amount for this portion of the program. All of these costs are fully offset in the amendment. This is a very small price to pay to help fulfill the promise that Congress made to weapons workers in 2000. It is not everything that I and others involved in the negotiations would have wanted, but it will make a significant difference.

Finally, I note that last week we celebrated the life and service of Ronald Reagan. Many of the tributes to President Reagan focused on his role in ending the cold war. Ronald Reagan was a commander in chief in that war—one of the last in a line of commanders in chief that stretched back to the end of World War II. As we all know, the cold war was a different kind of war—one that relied on deterrence, the credible threat of a massive retaliatory attack by the U.S. In a very real sense, the foot soldiers of that cold war included the men and women who toiled in the weapons production related facilities run by DOE and its contractors. These people were true cold war heroes, working in hazardous conditions, and in some cases, paid a heavy price in terms of their health. We owe it to them to fix the glaring flaws in the Energy Employees Occupational Illness Compensation Program.

As the Senator from Kentucky explained, the purpose of the program in 2000 was to remedy and provide compensation for workers who had been the warriors during the cold war. It was not a hot war. It was a cold war.

One of the commitments made by our Nation in passing the legislation in 2000 was to recognize our responsibility to workers who were exposed to radiation and to help them with medical and living expenses all these years later. One of the problems is that workers who became sick from working in contaminated atomic weapons plants or their contractors, after weapons production ceased, were not eligible to apply for benefits under the act. Recognizing that this was a potential oversight, the Congress directed the National Institute of Occupational Safety and Health to study this issue and report back to Congress.

In 2003, NIOSH—the national institute—submitted a report entitled ''Report on Residual Radioactive and Beryllium Contamination in Atomic Weapons Employer and Beryllium Vendor Facilities.'' That is a long way of describing that the NIOSH investigators found that some of the plants people have worked in were contaminated for years after the actual weapons production ceased or after the actual components for the weapons production in the contractor's plant ceased. The report concluded there was a potential for significant residual radioactive contamination that posed a risk of radiation-related cancers or diseases to unknowing workers. In fact, the report found that 44 percent or 97 of the facilities that fell into the category of being potentially residually contaminated did have evidence of such contamination; 88 such facilities have little potential for such contamination; 34 had insufficient information on which to base a determination.

In New York, 16 of 31 facilities that could have been considered residually contaminated were found to have significant contamination. I am not satisfied with the NIOSH findings because I think we now know more about where to look for and how to discover this residual contamination. The bottom line is that, even under the NIOSH report of 2003, we had workers in New York who were found to have been exposed to radiation and beryllium because of the work they did for our country through the contracting in order to produce the weapons needed in the cold war.

This is not just a New York issue, obviously. There are 16 States where this residual contamination has been found. So out of the NIOSH report it became clear that we needed to amend the law. I introduced the Residual Radioactive Contamination Compensation Act. I am pleased that, with some modifications, it has been incorporated into this amendment.

The most important change is we now will provide eligibility for benefits under subtitle B of the original act to workers who were employed at facilities where NIOSH has found potential for significant radioactive contamination. That means they will be able to apply for benefits just like the workers who we know were directly exposed to radiation during weapons production. They are not automatically eligible for benefits, but they now have a right to apply. That is only fair.

In addition to expanding eligibility for workers employed at facilities where the potential for residual contamination was discovered, my amendment requires NIOSH to update the list of such facilities by 2006. I have met with these men who worked in these plants. They came home from World War II—the vast majority of them—and they went to work in the industrial plants that were all over western New York in the late 1940s and 1950s, and they worked hard. They have distinct memories of rolling big coils of uranium around the floor of the plants, and uranium residue was falling into the fires of the steel mills. It is a very touching experience because they did what they were supposed to do. Many of them fought in Europe, in the Pacific, and came home after the war to lead their lives, raise their families. They worked hard for years, and now they are sick. So we need to fix this.

I am grateful for this amendment moving us forward. I am going to focus hard on NIOSH as they continue their work to meet the 2006 update deadline that this amendment imposes because I think there are other facilities—certainly in my State—where it is indisputable that they were contaminated by residual radioactive materials.

We are also establishing a center in western New York to help people navigate the claims system. As the Senator from Kentucky pointed out, the DOE has not done the job. We need to have a place where all of these workers, many of whom are in their seventies and eighties now, can go and get the information about this new law and they can get their claims expedited accordingly.

This is a modest amendment. The CBO estimates that making workers who were exposed to residual contamination eligible for benefits under subtitle B of the act will cost only $2.9 million per year over 10 years. The changes to subtitle D, the workers' compensation component of the program, are also relatively inexpensive. CBO anticipates the program will need an appropriation of an additional $2 million in fiscal year 2005 from the current program to pay for these changes, and that annual costs in future years

will be on the order of $25 million per year. This is very close to the current scoring amount for this portion of the program. The difference is we are not only going to do the program better and take care of more people, these costs are fully offset in this amendment.

Madam President, this is a very small price to pay to fulfill the promise Congress made to weapons workers in 2000 and that Americans made to these men over decades as they labored in these facilities. It is obviously not everything some of us would wish for, but it is a very honorable compromise, and the sponsors of the bill have worked very hard to bring it about.

So I hope that, in the wake of dedicating the World War II Memorial and the week of honors to President Reagan and his legacy, we recall that during the cold war we relied on deterrence. What that meant is we had to have a credible threat of a massive retaliatory attack by the United States against the Soviet Union in the event that they were to even consider acting against us.

In a very real sense, the soldiers of the cold war were also the men and women who toiled in these weapons production facilities run by DOE and the contractors, many of whom were in western New York and throughout my State. These were people who worked in hazardous conditions; many have paid a heavy price in terms of their health.

I am very pleased that today we are taking a step to fix the glaring flaws in the Energy Employees Occupational Illness Compensation Program, and I urge my colleagues to join in supporting the Bunning-Bingaman amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York, Mr. SCHUMER, is recognized.

Mr. SCHUMER. Madam President, I want to join all of my colleagues, including my good friend, the Senator from Kentucky, my colleague and friend, Senator CLINTON, Senator BINGAMAN, and so many others who are in support of this bipartisan amendment, which would not only improve many of the unsuccessful provisions of the Energy Employees Occupational Illness Compensation Program Act, but it would also address critical areas of concern important to workers that were not properly dealt with in the original legislation.

For decades during the cold war, thousands of New Yorkers labored in hazardous conditions at DOE and contractor facilities, unaware of the considerable health risks. Workers at these facilities handled high levels of radioactive materials and were responsible for helping create the huge nuclear arsenal that served as a deterrent to the Soviet Union during the cold war.

Although Government scientists knew of the dangers posed by radiation, workers were given little or no protection, and many have been diagnosed with cancer.

During the cold war, New York alone was home to 36 former atomic weapon employer sites and DOE cleanup facilities. In the 8 counties of western New York—in the Buffalo and Niagara region, where this is particularly a problem—there were 14 facilities that participated in the manufacture of America's nuclear arsenal.

Despite having one of the greatest concentrations of facilities involved in nuclear weapons production-related activities in the Nation, western New York continued to be seriously underserved by the Energy Employees Occupational Illness Compensation Program, not just for a year or two but for many years. Many constituents from my State went unaware of the program entirely or were not provided with sufficient information about how the claimant process worked. In the opinion of my constituents, this program was completely ineffectual in its ability to address their questions and concerns properly.

Despite statutory language in section 3631 of the original legislation, which required DOL to provide outreach and claimant assistance, the only assistance applicants received when applying for this program was from a traveling resource center that came to the area too infrequently to serve the public.

Today I am happy to say that the Bunning-Bingaman amendment would substantially improve the effectiveness of outreach and claimant assistance to applicants from the New York region by recognizing the need for a resource center in western New York. This is something we have been pushing for years. This would be a substantial step toward improving services for workers in my home State.

Upon successful passage of this legislation, I look forward to working with the newly established Office of the Ombudsman to locate a resource center in the western New York region. A permanent facility would not only increase awareness of the program among residents but would help serve workers throughout the claimant process.

Furthermore, this legislation would repair the definition of an ''atomic weapons employee'' to assure that those exposed to residual radiation after a facility finished processing radioactive materials for nuclear weapons programs would qualify to apply for benefits—a truly fundamental expansion on which my esteemed colleague Senator CLINTON has been a leader.

In a report released at the end of 2003, NIOSH identified 86 atomic weapons employer facilities across the country where there was a potential for significant residual radiation outside the period in which weapons-related production occurred, and 14 of those are in my home State of New York.

Passage of this new legislation would provide a significant opportunity for sick nuclear workers from across New York and the country who were formally excluded from this program to receive the compensation they deserve.

While the act was enacted to provide compensation to employees of the Department of Energy and its contractors who were exposed to radiation or other toxic substances, a significant portion of this program utterly failed—utterly failed—in its obligations to thousands of Americans who dutifully acted as soldiers on the front lines of the nuclear arms race.

After 4 years and more than $90 million in administrative funding, DOE admits they have only provided compensation to 4 claimants of the more than 24,000 who have applied for assistance under subtitle D. There have been multiple Senate hearings examining the failures of this program and particularly of subtitle D. GAO has studied DOE's efforts under subtitle D and found significant problems with both DOE's claims review process and the ability to pay valid claims.

Today we owe it to those who sacrificed their health and safety for the security of America to pass the Bunning-Bingaman amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I express my appreciation to the Senator from Kentucky, and the Senator from New Mexico as well. The Senator from Kentucky has worked diligently, consistently, persistently, and made certain that this amendment saw the light of day.

I thank the Senator from Virginia for permitting it to be considered in this way.

I only have a brief comment to make, but this is an important comment. As the Senator from New York said, this amendment will fulfill the intent of the act in 2000 which intended to provide for our cold-war veterans, our sick workers. The Senator from Alaska, who is in the chair, has been one of those who have spoken eloquently about this in the Energy Committee on which we both serve.

Over 24,000 of our Nation's cold-war veterans have filed claims with the Department of Energy, and over 18,000 of those claims are still being developed or awaiting development. There are more than 4,800 cold-war veterans in Tennessee who are sick and are getting the runaround from the Department of Energy. It needs to stop. We should be treating our cold-war veterans with the same respect they have treated our country.

As of March 18 of this year, 60 percent of these cases were still awaiting development—60 percent. The Department of Energy has had, as has been said already, nearly 4 years to get its act together and has yet to do so. This amendment will transfer the responsibility of claims from the Department of Energy to the Department of Labor. The Department of Labor currently

runs several workers' compensation programs and is well equipped to handle those claims. The changes will provide uniform medical benefits and allow a large number of claimants in the process to receive compensation much sooner.

I am proud to be a cosponsor of the amendment. I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, I rise today to join my colleagues, Senators BUNNING and BINGAMAN and the other supporters of this legislation, to support this very important amendment. This amendment will improve an existing program which provides financial and medical compensation to workers who were made ill as a result of their employment at the Department of Energy's nuclear weapons facilities.

Since the end of World War II, at facilities all across America, tens of thousands of dedicated men and women in our civilian Federal and contract workforce helped keep our military fully supplied and our Nation fully prepared to face any threat from our adversaries around the world by developing and building our Nation's nuclear weapons stockpile. The success of these workers in meeting this challenge is measured in part with the end of the cold war and the collapse of the Soviet Union. However, for many of these workers, their success came at a very high price. They sacrificed their health and even their lives, in many instances without knowing the risks they were facing, to preserve our liberty. I will not go into the details, but I saw the memoranda and all the other items they should have had available to them but which were kept from them. What happened to these workers was worse than what happened to the workers in the movie ''Erin Brockovich'' that many of us saw.

I believe these men and women have paid a high price for our freedom, and in their time of need this Nation has a moral obligation to provide some financial and medical assistance to these cold-war veterans. That is what they are—cold-war veterans.

To meet that goal, I worked with a bipartisan group of my colleagues 4 years ago to create a program that would provide financial compensation to Department of Energy contract workers whose impaired health has been caused by exposure to beryllium, radiation, or other hazardous substances. I have been pleased to be involved with this program from the beginning. In fact, the passage and creation of this legislation in 2000 was one of my proudest moments as a Member of the Senate. It took monumental efforts by a bipartisan group of my colleagues, many of whom cosponsored this amendment we are debating today. I said at that time the Holy Spirit was working because, without divine help, this would never ever have gotten done.

Under the current program, the Energy Employees Occupational Illness Compensation Program, workers suffering from beryllium disease, silicosis, or cancer due to radiation exposure because of their work in our national security programs are eligible for Federal compensation. The Department of Labor was assigned primary responsibility for administration and adjudicating these claims under part B of this act.

Under part D, the Department of Energy would assist claimants filing for compensation through State workers' compensation programs if a physicians panel found an occupational illness caused by chemical or other toxic exposure at a DOE site. Claims were not to be contested by contractors, and any compensation was to be paid by the Department of Energy.

This compromise package that was ultimately agreed to by Congress and signed into law was not what I originally supported in 2000. I introduced a bill which called for a Federal program administered entirely by the Department of Labor, but during congressional negotiations on the language authorizing the program, I agreed to this multiagency concept in order to reach a compromise creating the program. The fact is, if we did not agree to that, we would not have gotten a bill out of conference. So I agreed to it.

I have been pleased with the excellent program the Labor Department is running. Over 3 years after enactment, we have seen over 13,000 claimants receive compensation from DOL. On the other hand, I am becoming extremely frustrated with DOE's administration of part D of the program. More important than my frustration, however, is the fact that claimants who deserve answers and compensation are experiencing endless delays. I visited with some of those people. They cannot understand why this bureaucracy in Washington does not work.

While over 24,000 claims have been received by the Department, only 646 final decisions have been sent to claimants. Think about that: Out of 24,000, only 646 have been sent to claimants.

Even more shocking is that only four claimants have any compensation at all from the DOE portion of this program. I have always been skeptical of the capability of the Department of Energy to administer this because of their lack of experience in administering workers' compensation programs. I could have told them that when we started out, but no one would have listened.

Additionally, I was concerned about the role of State workers' compensation programs outlined in part D. As a former Governor, I was doubtful that a Federal program such as this would be able to work in each of the individual State programs.

There are two inherent problems within the existing program: continued delays and slowness in processing claims, and the so-called willing payer issue.

This amendment addresses both of those issues. In order to speed up claims handling and processing, this amendment moves administration of part D from the DOE to the DOL. I believe DOL is better suited to administering this program because they have significant experience in administering workers' compensation programs, including part B of the program.

This amendment also addresses the willing payer issue, another very important aspect. Under the current program, I understand it will be difficult for DOE to fulfill congressional intent in Ohio because there is not a contractor in place at the sites that can be compelled to pay the claims. They are no longer there. Many other workers nationwide are facing the same shortcomings in this program. In fact, the Ohio Bureau of Works' Compensation has tried unsuccessfully to work with DOE to ensure that this program works in Ohio.

The current administrator of the Ohio Bureau of Workers' Compensation is probably the best public administrator I have met in my life. He started with me when I was Lieutenant Governor, worked with me when I was mayor, and came to work with me as Governor of the State of Ohio. I would like to just quote from his letter to me and Senator DEWINE. He stated:

> I understand DOL's and DOE's concern with this amendment, but BWC must ultimately look at what is best for the customer, in this case, the injured workers; consequently, we feel the changes proposed by the amendment will result in positive developments. Since the program's inception, DOE has failed (for whatever reasons, some of which may not be the department's fault) to process its claims in a timely fashion. A recent General Accounting Office report stated that DOE had only processed 6 percent of the 23,000 received claims. Clearly, the current system is not working. We believe throwing more money into a system that does not work will only compound the problem.

