He pledged that Iraq would serve as an example of peace and of freedom—for Iraq, yes, but even more, or equally important, I should say, as an example for the entire region.

The Iraqi people look forward to holding democratic elections and to governing themselves, he told us. But he was quick to say the Iraqi people must have that security in order to rebuild their lives.

It was interesting. When we asked him about the coalition and how broad a coalition, what he said is what the Iraqi people need is not just a broad coalition, but he needs—the Iraqi people need—an effective coalition. It is that effectiveness that ultimately is most important to him as the new President of that country. He needs people who can get the job done for him.

The President was quick to express his thanks on behalf of the Iraqi people and asked us to extend that thanks, that appreciation of the sacrifices Americans have made so the Iraqi people could live in a free country, that they would have that opportunity to live freely and to pursue democracy. He made it clear the full pursuit of democracy will take time. The first step is the election 6 months from now. It may be a series of elections before full-blown democracy, as we generally conceive of democracy, will take hold.

In these difficult times, the President of Iraq stated Iraq would need the full support of the United States of America, both politically, financially, and militarily, as they go through this transition and over the coming months.

He recognized that without a secure and stable environment the U.S. coalition provided, a democratic Iraq simply would not succeed.

President al-Yawr recognized the huge task confronting the new Iraqi government, but he was determined. He expressed that determination in every sentence, in every thought he shared with us. He stated he was encouraged by the widespread support of the Iraqi people for the new interim government.

He clearly draws his strength from the aspirations to transform Iraq into a thriving democracy. President al-Yawr made clear that what is called TAL, transitional administrative law, the law of the land during this interim period, would govern their actions in the coming months, and the rights of all would be protected under this transitional administrative law. His immediate focus is to build those professional security forces to establish an independent judiciary that can uphold that rule of law.

As Iraqis rebuild their capacity to maintain security and govern themselves, the President said the world would see an Iraqi face on the war against terrorism in Iraq. Having met the Prime Minister in Baghdad a week and a half ago, and now the President of Iraq here in the Nation's Capital, the impact of having that Iraqi face, telling the Iraqi story, having it not told just by Americans or by an occupying force, will make a huge difference on the world stage. It is for the Iraqi people, it is by the Iraqi people, and it is up to the Iraqi people at this point.

No nation wants to rely on another for its security. The President of Iraq expressed that. The Iraqi people want to stand on their own strength. But they need help through this transition period. He also made it clear that to rely upon a coalition while they are rebuilding their police and their army is not a surrender of their sovereignty in any way. Indeed, it is in Iraq's vital national security interests to accept the coalition's help, he stated.

Having now met with Iraq's two most senior leaders over the last 12 days, I am confident these two leaders and this new government is a strong one. They have the vision, they have the fortitude, they clearly have the courage, but they also have the resolve to lead the Iraqi people on this path toward freedom and democracy.

Indeed, Iraq's new leaders have the confidence of our friends in the region. Senator DASCHLE, Senator MCCONNELL, Senator BIDEN, and I all met with King Abdullah of Jordan this week in the Capitol. His Majesty expressed his confidence in and support of the new Iraqi government, as well. That is, again, a perspective from a very important, very significant leader in that part of the world.

It is important to praise President Bush and his team for their vision, for their resolve, and their efforts to get the United Nations and the international community behind this government. That has been a successful endeavor.

We are all concerned about the recent terrorist activity in Iraq. As I have mentioned in the Senate in the last couple of days, an increase in terrorist activity is anticipated. It is expected by the Iraqi leaders and by our civilian and military leaders because the terrorist groups—whether it is the Zarqawi network, whether it is the former regime loyalists, or whether it is the insurgents—will increase activity to derail this transition of sovereignty to the new government. They are not going to be successful. Yet we will see that increased terrorist activity. Indeed, we see the increased activity when we open the news each morning.

The terrorists want to disrupt this handoff. They are simply not going to be successful. They do not want to see the Iraqi people breathe that fresh air of freedom. They will not be successful. Indeed, we will win.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order the remainder of the leadership time is reserved.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

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

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities for 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, so forth and for other purposes.

Pending:

Bond modified amendment No. 3384, to include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness compensation Program and to provide for the disposal of certain excess Department of Defense stocks for funds for that purpose.

Brownback amendment No. 3235, to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

Burns amendment No. 3457 (to amendment No. 3235), to provide for additional factors in indecency penalties issued by the Federal Communications Commission.

Mr. REID. Mr. President, on behalf of the two managers, I am reporting today that we will have two amendments by the Senator from Illinois that will be offered, two amendments by the Senator from New Jersey will be offered, an amendment by the Senator from Rhode Island will be offered, and I will offer an amendment. That is the schedule for today's session.

Of course, as the majority indicated, there will not be any votes. If the managers require votes, and these are not accepted, these votes will be stacked for Monday night in addition to amendments offered Monday that were announced at an earlier time.

The PRESIDENT pro tempore. The Senator from Illinois.

AMENDMENT NO. 3196

Mr. DURBIN. I call up amendment No. 3196.

The PRESIDENT pro tempore. The pending amendment will be set aside.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Ms. MIKULSKI, Ms. LANDRIEU, Mrs. MURRAY, Mr. DAYTON, Mr. CORZINE, and Mr. BIDEN, proposes an amendment numbered 3196.

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

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

The amendment is as follows:

(Purpose: To ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred)

At the appropriate place, insert the following:

SEC. ___. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.

(a) SHORT TITLE.—This section may be cited as the ''Reservists Pay Security Act of 2004''.

(b) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

''§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard

''(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

''(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

''(2) the amount of pay and allowances which (as determined under subsection (d))—

''(A) is payable to such employee for that service; and

''(B) is allocable to such pay period.

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).

''(c) Any amount payable under this section to an employee shall be paid—

''(1) by such employee's employing agency;

''(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

''(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

''(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

''(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

''(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

''(f) For purposes of this section—

''(1) the terms 'employee', 'Federal Government', and 'uniformed services' have the same respective meanings as given them in section 4303 of title 38;

''(2) the term 'employing agency', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

''(3) the term 'basic pay' includes any amount payable under section 5304.''.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

''5538. Nonreduction in pay while serving in the uniformed services or National Guard.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act.

(2) CONDITIONAL RETROACTIVE APPLICATION.—

(A) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after October 11, 2002 through the date of enactment of this Act, subject to the availability of appropriations.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for purposes of subparagraph (A).

Mr. DURBIN. This amendment is being offered by myself, Senators MIKULSKI, LANDRIEU, SARBANES, CORZINE, MURRAY, DAYTON, and BIDEN. This is an amendment that will be a familiar amendment to many Members of the Senate. It is an amendment I offered before on an appropriations bill and was adopted with an overwhelming vote in the Senate. Unfortunately, it was stripped out of the bill in conference.

This amendment to the Defense authorization bill addresses the financial burden facing many of the men and women who serve in the military Reserve and National Guard and are forced to take unpaid leave from their Federal jobs when called to active duty. I offered this amendment to the fiscal year 2004 supplemental. It passed by a margin of 96 to 3 before it was removed in conference. The vote recognized the reality that since the end of the cold war, employment of our Reserve forces has shifted profoundly, from being primarily an expansion force to augment active forces during a major war to the situation today, where the Department of Defense admits that no significant operation can be undertaken by the United States of America without Guard and Reserve components.

Think of how often we, as individuals, both elected and unelected, have come forward to congratulate employers who stand behind their employees when activated. We salute them. We say it is a great show of citizenship that when an employee of a company is activated in a Guard or Reserve capacity that the company makes up the difference in their paycheck; continues their health insurance; of course, promises them a job when they return. We salute all these great employers.

This amendment addresses an employer that has turned out to be a deadbeat when it comes to Guard and Reserve. That employer happens to be the Federal Government. Yes, that is right, the United States Federal Government is an employer which does not offer Guard and Reserve activated employees the same benefits being offered by State governments, local governments, and private companies.