The amendment we are considering today enjoys broad bipartisan support in the Senate. It is also supported by many State compensation systems and local labor organizations, including the Ohio Bureau of Workers' Compensation, the PACE locals at Mound and Portsmouth, and the Fernald Atomic Trades and Labor Council in my home State of Ohio.

I urge my colleagues to vote in favor of this amendment. It simply fulfills the promise that we made to these veterans of the cold war. We have kept them waiting too long.

I ask unanimous consent to have this letter from Administrator Conrad printed in the RECORD.

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

THE OHIO BUREAU
OF WORKERS COMPENSATION,
Columbus, OH, June 7, 2004.

Hon. MIKE DEWINE,
U.S. Senate, Russell Senate Office Building, Washington, DC.
Hon. GEORGE VOINOVICH,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DEWINE AND SENATOR VOINOVICH: I write today to express the Ohio Bureau of Workers' Compensation's (BWC's) support for the pending Bunning-Bingaman amendment to reform portions of the Energy Employees Occupational Illness Compensation Act of 2000. As you know, portions of this program, especially Subtitle D, have failed to process claims and assist injured workers with receiving their rightful benefits in a timely fashion. As stated in our previous letters, the Department of Labor (DOL) has found success implementing its part of the program (Subtitle B); however, the Department of Energy (DOE) has not met with the same results. Over the past two years, BWC has actively sought a positive solution to this problem with DOE and we are prepared to support the Bunning-Bingaman amendment to help move this program in the right direction.

I understand DOL's and DOE's concern with this amendment, but BWC must ultimately look at what is best for the customer, in this case the injured workers; consequently, we feel the changes proposed by the amendment will result in positive developments. Since the program's inception, DOE has failed (for whatever reasons, some of which may not be the department's fault) to process its claims in a timely fashion. A recent General Accounting Office report stated that DOE had only processed 6% of the 23,000 received claims. Clearly, the current system is not working. We believe throwing more money into a system that does not work will only compound the problem.

We believe the Bunning-Bingaman amendment will reform the system to speed up claims processing and benefit payouts. It will allow states to serve as consultants to advise the federal government on the benefit levels eligible injured workers should be receiving. In effect, the federal workers' compensation program outlined in this amendment offers fewer limitations and easier access to benefits for the injured workers of Ohio than did the previous system that was in place. The states will serve as guides to the federal government to help determine the correct benefit levels.

In addition, by shifting causation determinations and case development from DOE to DOL, it removes subjecting similar injured workers from having to go through multiple federal and state jurisdictions for approval. Injured workers receiving Subtitle B benefits are determined to be eligible for Subtitle D benefits, which will speed up claims and benefit distributions since 50% of all Subtitle D claims have already been awarded Subtitle B benefits.

In sum, we believe the amendment will help steamline the program and take the burden off the states while speeding up the process for the injured workers. It is our belief that the Bunning-Bingaman amendment will help resolve this problem and help bring relief to injured and ill Ohio workers and their families. As has been our history with this program, BWC stands ready to assist the process in any way possible.

Sincerely,

JAMES CONRAD,
Administrator/CEO.

Mr. GRASSLEY. Madam President, I rise to speak in support of the amendment offered by Senators BUNNING and BINGAMAN. This amendment, of which I am a cosponsor, makes significant and much needed reforms to the Energy Employees Occupational Illness Compensation Act of 2000.

Congress passed this law to provide timely, uniform, and adequate compensation to sick nuclear workers. These Department of Energy employees or contractors were made sick from exposure to toxic substances or radiation while assembling our nuclear deterrent. This law required DOE to help these former workers compile employment and medical records to assist in the filing of State workers compensation.

There are two facilities in Iowa that are covered under this law. Over 600 claims have been filed by former workers of the Iowa Army Ammunition Plant located in Middletown, IA. These patriots served on our Nation's homefront during the cold war, putting themselves at risk building nuclear weapons. The least our Government can do is provide the necessary assistance to ensure that those eligible for compensation receive it.

However, one thing has been made perfectly clear. The Department of Energy does not have the capability or expertise to fulfill their responsibilities under this act. I began to question DOE's ability to process these claims in April of 2003, when I noticed they had received over 15,000 claims and only a handful had been fully processed.

I questioned Secretary Abraham on this point. I followed up with Under Secretary Card a few months later. I was told on both occasions that all DOE needed was more time and more money. I was skeptical, to say the least.

Then, last fall, the General Accounting Office confirmed my suspicions. Their conclusions, in a report I had requested, were stunning. Of the more than 19,000 claims filed with the Department of Energy, only 6 percent had been completely processed, and over 50 percent remained untouched. Even more, GAO concluded that more money alone would not result in more timely processing.

Becasue it was clear that DOE had a substandard operation in place to implement this important program, Senator LISA MURKOWSKI and I took action. We offered and had accepted an amendment to the Energy and Water appropriations bill to transfer the claims processing from DOE to the Department of Labor.

We knew at the time that DOE was not on the right track, and that DOL had the experience and expertise to handle this compensation program. While we were successful in the Senate, the Department of Energy and their contract had their way, and our amendment was stripped in conference.

Since that time, I have testified before Chairman DOMENICI's Energy Committee twice to outline the abysmal performance of the Department of Energy. It was at the second hearing where I shared information I had uncovered about the contractor that DOE had hired to do this work.

While only 6 percent of claims had been fully processed, DOE believed it was perfectly reasonable to pay the program manager of their hired contractor $401,000 annually. The head of DOE's contractor costs the taxpayer more than the salaries of Secretary Abraham and Secretary Chao combined.

Today's bipartisan amendment is a comprehensive approach to finally put an end to the perpetual delay in claims processing and address the lack of a willing payor to pay valid claims in Iowa.

It is my understanding that the administration opposes our amendment because they believe it will create an unworkable process and delay the processing of claims. This is precisely the same position they held last October when Senator MURKOWSKI and I pushed similar reforms.

It is unfortunate that the administration hasn't realized during this time that the unworkable process and unnecessary delay is not a result of our efforts here in Congress but the result of 4 years of ineffectiveness at the Department of Energy. This amendment simply makes the original law work.

I hope my colleagues can support our efforts on behalf of the thousands of sick nuclear workers across the Nation. Through this amendment, these sick workers will finally receive the compensation they so richly deserve.

Mr. BINGAMAN. Madam President, I rise today to offer my support for the amendment offered by my colleague, Senator BUNNING, to reform the Energy Employees Occupational Illness Compensation Act.

The purpose of this act was straightforward when enacted in 2000: to compensate sick workers at Department of Energy facilities, and industrial sites, who performed work involving radioactive and hazardous materials associated with nuclear weapons. More importantly, it was to compensate them quickly, and with a minimal amount of bureaucracy, given that many of these workers are dying.

Unfortunately, 4 years later that does not appear to be the case for subtitle D of this act, as administered by the Department of Energy, which handles claims that are to go forward to State compensation boards.

Let me cite some statistics that indicate to me that there appears to be a structural problem with subtitle D. As of June 4, 2004, the Department of Energy has 24,354 cases pending to determine whether working at a DOE facility was the cause of their illness. Yet as of June 4, 2004, only four of the cases have received a favorable determination from State Worker Compensation Boards. The amount paid out for these four cases is approximately $139,000.

Over the past 4 years, the administration of this program has cost the taxpayers $95 million.

The Energy and Natural Resources Committee has held two hearings on this program to explore solutions to the problems we face under subtitle D. The first hearing was on November 23, 2003. It had seven witnesses, including Senator GRASSLEY and Under Secretary Card from the Department of Energy. The other five witnesses were experts in the field of injured worker compensation; all had worked on this program since its inception. At that hearing, the expert witnesses confirmed there were major problems processing the claims under subtitle D. Dr. David Michaels, the former DOE official who developed this program, told the committee that subtitle D, as administered by the DOE, was a failure.

The second hearing on March 30, 2004, included Senator GRASSLEY, DOE Under Secretary Card and officials from the GAO, Department of Labor and NIOSH. At this hearing, the DOE proposed several legislative changes to the processing of the claims, such as reducing the physician panels from 3 to 1 and increasing the pay for qualified physicians. In my opinion, these administration proposals fell short, yet these proposals are in the current Department of Defense bill the Senate is debating.

Because of these two hearings, Senator BUNNING and I are now proposing this amendment, which we believe will help fix some of the problems found under subtitle D. The amendment has undergone many hours of bipartisan staff discussion over several months.

The most significant element of the amendment is the shift of subtitle D from the DOE to the Department of Labor, which specializes in handling such claims. If the claim is found to have been caused by employment at a DOE site, the Department of Labor then pays the sick worker his lost wages at the time of his employment plus medical expenses, according to their State compensation formula at the time of employment.

This payment scheme is a positive step forward. It eliminates an adversarial adjudication in front of a State compensation board, which in some cases, even if positively adjudicated, will have no willing payer as the contractor has long since vanished. Sick workers who performed inherently unique governmental functions associated with nuclear weapons should not be subjected to this adversarial adjudication process.

I believe the remedy that Professor John Burton of Rutgers University proposed is the better approach. Professor Burton is the Nation's leading expert on workers compensation, and he has given advice on this legislation since it was first enacted. At the March 30 hearing, Professor Burton recommended a single formula modified according to the degree of disability. In this way, the Department of Labor is not tied to each State's compensation formula as in this amendment.

Nevertheless, I think this amendment reflects a bipartisan effort, and in doing so, compromises had to be struck by all parties.

I also ask unanimous consent to have printed in the RECORD a letter in support of the New Mexico Workers' Compensation Administration for fixing the program.

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

NEW MEXICO WORKERS' COMPENSATION COMMISSION STATEMENT ABOUT EEOICPA REFORM—JUNE 2, 2004

The NM Workers' Compensation Administration strongly supports concrete steps by the federal government to provide meaningful implementation of the EEOICPA. By meaningful implementation, we mean federal monetary compensation and medical care for workers made ill by exposure to radiation and toxic substances while performing jobs related to atomic weapon production and Cold War efforts. Our state, along with others, dedicated its most valuable resource, human lives, to the strengthening of the nation. New Mexico citizens are proud to have served. Many dignified New Mexicans, including our friend and beloved state Representative Ray Ruiz, have tragically passed away from work related illnesses while waiting for the federal government to fulfill promises contained in the Act. These fine people are patriots that were seriously injured while working on federal priorities. They are still waiting for federal help. The NM Workers' Compensation Administration stands ready and willing to assist in any way it can, and certainly will not stand in the way of federal authorities finally fulfilling the promises made to these citizens.

Sincerely,

ALAN M. VARELA,
Director, New Mexico Workers' Compensation Administration.

Mr. BINGAMAN. Let me note that even though this amendment proposes to move subtitle D from the DOE to the Department of Labor, the DOE will continue to play a vital role in locating and interpreting the workers' employment and medical records. This move will let the DOE concentrate solely on performing this important function without trying to administer a large claims processing program.

I conclude by thanking those who have contributed to this effort. I thank Ms. Kate Kimpan from Senator BUNNING's Office, who has provided neverending technical support on a complicated subject. I also thank Mr. Richard Miller of the Government Accountability Project, Mr. Jay Powers of the AFL–CIO, and others of the building trade unions. Richard Miller and Jay Powers have worked to help sick atomic workers since this program was initiated, and have continued to make Congress aware of its failings 4 years later; we owe both these gentlemen a debt of gratitude.

These workers and their families have suffered the pain of serious illnesses for so long—we should not make them suffer the indignity of trying to navigate Government red tape a moment longer. I urge my colleagues to support this amendment.

Mr. REID. Madam President, on June 10, the Las Vegas Review-Journal published an editorial about the program my friend from Kentucky seeks to fix. As the editorial noted, this program was created to compensate our cold war veterans who are sick from their work at nuclear facilities around the country, including the Nevada Test Site, during the cold war.

These brave men and women were not told that they were exposed to dangerous levels of radiation and other toxic substances. In fact, for years the Department of Energy knew the deadly effects of these substances but still resisted workers' attempts to seek compensation for their work-related illnesses.

The Energy Employees Occupational Illness Compensation Program, which began in 2000, was created to remedy the decades of stonewalling and deception by the DOE. When we worked to create this program in 2000, we put part of it under the auspices of the Department of Energy. We intended to provide relief to sick workers and their widows who are strapped with medical bills. As of April, only one worker in Washington State had received any compensation through the DOE program. Three more workers have now received compensation.

More than 24,000 workers have filed claims with the Department of Energy. After 4 years and about $74 million worth of work, exactly four of these workers have received compensation. The Review-Journal calls the DOE's program a ''boondoggle.'' I couldn't agree more. Many of these workers, if not most of them, are very sick. They are aging. If they have to wait much longer, they may not live long enough to receive the compensation they deserve. That isn't fair, and it isn't right.

My colleague from Kentucky is offering his amendment because these workers' illnesses will not wait for the DOE to fix this program on its own. This program has another serious problem that his amendment seeks to correct: some workers who file claims and deserve compensation have no entity to pay their claims.

In Nevada, for example, 482 workers have filed for compensation. If they were exposed to toxic substances at the Nevada Test Site before 1993, they would have no so-called ''willing payer'' of workers' compensation.

For 3 years, Congress has asked the Department of Energy to suggest a way to fix this problem. The best answer we have received is, we are looking into it.

In its last hearing on this program, the DOE said it had no responsibility to help workers through their State workers' compensation programs. The bureaucrats at DOE are missing the point of this program. Yes, DOE is finally beginning to admit to some of its workers that their jobs made them sick. That is a step in the right direction. But admitting responsibility for

these illnesses, and then declining to offer any help, is not in the spirit or the letter of the law we passed 4 years ago.

The Department of Energy was given a huge opportunity with this program to rectify its previous mistakes that caused these workers to become sick. I am very disappointed with what the DOE has done with that opportunity, but I am not surprised considering how they have botched our nuclear waste program.

I hope our action today will move us toward fulfilling the promises we made to these workers. Just as we would never leave a soldier on the battlefield, we must not leave behind these Americans whose work in the nuclear industry helped our Nation win the cold war.

Mr. KENNEDY. Madam. President, I support Senator BUNNING's amendment to improve the Energy Employees Occupational Illness Compensation Program Act. The program, for all its growing pains, is becoming a long-awaited success. It has now provided benefits to over ten thousand employees or their surviving family members.

Four years ago, I joined my colleagues Senators Thompson, BINGAMAN, and VOINOVICH to pass this program to compensate workers for the dangers they have faced from chemicals and radioactivity in their work in producing nuclear weapons many years ago. Many of them suffered debilitating and often fatal illnesses directly related to their exposure. The health and safety hazards they faced were not as well known as they are today, but in many cases, the government decided that production of the weapons was more important than the safety and health of the workers.

The compensation program was intended to right this wrong, and many of its goals have been achieved in the past 4 years. The Department of Labor has processed over 30,000 out of 55,000 claims, and made payments of over $870 million in compensation and medical bills.

Unfortunately, not all parts of the program have been as successful. The part handled by the Department of Energy is not functioning as it should. The Department has moved very slowly. After four years and more than $90 million in administrative costs, 80 percent of the 24,000 claims the Department has received have still not been fully processed.

Even workers who do make it through the system are not being paid. Because the payments are funneled through State workers' compensation systems, even persons who we acknowledge were made sick by their work have to fight for the compensation they are owed. At this point, we know of only four claims that have been paid.

This is why this amendment is needed, and I commend Senator BUNNING and Senator BINGAMAN for their leadership in developing this bi-partisan solution. I also commend the many other colleagues on both sides of the aisle who have been working on this amendment for several months in order to guarantee that the relief the workers and their families deserve as soon as possible.