One might ask, How many Federal employees are in the Guard and Reserve? Today, there are about 1.2 million members in the National Guard and Reserve. Of that number, 10 percent, 120,000, are Federal employees. More than 43,000 Federal employees have been activated since 9/11. That is more than one-third of those Federal employees who are members of the Guard and Reserve have actually been activated.

Currently, more than 15,000 Federal employees remain activated with Guard and Reserve. They are dedicated. They are loyal. They are serving their country. They have chosen not only to work for our Federal Government but also to volunteer for the Guard and Reserve. But they do it at a price.

While these individuals receive pay for the time they are on active duty, the salary gap many times between military pay and their Government pay and allowances can be considerable.

A Department of Defense survey of 35,000 reservists, including Federal employees, found that 41 percent of all reservists suffer lost income during mobilization and deployment. Of the 41 percent reporting a loss, approximately 70 percent said their annual income was reduced by almost $4,000. Approximately 7 percent, however, reported an annual loss ranging from $37,000 to $50,000.

So imagine this scenario: Someone works for the Department of Transportation of the United States of America. They have signed up for the Army Reserves. They have a job that pays $60,000 a year, being a Federal employee. Now they have been activated and they are being paid $30,000 a year. What about that salary gap?

A lot of State governments and local governments and private companies say: We will make up the difference. We will stand with you. You are serving your country. You are risking your life. We will stand by you—but not the Federal Government. Many companies, State and local governments—companies such as Ford, IBM, Verizon, Safeway; and the State of California, Los Angeles County, Austin, TX—recognize the burden and voluntarily pay the difference between Active-Duty military salary and civilian salary for reservists. Typically, these employers

cover their reservists anywhere from 90 days on, with possible extensions of up to 18 months.

In my State of Illinois, Boeing Aerospace, State Farm Insurance, Sears, Roebuck & Company, the State of Illinois, the city of Chicago, and many other Illinois companies and local governments and institutions, cover the pay differential for Reserve and Guard members. The State of Alaska has passed legislation, which Governor Murkowski signed into law, that allows the government to make up the difference in pay and continue some or all health benefits for State employees called to active duty in the Reserves and National Guard. The authority would be discretionary, triggered by an order of the Governor. The bill's effective date is retroactive to September 11, 2001.

In addition to Illinois and Alaska, similar legislation has been enacted in at least 21 other States, including the Commonwealth of Virginia. I know the Senator, who is chairman of this committee, is particularly proud that his State stands behind State employees who have been activated for the Guard and Reserves and makes up the difference in salary.

But what an embarrassment it is for us to stand on the floor of the Senate and say the Federal Government does not do the same thing. That is right: The Government of the United States does not offer the same benefits offered by Illinois, Alaska, Virginia, and many other States across the Nation. These States have gone above and beyond the requirements of law in many circumstances. They stand behind these people. In fact, when you look at the private sector, hundreds of companies provide full salary differential for at least 90 days when the Guard and Reserves are activated.

The Federal Government is the Nation's largest employer. We, in Washington, are the first to stand up and salute our troops, as we should. But instead of just saluting, why don't we give these troops a helping hand? For goodness' sake, these Federal employees—activated time and time again, causing great hardship to their family—deserve the same consideration as those employees of State and local governments and private companies.

My amendment will help alleviate some of the financial burdens faced by these Federal employees who have been mobilized. Federal employees, without hesitation, take time off their jobs, away from their families, to serve our Nation.

On October 11, 2002, I voted against the resolution to give the President authority to go forward with this war. That decision was a tough one. The decision was made by this Congress to go forward anyway.

What has happened since? We have found a war that we hoped would be short in duration has become much longer. We now have some 135,000 to 140,000 troops in the field in Iraq. We hope they will come home soon, but there is no end in sight. Many of my activated Guard and Reserve units have been extended. They are over there for extended periods of time, causing great hardship, really assaulting the morale of many of these units. Yet they continue to serve, and they continue to risk their lives. Some have been mobilized for more than a year. Many have had their tours involuntarily extended. Some are subject to stop-loss orders.

Given the increased commitment of Reserve components—the longer tours, particularly in Iraq and Afghanistan—and concerns over recruiting and retention, this legislation is timely and a vote of support for each and every Federal employee who is also a citizen soldier. We have to provide our reservist employees with financial support so they can leave their civilian lives to serve our country without the added burden of worry about whether their loved ones back home can make a monthly mortgage payment or provide new shoes for the kids. They are doing so much for us, we can do no less for them.

Let me also say, this is an authorization, and it is an authorization with a retroactive date back to October 11, 2002, when the Senate initially enacted my reservist pay security bill. The amendment provides for the authorization of $100 million to cover retroactive payments from October 11, 2002, through the date of enactment. Of course, this $100 million is subject to appropriation.

Prospectively, the funds come from discretionary funds for each agency, so that as Federal employees in each agency are activated into Guard and Reserve units, serving and risking their lives overseas, the agencies will understand they are going to stand by these employees while these employees are standing by our country.

I believe this is a reasonable amendment. I think it is one that the Senate has embraced with an overwhelming bipartisan rollcall vote of 96 to 3. It belongs in this authorization bill so we can say to Federal employees: We respect you no less than all of the others who are serving in the Guard and Reserves. We believe you should be given a helping hand to keep your family together as you volunteer to serve this country.

Mr. President, at this point I would ask that this amendment be set aside and I be given an opportunity to call up another amendment which I have pending at the desk.

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

Mr. DURBIN. Mr. President, I call up amendment No. 3225.

Mr. WARNER. Mr. President, I wonder if we could——

The PRESIDENT pro tempore. Is there objection?

Mr. WARNER. Mr. President, reserving the right to object, could we first discuss this amendment a minute?

Mr. DURBIN. Yes, I would be happy to discuss it. In fact, I did not know the Senator wanted to, but I am anxious to.

The PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, the concern I personally have had—and I think shared by some of our colleagues—is almost less from a fiscal standpoint and more from the fact that when you put a unit together and you bring into that, say, Regular Army unit a guardsman and reservist—the Senator well understands that young people exchange with each other their own pay and background and one thing and another—and suddenly, you have two sergeants, equally competent to operate that tank or artillery piece or Humvee, whatever the case may be, and one is getting this bump up in pay from, again, the Federal Government as opposed to the State and the other is not, it causes a friction. This is the main concern I have. I just wonder to what extent my colleague has thought through that issue.

Mr. DURBIN. Mr. President, I thank the chairman of the committee, and also for his leadership on this bill.

Retired MG Bob McIntosh of the Reserve Officers Association has testified on this same issue. He said he does not believe that people in the military sit around comparing pay stubs. But if they did, I am afraid the Senator's argument would lead us to conclude that we have to stop State and local governments from providing additional pay because that, too, is a differential being provided out of the largess and charity—charity is not the right word; it is really a payment that is made because of a sense of obligation to the family involved. But it is a payment that is made.

In my State of Illinois and your State of Virginia and in the State of Alaska, you have the decision that, when your State employee is activated, the State is going to send them the pay differential. So you will have two sergeants: one in Virginia who might be receiving this pay differential, and one from the Federal Government who does not.

So in my way of thinking, we should be encouraging all of these employers to stand by their people. We are more dependent on the Guard and Reserves now than ever in our history. We want to have good recruitment, good retention. I think if we have more employers standing behind those men and women, it is going to help us keep and attract the very best.

Mr. WARNER. Well, I see that argument very clearly. Of course, you know the Army proudly has this motto: ''We are one,'' which means every soldier can do a variety of things, and whether you are a guard or reservist, you are respected now just as much as that career person.

Do you have that list of 22 States? I think we have it over here on our side. I would like to look at that.

Mr. DURBIN. I would be happy to show you.

Mr. WARNER. Do most of those States do both their National Guard as well as their Reserves or do they just do their Guard?

Mr. DURBIN. I say to the Senator, I am not certain as I stand here. I do not want to mislead him, so I will check into that. But I think they do cover the Guard, and I will find out specifically whether they cover the Reserves as well.

Mr. WARNER. Fine.