The amendment will transfer the administration of claims from the Department of Energy to the Department of Labor, which will pay these claims directly. This step will make it substantially easier for thousands of deserving workers, retirees, and surviving family members to obtain the compensation and medical care they are owed. The amendment also expands eligibility to include workers exposed to residual contamination. I commend Senator CLINTON for her work on this specific problem, which is critical to many workers in Western New York.

The use of a State workers' compensation formula to calculate benefits should not be taken as a model in other cases. This was a unique compromise we reached in order to achieve timely payment of these claims, and is in no way an endorsement of a change in the benefit levels or structure of other Federal workers' compensation programs.

Clearly, we should be using a uniform Federal compensation formula to compensate these workers, because they were performing work for the federal government. A uniform formula is in keeping with the structure of other federal workers' compensation programs. It would also be far easier for the Department of Labor to administer, and I know the Department shares my views on this point.

In addition, other aspects of the compensation program deserve our concern. Thousands of workers are seeking entrance into a Special Exposure Cohort under another part of the program, and the rules for admission have just been issued by the National Institute of Occupational Safety and Health. Also, the dose reconstruction estimates still await processing for some workers in the building and construction trades. I urge the Institute to give high priority to this task so that further legislation will not be necessary.

This amendment is a needed step to carry out the compensation program. I welcome this bipartisan compromise and I urge my colleagues to approve the amendment.

Ms. MURKOWSKI. Mr. President, it is an honor to come to the floor today to speak in support of this amendment to the Department of Defense Authorization Act on behalf of nuclear workers. I am proud to cosponsor this amendment. Why am I am honored to speak on behalf of this amendment? Simply put, because it is the right thing to do. The nuclear workers who will receive compensation under this amendment helped America win the cold war. They worked in our nuclear research facilities, our weapons facilities or, in the case of Alaskans, at the site of the largest nuclear test our country ever conducted. It was through their hard work and courage that our Nation was able to triumph in the most significant challenge we faced during the second half of the 20th century.

Will the compensation to be provided nuclear workers under this amendment really repay our Nation's debt to them? Of course not. It will not come close. Sylvia Carlsson is the widow of an Amchitka worker. Her husband was a mine shaft workers on the Project Cannikin at the Amchitka, AK, nuclear test site in 1971. Project Cannikin was our Nation's largest nuclear bomb test. He was exposed to ionizing radiation during the course of his employment. He died of colon cancer before his 41st birthday. Bev Aleck and Nancy Woodward-Tremper are two of a number of other Alaskan widows with similar stories. Other former Amchitka workers, such as Andrew Akula, are still living but are suffering from life-threatening conditions. Ask any of these Alaskans whether this compensation will make up for lives lot or a lifetime of debilitating disease. It wouldn't. However, the compensation they have earned will at least show that a grateful Nation acknowledges their contribution to our national security.

Let me briefly talk about what this amendment actually does. First, and perhaps most importantly, my colleagues should recognize that this amendment does nothing more than cure deficiencies in Energy Employees Occupational Illnesses Compensation Program Act that Congress passed in 2000. It is narrow, focused legislation. It certain is no brand new entitlement program.

The Energy Employees Act of 2000 established two programs for compensating nuclear workers. The program under subtitle B of the act is administered by the Department of Labor. Numerous claims have been processed and many claimants found eligible have received compensation under the Department of Labor program. Indeed, the Department of Labor's implementation of subtitle B has been universally recognized as a success.

In sharp contrast to the Department of Labor's record, the processing of claims under subtitle D of the Act by the Department of Energy has been unacceptably slow. In 4 years, only 3 percent of claims have been processed by DOE. The great majority of claims remain unprocessed by DOE.

DOE's failure to successfully implement its portion of the Energy Employees Act has been the subject of two recent Senate Energy Committee hearings. The record of these hearings unequivocally reflects both DOE's dismal claims processing record and its failure to develop any plan to provide funds to a significant percentage of nuclear workers found eligible for compensation.

In addition to the Senate hearings, the GAO recently issued a report on DOE's implementation of subtitle D of the Energy Employees Act. It found numerous problems with both DOE's

claims processing efforts and confirmed the findings of the two Senate Committee hearings concerning DOE's ability to assure that claimant's found eligible would actually receive compensation.

I try to stay away from dry statistics when discussing issues that have such a direct impact on so many Americans' lives and health. However, I think that in this instance one statistic starkly illustrates the need for this legislation. After 4 years and more than $90 million in administrative funding, DOE has provided compensation to only 4—yes, 4—of more than 24,000 individuals that have applied for assistance under the subtitle D program.

There is nothing new or difficult about this legislation. There is nothing that requires lengthy reflection or consideration. This amendment simply implements legislation Congress passed 4 years ago. Unfortunately, what Congress intended in the 2000 Energy Employees Act has not occurred. This amendment addresses that failure.

I close my remarks as I began. Our Nation owes a debt of gratitude to the nuclear workers. It is well past time that we provided Alaskans and other Americans the compensation they have earned in service to our country. The workers and their survivors deserve no less.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Does the Senator from Kentucky wish to modify his amendment?

Mr. BUNNING. I will, following the Senator from Iowa.

Mr. WARNER. Fine. I ask my colleague to be able to wrap up this very important debate shortly.

Mr. HARKIN. Shortly.

Mr. WARNER. We are anxious to move on, and there will not be a requirement for a rollcall vote. I appreciate very much the cooperation because given the bipartisanship on this matter, it will be a timesaver as we move ahead on this bill.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I ask unanimous consent that I be added as a cosponsor to the pending amendment.

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

Mr. HARKIN. Madam President, I thank the Senator from Kentucky for also agreeing to modify his amendment with a provision of mine that would shorten the period of time that Congress has to review an administrative determination to add a class of nuclear weapons workers to a ''Special Exposure Cohort'' entitling them to automatic compensation from 180 days to 60 days. I appreciate the willingness of the Senator from Kentucky to accept that and to shorten that period of time to 60 days which will speed the process of compensating workers.

Senator BUNNING has worked very hard on this amendment. It takes some very important steps toward addressing very serious defects in an existing compensation program, and I hope that my colleagues will support the amendment today and hopefully we will not even need to have a rollcall vote.

In my State of Iowa, between the years of 1947 and 1975, almost 4,000 people were employed assembling, disassembling nuclear weapons. So great was the secrecy surrounding the facility, which was located inside an existing ammunition facility, that I did not even learn of its existence until late in 1997. I might add that when I was informed by certain workers that they had been exposed to dangerous radiation, I then submitted this to the Department of Army.

The Department of Army denied that they had ever worked on nuclear weapons at this facility. Well, I thought that was the end of it. I thought surely the workers must have been mistaken. Then I found out that it was the Army that was mistaken and, in fact, thousands of workers had worked at this plant in Iowa. Five and a half years later we are still trying to learn the full extent of the weapons activity and the radioactive materials to which Iowa workers were exposed.

During this same period, as the realization sank in that the cold war really was over, it became clear that nuclear weapons workers all over the country had been exposed to extremely dangerous radioactive materials without their knowledge and without adequate protection. As a result, many of the workers developed cancer and related occupational illnesses. That is why in 2000, Congress acted to create a compensation system for former atomic weapons workers.

The compensation system that we created had two distinct parts. The part addressed by the Bunning amendment today applies to workers who show that they have an illness that was more likely than not caused by the work they performed in these nuclear weapons facilities, and that they have been disabled by that illness.

Since the creation of the compensation program, this part has been administered—or I should say, quite frankly, has been NOT administered—by the Department of Energy. There are 23,000 workers who have filed claims with the Department of Energy. As of April of this year, exactly one person has received compensation.

When confronted with this appalling record, the Department of Energy continued to assert that it was making improvements and would have all the claims through the first stage of the process in no less than 5 more years! Of course, even if the Department had done a better job of processing the claims, not one single worker in Iowa would ever have been able to get paid. That is because the program was totally dependent on the existence of a current Department of Energy contractor who would be available to pay the claims.

This is a catch-22 situation for Iowa workers because Iowa has not had a DOE contractor since 1975. So as the program stands today, there is no way that any former Iowa atomic workers will be able to get compensation for their illness.

So I welcome the Bunning amendment, which transfers this program known as Title D from the Department of Energy to the Department of Labor and permits the Department of Labor to pay the claimants directly. This will mean that Iowa workers can actually receive compensation and medical benefits under this program. The Bunning amendment simply carries through on our original commitment in the 2000 bill that Congress believes that former nuclear weapons workers made ill by their employment are entitled to compensation.

I do believe this amendment should be a little bit better, and I will talk about an amendment that Senator BOND and I will be offering at some other point later on. First, the amendment continues to require that the amount of compensation under this program be determined based on the State compensation formulas. That means if a worker in Iowa and a worker in Kentucky or New Mexico had the exact same illness, they could nonetheless be receiving very different compensation awards. That makes no sense and creates a ridiculous burden on the Department of Labor in attempting to get these claims processed and paid.

In addition, the level of compensation paid under this program is in my opinion inadequate. The amount that a former worker can receive is calculated based on his or her wage at the time of the disability. In Iowa, this means that the absolute best case scenario is that a worker would receive eighty percent of a 1975 wage, a wage from almost 30 years ago, with no adjustment for interest or inflation.

Under the absolute best case scenario, where a worker is determined to be 100-percent disabled by an injury, that worker would receive about $105 a week, or about $5,000 a year. That is the best case scenario. Most will receive much less.

I think every atomic worker in America who can show they have been injured ought to receive the same pay, whether they worked in Kentucky, Ohio, New Mexico, Colorado, Iowa, Alaska, or Missouri. Basing this on workers' comp wages in each State, again, skews it that way. I believe the amount they are being paid is too low. To base it on a wage of 30 years ago is totally inadequate.

But nonetheless, I believe this amendment is a major step forward for workers in Iowa and across the country. I just wish we could find a more simple and uniform and more generous method for awarding this compensation.

In addition, this amendment essentially leaves untouched the other half of the energy workers compensation program. Basically, we are talking about two titles: Title D, which the

Bunning amendment addresses, and then there is Title B. That provides a flat sum of $150,000 and medical benefits to workers with cancer and beryllium disease.

There are two ways for a worker to qualify for this compensation under Title B. The first is to qualify for automatic compensation as a member of a special exposure cohort. When we originally passed the bill, workers from Kentucky, Ohio, Tennessee, and Alaska were designated for this automatic compensation. My question is, Why not all the other atomic workers around the country? Why were they left out? Why should they not be included in part B? Why should those who worked in Iowa who were exposed not be included? So that is the special exposure cohort.

The second way to qualify for the title B, the cancer and beryllium title, and the only method available to the workers in Iowa at the Iowa Army ammunition plant and at facilities in Missouri and at other facilities across the country, is to go through a process where a worker's dose of radiation is reconstructed based on all the documents and information gathered from the site.

At the time the bill passed Congress in 2000, Congress recognized there would be situations where it was simply not feasible to reconstruct workers' doses because relevant records of dose are lacking or do not exist, or because it might take so long to reconstruct a dose for a group of workers that they will all be dead before we have an answer to who is eligible.

That, unfortunately, is precisely the situation in which we find ourselves in Iowa. The Iowa Army ammunition plant facility was in operation, as I said, from 1947 to 1975. The people who worked there who are still alive are elderly, and they are ill. Many have died since we first passed the bill. Bob Anderson, the gentleman who first wrote to me about the fact that they made nuclear weapons in Iowa at this facility, will undergo surgery for thyroid cancer this week. That is in addition to the lymphoma from which he already suffers. Yet almost 4 years into this program, only 38 Iowans have received compensation, and that 38 does not include a single person who suffers from cancer—not one.

These people cannot afford to wait any longer. That is why I will be offering an amendment with Senator BOND to allow workers from our facility to receive automatic compensation as part of a special exposure cohort, the same as the workers in Kentucky, Ohio, Tennessee, and Alaska.

Why should Iowa workers be added to the category entitled to this automatic compensation? Because what we have learned since 2000 is that Iowa has the single worst record of any facility in the country involved in nuclear weapons production. After 3 years of hard work by researchers at the University of Iowa and by the National Institute of Occupational Safety and Health, they have concluded there are no records anywhere that document the level of internal radiation exposure to which workers in Iowa were exposed—none, no records.

With regard to external doses, which are measured by having workers wear badges, between 1948 and 1958 not one single worker in Iowa wore a dose badge—not one. So how can you reconstruct it when, for 10 years, they didn't even wear a dose badge? And, when they did begin wearing badges, it was minimal. Between 1959 and 1965, somewhere between 8 and 35 workers a year wore badges out of a workforce of 800 to 1,000 at that facility. This is despite the fact that just this week, at a meeting of former workers, they told my staff that based upon the way the plant was set up, at least 156 workers a year were exposed to the highest levels at the plant.

Listening to these workers, some of whom worked side by side while one wore a badge and the other didn't, gives a sense of just how totally lacking the facility was in terms of monitoring the radiation that these workers received. Up until 1968, the highest percent of the DOE employees who were monitored was 7 percent, and I am told that these were badges that workers wore on their collars while they were working with nuclear material at waist level.

Just in the last couple of months, NIOSH, the National Institute of Occupational Safety and Health, has completed a ''site profile'' of the Iowa Army Ammunition Plant that acknowledges these grossly inadequate records. But what is their approach now? They believe they can reconstruct this dose that Iowa workers got by looking at an entirely different facility in Texas during an entirely different time period. This is not fair and it is not right. It is time to admit that Iowa is a site where it simply is not possible to perform dose reconstruction. The Government simply doesn't know what went on at the facility and to what the workers were exposed. That makes it impossible to perform timely dose reconstruction based on science.

For example, in a site profile, NIOSH assumed that the entire work of the facility consisted of assembly work where the workers were protected from the most virulent types of radiation because the neutrons were already shielded with a hard coating when they arrived at the plant. But in a meeting with former workers, they spoke of how weapons were regularly disassembled. The protective outer coat was removed, exposing them to high doses of neutron radiation.

I know the chairman is anxious to get on, but this is extremely important to hundreds of people in the State of Iowa who are sick today with cancer, who are sick today with other diseases, who worked in these plants, who never were told to what they were exposed. We have been fighting, I say to my friend from Virginia, we have been fighting for years to get these poor people covered and they are dying every day and they are not being compensated.

Mr. WARNER. Mr. President, I have personally observed the Senator from Iowa and the Senator from Kentucky for years, and finally they have brought it to fruition. We are ready momentarily to act and accept the amendment.

Mr. HARKIN. I know. I am supporting the amendment. What I am trying to say here on the Senate floor is that even with this amendment there are certain people in Iowa who, because of the way it is structured, will not be adequately compensated. What I am saying to my friend from Virginia and others on the Senate floor is there is a special program that exists in about four different States where if workers have cancer or beryllium illness, they are automatically compensated. In Iowa, because we have no records of dosages and these people have cancer from beryllium, they should have also been put into that special program. Why should atomic workers from one State be put into that and atomic workers from another State exposed to the same kind of radiation not be?

That is the case I am making here. I support the amendment. It takes us a long way. It gets us out of the Department of Energy into the Department of Labor. But it does not address the part of the compensation program that provides for people with cancer. I am saying NIOSH cannot do it, cannot reconstruct the radiation doses of people suffering from devastating cancers. These people in Iowa I believe are being discriminated against. They cannot reconstruct valid doses.

This is exactly the type of situation Congress foresaw when we passed this legislation in 2000. Former weapons complex workers in Iowa are old, they are sick, and they are dying. I mentioned one who just had a lymphoma operation, and he is now undergoing a thyroid operation this week. He was exposed year after year to deadly radiation.

I will close by saying that at a meeting of workers in Burlington, IA, earlier this week we heard from a number of workers—one who worked with weapons for 3 years in the 1960s. Two of her children were born with very serious birth defects which the doctors themselves attributed to radiation exposure. She herself has now developed cancer. We heard from workers who talked about the hair on their legs and arms standing on end when they were near the weapons even though the weapons were cool to the touch. We heard from children whose parents had died when they were young because of lung cancer, kidney cancer, and other cancers, and who worked for years in this facility.

What these people are seeking is not just about money; it is about an acknowledgment that they were put in harm's way without their knowledge. They are seeking an acknowledgment that they made a sacrifice on behalf of the good of this country and for the protection of this country. To require these workers to continue to wait for that justice is not fair and it is not right.

I thank Senator BUNNING and Senator BINGAMAN for their hard work on this amendment. This amendment, as I say, fixes one-half of the compensation system. This is a major step forward. I also say to my colleagues that we are not doing justice for all these workers.

Senator BOND and I will be offering an additional amendment as we proceed on this bill.

There is no reason we should not add the workers from these two facilities to the special exposure cohort. When we originally passed this bill, we created a fund with mandatory spending in the Department of Labor. The Congressional Budget Office analysis devotes almost $700 million for payment of compensation to workers included in the special exposure cohorts—the cancer cohorts. Today, even though the vast majority of claims by workers in those four States who are eligible for this cohort have been paid, just over $400 million has been spent. But the Congressional Budget Office devoted $700 million. The money is there. The money has already been accounted for. We just ask that these workers be acknowledged for the sacrifices they made for their country and that they be included in the special cohorts.

I again thank the Senator from Kentucky.

I yield the floor.

MODIFICATION TO AMENDMENT NO. 3438

Mr. BUNNING. Madam President, I ask unanimous consent that my amendment be modified by the language currently at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The modification is as follows:

At the end insert:

REVIEW BY CONGRESS OF INDIVIDUALS DESIGNATED BY PRESIDENT AS MEMBERS OF COHORT

Section 3621(14)(C)(ii) of that Act (42 U.S.C. 10 7384*l*(14)(C)(ii) is amended by striking ''180 days'' and inserting ''60 days''.

Mr. REID. Madam President, before this amendment is agreed to, I ask unanimous consent that the Senator from Washington be allowed to speak for up to 3 minutes on this amendment.

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

The Senator from Washington.

Ms. CANTWELL. Madam President, I rise as a sponsor of the Bunning amendment, and I thank the Senator from Kentucky for his hard work—both on the Energy Committee and here on the floor of the Senate.

Obviously, we are taking a giant step forward in moving major responsibility for the Energy Employee Occupational Illness Compensation Program at the Department of Labor.

There are thousands of people in Washington State who have been impacted by exposure while working at the Hanford Reservation. The issue is that in 2000, with passage of the original act, as my colleague from Iowa stated, we set up specific exposure cohorts that allowed workers in particular regions of the country to get compensation based on their exposure to beryllium. But where we are today is there are still thousands of workers who have not had their claims processed.

One of the reasons why claims haven't been processed is specific information doesn't exist or was not kept by the various employers at these reservation sites across the country to show what exposed employees endured. The issue then becomes that they have been left to fight their own battles—to fight to get compensation, to fight to prove they actually had exposure, and to fight to pay their medical bills.

With thousands of people in Washington State affected by this, I have been a big supporter of those responsibilities over at the Department of Labor. Besides that, this great ombudsman program is where individual employees can go to ask for help and support in moving their cases.

It also helps in establishing a willing payer. Some of the companies that have been involved in the cleanup process throughout the U.S. no longer exist. We have had employees who wanted to get compensation, and have proven their cases, only to find that no employer existed. This helps in establishing a willing partner and payer.

But the most specific and positive aspect of this legislation is the step forward in saying, let us do site profiles. Site profiles are specifically the responsibility of the Department of Labor to go to a place such as the Hanford nuclear reservation and say, even though some of the employers may not have kept day-to-day logs and details about every specific employee and how they were exposed—and my colleagues have articulated on the Senate floor already how so many people in their States did not have records kept and went to get records by the Department of Energy only to find they didn't exist for the individual employee. When the Department of Labor does a site profile, it will help us when we come back and say that a large class of people at the Hanford Reservation and possibly these other sites around the country now qualify for compensation. This will help expedite that.

The amendment that was modified by the Senator from Kentucky, which the Senator from Iowa worked on, is a very helpful amendment because it actually helps speed up that process of those site profiles.

I don't think it is lost on my colleagues that many of these people are dying. Many of these people, by the time this program under the DOE was going to be finished, were never going to get the help they deserved.

This amendment takes a very positive step forward in getting site profiles done, getting the information needed to prove that these people have been impacted, that they have had illness due to exposure on the job, and that they will not get some help.

I yield the floor.

Mr. WARNER. I urge adoption of the amendment.

The PRESIDING OFFICER (Mr. HAGEL). The question is on agreeing to the amendment, as modified.

The amendment (No. 3438) was agreed to.

Mr. WARNER. 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. WARNER. I will address the Senate with regard to a unanimous consent which has been crafted carefully on both sides of the aisle.

I ask unanimous consent that Senator GRAHAM now be recognized to call up his amendment No. 3428, and that it be further modified with the changes at the desk. I further ask consent that there be 15 minutes for debate equally divided on the amendment, and that following that time the amendment be agreed to and the motion to reconsider be laid upon the table.

If further ask that following disposition of the Graham amendment, Leahy amendment No. 3292 be the pending question, and that I be recognized to send up a second-degree amendment, No. 3452.

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

AMENDMENT NO. 3428, AS MODIFIED

Mr. GRAHAM of South Carolina. I send my modification to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for himself and Mr. CRAPO, Mr. CRAIG, and Mr. ALEXANDER, proposes an amendment 3428, as modified.

The amendment is as follows:

On page 384, line 15, strike ''by rule in consultation'' and all that follows through page 385, line 21, and insert ''by rule approved by the Nuclear Regulatory Commission;

(2) has had highly radioactive radionuclides removed to the maximum extent practical in accordance with the Nuclear Regulatory Commission-approved criteria; and

(3) in the case of material derived from the storage tanks, is disposed of in a facility (including a tank) within the State pursuant to a State-approved closure plan or a State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this Act.

(b) INAPPLICABILITY TO CERTAIN MATERIALS.—Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the State.

(c) SCOPE OF AUTHORITY TO CARRY OUT ACTIONS.—The Department of Energy may implement any action authorized—

(1) by a State-approved closure plan or State-issued permit in existence on the date of enactment of this section; or

(2) by a closure plan approved by the State or a permit issued by the State during the pendency of the rulemaking provided for in subsection (a).

Any such action may be completed pursuant to the terms of the closure plan or the State-issued permit notwithstanding the final criteria adopted by the rulemaking pursuant to subsection (a).

(d) STATE DEFINED.—In this section, the term ''State'' means the State of South Carolina.

(e) CONSTRUCTION.—(1) Nothing in this section shall affect, alter, or modify the full implementation of—

(A) the settlement agreement entered into by the United States with the State of Idaho in the actions captioned Public Service Co. of Colorado v. Batt, Civil No. 91–0035–S–EJL, and United States v. Batt, Civil No. 91–0054–S–EJL, in the United States District Court for the District of Idaho, and the consent order of the United States District Court for the District of Idaho, dated October 17, 1995, that effectuates the settlement agreement;

(B) the Idaho National Engineering Laboratory Federal Facility Agreement and Consent Order; or

(C) the Hanford Federal Facility Agreement and Consent Order.

(2) Nothing in this section establishes any precedent or is binding on the State of Idaho, the State of Washington, the State of Oregon or any other State for the management, storage, treatment, and disposition of radioactive and hazardous materials.

NATIONAL ACADEMY OF SCIENCES STUDY

(a) REVIEW BY NATIONAL RESEARCH COUNCIL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Energy shall enter into a contract with the National Research Council of the National Academies to conduct a study of the necessary technologies and research gaps in the Department of Energy's program to remove high-level radioactive waste from the storage tanks at the Department's sites in South Carolina, Washington and Idaho.

(b) MATTERS TO BE ADDRESSED IN STUDY.—The study shall address the following:

(1) The quantities and characteristics of waste in each high-level waste storage tank described in paragraph (a), including data uncertainties;

(2) The technologies by which high-level radioactive waste is currently being removed from the tanks for final disposal under the Nuclear Waste Policy Act;

(3) Technologies currently available but not in use in removing high-level radioactive waste from the tanks;

(4) Any technology gaps that exist to effect the removal of high-level radioactive waste from the tanks;

(5) Other matters that in the judgment of the National Research Council directly relate to the focus of this study.

(c) TIME LIMITATION.—The National Research Council shall conduct the review over a one year period beginning upon execution of the contract described in subsection (a).

(d) REPORTS.—

(1) The National Research Council shall submit its findings, conclusions and recommendations to the Secretary of Energy and to the relevant Committees of jurisdiction of the United States Senate and House of Representatives.

(2) The final report shall be submitted in unclassified form with classified annexes as necessary.

(e) PROVISION OF INFORMATION.—The Secretary of Energy shall make available to the National Research Council all of the information necessary to complete its report in a timely manner.

(f) EXPEDITED PROCESSING OF SECURITY CLEARANCES.—For purposes of facilitating the commencement of the study under this section, the Secretary of Energy shall expedite to the fullest degree possible the processing of security clearances that are necessary for the National Research Council to conduct the study.

(g) FUNDING.—Of the amount authorized to be appropriated in section 3102(a)(1) for environmental management for defense site acceleration completion, $750,000 shall be available for the study authorized under this section.

The PRESIDING OFFICER. The Graham amendment is so modified.

Mr. GRAHAM of South Carolina. We have 7½ minutes?

The PRESIDING OFFICER. The Senator has 7½ minutes.

Mr. GRAHAM of South Carolina. Mr. President, I would like to speak for 2 minutes.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM of South Carolina. Mr. President, many thanks to a lot of people for resolving an issue important to South Carolina. This amendment is a work product of Senators CRAPO, CRAIG, myself, and others. Senator CRAPO has been terrific to work with, along with Senator CRAIG.

We have now put into place an amendment that well defines what we were trying to do. I am trying to clean up 51 tanks of 37 million gallons of high-level nuclear waste in South Carolina, 23 years ahead of schedule, saving $16 billion. My intent has been to do just that and no more.

The Crapo-Craig-Alexander amendment clearly says the agreement between DOE and South Carolina is South Carolina specific. Senator ALEXANDER's language says the Nuclear Regulatory Commission will always retain the power to determine what high-level versus low-level waste is. The $350 million in question will flow to Idaho and Washington regardless of an agreement or the lack thereof. The Crapo-Graham amendment has been worked with Senator CANTWELL, and it does not prevent the disposition plan that has been agreed to in South Carolina.

I thank all Members. There will come a day when Idaho and Washington will need like help, and I will be there. I want the people in South Carolina to know without the help of Washington and Idaho, this would not have happened. There will be a day when they need our assistance, and I will be there. This is a win-win. There is nothing in this amendment that will prevent section 3116 from moving forward.

I yield back any time I have.

Mr. ALEXANDER. Mr. President, I express my gratitude to the Senators from Idaho, and the Senator from South Carolina for working with me on this amendment. I voted against the Cantwell motion to strike because Senator GRAHAM agreed to work with me in making some modifications to the underlying bill.

I am not opposed to reclassification of radioactive waste. What I believe is that the Nuclear Regulatory Commission must have a central role in this process.

The bill as it stands now grants the Department of Energy the right to reclassify nuclear waste from high-level to low-level waste. Under current law, only the NRC has authority to define high-level and low-level radioactive waste. Congress gave the NRC that authority in the Nuclear Waste Policy Act of 1982. The NRC's authority should be maintained. We should keep that authority in the hands of one regulatory agency.

This perfecting amendment ensures that the NRC has the final say in any re-classification criteria. One amendment would modify Section 3116 of the bill to require the NRC to approve the criteria that the DOE uses to determine whether waste incidental to reprocessing is high-level or low-level radioactive waste. This would maintain the NRC's authority over defining radioactive waste.

I hope my colleagues will support quick adoption of this amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. I appreciate the opportunity to speak on this amendment. I appreciate the hard work of all those involved as we have negotiated these very important issues to the Nation, particularly to the States of South Carolina, Idaho, and Washington.

When we put together the South Carolina language last week and debated it in the Senate, there was a question raised whether that would cause any impact with regard to agreements that had been reached or to negotiations that were underway between the State of Idaho and the Department of Energy and Washington and the Department of Energy.

This amendment makes it very clear that there is no precedent value of the South Carolina language that would impact or in any way alter or amend the agreements of the State of Idaho and the State of Washington that they have with the Department of Energy, or create any precedent for any negotiations now underway between those two States.

The language says that nothing in the section shall alter, affect, or modify the full implementation, and it lists the various agreements for Idaho, most important of which is the Batt agreement.

Then it says:

(2) Nothing in this section establishes any precedent or is binding on the State of Idaho, the State of Washington, the State of Oregon, or any other State for the management, storage, treatment, and disposition of radioactive and hazardous materials.

It is very clear by statutory language now—if it was not already clear before, which we believe it was—that the South Carolina agreement stands by itself. The States of Idaho, Washington, and all other States will be free to negotiate their own arrangements and relationships with the Department of Energy.

Again, I thank Senator CRAIG, Senator ALEXANDER, and Senator GRAHAM for working so closely with me. Senator CANTWELL from Washington has worked closely with us on this issue. I appreciate everyone coming together with a strong resolution to resolve these critical issues.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the chairman of the Defense Authorization Committee for his cooperation and the ranking member for allowing Idaho and Washington and South Carolina to resolve what was and has been, at some points along the way, a contentious issue. But foremost, I thank my colleague from Idaho, MIKE CRAPO, for the diligence that he has put into making sure that Idaho remains whole in its agreement, that Washington remains whole in its agreement, and that South Carolina be allowed to gain an agreement with the Department of Energy, and, if you will, to wipe away the fog that had been created by a court decision that did not, in the opinion of the Department of Energy and the OMB, allow them a clear path forward to continue to spend money for the purposes of cleanup.

We think this language allows that clear path forward while allowing the State of South Carolina to arrive at an agreement different from that which the State of Idaho or the State of Washington has.

I agree, the language is not precedent-setting. Idaho is still very whole in the relationship it has currently with the Department of Energy. My goal, and the goal of the other Senator from Idaho, MIKE CRAPO, has always been to assure that cleanup goes forward without a hitch, and this language will allow that to happen, for the $90-plus million that was dedicated to cleanup in Idaho for this coming year to be allowed to be applied for that purpose. We think that is critically important as we move down this path.

We have worked closely with the State of Idaho. We think this does meet the concern of the State of Idaho. They have vetted this language and understand it clearly. We hope we have now resolved any question anyone might have as to Idaho's role and primacy as it relates to its relationship with the Department of Energy for the purposes of cleanup.

I say to the chairman, thank you for your willingness to be flexible as we have worked out these difficulties.

I appreciate the positions and concerns of the Senator from Washington. We hope this language keeps Washington as whole as we believe it does and as we believe it keeps Idaho, while allowing the State of South Carolina to proceed down a path that could be somewhat different from that which we might choose.

With that, I yield the floor.