Mr. President, I am going to ask that a quorum call be put in while I have an opportunity to take some of the facts which the Senator delivered in his very comprehensive opening statement and check them out.

As I am doing that, would you prefer to go on to your other amendment?

Mr. DURBIN. Yes.

Mr. WARNER. Fine.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, the pending amendment is set aside so the Senator may offer another amendment.

AMENDMENT NO. 3225

Mr. DURBIN. Mr. President, I call up amendment No. 3225.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 3225.

Mr. DURBIN. Mr. 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 as follows:

(Purpose: To require certain dietary supplement manufacturers to report certain serious adverse events)

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

SEC. 717. REPORTING OF SERIOUS ADVERSE HEALTH EXPERIENCES.

(a) IN GENERAL.—The Secretary of Defense may not permit a dietary supplement containing a stimulant to be sold on a military installation unless the manufacturer of such dietary supplement submits any report of a serious adverse health experience associated with such dietary supplement to the Secretary of Health and Human Services, who shall make such reports available to the Surgeon Generals of the Armed Forces.

(b) EFFECT OF SECTION.—Notwithstanding section 201(ff)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)(2)) and paragraph (3) of subsection (c), this section does not apply to a dietary supplement containing caffeine that is intended to be consumed in liquid form.

(c) DEFINITIONS.—In this section—

(1) The term ''dietary supplement'' has the same meaning given the term in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)).

(2) The term ''serious adverse health experience'' means an adverse event that is associated with the use of a dietary supplement in a human, without regard to whether the event is known to be causally related to the dietary supplement, that—

(A) results in—

(i) death;

(ii) a life-threatening condition;

(iii) inpatient hospitalization or prolongation of hospitalization;

(iv) a persistent or significant disability or incapacity; or

(v) a congenital anomaly, birth defect, or other effect regarding pregnancy, including premature labor or low birth weight; or

(B) requires medical or surgical intervention to prevent 1 of the outcomes described in clauses (i) through (v) in subparagraph (A).

(3) The term ''stimulant'' means a dietary ingredient that has a stimulant effect on the cardiovascular system or the central nervous system of a human by any means, including—

(A) speeding metabolism;

(B) increasing heart rate;

(C) constricting blood vessels; or

(D) causing the body to release adrenaline.

Mr. DURBIN. Mr. President, I offer this amendment to the bill because of a serious health danger which exists in America and one that has been demonstrated clearly on military bases.

Military personnel are under unusual pressure to be physically fit. The conditions under which they work and train are often harsh and demanding, making physical strength and endurance essential. The pressure makes dietary supplements particularly attractive to members of our armed services, especially products marketed for weight loss and performance enhancement.

A 1999 study by the U.S. Army Research Institute for Environmental Medicine found that 85 percent of the more than 2,200 male soldiers surveyed reported using dietary supplements. A military study conducted by the Department of the Navy found that overall 73 percent of personnel reported a history of supplement use, with the numbers as high as 89 percent among marines. When broken down by supplement category, the survey by the Department of the Navy showed that 26 percent of marines took supplements containing stimulants.

Most dietary supplements are safe and provide health benefits to those who take them. This morning I took my vitamins. I don't know if it will make me live longer. I hope it will. I don't think it did me any harm. Millions of Americans take vitamins and minerals every morning believing it is good for them. They are probably right. Medical science proves that.

Within the category of dietary supplements, however, are not just vitamins and minerals but other combinations of chemicals, some naturally occurring, which are not as benign as the vitamins and minerals we take in the morning. There are some supplements, specifically those containing stimulants, which are often marketed for energy promotion, performance enhancement, and weight loss. We know they can cause harm.

Between 1997 and 2001, 30 Active-Duty personnel in America's Armed Forces died after taking dietary supplements containing ephedra. That was a supplement marketed across the United States with names such as Metabolife for weight loss and energy. Eventually that substance was banned by the Federal Government, by my State of Illinois, and others. It had already been banned by the U.S. military, the nation of Canada, banned for use in athletics on the professional level, and by the NCAA, but it has been banned now by the FDA.

A list of adverse events related to dietary supplements released by the Navy includes health events such as death, rapid heart rate, shortness of breath, severe chest pain, and becoming increasingly delusional. These are members of the Armed Forces who are going to base exchanges and buying dietary supplements which are dangerous. They look at what is printed on the bottle. They think they are safe. They buy them with sometimes disastrous results.

Unfortunately, most of the time adverse events such as those I described are not even known to the Food and Drug Administration or to the public because the companies that make the products don't report these bad results. If you walk into a drugstore today, anyplace in America, and you go to the prescription counter with your prescription from the doctor and you get the pills, here is what you know about the pills you are holding. They have been clinically tested for safety so that you can be reasonably sure that if you ingest them you will not die, and that they are likely to achieve the result they are supposed to achieve.

Secondly, if something goes wrong with one of those pills, if you take it and get sick and notify the company, they are bound by law to notify the Food and Drug Administration. If something happens, the Food and Drug Administration says: We may have to remove this from the market to make sure it is still safe. That is the law that applies to prescription drugs.

Now go to the over-the-counter drugs where you don't need a prescription. Have they been tested? The component parts of virtually all over-the-counter drugs have gone through the same testing to make sure they are safe and effective.

Now move over to the section of the drugstore that has the vitamins, minerals, and dietary supplements. None of those rules apply. There has been no testing of that dietary supplement which says it is going to give you energy or help you lose weight, no testing whatsoever.

Let me take that back. The testing is taking place as you buy it. You are the test case, as the consumer. You are ingesting this compound to see what happens. But safety testing of the dietary supplement is not required. What happens if they are dangerous, like ephedra? What if they cause people to have a stroke, heart attack, high blood pressure, or death? Does the company that makes the dietary supplement have any obligation to notify the Government that the product is dangerous? Absolutely not, no requirement whatsoever. That adverse event reporting for prescription drugs does not apply to dietary supplements.

My amendment would require manufacturers of dietary supplements that sell supplements containing stimulants on military installations to turn over to the FDA serious adverse event reports relating to their products. These would include adverse events such as death, life-threatening condition, hospitalization, persistent disability or incapacity, or birth defects. We made a specific exemption in this amendment for supplement beverages containing caffeine, such as tea and sports drinks.

The Office of the Inspector General at the Department of Health and Human Services estimated in 2001 that less than 1 percent of all adverse events associated with dietary supplements are reported to the FDA. The Institute of Medicine issued a report last month recommending that adverse event reporting become mandatory for dietary supplement manufacturers.

They asserted that:

> While spontaneous adverse event reports have recognized limitations, they have considerable strength as potential warning signals of problems requiring attention, making monitoring by the FDA worthwhile.

The Institute of Medicine recommended that Congress amend the 1994 supplement law, DSHEA, and require manufacturers of supplements to report to the FDA in a timely manner any serious adverse event associated with their products.

The men and women in uniform serving this country face enough danger in the field. They should not have to worry about the so-called health products being sold on military bases with the approval of the Federal Government that may, in fact, be dangerous to their health. This is the minimum we should require of companies selling dietary supplements on military bases, that they be forced to notify the FDA if the product they are selling to our soldiers, sailors, airmen, marines, and members of the Coast Guard are, in fact, dangerous and cause serious adverse health events such as death and stroke.

In closing, let me tell you what the dietary supplement industry is doing to lobby against this amendment. This is an outrage. This multibillion-dollar industry that sells dietary supplement products all across America without testing them to make sure they are safe and without reporting to the Federal Government when they become lethal and kill people opposes my amendment which would require that they notify the FDA when people face stroke and adverse events, death and serious health consequences.

This is what they are saying on their e-mail to their customers: The Durbin bill will hold dietary supplements to a higher level of scrutiny than prescription drugs, over-the-counter drugs, and food additives. They are wrong. Supplements face none of the up-front scrutiny that prescription drugs, over-the-counter drugs and food additives face, nor are they required to report adverse events as prescription drugs are.

The standard we are establishing is the same standard. They should live by the same standard. We lost 30 American soldiers to these dietary supplements, which were lethal. At this point in time, as a minimum, we should require these companies to report to the FDA, when their products are killing people. If they will not report, they should not be allowed to sell their product on military bases. The military banned ephedra when they found out it was killing our soldiers.

We should not test-market dietary supplements on our soldiers. That is what my amendment will do. I hope the Senate will adopt it and that we will show concern for the military and their families and protect them as we should protect every American consumer.

At this point, I ask unanimous consent that my amendment be set aside. I ask for the yeas and nays on my amendment.

Mr. WARNER. Mr. President, reserving the right to object, regarding the second amendment we are currently on, I would like to reserve the right to have an amendment in the second degree. I want to make that clear. We will lay this aside, and one of our colleagues, who is as active in this field as the Senator is, wishes to address a certain aspect of this amendment.

For the time being, this amendment will be laid aside until, hopefully, some time Monday when our colleague will have time.

Mr. REID. Senator DURBIN was only asking for the yeas and nays.

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

The yeas and nays were ordered.

Mr. WARNER. Mr. President, regarding the first amendment, during the course of the colloquy with the Senator from New Jersey, if he would like to speak with me, I have some thoughts on that.

Mr. DURBIN. I thank the Senator.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

AMENDMENT NO. 3291

Mr. LAUTENBERG. Mr. President, I call up amendment No. 3291.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 3291.

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

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

Mr. LAUTENBERG. Mr. President, I rise to offer a fairly straightforward amendment to this bill. The amendment will change the flawed policy that currently prevents media access to the arrival of deceased military personnel from overseas. I include access by the families as well.

On the eve of the Iraq invasion, the Department of Defense issued the following bizarre directive:

> There will be no arrival ceremonies for, or media coverage of, deceased military personnel returning to or departing from Ramstein (Germany) Airbase or Dover (Delaware) base.

With this order, the administration effectively blocked images of flag-draped coffins from appearing in the media coverage of this war. It is very hard to understand that decision. I and my colleague from New Jersey, Senator CORZINE, went to Arlington Cemetery this week to honor the funeral and burial of one of four New Jersey guardsmen who were killed last week. I was struck by the ceremony. I have seen such ceremonies before, but in Arlington it has a special significance. Thousands of our comrades in arms from different wars are at rest there. But in the formal ceremony, it was particularly noteworthy that the flag was handled by the honor guard in such a way that every fold, every edge was perfectly handled by this obviously well-trained honor guard. When the final recipient among the guard was handed the flag, folded in triangular form, he took it, almost reverently, and carried it over to the mother of this young man who was killed. What a touching moment.

Even though there were no direct photographs, it is permanently etched in the minds of those who viewed this ceremony. The symbolism of the American flag covering the coffins of those killed doing their duty has been televised as never before, and journalists are embedded in tanks with combat units. But by the order of the Pentagon, the solemn homecoming of the dead—a time-honored tradition—was forbidden to be photographed or to appear on a television screen. Perhaps—just perhaps—the American people might believe that the reports on the deaths of our soldiers are somehow exaggerated, and this time-honored respect for giving one's life in battle for his country—an honor by having a flag draped over that coffin—was going to be ended. In seeing these coffins, the American public would make it impossible not to share the sorrow of the families who received them. You didn't have to know who was in that coffin, or the family, to know there was another American hero being returned to his country.

Seeing the returning coffins prompted a national sense of shared pain and sacrifice and despair. But during this war, the administration has chosen to fence itself in and ban cameras not only from the central military morgue at Dover Air Force Base but also make it difficult for the press to access the Walter Reed Army Medical Center here in Washington.

I visited Walter Reed this week with Senator CORZINE after we left Arlington Cemetery. We felt it was appropriate to visit with those who were wounded and being treated at Walter Reed from the same contingent, from the Guard company that was attacked so ferociously. We talked to the soldiers who were there with their families. When you see the pain and suffering of those people, you realize how brave and courageous they had been.

I talked to one man, who is now sightless, looking blankly into space. His wife was sitting there with him. He thanked us for visiting. He said he would never again see his 20-month-old daughter. But that would not prevent him from holding her in his arms. He was anxious to get back home to do that. He wanted to return to his fatherly status. He talked of his faith and loyalty to his country. That is a message that ought to go out across America. Why should the press be deprived from an orderly visit, prearranged, to talk to a young man like that, to see the incredible spirit that accompanied this man's faith.

As a result of the current policy at the Pentagon, the over 830 service men and women who died in Iraq passed through a politically imposed void hiding the truth. Even during the Afghanistan war, flag-draped coffins were filmed, and during the Kosovo conflict, President Bill Clinton was on the tarmac to receive U.S. dead.

In 1983, one of the most revered people in American history, President Reagan, personally and publicly received the bodies of 241 marines who were killed by terrorists in Beirut, Lebanon.

I believe the current Pentagon directive is an attempt to manipulate public opinion or make this war pass something that is called the ''Dover test,'' as the Pentagon itself has coined it.

The Dover test dictates that the Pentagon should suppress images of coffins returning from overseas in order to prevent the American people from seeing the real sacrifices that are being made.

The current policy has nothing to do with the privacy of the deceased or their families, as the administration claims. Rather, this policy has everything to do with keeping the country from facing the realities of war, shielding Americans from the high price our young service people are paying.

My amendment is straightforward. It simply instructs the Department of Defense to work out a protocol so that the media can respectfully cover the return to the United States of these heroes who died serving their country.

The amendment specifically states that the new protocol must preserve the dignity of the occasion and protect the privacy of the families. I agree with that statement. The amendment requires the Pentagon to report to Congress on the new protocol within 60 days of enactment of this bill.

The American people deserve to know and see the truth about the cost of the war in Iraq. My amendment will bring an end to this shroud of secrecy cloaking the hard, difficult truth about the war and the sacrifices of our soldiers.

Our soldiers are fighting for democracy, fighting for a free press in Iraq. Yet our Government is censoring the press here. It is not right and is out of line with American values.

My amendment is supported by leading media associations, including the American Society of Newspaper Editors, and in my view, we should embrace a free press in this country and not fear it. There are heroes who have made the ultimate sacrifice in this war for our country. Let's not censor the honor they earn when they return to our shores.

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

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I always enjoy debating my good friend from New Jersey. I have fond memories of a recent trip we took to the 60th anniversary of D-day when he told me some of his own personal experiences as a young soldier in the closing moments of World War II, serving with our forces in Germany. He is a modest man and does not talk about it much, but he is one of the few remaining veterans of World War II in the Senate.

I wonder if the Senator might go back to that reference in his statement about the Beirut bombing. Mr. President, would the Senator from New Jersey repeat that because it invoked a memory I have? Did he not talk about how President Reagan went down—I wonder if he will, once again, recite that very important chapter of history.

Mr. LAUTENBERG. Yes. I did say President Reagan made a point of welcoming the bodies back to this country, 241 of those marines who died in Beirut, and I pointed to the fact that this President, to whom we just said goodbye and who was revered by so many in this country, felt in his heart that it was something he should do. It is so contrary to what is happening now. It does not make sense to me.

Mr. WARNER. Mr. President, if my dear friend will indulge me my own recollection, when that tragic incident happened in Beirut, Senator Tower was the leader of the Republican side of our committee, and I was sort of one of the junior members. I remember he came into my office and said: We are leaving for Beirut in 2 hours. If you have time to pack a bag, pack it; otherwise, just bring a toothbrush.

We went over there and saw the tragedy that had befallen our marines. I will never forget it. When we came back on the plane, we talked a little bit, and President Reagan did receive the benefit of our trip. He was deeply moved by that incident.

I cannot recall exactly the days thereafter when we were working with bringing the remains home, but I let it be known to the President that maybe this would be an opportunity to send a strong message of his deep bereavement for the losses and the resolve that he had to challenge those who brought this about and bring to accountability those who perpetrated that crime. We suggested he go down, and sure enough he did go.

I was privileged he asked if I would come down with him. It was a day I will never forget. It was a cold and rainy day. Because of the number of caskets, it was on the outside largely. I recall the schedule, as all Presidential schedules are detailed, and I had a little copy in my pocket.