Mr. ALEXANDER. Madam President, I wish to express my gratitude to the Senator from Idaho and the Senator from South Carolina for working with me on this amendment and allowing me to be a cosponsor. I voted against the Cantwell motion to strike because Senator GRAHAM agreed to work with me in making some modifications to the underlying bill.

I am not opposed to reclassification of radioactive waste. What I believe is that the Nuclear Regulatory Commission must have a central role in this process.

The bill, as it stands now, grants the Department of Energy the right to reclassify nuclear waste from high-level to low-level waste. Under current law, only the NRC has authority to define high-level and low-level radioactive waste. Congress gave the NRC that authority in the Nuclear Waste Policy Act of 1982. I think the NRC's authority should be maintained. We should keep that authority in the hands of one regulatory agency.

This perfecting amendment ensures that the NRC has the final say in any reclassification criteria. Our amendment would modify Section 3116 of the bill to require the NRC to approve the criteria that the DOE uses to determine whether waste incidental to reprocessing is high-level or low-level radioactive waste. This would maintain the NRC's authority over defining radioactive waste.

I hope my colleagues will support quick adoption of this amendment.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, are we ready to vote on this matter?

I urge adoption of the amendment.

The PRESIDING OFFICER. There is still 7½ minutes remaining for debate.

Mr. WARNER. Mr. President, I yield back the time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3428) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I had wished to speak on the previous amendment. I thought that was part of the agreement, but I will be more specific now, since the amendment has just been adopted by voice vote; and that is to say, the amendment allows us to do a study, it allows the Department of Energy to receive information from the National Academy of Sciences in the future about the ground water conditions and environmental conditions from any kind of proposal or plan on which the Department of Energy would like to move forward.

I think my colleague from South Carolina said it best when he said our colleagues in the Senate have probably learned more in the last few weeks about nuclear waste and our responsibilities as the Federal Government than they have at any previous time.

But I guess I disagree with my colleagues. This debate is far from over. I do not agree with the underlying bill or where it is going in changing the definition of nuclear waste. No State in America should be allowed, on the Environmental Protection Act, on the Clean Water Act, on any legislation, to cut a deal behind closed doors with the Federal Government and think they are going to stick the American consumer with waste in their backyard.

While this particular amendment that we just voice-voted will allow us to say that we want this to look no further than what South Carolina is proposing, and that we want DOE to do its job in providing an environmental study and analysis of this issue, this issue is far from over for the American people.

This issue not only impacts my State, and the States of Oregon and Idaho, it affects every Western State. The reason it affects every Western State is because the Department of Energy has been trying to reclassify waste all over the West, push it into New Mexico, cut it across Arizona, and demand that waste from South Carolina be accepted in Washington State. We just had to file suit recently because high-level waste from South Carolina was illegally sent to Washington State.

So while I support my colleagues' efforts today to clarify that, more study and analysis should be made. This debate is far from over, and this body needs to understand that it is reclassifying the definition of high-level waste to a lower level, which will make all Americans less secure, and certainly the drinking water in South Carolina and in Washington State, if this is not resolved, less secure for people.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, very briefly, the amendment has been adopted, and I would like to make a comment or two for those who may still be listening.

The membership has been challenged for 3 weeks now to find a way to deal with the problem. Here is the simple problem: For over a year, South Carolina, Washington, and Idaho have been trying to negotiate with DOE a way to clean up tank farms that have a lot of high-level waste.

In my State, there are 37 million gallons of high-level liquid waste in tanks that are over 50 years old. There are only 51 of them. For about a year now we have been negotiating with DOE to define what is ''clean'' and how we can best close up those tanks. We have been able to take the liquid out of two of the tanks and come up with a plan that has been approved by the Nuclear Regulatory Commission that says that the inch and a half of waste left in those two tanks is no longer high-level waste because of scientific treatment.

We want to apply that same concept to the other tanks. What I am trying to do in South Carolina is good for South Carolina's environment. It has been approved by the Nuclear Regulatory Commission as being safe. It has been approved by the Defense Waste Policy Board as being safe. It does not prejudice Idaho or Washington that have similar problems.

I do appreciate the fact that the body has allowed this agreement to go forward. South Carolina will save $16 billion, and it will allow the tanks to be closed up 23 years ahead of schedule.

I am willing to work with any Senator from any State who has similar problems. I am not willing to sit on the sidelines and disallow my State to move forward in an environmentally and economically sound fashion to address a real problem South Carolinians face. We have done nothing to prejudice anybody else. We have not changed any standards, given any authority to DOE at the expense of the Nuclear Regulatory Commission.

A lot of demagoguery is going on here, but it is time to clean up these sites and stop demagoguing. I hope one day Washington can find an agreement to clean up the tanks and alleviate their ground water problems. If they need help from Congress, I will be there. But I urge Idaho and Washington and other States to try to work to get these matters behind us.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank the Senator for his hard work.

AMENDMENT NO. 3452 TO AMENDMENT NO. 3292

Mr. President, I believe the Senate is ready to turn its attention to the amendment from the distinguished Senator from Vermont. Am I correct in that?

The PRESIDING OFFICER. That is correct.

The clerk will report the second-degree amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3452 to amendment No. 3292.

The amendment is as follows:

(Purpose: To extend jurisdiction and scope for current fraud offenses)

On page 1, strike line 2 and all that follows through page 4, line 11, and insert the following:

(a) STATEMENTS OR ENTRIES GENERALLY.—Section 1001 of title 18, United States Code, is amended by adding at the end the following:

''(d) JURISDICTION.—There is extra-territorial Federal jurisdiction over an offense under this section.

''(e) PROSECUTION.—A prosecution for an offense under this section may be brought—

''(1) in accordance with chapter 211 of this title; or

''(2) in any district where any act in furtherance of the offense took place.''.

(b) MAJOR FRAUD AGAINST THE UNITED STATES.—Section 1031 of title 18, United States Code, is amended by adding at the end the following:

''(i) JURISDICTION.—There is extra-territorial Federal jurisdiction over an offense under this section.

''(j) PROSECUTION.—A prosecution for an offense under this section may be brought—

''(1) in accordance with chapter 211 of this title;

''(2) in any district where any act in furtherance of the offense took place; or

''(3) in any district where any party to the contract or provider of goods or services is located.''.

Mr. WARNER. Mr. President, my understanding is that the second-degree amendment from the Senator from Virginia is now before the Senate.

The PRESIDING OFFICER. That is correct.

Mr. WARNER. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, as I understand it, there is no time agreement on the second-degree amendment; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Nor do I think there will be. I realize the second-degree amendment is designed—whether intentionally or otherwise—to protect a number of the major corporations now working in Iraq, some of which have been involved with overcharging our military and profiting on the war. It is unfortunate that we would try to protect those who are gouging the American taxpayers.

After World War II and after the Korean War, we put in a war profiteering amendment similar to what I offered, and I would say to my distinguished friend from Virginia, we passed a similar war profiteering amendment on the Iraq supplemental appropriations bill last year. But when it came up in conference with the other body, even though they are independent Members of the House, several of them were very candid and told me they had been directed by the White House to remove it and had heavy pressure brought by Halliburton and others. So they had to remove the war profiteering amendment.

I actually thought we were elected not by corporations, whether it is Halliburton or anybody else, and not appointed by the White House, but, rather, are here to do the American people's business.

Now, be that as it may, I would hope that at some point we would get to the underlying amendment, and it would actually be the law today except that the White House and Halliburton and others told the Republican majority, the leadership in the other body, that they had to take it out, which they did.

I commend the majority of Senators, both Republicans and Democrats, who supported it originally and have been willing to resist the pressure of the White House.

Over the last few weeks, the news has been dominated by events in Iraq. We are still trying to figure out exactly what went wrong in Abu Ghraib prison as well as other detention centers around the world. There has been some disagreement on this issue, but I think we have already learned a couple of lessons.

We need to improve transparency. We need to improve accountability. We need to put in place strong measures to prevent illegal and immoral acts. The reason for doing this is simple. Bad behavior by a few can lower morale among American soldiers. It can undermine support at home for the mission, and it could damage the work of the vast majority of brave men and women who are trying to do the right thing, trying to make life better, and are putting themselves in harm's way every day. By all means, we ought to take action in this body to make sure that no corporation or group can come in and make obscene profits or engage in war profiteering while our American men and women are putting their lives on the line for their country. We should not have anybody come in and say: Here is a great way to make some huge profit off their suffering and off the suffering of the Iraqi people.

So my amendment does not have anything to do with the recent prison abuses in Iraq, but it does address the serious issues I mentioned. It addresses the serious and sinister problem of war profiteering that can harm our mission there and around the world.

Senator Harry Truman served with distinction in this body and conducted Senate committee investigations into war profiteering during World War II. Then-Senator Truman, later President, said on this issue:

> No one objects to a fair profit . . . [I]t is our duty . . . to protect the patriotic majority of war contractors against a stigma of profiteering generated by the self seeking minority. We intend to see that no man or corporate group of men shall profit inordinately on the blood of the boys in the fox holes.

Today we have both men and women on the frontlines. And we have a lot of companies over there who are putting their own people in harm's way. They are doing it with the best interests of our country and the best interests of the Iraqi people. They are doing it very bravely. They are not doing it to profit from the war. As Harry Truman said: We have to take care; we have ''to protect the patriotic majority of war contractors against the stigma of profiteering generated by the self seeking minority.''

All my amendment says is that while most of the people over there will be playing by the rules, for those who are not, we are going to hold you accountable.

As a former prosecutor, I know nothing focuses the minds of those who are committing crimes more than knowing somebody can put them in prison for a long time. I will give you an easy example. If you have five warehouses lined up and four of them have heavy locks on the doors and one doesn't, that is the one that usually gets burgled. In this case, most people are going to be very honest. But without the locks on the doors, there are going to be some who try to get away with ripping off the American taxpayers.

I would hope that everybody in this body, Republican and Democrat, would agree with what President Truman said. I am concerned because we have seen one bad headline after another—the Wall Street Journal, the Washington Post, the New York Times, and others—about Government contracts in Iraq.

In addition, Time magazine recently reported on an e-mail sent by a Pentagon official that raises serious questions involving Vice President CHENEY's office, the White House, and the Vice President's former employer, Halliburton. This is what the e-mail says: A multibillion-dollar Halliburton contract was approved ''contingent on informing White House tomorrow. We anticipate no issue since action has been coordinated with Vice President's office.''

And right on schedule, 3 days later, the Army Corps of Engineers gave Halliburton a multibillion-dollar contract, and they did it without seeking any other bids. This does not look like a typical heads-up memo, as the Vice President's office is now claiming. To this former prosecutor from Vermont, it looks like a coordinated scheme to enrich Halliburton at taxpayer expense with no-bid contracts.

This latest revelation underscores the need to address this issue. Even if there is a reasonable explanation for this outrageous e-mail—and I am still waiting to hear what it is—we have to put in place tough measures to address this issue. I think we have to send a clear message that lining one's pockets, especially while our troops are in harm's way, is simply unacceptable.

I hope my amendment, if we are allowed to vote on it, will put a stop to these scandals. This amendment should pass unanimously. I am sorry that the Republican leadership has decided to put what I could only call ''a hold Halliburton harmless'' second-degree amendment in here. I hope that those majority of Senators, Republicans and Democrats alike, who voted for this amendment last year will vote against the second-degree amendment and vote for this amendment. Vote against the ''hold Halliburton harmless'' amendment and vote for the war profiteering prevention amendment.

The war profiteering prevention amendment, if it becomes part of law, will send a very clear signal. I don't care what the corporation is, whether the corporation is from Vermont or anywhere else, it will send a very clear signal: Play by the rules. But if you don't play by the rules, just as Harry Truman said after World War II, we are going to hold you accountable.

Mr. President, I ask unanimous consent, at the request of the distinguished chairman, that we be allowed to go into a quorum call until the hour of 2 p.m.; that then, by consent, the call of the quorum be rescinded and the Senator from Vermont be recognized again.

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

Mr. LEAHY. Mr. President, under the unanimous consent request, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I appreciate the concern of the distinguished senior Senator from Virginia in trying to find a way through this.

I want to make it very clear about what we have. The war profiteering bills President Truman spoke of after World War II were civil bills. This is a criminal statute. Actually, the criminal statute is more protective of the contractors because it requires a higher level of proof. As a former prosecutor, I much prefer the idea that someone thinks they are not just going to pay a fine, they might face prison.

Second, this passed in almost exactly this form in the supplemental appropriations bill. It was debated and passed as a separate measure in the committee. The amendment then became part of the Supplemental which passed the Senate by a wide margin. The amendment we are considering today is different only in two respects. This one applies to all countries; at that time, it applied only to Iraq. Second, the amendment the Senate passed earlier contained a sunset. The amendment here today does not.

When we went to conference, the House did not have a similar piece of legislation. The distinguished chairman of the Appropriations Committee, Senator STEVENS, proposed they accept ours. They had a rollcall vote and, by party line, refused it. Senator STEVENS had modified it with, I believe, a 7-year sunset. That was not accepted.

Several Republicans were very forthright in saying they were under pressure from the White House not to accept it. Some suggested they were under pressure from corporations that were major contributors. I suggested if there is a bad case of war profiteering, they may come back to regret it.

Senator STEVENS very correctly wanted to make it clear that all Republicans and all Democrats on the Appropriations Committee, in the committee of conference, had supported this. It had been part of a bill we passed overwhelmingly, if not unanimously, in this body early. Because the House would not accept it, it was dropped.

Obviously, every Senator has to vote the way he or she wants, but as war profiteering goes on, it is something each Senator has to answer to his or her constituents.

Mr. DURBIN. Will the Senator yield?

Mr. LEAHY. I yield, without losing my right to the floor.

Mr. DURBIN. I think the Senator said this, but I believe it should be repeated. Is this not the same issue we have voted on before? Did the Senator from Vermont offer earlier an amendment which would have created criminal penalties for those companies which are illegally profiting from the war in Iraq? Did the Senator offer a similar amendment last year?

Mr. LEAHY. Mr. President, if I might retain my right to the floor, the senior Senator from Illinois is absolutely correct; I did. I offered it. We had a debate within the Appropriations Committee to accept it within the Appropriations Committee and it became part of the bill.

My earlier statement may have left confusion, and I apologize. There was no intention of doing that. It was part of the appropriations bill and thus not voted on by the Senate although there was not a single amendment to strike that provision. There were various amendments, as the Senator may recall, that were proposed during the appropriations bill on the Senate floor, but no one moved to strike this. It passed 93–0. About the only difference in that bill, as I recall, was the amendment spoke only to Iraq. This includes other countries besides Iraq.

Yes, we voted on it, we passed it, and then the Senate offered it as their position. Both Republicans and Democrats offered it as our position to the other body, which rejected it on a party-line vote at the request of the White House.

Mr. DURBIN. I ask, through the Presiding Officer, if the Senator from Vermont would further yield for a question, if I am not mistaken, the Senator from Vermont came to Members initially and said creation of a criminal penalty for companies that profiteer illegally from the war in Iraq is modeled after a similar law proposed and enacted during the time of Harry Truman when he was looking at the very same question relative to World War II.

I recall during the course of that debate—and I will ask the Senator if my recollection is correct—that the Senator said, when we were asked to vote for this amendment, we were really trying to establish the same type of standard we used in every war when some individuals and some companies exploited the situation in a war to make an illegal profit. We do not want that to occur. It is not the fair to the taxpayers, it is not fair to the soldiers, it is not fair to America, and they should be held criminally accountable.

I ask the Senator from Vermont, if this amendment passed so overwhelmingly before, why is there any hesitation today to take this Harry Truman precedent and say those who misuse a war, where American lives are at stake, and profiteer should be held criminally liable for their misconduct?