He went down to speak to some of the families. It was just magnificent the way this President stood in that cold rain and spoke to them. He turned to me and he said: You know, we should stay and speak to every single family member. He did that. We found the time to go down very orderly and speak to every single family member.

The commanding officer of Camp Lejeune was MG Al Gray. Gray is an extraordinary man. He came up through the ranks in the Marine Corps to become a general. He knew the name—I don't recall he even used any notes—of everyone there, and he stood side by side with the President. I was just a few feet to one side going through and talked to the President. If a wife or a loved one wanted to hug the President, the President hugged them. It was remarkable. It was one of the most extraordinary moments in my long career of working with the men and women of the Armed Forces and a series of Presidents over the many years.

I am glad the Senator from New Jersey brought that up because that attack, in a sense, caught this Nation by surprise. We were ill-equipped. I don't know that the Senator from New Jersey would have any reason to remember this, but the guards around the barracks could not even have live ammo in their weapons to try and deter an attack. We were relying on host country security and the like. But that is an incident which I commend the Senator again for bringing up, but we could not, in my judgment, replicate that today because of the regrettable constancy of bringing back our beloved lost ones in the present conflicts, be they Afghanistan or Iraq.

AMENDMENT NO. 3458 TO AMENDMENT NO. 3291

Mr. WARNER. Mr. President, it is for that reason that I send to the desk a second-degree amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3458 to amendment No. 3291.

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

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

The amendment is as follows:

(Purpose: To propose a substitute expressing the sense of Congress on media coverage of the return to the United States of the remains of deceased members of the Armed Forces from overseas)

Strike the matter proposed to be inserted, and insert the following:

SEC. 364. MEDIA COVERAGE OF THE RETURN TO THE UNITED STATES OF THE REMAINS OF DECEASED MEMBERS OF THE ARMED FORCES FROM OVERSEAS.

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

(1) The Department of Defense, since 1991, has relied on a policy of no media coverage of the transfers of the remains of members Ramstein Air Force Base, Germany, nor at Dover Air Force Base, Delaware, and the Port Mortuary Facility at Dover Air Force Base, nor at interim stops en route to the point of final destination in the transfer of the remains.

(2) The principal focus and purpose of the policy is to protect the wishes and the privacy of families of deceased members of the Armed Forces during their time of great loss and grief and to give families and friends of the dead the privilege to decide whether to allow media coverage at the member's duty or home station, at the interment site, or at or in connection with funeral and memorial services.

(3) In a 1991 legal challenge to the Department of Defense policy, as applied during Operation Desert Storm, the policy was upheld by the United States District Court for the District of Columbia, and on appeal, by the United States Court of Appeals for the District of Columbia in the case of JB Pictures, Inc. v. Department of Defense and Donald B. Rice, Secretary of the Air Force on the basis that denying the media the right to view the return of remains at Dover Air Force Base does not violate the first amendment guarantees of freedom of speech and of the press.

(4) The United States Court of Appeals for the District of Columbia in that case cited the following two key Government interests that are served by the Department of Defense policy:

(A) Reducing the hardship on the families and friends of the war dead, who may feel obligated to travel great distances to attend arrival ceremonies at Dover Air Force Base if such ceremonies were held.

(B) Protecting the privacy of families and friends of the dead, who may not want media coverage of the unloading of caskets at Dover Air Force Base.

(5) The Court also noted, in that case, that the bereaved may be upset at the public display of the caskets of their loved ones and that the policy gives the family the right to grant or deny access to the media at memorial or funeral services at the home base and that the policy is consistent in its concern for families.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Department of Defense policy regarding no media coverage of the transfer of the remains of deceased members of the Armed Forces appropriately protects the privacy of the members' families and friends of and is consistent with United States constitutional guarantees of freedom of speech and freedom of the press.

Mr. WARNER. I share in many ways the objectives of my good friend and colleague from New Jersey. As I said, I respect his own service in the military where both he and I have been along with the loved ones of those who have given their lives in situations, and I am sure both of us, in the course of our long public careers, have attended many funerals with those loved ones.

This substitute is carefully thought through and I hope the Senator will take a look at it. I would like to read it.

The Department of Defense, since 1991, has relied on a policy of no media coverage of the transfers of the remains of members to Ramstein Air Force Base, Germany, nor at Dover Air Force Base, Delaware, and the Port Mortuary Facility at Dover Air Force Base, nor at interim stops en route to the point of final destination in the transfer of the remains.

Now, that final point is basically where the families of the deceased are located. Continuing:

The principal focus and purpose of the policy is to protect the wishes and the privacy of families of deceased members of the Armed Forces during their time of great loss and grief and to give families and friends of the dead the privilege to decide whether to allow media coverage at the member's duty or home station—

That refers to the final destination of the transfer of the remains—

at the interment site, or at or in connection with funeral or memorial services.

Those could be elsewhere selected by the family.

In a 1991 legal challenge to the Department of Defense policy, as applied during Operation Desert Storm, the policy was upheld by the United States District Court for the District of Columbia, and on appeal, by the United States Court of Appeals for the District of Columbia in the case of JB Pictures, Inc. v. Department of Defense and Donald B. Rice, Secretary of the Air Force [86 Fed. 3rd 236, 1996] on the basis that denying the media the right to view the return of remains at Dover Air Force Base does not violate the first amendment guarantees of freedom of speech and of the press.

The United States Court of Appeals for the District of Columbia in that case cited the following two key Government interests that are served by the Department of Defense policy:

Reducing the hardship on the families and friends of the war dead, who may feel obligated to travel great distances to attend arrival ceremonies at Dover Air Force Base if such ceremonies were held.

Protecting the privacy of families and friends of the dead, who may not want media coverage of the unloading of caskets at Dover Air Force Base.

Especially when their loved one may be among them.

The Court also noted, in that case, that the bereaved may be upset at the public displays of the caskets of their loved ones and that the policy gives the family the right to grant or deny access to the media at memorial or funeral services at the home base and that the policy is consistent in its concern for families.

It is the sense of Congress that the Department of Defense policy regarding no media coverage of the transfer of the remains of deceased members of the Armed Forces appropriately protects the privacy of the members' families and friends and is consistent with United States constitutional guarantees of freedom of speech and freedom of the press—

As determined by the Federal courts. I would like the Senator's views on that approach.

Mr. LAUTENBERG. I thank my colleague and friend from Virginia. We have shared many experiences. One of them is reaching a particular age when memories go back a long, long time.

The recall that the Senator from Virginia just delivered to us about President Reagan's sensitivity and the part that my friend was able to play, viewing all of that and trying to expedite things, it is a wonderful recall as to what happened with a very sensitive President.

I traveled to Beirut—and that was my freshman year in 1983—and I was there between the killing of the 241 and the killing of 8 more that the Senator recalls a few weeks later. It was a disastrous scene and left an impression that one can never forget of these young people in their sleep taken from us. I never recall hearing one family saying too much exposure resulted from that. I did not hear anybody ever say to the public, my son, in an unidentified casket, should not be honored in a generic way with his comrades who also are fallen in pursuit of an American objective.

As the Senator was recalling his views and offering this amendment, I looked at some information we have, a New York Times/CBS poll from September 2003 that found 62 percent of Americans said the public should be allowed to see pictures of the military Honor Guard receiving the coffins of these soldiers killed in Iraq as they return to the United States. There were 27 percent who said no.

In response to our good friend's concerns about whether families might be inconvenienced if they are called to Dover, DE, or perhaps embarrassed somehow or another, they do not have to go. That is not what my amendment says. It says that media should not be prohibited from going there and taking a picture and saying here is a picture of unknown heroes.

We walked in Normandy together just a week ago, and I saw lots of crosses and Stars of David. I looked at some of the stones and saw a lot of them had a New Jersey home when they left, but I looked at one stone and it just gave me such a shock because it said on this stone, here lies a valued comrade known but to God.

The unknown soldier of a family who lost a brother, a son, a father will never know what happened to them, but they were respected in that piece of turf with their colleagues who had fallen.

I get very emotional when I think about the days that I enlisted in the Army. I was 18. My father was on his deathbed, 42 years old. My mother was about to become a 36-year-old widow, and what it meant to me to join with all of my other comrades to try to do something. The promise I had from the Army was they would give me until my father's death so I would know that I would be home with my mother.

I went, and although I did not serve in active combat, lots of people I know

died. We were attacked by German bombs constantly. Those days meant so much. Then there were the opportunities that were given to us: a college education, an opportunity to serve our country even more forthrightly.

So when I look at veterans and visit the hospital, I see a fellow who has one limb remaining, a prosthetic on his arm, prosthetics on his legs, learning to walk that way, I say, by God, what a price we paid. How dare we not honor them in the most obvious ways.

I hope I can have a talk with my friend and colleague from Virginia—not to cover this issue with anything but a determination to say if someone has died for their country and we take that flag and put it on that casket, they have received the honor of their country, every one of the 280 million citizens we have here. When that flag is placed there it says your country loves you and they are terribly saddened by what happened to you. I believe that practice should be made obvious to the public. It is not the display of the coffin I am looking for; it is a display of our honoring this individual. It is the way to do that.

I hope the good Senator's second-degree amendment can stand alone. Let this first amendment be considered. It is just to say we are not going to hide anything. The public is going to know that in that box lies a young man or a young woman who gave his or her life in pursuit of the country's interests.

Mr. WARNER. Mr. President, there are rare moments in the life of the Senate. I have enjoyed our colloquy. The Senator has raised one of the most important issues that will be considered on this bill. Despite all the billions and billions of dollars, some $420 billion involved in this bill, this is a matter of principle of the greatest concern to every single Member. Therefore, I am going to ask that this amendment be laid aside so the Senator and I can resume this debate on Monday and let each one of our colleagues have the benefit of our thoughts and have the opportunity to do some careful study of the different proposals, the one you have submitted and the one I have submitted.

May I suggest, however, with regard to yours, there may be one technical thing you might wish to reflect on, and that is the use of the word ''killed.'' You limit it to the people who have been killed overseas. There are some who lost their lives overseas other than in situations that would be characterized as ''killed.'' I would broaden that definition, if I were you, to include those who for other reasons might have lost their lives but who deserve, no less, the recognition which my distinguished colleague from New Jersey wishes to accord them.

Mr. LAUTENBERG. Toward the end of my amendment I use the term ''died.'' That is an appropriate correction. I would certainly accept that.

Mr. WARNER. Fine. I think you do refer to that. But to make it clear, you might wish to broaden it.

Mr. President, at this time—unless there is further debate from my distinguished colleague?

Mr. LAUTENBERG. I wonder if the Senator from Virginia would confirm at this point that we will vote on this amendment whether it carries the second degree or it does not?

Mr. WARNER. At this point in time I would like to leave it in the status it is in, assuring you that you have my personal assurance, because of my personal respect for you and the contents of this amendment and its importance, that it will be treated with eminent fairness. No procedural mechanisms will be utilized in any way to deprive the Senator of an opportunity for his debate to be heard and considered.

I thank my friend. I would only conclude: One of the great values in making a trip with a fellow Senator—no matter how long you have served with them and visited with them, there are some things about their life which are fascinating. I hope someday you tell the story about how you were in the Army over there, and both you and I were communicators, and at times in our careers we used to climb up the poles to get the wires that transmitted the signals and orders to those at the front. While you were on top of the pole, a Buzz Bomb—I wonder if even a few realize that weapon was employed by Hitler in the final months of the war, which is a very lethal and dangerous weapon. But that is for another day. The Chamber should hear that story.

Mr. LAUTENBERG. In those days the Germans would knock down the wires and I would put them up, they would knock them down, I would put them up, but somehow we survived.

Mr. WARNER. But to be on top of that pole and to get down in safety from the Buzz Bomb—that was a trip.

I yield the floor.

Mr. LAUTENBERG. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 3353

Mr. REED. I call up amendment No. 3353.

The PRESIDING OFFICER. Without objection the pending amendment is laid aside. The clerk will report.

Mr. REID. Mr. President, I am wondering if my friend from Rhode Island would yield? He would get the floor as soon as Senator DAYTON takes a minute to introduce a bill as in morning business. Will the Senator allow us to do that? We promised him some time yesterday.

Mr. REED. I have no objections. I understand Senator SESSIONS also——

Mr. REID. But you already have your amendment pending here. Has it been reported?

Mr. REED. It is being reported right now.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], proposes an amendment numbered 3353.

The amendment is as follows:

(Purpose: To limit the obligation and expenditure of funds for the Ground-based Midcourse Defense program pending the submission of a report on operational test and evaluation)

On page 33, after line 25, insert the following:

SEC. 224. LIMITATION ON OBLIGATION AND EXPENDITURE OF FUNDS FOR GROUND-BASED MIDCOURSE DEFENSE PROGRAM PENDING SUBMISSION OF OPERATIONAL TEST REPORT.

Of the amount authorized to be appropriated for fiscal year 2005 by section 201(4) for research, development, test, and evaluation, Defense-wide, and available for the Missile Defense Agency for Ground-based Midcourse interceptors, and long-lead items for such interceptors, $550,500,000 may not be obligated or expended until the occurrence of each of the following:

(1) The Director of Operational Test and Evaluation has approved, in writing, the adequacy of the plans (including the projected level of funding) for operational test and evaluation to be conducted in connection with the Ground-based Midcourse Defense program in accordance with section 2399(b)(1) of title 10, United States Code.

(2) Initial operational test and evaluation of the program is completed in accordance with section 2399(a)(1) of such title.

(3) The Director of Operational Test and Evaluation has submitted to the Secretary of Defense and the congressional defense committees a report stating whether the test and evaluation performed were adequate and whether the results of the test and evaluation confirm that the Ground-based Midcourse Defense system is effective and suitable for combat, in accordance with section 2399(b)(3) of such title.

(4) The congressional defense committees have received the report under paragraph (3).

Mr. REID. I ask unanimous consent the Senator from Minnesota be recognized and be able to speak as in morning business for 5 minutes, and the Senator from Rhode Island then regain the floor to discuss his amendment.

Mr. WARNER. No objection, Mr. President.

Mr. REED. Thank you.

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

UNSHACKLE SENIORS ACT

Mr. DAYTON. I thank the Senator from Rhode Island for making that arrangement. I thank the Senator from Rhode Island for giving me that opportunity and also the distinguished chairman of the Armed Services Committee for allowing this as well.

I will be introducing my Unshackle Seniors Act, which will allow seniors and others who are on Medicare to purchase their Medicare discount cards as they choose and to cancel their participation with full refunds and other returns whenever the cards are changed in their coverage or their discounts.

As you know, last year Congress passed a prescription drug coverage plan that was far different from the Senate-passed version which I supported. I voted against the final conference report after voting for the Senate bill. I did so for several reasons, but one was the excessive delay until the actual program would begin, which necessitated these drug discount cards

being made available until the program begins in January of 2006, which is over 2 years after the bill's passage. Until then, seniors are going to be able to sign up for only one, just one drug discount card and only one for that entire year, even though the care plan providers can change the coverage and the amount of the discount they are choosing.

What kind of deal is that, where seniors are stuck with one card for the entire year, but the plan can be changed at the discretion of the provider, yet seniors can't change theirs accordingly? My bill would unshackle seniors from that restriction and would allow them to purchase as many drug discount cards as they choose and also grant them a full refund whenever the card providers change the coverage or the discount, thereby unshackling seniors from this ridiculous restriction that works to the benefit of providers rather than the patients.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 3353

Mr. REED. Mr. President, I understand my amendment has been reported and we are on the amendment now. Let me endeavor to explain the amendment and do it as quickly as possible.

The amendment I support today would provide a condition on the acquisition of interceptors 21 through 30 of the national missile defense. The condition would be that the operational testing would be completed—or initiated, at least—prior to the acquisition of these missiles.