Mr. LEAHY. Mr. President, if I might, the Harry Truman proposal, course, was civil. This is a criminal law.

Mr. WARNER. That is very important. Harry Truman was civil.

Mr. LEAHY. If the Senator would let me finish.

The Harry Truman amendment was civil. This is criminal. Thus, this is more protective of a defendant because, as the distinguished Senators know, and certainly those who have been prosecutors know all too well, in a criminal case you have to prove beyond a reasonable doubt. A civil case can often be the preponderance of the evidence. This is more protective of both sides. But it holds the hammer of a criminal proposal. This has tough criminal penalties for individuals who defraud the American taxpayer. It provides a maximum criminal penalty of 20 years in prison and fines of up to $1 million.

The reason we did criminal rather than civil, there was a time when if you proposed a $10 million fine back at the time of Harry Truman, that was a lot of money. We have had at least one company that has already had to pay back money on overcharging and profiteering. They spend more than that $10 million on a weekend running ads saying how good they are at feeding the troops. But if you are facing a criminal penalty and might go to the slammer, then you think about it.

I will state why this is necessary. For example, if we wanted to use current law, which is basically what the second-degree amendment is, current law does not specifically outlaw war profiteering. My amendment, which the Senator from Illinois has spoken about, does specifically outlaw war profiteering. We wanted to go as a second-degree amendment. Current statute does not say that U.S. courts have explicit and uncategorical jurisdiction over fraud and profiteering in Iraq. My amendment does. If we tried to just take current law, where are we? My amendment eliminates unnecessary thresholds, for example, to prove mail and wire fraud, and the current statutes do not. And, of course, a 20-year felony.

There really are no laws on the books that address war profiteering. There are laws on the books for murder, laws on the books for rape, laws on the books for armed robbery, but there is nothing that goes specifically into war profiteering. Frankly, what I want to do is not just to throw people in the slammer; I want to stop them from doing it in the first place.

This is a real deterrent. If you have a prosecution that says you can go to jail, not just pay a fine, which is small change for some of these companies, but you might actually go to jail, somebody is going to say: Wait a minute. We can't triple charge for this. We can't triple charge for these hotels. We can't triple charge for these cars—and so on.

Mr. DURBIN. If the Senator from Vermont will further yield for a question?

Mr. LEAHY. Yes, without losing my right to the floor.

Mr. DURBIN. Mr. President, I would like to ask the Senator from Vermont about three specific reports that have come out in the news recently about Halliburton and about their practices with sole-source contracts in Iraq, where they literally are not competing with any other company for these contracts, and they are cost-plus contracts.

I would like to ask the Senator from Vermont if the amendment which he is proposing might apply with a criminal penalty in these cases. It was reported last week that Halliburton and its subsidiaries were literally driving empty trucks back and forth on the highway, billing the Federal Government for each trip, when in fact they were not even transporting any supplies or equipment for our troops.

It was reported this morning that this same Halliburton operation, if they had a flat tire on a truck, they would abandon the $85,000 truck by the side of the road or torch the truck rather than try to get it repaired because each and every truck was just another cost-plus item on a Federal contract.

And then it was further disclosed they were incorrectly billing the Federal Government, charging for 240,000 cases of soda pop—if you can imagine—but they were delivering 240,000 cans of soda pop. So it was a dramatic overstatement of what they were supposed to be providing for the troops.

I ask the Senator from Vermont, when you consider the fact that we have 138,000 of our finest men and women risking their lives literally in Iraq, how can we possibly turn our backs on this type of outrageous profiteering that has been alleged? Why would it not be a crime? And why would this Senate even hesitate from establishing a criminal penalty when we have a situation that is costing the taxpayers over $1 billion a week to sustain our war effort in Iraq?

Mr. LEAHY. Mr. President, the Senator from Illinois raises the exact right point. You read these accounts in the press. I referred to the e-mail traffic which has just come out about a multi-billion-dollar noncompetitive contract given to Halliburton after they had sent e-mails saying it was being cleared by the Vice President's office or it was OK with the Vice President's office, and there are the things you have talked about, the obvious things about war profiteering.

Now, had the other body left the amendment in, the amendment that was part of the appropriations bill that we passed overwhelmingly—I think 87 to 12 here in the Senate—had they left that in the final bill, had they stood up to the White House and not allowed them to convince them to strip it out, then the kinds of actions the Senator from Illinois is talking about would be prosecutable.

I would suggest they probably never would have happened. The taxpayers would have saved those millions upon millions of dollars because somebody would have told them back at corporate headquarters: Hey, guys, you can go to jail if you do this. It is not just the case that if you get caught, you might have to pay the money back, but you can go to jail if you do this. And that would stop it.

Now, if we pass this today, it still has to be signed into law, and it would be prospective. Unfortunately, because the other body basically gave in to the importunings of the White House and took out the amendment, the war profiteering amendment which had been part of the bill that every one of us on this floor voted for, we cannot do anything about that. Had that been put into law, as it should have been, I suspect the activities that the Senator from Illinois has talked about would not have occurred because whoever is on the ground is going to call back and say: Hey, guys, it might sound good to you back home there, but I am not going to go to jail. I am not going to go to jail just to raise a little more money. I am not going to go to jail just because you say if you get caught you may have to pay it back, and it wouldn't happen.

What I am saying is this: When companies, especially some companies that have been accused of this, will spend more money in a few days here in Washington running ads to convince 535 Members of Congress how wonderful they are than they could possibly pay in fines, they do not care. You could leave whatever laws are on the books now. You could leave the possibility of paying it back. Because what happens? If you are a company and you go ahead and profiteer, you do war profiteering, you overcharge, you do whatever these other things are, and you do it 10 times, and you get caught 3 times, and they say: You are going to pay back those millions you overcharged—you say: Gosh, almighty, you got me. Gee, I'm sorry. Gee whiz. Here it is. And you tell your bookkeepers: They didn't find the other 7. We are ahead of the game.

On the other hand, if you do it 10 times, and you get caught on 3 of them, and suddenly people start going to jail, these other companies are going to say: Wait a minute, no-bid contracts or not, I am not going to take the chance.

If we want to stand up for the American taxpayers, if we want to say we are tough on crime, let's say criminals go to jail. That is all there is. Let's try this law. Let's see. Maybe if this is on the books people will stop profiteering.

What drives me up the wall is we have 140,000 very brave men and women—American men and women—over there under arms who are trying to do their best and getting shot at every day. I was at a funeral in Vermont this week for one of them, as I have been on several other occasions. They are putting their lives on the line. They are getting paid what a corporal or a sergeant gets paid, and they should not have to be putting up with companies back here making obscene profits on what they do. They put their lives on the line.

What I am saying is, some of the people who are making these obscene profits, they ought to at least go to jail. They ought to at least go to jail. I was thinking of that this week when I was at that funeral in Vermont. These are brave American men and women. I know every one of us here applauds their bravery. But I do not want to see companies, whether they are American companies or any other companies, making money on our sons and daughters who are over there putting their lives on the line.

That is why I want this amendment. That is why we should have kept it in the bill before. Frankly, we ought to keep it in now. Now, I fully understand that the White House comes out here and says: We don't want to tamper with these people. We don't want to put the brakes on them. They can get the votes to knock down this amendment, but it is wrong. It is wrong. And I suggest that some of those who lobby against this kind of amendment go to some of these funerals—go to some of these funerals—and tell them we will protect the people who are profiteering. It is wrong. It is wrong. We ought to be protecting them.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. LEAHY. Mr. President, I yield without losing my right to the floor, of course.

Mr. WARNER. A question: Is there some opportunity such that I can present the Senate with an explanation of why I felt there should be a second degree? I would like to do it in just a dispassionate, straightforward manner, and let the Senate then make its decision. So I would like to have the opportunity. I hope in due course to present my side of this issue.

Mr. LEAHY. Mr. President, regaining my right to the floor, of course I am willing to offer the appropriate courtesy, very soon, to the Senator from Virginia. He is one of the most distinguished Members of this body, and, more importantly, he and I have been close friends for over a quarter of a century.

I say to the Senator, I wonder if you might consider this: have a vote on your amendment, and have a vote on my amendment separately, and let the Senate work its will. The distinguished senior Senator from Virginia is going to be the Senate chairman in the committee of conference. It gives him that much more control. But why not let the U.S. Senate vote on each amendment separately and then see where it goes from there?

I will say this very frankly. I think the reason nobody moved to strike my amendment out of the appropriations bill was that—I heard this from both sides—they said: OK, we understand this is not a bad amendment, and we don't want to be on record as saying we are against it.

I think the reason both Republicans and Democrats in the Senate urged it upon the other body was for them. I think the obvious embarrassment by some, not all, but the obvious embarrassment by some who had to vote against it on the other side was they wished they had not. They wished they could have kept it in. So I would ask my dear friend from Virginia—and he is truly my dear friend—what do you think of that idea? Let's vote on both of them?

Mr. WARNER. Mr. President, as the Senator well knows, the distinguished leaders on both sides are now looking at that while I am engaging in debate with him. We are looking at that proposition.

I would like to have the opportunity at the earliest convenience to state the purpose for which I initiated the substitute amendment. And I think it is going to meet the majority of objections the Senator from Vermont has with his proposal.

Mr. LEAHY. Mr. President, certainly, if the distinguished Senator from Virginia wishes to speak, I am not going to withhold the floor from him. He has accommodated me when I have wanted to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my colleague. I will not try and make reference to the consideration of language similar to this underlying amendment and what occurred in the appropriations cycle and what occurred or didn't occur in the conference. I was not there. I don't have the specific knowledge. I am pleased that the distinguished Senator from Vermont, when I did discuss with him privately some of the earlier statements, has now corrected them. And I accept at face value what you have said about what took place in the appropriations cycle.

But we are now, at this point in time, on this bill, presented with this amendment and a second-degree submitted by myself.

First, the Senator observes that there is a need for legislation to impose criminal penalties on persons who commit wrongdoing in contracting in the course of our military operations. I concur with that very simply. So how best to do it, I think, is as follows.

My amendment would strike the language of the Leahy amendment and substitute language which would make it explicitly extraterritorial, which means we can reach out to these companies that are alleged to have done wrong and make applicable existing criminal statutes, statutes which have been on our books for a long period of time, which have been tested in the courts, and we know precisely what the language means.

My amendment would do the following. There are two existing Federal criminal statutes. The first is 18 USC 1001 dealing with false statements; and, secondly, 18 USC 1031, dealing with major frauds against the United States.

Those are the statutes, the body of law, which Congress put in place to deal with problems such as may be occurring in our operations in Afghanistan, Iraq, and, as the Senator said in his amendment, any other country in which members of the United States Armed Forces are engaged. So we have reached out not just to those two countries, Afghanistan and Iraq, but we have reached out to accommodate all of those areas. And these companies or individuals can be held accountable.

So the second-degree amendment takes care of the potential problems in covering overseas contracting without the problems inherent in the Leahy amendment.

I turn now to the Leahy amendment. This was the primary reason I put forward the second-degree amendment because you have added language. Frankly, I say with some modesty, I was a lawyer and a criminal prosecutor. But if I could draw your attention to section D in which you apply all of the penalties of your amendment, D says: Knowingly and willfully an individual or a contractor or an entity or corporation ''materially overvalues any good or service with the specific intent to excessively profit from the war, military action, or relief or reconstruction activities in Iraq, Afghanistan, or such other country. . . .''

I say to my good friend, I am not sure what the derivation of that language is and the extent to which the courts have addressed that language in the context of not a civil but a criminal prosecution. So I pose that as a question.

Mr. LEAHY. If I might respond to that, they have. The Senator from Virginia asked whether they have done it in a criminal prosecution. No, this is not a criminal statute. They have done it in a civil case, and there is a huge amount of case law on this in civil cases. The only difference is, if the Senator is worried about the rights of contractors and others, in a criminal case, of course, you have to prove specific intent. In civil cases, you have to prove it with a preponderance of the evidence. Here you have to prove it beyond a reasonable doubt. But these are words of art: ''overvalues a good or service with specific intent to excessively profit from the war, military action. . . .'' Those are words of art. They have been interpreted by the courts.

The difference, again, as I said, if you are doing it in a criminal case, as the Senator from Virginia well knows, you have to prove it beyond a reasonable doubt.

''Excessively profit'' is taken from the renegotiation act, which is, as I said, a civil act. The constitutionality of that was upheld; I believe it was in the Lichter case.

Mr. WARNER. I thank my colleague. Let me bring to his attention that we are quite fortunate as a nation to have literally several thousand contractors engaged in supporting the men and women of the Armed Forces of the United States in many areas of the world. And now we are about to take

language which, as the Senator said, perhaps was a basis for a civil penalty and subject these thousands of contractors and individuals to the following language in your amendment: They ''shall be fined under paragraph (2), imprisoned not more than 20 years.''

I say to my good friend, we were taught in law school the difference between civil and criminal law. We were taught the tremendous burden of proof and so forth that is associated with depriving one of one's freedom and liberty. You are about to subject these contractors to that, up to 20 years, using only civil standards. I understand you have specific proof in there.

Mr. LEAHY. It has to be beyond a reasonable doubt. And I have prosecuted thousands of cases, tried hundreds of them as a prosecutor. I know that is one high hurdle.

Mr. WARNER. Mr. President, I can't remember. It has been too long. That is one of a senior citizen's benefits. But I spent 5 years as an assistant U.S. attorney in the criminal and appellate divisions of the courts here in the Nation's Capital. I point out to the Senator, I recognize the high bar. I am just saying I think the Congress should deliberate very carefully a criminal penalty of up to 20 years for these thousands upon thousands of companies that are currently engaged. Carefully, first go through a series of hearings, and then floor debate, rather than come up here and in a matter of an hour or two of time try and make the decision to impose criminal law on an existing framework of contractor support at the very time we are engaged in combat operations in Iraq, Afghanistan, and, to a lesser extent, in other parts of the universe.

The Senator is asking the Senate to take a very serious step. That is why the substitute amendment would incorporate, if adopted, a statute—basically existing law—and extraterritorial ability to reach the company under existing law in title 18.

Mr. REID. Does the Senator from Vermont have the floor?

The PRESIDING OFFICER. The Senator from Virginia controls the floor and has yielded only for the purpose of allowing an inquiry to be made through the Chair.

Mr. WARNER. If the Democratic whip wishes to address the Senate, I am more than happy to allow that.

Mr. REID. I will wait my turn.

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

Mr. WARNER. Absolutely, Mr. President.

Mr. LEAHY. My question to the distinguished senior Senator from Virginia probably reflects my confusion. He was concerned about the 20-year penalty to which this might subject some of these contractors. Obviously, thousands of contractors are not going to be subjected to that. It is only going to be the most grievous ones.

He is proposing, if I am correct, a statute that would subject overseas contractors to a 30-year penalty. I thought I was a tough prosecutor. The Senator from Virginia complains about my 20-year penalty; he is proposing 30 years. I don't mean to get into a bidding war on penalties, but if my 20 years is too Draconian, 30 years sounds even more so.

Mr. WARNER. Mr. President, I will reply to that. My criminal penalty is under existing statutes, which were carefully debated by the Congress and have been on the lawbooks for a number of years. I will soon address the Senate as to how long these statutes have been in place. That is the basic difference.

My statutes don't have in it ''materially overvalues any good or service.'' I say to my good friend, that is too vague on which to send someone, as we used to say, as an old prosecutor, ''up the river.'' I don't care whether it is 20 or 30 years. I don't know how the burden of proof of ''materially overvalues'' is reached. You are asking for a criminal penalty predicated on that phrase.