In a sense, it embraces two issues. The first issue is the unwise acquisition of another 10 missiles beyond the 20 that already have been designed for this initial rudimentary deployment of the national missile defense system. That issue is one. The second issue, again, is the issue of making sure we have realistic operational testing.

Yesterday we engaged in a very vigorous debate. I believe the debate was productive. My legislation, as amended by that of Chairman WARNER, would require realistic testing. In fact, it set a date of October 1, 2005, to complete such testing. But I do believe it is important to once again look at this issue of testing, particularly in the context of the acquisition of these additional missile systems.

Initially, when the administration talked about the rudimentary deployment of a national missile defense system, they conceived of a system with 20 interceptors. Suddenly, this year, they have moved forward and added an additional 10 interceptors, interceptors 21 through 30. More than that, they requested an additional long lead time funding for interceptors 31 through 40.

That is an unwise use of very scarce resources at a time when we are trying to expand the size of the Army, when we are trying to do so many things that are putting huge pressure on the bottom line of the Department of Defense. It is unwise. We are talking about an extremely premature acquisition of missiles before we have ''proved out'' the system.

I was struck yesterday when Senator ALLARD submitted a letter from Thomas Christie, Director of the Office of Director, Operational Test and Evaluation at the Pentagon. Dr. Christie said:

> The Ground-based Midcourse Defense (GMD) element is currently at a maturity level that requires continued developmental testing with oversight assistance from operational test personnel. Conducting realistic operational testing in the near-term for the GMD element would be premature and not beneficial to the program.

We have the chief testing official in the Department of Defense saying this system is so immature that we cannot even do operational tests. Yet in this proposal, the administration is asking to go ahead and buy additional interceptors that have not yet been adequately proven and adequately tested. Once again, it is a misuse of very scarce resources.

I have no qualm today with acquiring the 20 interceptors initially planned for the system. But to go beyond that is a mistake in terms of using scarce resources for, basically, unproven interceptors.

It is useful to review the situation of this midcourse ground system and where we are in terms of the system. First, as I mentioned yesterday, one of the key elements is a DSP satellite system that will monitor the initial launch of a missile. That is from a cold war legacy system. It is reliable; it is limited. You simply identify the lift-off of the aggression missile.

The second part of the system is the Aegis ships which have been pressed into service. They were originally designed simply to track and to defend against cruise missiles and aircraft. Now they have been given this extra task of trying to monitor the target as it rises out of the North Korean peninsula headed toward—we hope never but at least hypothetically—the United States.

A third element is the Cobra Dane radar, another system of 1970 vintage, designed not for missile defense but for looking at Russian missiles and their missile rangers. It is not even capable, most people concede, of tracking effectively a missile bound for Hawaii. It has been upgraded but still it is not the X-band radar, the big powerful radar originally designed for the system.

Then there is the interceptors element which is the subject of this amendment. Originally, as I indicated, the plan was to have 20. Now the administration is talking about 40. The interceptors have not been tested together with the new ''kill'' vehicle. In fact, the new kill vehicle, the warhead that sits on top, has not even been flight tested. As a result, we are rushing into this deployment. In fact, the whole system has not been tested. So bits and pieces have been tested. It is premature to go ahead now and ramp up production of these missiles.

If it turns out there is a systematic flaw in the missiles, and they have been acquired and deployed, if they have not been worked on in the silo, they will have to be removed from the silo and transported. It is very expensive.

I beg the obvious question. If we have not tested the system adequately, if we are planning for years now to have a 20-interceptor structure of our missiles, why are we rushing ahead now and buying additional missiles? My amendment says, at least before we get to this point of buying the additional missiles, we should be in the area of planning and carrying out realistic operational testing.

Yesterday, again, we had a very good debate. We were able to make some progress. But I point out again, the amendment proposed by Senator WARNER, and adopted to change my language, moves the responsibility from the Office of Director of Operational Test and Evaluation of the Pentagon to the Secretary of Defense. It takes away that objective independent voice, which is the traditional way in which we evaluate any weapon system, not just the missile defense system.

I hope by the time we get around to making these acquisitions, acquiring interceptors 21 through 30 and 21 through 40, that we would not have the specialized testing regime under the Secretary of Defense, and that we would be back in a situation where we are doing operational testing the way it was designed and carried out.

That is the essence of my amendment. It would not in any way inhibit the deployment of the system. It would not in any way try to shrink the number below 20, which has been the plan for years. It would not decrease funding for missile defense. If this operational testing regime was in place, then these 21 through 30 interceptors could be acquired. It is really designed to first highlight and underscore the fact that we are rushing ahead, not just in terms of deployment but in actually building out this system way beyond what has been proven by testing; and, second, also, to emphasize the need for a thorough testing not beyond, frankly, what was required in yesterday's amendment.

Although I think yesterday's amendment was a good step forward, operational realistic testing by October 1 of 2005 is a very laudable goal. I hope we can follow through and carry it out.

Ultimately, we want to get the whole system back into the situation of practically every other major defense program; that is, before deploying the system, build the system, go to production, and that you have actually done operational testing, independent operational testing, supervised, conducted, monitored by Dr. Christie and his colleagues in the Defense Department Office of Director of Operational Testing and Evaluation.

One other point I make, in the discussion yesterday, there was some mention of how this system was going to protect us from threats around the world, including threats from Iran. This system is exclusively designed to protect from a missile launch from North Korea. It will provide no protection from a missile launch from any other point on the globe, as far as I can tell. It is not a comprehensive system defending the United States. It is a limited system focused on North Korea.

One can fairly ask, if North Korea is such a dangerous threat that requires this very hasty emergency deployment of a missile system, why are we withdrawing troops from North Korea, ground forces that could complement our diplomacy? We are we not taking aggressive diplomatic steps to try and disarm North Korea when they have made it clear they have nuclear material. They very well may have fashioned multiple nuclear weapons in the last year while we have been trying to negotiate but doing so unsuccessfully.

Again, this raises the whole question of how do you deal with these threats through this very expensive, very limited missile defense system or through other means complementing the development of the system. I argue, of course, that we have to be much more aggressive diplomatically with the North Korean situation; that we have to do it from a position of strength. That position is not enhanced when we take out troops.

I also suggest if we did that, we would have the time to develop this system properly, to declare it deployed—not now, but when we have had a test of the entire system, of all the elements, so that we know this system will work and it will work effectively.

An interesting final point I make is that in the discussion yesterday about operational testing, there was an example given about the Patriot system, which is the PAC–3 system. That is a complicated missile system, hit-to-kill technology, the same basic technology that will be employed in this national missile defense system.

We talk about this midcourse system. It did extremely well in all its developmental tests, and then it had operational tests. They had four consecutive operational test failures; that is the PAC–3.

Now, certainly we do not want a situation where the first operational test is the acquisition of an incoming missile from a hostile power, and we don't know if we are going to have the PAC–3 record of four failures in a row or we are going to do much better. I think that, essentially, is where we are today.

So my amendment, in summary, which will be disposed of next week, would condition the acquisition of interceptors 21 through 30—the new requirement that sprung up this year, after years of looking at 20—it would condition it on having operational testing according to the standard procedures that are in place in the Department of Defense.

With that, I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Alabama.

Mr. SESSIONS. Madam President, I rise in opposition to the Reed amendment, but I would note that Senator REED has certainly done a lot of work on this issue. Yesterday, Senator WARNER proposed a second-degree amendment that incorporated a number of the concerns the Senator had about missile defense. This amendment today would cover much of the same ground that was considered in the amendment offered by Senator REED yesterday. That amendment was adopted by the Senate and modified, as I noted, by Senator WARNER.

The amendment today uses the same approach to testing as the amendment yesterday, but it has the additional disadvantage of imposing a very significant cost to the Missile Defense Program and to our ability to defend the Nation from long-range missile attack. It would prohibit expenditure of fiscal year 2005 funds for ground-based interceptors until initial operational test and evaluation is completed. And that has a technical and important legal definition.