Mr. LEAHY. Mr. President, if I may respond without the Senator losing his right to the floor, he is relying on a statute—if I recall, without hearings; there was an amendment to the Sarbanes-Oxley bill a couple years ago on the floor. If we are talking about criminal statutes and changing them by whim, that is one that said no more debate on this. I am bringing up something that was debated rather thoroughly in the Appropriations Committee, including a bill the Senator from Virginia and I voted for last year.

Mr. WARNER. Mr. President, I wonder if the Senator could point to the RECORD in which the Senate—in the course of the deliberation on the Appropriations bill in which his amendment is included—debated that.

The PRESIDING OFFICER. Without objection, the Senator from Vermont is yielded to for the purpose of answering a question.

Mr. LEAHY. It was debated, of course, in committee. It was well noted here before all Senators. Nobody, either Republican or Democrat, made the normal motion to strike that was done when you have a part to which you object. The Senator from Virginia is right that this is slightly different. That one was just for Iraq. This includes Afghanistan and elsewhere and does not contain a sunset provision.

I must admit that we are somewhat inclined to do that, especially after hearing of these e-mails that have just been made public. We are not talking about somebody who shows up and provides five dozen baseball caps to one of our military groups somewhere around the world. We are talking about people getting a billion dollars, with no-bid, no-competition contracts. I think we ought to at least be able to look at them and make sure they are spending our money correctly.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, my colleague has challenged me on the underlying statute that I include in my amendment. I draw his attention to the title 18, section 1001. That statute was put on in 1948.

Now, the second statute I utilize is 1031, which was adopted in 1988. So the first was in 1948; the next was in 1988.

I question my friend, who challenged me that they were just adopted, it seems to me that both of these Federal laws have been on the books for a sufficient time to have been examined by the courts and others.

Mr. LEAHY. Mr. President, I am confused by the response. Is the Senator saying that section 1001 of title 18 was not amended by the Sarbanes-Oxley Act about a year and a half ago?

Mr. WARNER. It might have been amended.

Mr. LEAHY. Whatever it was——

Mr. WARNER. On October 11, 1996, there was one amendment.

Mr. LEAHY. It was not increased back in—if the Senator tells me the Sarbanes-Oxley Act was not amended on section 1001 at all, I will accept that.

Mr. WARNER. I am reading from the Federal Criminal Code, 2004 edition. I imagine it supersedes the 2003 edition.

The point is that the statute, 1001, originated on June 25, 1948. This shows the last amendment to be October 11, 1996. Very clearly, I think my good friend has to acknowledge that this is proof that the two statutes upon which I rely have clearly been on the books for a considerable period of time and have been presumably tested in the courts and otherwise. That is the basic difference.

I can find no reference in the Criminal Code to the use of the language that my good friend uses here, ''materially overvalues.'' I think that is too vague a standard upon which to send anybody up the river. I don't care whether it is 20 or 30 years, or whatever period of time.

Mr. LEAHY. Mr. President, is it the position of my friend from Virginia that the kinds of things we have heard about—and he sees it more than I do as chairman of the Armed Services Committee—about the hundreds of millions of dollars being overcharged in meals, and hundreds of millions of dollars being overcharged on vehicles, housing, and construction. Any of those would be covered by his statute.

Mr. WARNER. That is a legitimate question. I answer in the affirmative, that the anecdotal types of things we have discussed on the floor would be covered by the existing criminal statutes, provided they found the requisite level of ''beyond a reasonable doubt.''

I challenge my friend, I cannot find any criminal law that employs this type of verbiage that he seeks here. There is reference in civil statutes to that type of language, but the Senator from Vermont is now asking that these words become a part of the criminal statute.

I think what is going to happen, if your amendment will be adopted, is

that this infrastructure of tens of thousands of individuals and companies out there right now is going to say: We are out of this; we are not going to subject our people, we are not going to subject our business to the risk of this type of prosecution under these vague standards of ''materially overvalues any good or service.''

Mr. LEAHY. Mr. President, if I might, obviously the statutes on the books have not stopped them from overcharging, have not stopped them from the kinds of things we have seen.

Nobody wants to use the word ''Halliburton'' around here, but we constantly pick up the paper and read about a number of these companies. They are obviously overcharging, and nothing is happening to them. I am just one frustrated American who wants them to stop.

Mr. WARNER. I have a very quick and simple answer to the Senator's question. Adoption of the amendment by the Senator from Virginia would be the first time the jurisdiction of these two titles is extended beyond the shores. Criminal convictions could be brought against defendants, if my amendment is adopted.

Mr. LEAHY. Mr. President, will the Senator yield for another question?

Mr. WARNER. Yes.

Mr. LEAHY. Let me ask the Senator from Virginia this: Suppose we have an item, and one of these contractors about which we are talking charges $2,000 for an item. It cost him $5. We remember back to the days of the $500 hammer. He charges the Government $2,000 for an item that costs $5, but he does not lie about this. He does not conceal the cost. He simply says: Here is my bill.

He says: OK, it is $2,000. He paid $5. He does not conceal that cost. He does not lie. He just says: Here is the bill for $2,000. He has not lied. He did not conceal—the bill is not hidden somewhere else. It is a straight-out bill, but he is obviously gouging the Government, charging $2,000 for a $5 item. Does the Senator's statute cover that situation?

Mr. WARNER. Section 1031 of title 18, ''Major fraud against the United States'':

Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent to defraud the United States—

That is fairly broad.

Mr. LEAHY. That is not a scheme. He said: I just delivered this widget. Here is your bill for $2,000. And there are so many other things going on, the Government says: Here is your 2,000 bucks. It is not a scheme. It is not an artifice. He is not hiding the fact at all. He said: Here is your bill for $2,000 and somewhere gets paid in the bureaucracy. He has obviously gouged. He has not lied about it. He is up front about it. Does the Senator's statute cover that because that happens a lot?

Mr. WARNER. Mr. President, this framework of laws embraces enough provisions that they could establish a case of fraud using the example the Senator from Vermont stated because the contract will have provisions in it with regard to the amount of profit, and there would have to be some reasonable examination of that. The contract is not going to be silent on that issue.

Mr. LEAHY. Mr. President, is the Senator from Virginia saying, then, it would require fraud?

Mr. WARNER. I am reading the statute. That is what it says here:

Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent to defraud the United States—

And the contract is going to set the profit margins.

Mr. LEAHY. We are getting a lot of no-bid contracts with basically the company, as we found in these e-mails, saying: Here is what it is going to be.

There are no bids. There is nothing else. The Government says: OK, go forward. But there is no question there has been war profiteering there. There has been no fraud, no artifice, nothing else. He just sent the bill, and the bill gets paid. It is profiteering, but I do not see where your statute covers that situation.

Mr. WARNER. Would that be in the nature of some sort of trick they were trying to perform?

Mr. LEAHY. Mr. President, if I may respond, they realize there are not going to be bids on this contract. They realize it is going to be OK'd as soon as they send it in. They have not done any tricks at all. They just say: Here is our bill. There is nobody else bidding, and it gets passed.

Some may say that may be fraud; that may not be. Mine does not say maybe. It just says to do it is a crime.

Mr. WARNER. Let's look at section 1001:

Except as otherwise provided in this section, whoever, in any matter within the jurisdiction—

So forth—

knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement, or representation; or

(3) makes or uses any false writing or document knowing the same to contain—

I say to my good friend, these statutes cover most of the situations, if not all, in which there could be a wrong perpetrated, a wrong of the type you say is profiteering.

To bring this to a conclusion, the very fact that the two of us have had some experience and cannot reconcile differences on the meaning of the language of the Senator from Vermont brings home the fact we should not be asking our colleagues to make that the law of the land on a vote this afternoon after this short debate. The Senator is bringing a brandnew dimension into the Criminal Code.

Mr. LEAHY. Mr. President, if I might respond to that, it is not a brandnew dimension. It is basically what we had in the Appropriations bill last year.

Secondly, it is completely appropriate to apply this new law to Iraq when we see these huge cost overruns on no-bid contracts, and nobody seems to be held accountable. Defense offered by lawyers for the contractor might be that there are no false statements and, therefore, no crime, even though one is ripping off the taxpayers.

It is similar to the guy who comes in and says: I will sell you this hammer for $2,000. He is not claiming it is a $2,000 hammer. He is not claiming he paid more than $5 for it. He says: I will sell it for $2,000. Has he made excess profit? Of course, he has. But when it comes to the point when our men and women are putting their lives on the line while others sit back in the boardrooms in America, I think every single lawyer in these boardrooms is going to know exactly what this amendment does, and it will be a strong deterrent.

Mr. President, as the White House proved last year when this amendment was debated during the Iraq supplemental conference, I am sure the Senator can pull up the votes to defeat me. I think it is a mistake. Frankly, I will keep on trying to bring up commonsense amendments to prevent war profiteering. Maybe sooner or later some of these people in the same boardrooms who are involved, who are getting no-bid contracts, may think: Maybe we better slow up because maybe one day the Senate will actually say we are going to hold you accountable if you engage in this sort of activity.

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

Mr. WARNER. I think we are at the point, unless there are other colleagues who desire to discuss this—does the Senator from Alabama wish to speak?

Mr. SESSIONS. I will just make a few brief comments, if that is appropriate.

Mr. WARNER. Yes.

The PRESIDING OFFICER. Does the Senator from Virginia yield for a question from the Senator from Nevada?

Mr. WARNER. Yes, of course, Mr. President.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I was wondering if the Senator from Virginia had yielded the floor, but he has not.

Mr. WARNER. I was hoping I could yield to the Senator from Alabama for a question or observation.

Mr. SESSIONS. Well, I want to make a comment or two unless the debate is basically finished, in which case I have an amendment that will hopefully come up a little later that covers some of these same issues. I have some observations that I would like to share about this particular amendment. I would not be able to support it, and I wish to explain why, but if the Senator is ready to move along, I am willing to yield the floor and move along.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we are trying to complete this Defense bill. The

Senator from Vermont has made his case. The Senator from Virginia has made his case. The record should be spread with the fact that Senator LEAHY is going to get a vote on his amendment before we finish this bill, and I would hope we could move on. As far as I am concerned, the issue is very clearly defined. I have heard people ask all during the day, What is happening with this bill? Why can we not move it more quickly?

The Senator from Michigan, the manager of this bill on the side of the minority, and I have worked very hard the last 24 hours to try to clear amendments, and on our side there are a definite number of amendments. As I understand it, this is our 11th day on this bill. We have spent weeks on these bills in the past. We know the importance of the Senate agenda. There are so many other things to do. We have just wasted a tremendous amount of time, obviously for the reasons the majority does not want to vote on Senator LEAHY's amendment. So I would certainly hope that everyone understands that anything that is being slowed down on this bill is not because of us.

There are a number of issues we need to debate on a Defense bill. Certainly, we should have an amendment that deals with end strength; that is, what should be the troop levels. The person who is offering that amendment is a graduate from West Point, a retired major from the Army. Certainly, Senator JACK REED of Rhode Island is qualified to offer that amendment. We should do that. We should get to that.

Another issue that we need to debate is the missile defense system. Some feel very strongly that it is an important program on which we should spend lots of money. Others believe we are spending too much money on it. That is an issue that should be debated.

The distinguished senior Senator from Delaware wishes to offer an amendment to cut some of the higher tax cuts that were given and have those moneys spent on Iraq.

We have a number of important issues. There are a number of issues that may not seem important in the overall scheme of things, but to the individual Senators they are extremely important.

I repeat, I want everyone to understand we are doing everything we can to move this bill along. In the last several days, we have heard threats of filing cloture because we are slowing the bill down. We are not slowing the bill down. Nothing can be guaranteed around here, but I would certainly suggest if there is a cloture motion filed on this bill, I do not think the majority is going to get cloture on this bill. We want the opportunity to offer a few amendments.

Now, we all understand that President Reagan died. There is never a good time for someone to pass away. We all felt so strongly about President Reagan, and we joined in the celebration of his life last week. But we should not be punished on this bill because of that. So I would hope that we could move this bill along.

As everyone knows, tonight we are not going to be able to go very late. We can finish this bill, but we are not going to finish the bill tomorrow. We cannot finish the bill tomorrow.

I have said on this floor so many times—but when something is good, it has to be repeated—there are no two finer people in the Senate than the distinguished senior Senator from Virginia and the distinguished senior Senator from Michigan, the two managers of this bill. But we have to move on.

Through the Chair, I say to my friend, the chairman of this most important committee, we are not trying to slow this bill down. We have done what we can to move it forward, but I have stated there are some issues that we must address. We are going to continue to work. I have talked to the Democratic leader on many occasions. He is, of course, always aware of what is going on on the floor. He wants this bill completed as much as the rest of us. So I would hope that we could get a vote on the amendment of Senator LEAHY as rapidly as possible and move on.

I do not know if this is true, but I have been told the majority wants to vote on some judges tonight. That is also going to take some time.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, in reply to the distinguished Democratic whip, I certainly commend him. I would say to him that practically as long as I have been in the Senate he has been on the floor for the Senate authorization bill all these many years and has been a tremendous help to us, and he continues at this moment. I assure him we are working on a UC which I hope will accommodate the distinguished Senator from Vermont and his requirements. So I am simply asking for a few minutes on which this matter may be presented to the Senator, unless someone wishes to speak.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I wonder if my friend from Virginia would yield for a question relative to his amendment?

Mr. WARNER. Yes, of course.

Mr. LEVIN. I listened to most of the debate—I had to leave for a moment.

Mr. WARNER. Yes.

Mr. LEVIN. I understand the position, or the statements of the Senator from Virginia. Much of his opposition to the language of the Senator from Vermont is that it is in the form of a criminal statute.

Mr. WARNER. Well, not exactly. We will just have a colloquy. Mine is likewise a criminal statute.

Mr. LEVIN. I understand that.

Mr. WARNER. They are both criminal, except mine uses the underlying statutes and legislation adopted into law after the normal process through the Senate.

Mr. LEVIN. I do understand that. There is no reason both of these amendments should not be adopted. They are perfectly consistent with each other.

Mr. WARNER. Oh, no, I cannot buy off on that. There is one portion of the amendment of the Senator from Vermont which is a brandnew concept being introduced of standards for criminality, and I cannot accept that.

Mr. LEVIN. That is my question to my friend from Virginia. My question is, Is the objection to his language that it is a criminal statute—if this, for instance, simply restored the civil penalty for this material overvaluation of a good and service, would the Senator from Virginia still object to it?

Mr. WARNER. Well, I would have to look at it. At this late hour, with votes momentarily to occur, I would not want to conjecture. My predicate is that criminal penalties deserve the most exhaustive consideration by the legislature, be it State or Federal. This new standard that my colleague from Vermont has raised has a legislative as well as a judicial history in civil penalties. It does not have a comparable record in any Federal system.

Mr. LEVIN. Which is the reason—if I can be recognized?

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

Mr. LEVIN. The reason I sought the floor to ask the Senator from Virginia the question is because the argument he makes seems to be based on a premise that there is a civil penalty history to this language but not a criminal penalty history. It would seem to me that would be greater protection for any potential defendant or contractor because there is a higher standard of proof.

But putting all that aside, my question is, then, would there be any objection to simply restoring the civil penalty for that violation, material overvaluation of any good or service? Since the Senator says there is a history in terms of civil penalties for that activity, then I was very curious to find out whether he might object if we simply restore the civil penalty for that violation.

Mr. WARNER. Mr. President, it is a situation I would want to examine with great care and see how it is phrased. I think right now we have two very distinct pieces of legislation before this body. This is legislation proposed by the Senator from Virginia which is predicated on statutes that have been in existence for a number of years—one, 1948 is the origin; the second is 1988. We simply extend the jurisdictional reach of those statutes to areas in which these contractors are performing beyond the continental boundaries. It is a very clear way of bringing to justice those operating beyond our shores. To me, that does it. I am firmly opposed to the introduction into the criminal statutes a standard of criminality which I feel is far too vague to support the extreme of deprivation of

life, liberty, and freedom—not life, perhaps, but liberty and freedom.

Mr. LEVIN. If I could reclaim the floor, what the amendment of the Senator provides, and I have no objection to it although I don't believe it adds much to existing law—I don't have any objection to the Senator's amendment making clear there is this extraterritorial jurisdiction. That is fine. But what it leaves out is the language previously in the law providing for a civil penalty for material overvaluation of a good or service. What it says is ''with the specific intent to excessively profit.'' That is a specific intent which is appropriate, I believe, either to civil or criminal law. From my perspective, this can be either civil or criminal. But the key point is that the amendment of the Senator does not include that subsection 1(d), which, it seems to me, is essential if we are going to get to that profiteering issue which the amendment of the Senator from Vermont gets to.

But I would be interested, if the amendment of the Senator from Vermont is defeated, and I hope it is not, as to whether then the Senator from Virginia might accept a civil penalty for this exact same language which was previously a civil penalty.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized to answer the question.

Mr. LEVIN. And I yield the floor.

Mr. WARNER. In reply, I think you framed the question very clearly. My response I hope is equally clear. I could not make a proffer as to what I might do until I have looked at it. I want to know how this particular language is employed in those civil penalty provisions. It may have added words in it. I haven't read any of those clauses, so I would have to wait. But you have accurately stated there is a very significant difference between the legislation proposed by the Senator from Virginia and the legislation proposed by the Senator from Vermont.

I think at this point we are about ready to receive the unanimous consent proposal; am I not correct?

Mr. REID. Close.

Mr. WARNER. I have been informed by the distinguished Democratic whip that we are close, in which case I suggest the absence of a quorum, at which time we can all draw a breath.

The PRESIDING OFFICER. The clerk will call the roll.

The 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 (Mr. CORNYN). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. WARNER. Mr. President, the leadership has been working with the managers and has worked out a unanimous consent request which I would like to propound to the Senate at this time.

I ask unanimous consent that at the hour of 4:30 today, the Senate proceed to a vote in relation to the Warner amendment No. 3452, which is to be modified to be in the form of a first-degree amendment, to be followed by a vote in relation to the Leahy amendment No. 3292, with no amendments in order to the amendments prior to the votes; I further ask consent that following those votes, the Senate proceed to executive session and immediate votes on the confirmation of the following: Executive Calendar No. 567, William Duffey; No. 590, Lawrence Stengel; No. 607, Paul Diamond.

I further ask consent that following those votes, the President be immediately notified of the Senate's action and the Senate resume legislative session.

I finally ask consent that following those votes Senator SESSIONS be recognized in order to offer his amendment No. 3372, which is to be further modified with changes that are at the desk; provided further that following 10 minutes of debate equally divided in the usual form, the amendment be agreed to.

Mr. REID. Reserving the right to object, I would ask the distinguished Senator to modify the request to allow 2 minutes prior to the votes on Mr. Duffey, Mr. Stengel, and Mr. Diamond.

Mr. WARNER. So modified.

Mr. REID. I would also ask the distinguished chairman of the committee, we understood there would be an up-or-down vote on the second-degree amendment offered by the chairman and also an up-or-down vote on the amendment offered by the Senator from Vermont.

Mr. WARNER. My understanding is, that is correct.

Mr. REID. I have no objection.

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

Mr. WARNER. I thank the Chair.

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.

Mr. WARNER. Mr. President, the managers of the bill are grateful to the leadership for the cooperation we are getting in moving this bill along, as well as all Members. We have had a preliminary meeting with regard to tomorrow's schedule. I would like to acquaint the Senate with the thinking at the moment with the leadership.

We would start off the morning with no morning business, proceeding promptly to the bill at the hour of 9:30, with the first amendment to be brought up on our side, the Bond-Harkin amendment. Am I correct on that?

Mr. LEVIN. That is my understanding.

Mr. WARNER. We will try to establish time agreements during the course of the votes today. That is to be followed by the Reed amendment which goes to end strength, a very significant issue. That amendment currently has an amendment in the second degree, not an amendment which is a substitute but just an amendment. That is under consideration and will be debated at that time and then, in all probability, a voice vote, not on that, a voice vote on the first one I hope, but on the second there would likely be a rollcall.

Mr. REID. Will the Senator yield?

Mr. WARNER. Yes.

Mr. REID. In our conversation on the floor, we talked about what we wanted to do. We did talk about Bond-Harkin, Reed end strength. I ask the two distinguished managers of the bill, because of the difficult schedule that the ranking member of the Foreign Relations Committee and the minority leader have on Friday, if we could have one amendment that the Senator from South Dakota is going to offer dealing with health. He would take a very short time agreement on that. And the Senator from Delaware wishes to offer an important amendment dealing with taxes, and he will take a relatively short period of time. He has to decide that. But we are talking about this before we get to missile defense. They say they would certainly like to get that done because, as you know, their schedules are extremely difficult in the next day or two.

Mr. WARNER. That is a new dimension which I have not had the opportunity to review.

Mr. REID. At least we got it down a little ways.

Mr. WARNER. We will take that into consideration. I cannot commit at this point in time, but I do know there is an amendment by the distinguished Senator from Delaware regarding taxation.

Mr. REID. That is the one.

Mr. WARNER. I see.

Mr. LEVIN. After Daschle.

Mr. REID. And Senator DASCHLE would take a very short time agreement. We have not had the opportunity to fully vet this with Senator BIDEN other than he wanted to get up early because of his schedule on Friday, but we will discuss this with them.

Mr. WARNER. I defer to my colleague here with regard to the very important amendments on missile defense.

Mr. LEVIN. Before I make reference to the missile defense amendments, which it is our hope that we would be able to take up and dispose of tomorrow, the reference that the chairman made to the end strength amendment, I understand the Senator from Rhode Island, his end strength amendment at the moment could lead to a second-degree amendment.

Mr. WARNER. It is at the desk.

Mr. LEVIN. But there is still an effort being made, as I understand it, to see if there can't be a resolution to that.

Mr. WARNER. Fine. Mr. President, the Senator from Rhode Island approached the Senator from Virginia earlier today, and he said he would provide some language. Thus far, we haven't had that opportunity.

Mr. LEVIN. We are also hoping to dispose of either three or four amendments tomorrow relative to missile defense. We would like to talk to the Senators involved in that during these votes. But I believe the logical order here is that the Boxer amendment be first and then Reed, either one or two amendments on missile defense after the Boxer amendment, and then I would have an amendment after the Reed amendments. That is the current informal intention. We would talk to those Senators to see if they agree that that is the logical order, try to get time agreements on all of these amendments.

Mr. WARNER. Mr. President, to conclude this brief colloquy, I am not able to speak to the Daschle amendment or the Biden tax measure. I will have to engage people on the tax committee to look at that. The others, I would say, as chairman and I hope you as ranking, if we are able to get through the agenda we have outlined, this bill is really down in its final stages; would you not agree?

Mr. LEVIN. Well, there are a lot of outstanding amendments.

Mr. REID. If the distinguished chairman will yield, Senator DASCHLE would be happy to wait until Monday with a very short time agreement. But we do have some other amendments on this bill.

Every year, as you know, there are a few abortion amendments. They don't take a lot of time because we have debated a number of them on previous occasions. We have a number of other issues. But as we talked about earlier today, if we do end strength and missile defense, we get Senator BIDEN's amendment out of the way, the others should go fairly quickly.

Mr. LEVIN. If the Senator will yield, in fairness to our colleagues, we do have listed a number of amendments from a number of colleagues who expect—and I think reasonably so—their amendments would be addressed before this bill goes to final passage. I wouldn't want to give an assessment that we are near the end because there are many Senators. We are, by the way, successfully reducing the number of amendments. We want to give credit to Senator REID as always for his Herculean efforts in this regard. We have, under his leadership on our side, been able to successfully reduce the number of outstanding amendments, but there are still many left.

Mr. WARNER. I would say in response to that, we have likewise successfully reduced and I think have only one left on our side compared to what you may have before you.

Mr. REID. If the Senator will yield.

Mr. WARNER. Yes.

Mr. REID. I don't usually deal in the minutia of things, rather broader issues. But I just wanted to say something to the distinguished Democratic leader of this important committee, I do believe we are near the end. I say that because we have been on this bill 11 days. If we spend a few more days on it, we are near the end.

Mr. LEVIN. If we spend a couple more days, yes, we are near the end.

Mr. WARNER. Wait a minute, let's just leave it ''we are near the end.''

Mr. LEVIN. I subscribe to my leader's comment.

Mr. WARNER. I thank the distinguished Democratic whip and my colleague from Michigan. The unanimous consent agreement is in order. The vote should start momentarily.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I ask the distinguished manager, I understand that the measure that Senators HARKIN, TALENT, GRASSLEY, and I have proposed is in order for 9:30 tomorrow morning.

Mr. WARNER. Yes. Could the Senator, in the interim, talk to his cosponsors on both sides of the aisle and give me an estimate of the time that would be required?

Mr. BOND. We hope it will be brief. We will talk with you. We hope that perhaps it may be accepted.

Mr. WARNER. Without a rollcall vote.

Mr. BOND. I would like to spare the body a rollcall vote.

The PRESIDING OFFICER. Under the previous order, amendment No. 3452 is modified to be a first-degree amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 119 Leg.]

YEAS—97

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

NOT VOTING—3

Edwards	Graham (FL)	Kerry

The amendment (No. 3452) was agreed to.

Mr. WARNER. Madam 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. LEAHY. I asked unanimous consent—I have discussed this with the senior Senator from Virginia—that we have 2 minutes equally divided on the next amendment.

Mr. WARNER. Two minutes on each side.

Mr. LEAHY. Two minutes is fine with me.

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

The Senator from Vermont.

Mr. LEAHY. Madam President, I do not want to start until the Senate is in order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Vermont.

Mr. LEAHY. Madam President, I voted, as did others, for the Warner amendment even though I see it as only the tiniest step toward addressing what we read about in the paper every single day, and that is war profiteering in Iraq. His amendment does not cover war profiteering; mine does. In fact, his, I believe, removes my prohibition against war profiteering. What I have in here is an amendment, very similar to what we passed in the appropriations bill earlier, about real war profiteering.

This Monday I was at the funeral in Vermont of a young sergeant who was killed in Iraq, just as my wife and I have been at other funerals of Vermonters killed over there, and I suspect most Members of the Senate have. They are over there defending their country. They are over there doing what their country asked them to, being paid as corporals and sergeants, and dying.

We have a lot of other people sitting in boardrooms back here in America, watching enormous profits, watching the American taxpayers pay for things that are never delivered, for trucks that are never there, for meals that are never there, and we can't stop them. My amendment would stop them. My amendment would put, if not patriotism in them, it will put the fear of going to jail in them.

Let us stand up for our American men and women over there. Let us stop the war profiteers. Let us say no to them, and let us say, if you continue, you are going to go to jail because that is where you belong.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, my amendment does everything that my colleague stated as a desired goal. His amendment goes a step further. This is the reason we have two votes. He establishes a new criterion for a crime that could result in incarceration up to 20 years. It is so vague that I assure you it could not get through the first year of law school. It says you could go to jail if ''you materially overvalue any good or service.'' There is no regulation, no criterion by which to judge that. As a consequence, this body would be enacting a new criminal statute without any hearings, without any thoughtful process, and would subject the contracting community, which numbers in the tens of thousands of individuals supporting the men and women of the Armed Forces all over the world, to this very vague proposed criminal statute.

I urge strongly that you vote against the Leahy amendment.

I regret that, I say to my good friend, but we cannot put on our books this statute. It would be wrong.

Mr. LEAHY. Madam President, my amendment very simply says to the Halliburtons all over the country that you can't profit on the backs of our men and women in Iraq or Afghanistan. We all know that is what it is.

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

Does the Senator from Virginia yield his remaining 35 seconds?

Mr. WARNER. Yes, Madam President. I yield it knowing that the good wisdom and sound judgment of this body will follow my views.

Mr. LEAHY. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) 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 46, nays 52, as follows:

[Rollcall Vote No. 120 Leg.]

YEAS—46

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

NAYS—52

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

NOT VOTING—2

Edwards	Kerry

The amendment (No. 3292) was rejected.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, this afternoon, while debating my amendment on war profiteering, we became mired in a debate about what is or what is not in the criminal code.

I will not revisit that issue now. However, I will say to the senior Senator from Virginia, who asked from where the language in my amendment originated in the criminal code, that I have more information on that issue that should be to his satisfaction.

First, the term ''material'' appears in terrorism laws prohibiting ''material'' support. In fact, all falsity in the criminal code must ''material''. Pursuant to a Supreme Court ruling, part of proving a false statement must be ''material.''

Second, the term ''overvaluation'' is in Title 15 prohibiting ''criminally overvaluation'' of securities.

Third, with respect to ''intent to excessively profit,'' this is taken, in part, from ''significantly profit'' in 12 U.S.C. 1297 which criminalizes bank crimes. ''Significantly profit'' is, in fact, a lower standard that ''excessively profit.'' We erred on the side of caution and raised the standard.

Although I made this point clear during the debate, this should leave no doubt that my amendment is carefully constructed legislation.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, my understanding is we will now go off the bill. We will remain off the bill for the remainder of the evening. We now have three votes on judicial nominations. I stand corrected. After the votes on the three judicial nominations, there is a short matter with Senator SESSIONS. It is in the UC.

Madam President, I ask unanimous consent that the votes for the three judicial nominations be 10-minute votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF WILLIAM S. DUFFEY, JR. TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session, and the clerk will report the first nomination.

The legislative clerk read the nomination of William S. Duffey, Jr., of Georgia, to be United States District Judge for the Northern District of Georgia.

The PRESIDING OFFICER. There will now be a period of 2 minutes evenly divided on the nomination.

Mr. HATCH. Mr. President, I am pleased today to speak in support of William Duffey, who has been nominated to the United States District Court for the Northern District of Georgia.

Mr. Duffey is a cum laude graduate of South Carolina University Law School, where he had been a member of the Order of the Coif. His illustrious legal career includes a tour of duty in Turkey with the U.S. Air Force; deputy and associate independent counsel with the Office of the Independent Counsel's Whitewater investigation; and a long, successful law practice with the prestigious firm of King & Spalding.

Mr. Duffey is a gifted and experienced attorney whose familiarity with Federal trial procedure will benefit him immensely on the Federal bench. I am confident that he will make a fine jurist on the Federal bench.

Mr. CHAMBLISS. Madam President, I rise in support of the confirmation of William S. Duffey to be a district judge for the North District of the State of Georgia.

Bill Duffey is a well-respected lawyer in our State, one of the best lawyers in the State of Georgia. He has served in private practice. He served in the Judge Advocates Corps of the United States Air Force. He served in the Office of the Independent Council.

For the last 4 years, Bill Duffey has served as the U.S. attorney for the Northern District of Georgia. He comes highly recommended by his peers, by those who have appeared before him, as well as those who have been on the other side in cases.

He is a true gentleman in every sense of the word, an outstanding advocate for the judiciary. He will make an excellent judge, and I ask for his confirmation.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, it is interesting, I think I heard one of the