I remind my colleagues, the Warner second-degree amendment, adopted yesterday, requires the Secretary of Defense to establish criteria for realistic testing of ballistic missile defense systems and to conduct a test consistent with those criteria in 2005. The Senate approved this approach, rather than the Reed approach, which would require operational tests and evaluation of each configuration of the BMD system.

Indeed, the Senator's amendment today is much more demanding because unlike the one yesterday, it would restrict the ability to acquire additional missile defense interceptors until such testing is completed.

During the debate yesterday, we noted that the Department of Defense Director of Operational Test and Evaluation believes that operational test and evaluation for ground-based midcourse missile defense elements—the kind of testing the Senator is proposing—is premature and not helpful to that effort. We note the need for flexibility to incorporate developmental goals into missile defense testing so that the missile defense system can continue to evolve and improve over time. These developmental goals are precluded, by law, from operational test and evaluation.

We noted that the Warner amendment provides the flexibility to include developmental goals and avoids the cost delay involved in significant replanning of the test program. All these arguments are relative to the amendment before us today as well.

So I note again that the Warner amendment, adopted by the Senate yesterday, requires a test be conducted in 2005, consistent with the Secretary's criteria for realistic testing. Yet the Reed amendment before us would prohibit the Department from using funds for additional interceptors in 2005, until the approach to testing rejected by the Senate yesterday is not only adopted but completed. So the Senate has spoken on this issue.

Further, the amendment we are considering, if adopted, would do serious harm to the Nation's ability to defend itself from long-range missile threats. While we have no defense today against long-range ballistic missile attack, we are on track to field a missile defense test bed that will provide an early, limited capability to defend against long-range missiles later this year.

Our goal is to have five missiles in place in September that have the capability of knocking down attacking missiles whether they come from any place on the globe, protecting the entire United States by placing them in this geographically perfect spot in Alaska that allows us to protect the whole country.

I think most people need to remember that. People made fun of this. They said it could not be done, a system like this would not work. But it is going to be deployed in September. What this amendment would do is stop the assembly of additional missiles that are now ongoing, block the assembly line that really needs to continue for at least a year, maybe two. I think that is the biggest problem we have with it.

The kind of testing and evaluation and development we are doing today, through a spiral development type concept, is to move forward, to get this system up. As Senator REED's chart showed, we have ships at sea. We have early radar warning systems. We have communications systems.

We have to have command systems as well as the missile and its technical capability to hit an incoming missile. The tests so far have proven that the existing capabilities of the guidance systems that we have enable an American antiballistic missile to knock down an incoming missile with remarkable certainty. It is a remarkable scientific achievement. Someone said recently, it is equivalent almost to putting a man on the Moon.

It has been done. We are there. We do not need to slow this down. But there is no doubt in my mind that as we go forward additional tests will be conducted, that additional scientific and technological advancements will be brought on line. We will continue to improve this system as we go forward with it.

We have had a lot of debate on national missile defense. I know people have different ideas about how it ought to be developed. We have put some real faith in General Kadish and his team at National Missile Defense. I think they have proven worthy of the faith we have put in them. We gave them flexibility. We did not try to micromanage what they were going to do. We challenged them to produce a system that

could be deployed this year. We gave them the ability to develop and move forward in a way they thought best. If they believed changes needed to be implemented differently from what they thought when they first started, we gave them flexibility to do that. They are coming forward in a great way.

I am proud of what General Kadish has accomplished and what Admiral Ellis has stated and his confidence in this system. I believe we have been very fortunate to have top-flight people in charge of this program. If not, we would not be nearly as far along as we are. I do not think we ought to constrict them with this amendment.

I respect the Senator's goals. I know he has studied it carefully. He believes this would help. But at this point I think it would do more harm than good, and I oppose the amendment.

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

Mr. SESSIONS. I am delighted to yield.

Mr. REED. I want to understand and make sure that I am accurate. In reference to the system being deployed this September in Alaska, my understanding, which I stated, is that it would only provide coverage for essentially the North Korean threat. And then I heard you say the system—it might be in the future—but the system would cover all threats. My sense is that this system that will be deployed would cover North Korea.

Mr. SESSIONS. I believe it would cover at least a good bit of the United States against a Middle Eastern threat, and it could be effective against other threats. But, obviously, the main threat at this point—the ultimate goal is to provide a system that can protect us from all threats.

Mr. REED. I understand, as the system is eventually designed to be. But, if you will indulge me, I also understand that other radars have to be put in place beyond Cobra Dane, beyond the Aegis systems that they have not yet put in place. There are other elements that have to be in place for a more comprehensive system.

The other point on which I raise a question is the simple fact reflected in Mr. Christie's letter. This isn't a question of logic as much as technology. He seems to be saying the system is so premature or has a lack of maturity such that you can't do operational testing. I must say, I find it difficult, then, to say we can't do operational testing but we are going to put it in operation. That is the situation we face in September. But that is more of a comment than a question.

I thank the Senator for his kindness.

Mr. SESSIONS. I know the Senator has studied this carefully, and I respect him for that. We have made a commitment to go forward and deploy. We have done a good deal of testing to date. We are going to need to test the whole system. The Senator is right. We may find that some difficulties exist that need to be dealt with. We may find that some things work better than we thought. But until we get the system in the ground, I don't think we can do the kind of realistic testing that we need, testing the command center, the advanced radar, the communications systems, and all of that. I am committed to this spiral development system in which we don't straitjacket ourselves but continue to develop as we test. I think your amendment would limit the development and go back to the more traditional firm testing, step by step. I respect your view on it, but I think we should go the other way.

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

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

AMENDMENT NO. 3297, AS MODIFIED

Mr. REID. Madam President, I ask unanimous consent that the pending amendment be laid aside and that we now call up amendment No. 3297, as modified, which is at the desk.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 3297, as modified.

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

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

The amendment is as follows:

(Purpose: To repeal the phase-in of concurrent payment of retired pay and veterans' disability compensation for veterans with a service-connected disability rated as 100 percent)

At the end of subtitle D of title VI, add the following:

SEC. 642. REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES RATED AS 100 PERCENT.

Section 1414 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by inserting after the first sentence the following new sentence: ''During the period beginning on January 1, 2004, and ending on December 31, 2004, payment of retired pay to such a qualified retiree described in subsection (c)(1)(B) is subject to subsection (c).''; and

(B) in the last sentence, by inserting ''(other than a qualified retiree covered by the preceding sentence)'' after ''such a qualified retiree''; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting ''(other than a retiree described by subparagraph (B))'' after ''the retiree'';

(ii) by redesignating subparagraphs (B) through (F) as subparagraphs (C) through (G), respectively; and

(iii) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) For a month for which the retiree receives veterans' disability compensation for a disability rated as 100 percent, $750.'';

(B) by redesignating paragraph (11) as paragraph (12); and

(C) by inserting after paragraph (10) the following new paragraph (11):

''(11) INAPPLICABILITY TO VETERANS WITH DISABILITIES RATED AS 100 PERCENT AFTER CALENDAR YEAR 2004.—This subsection shall not apply to a qualified retiree described by paragraph (1)(B) after calendar year 2004.''.

Mr. REID. Mr. President, it seems that every year at this time I come to the floor to offer an amendment on behalf of America's disabled veterans. It is something that I have become accustomed to and something that the veterans expect of me.

The amendment I offer today, and have for many years, deals with concurrent receipt, a subject first brought to my attention many years ago by a disabled veteran. This is also called the veterans tax.

A disabled veteran told me in Nevada many years ago that he wasn't allowed to receive both his retirement pay and disability compensation at the same time. I thought he misunderstood what the law was all about. His retirement pay was being offset dollar for dollar by the amount of disability compensation he received. He said it was a restriction found in U.S. law. I assumed he was wrong because it seemed so unfair.

He was right. It was a law that had been in effect for more than 100 years. The law was on the books and hundreds of thousands of disabled veterans were having their retirement pay wiped out. No other disabled Federal retiree was being subjected to this tax; only those who retired from the U.S. military.

So with the help of my colleagues, especially Senators WARNER and LEVIN, and at a later time Senator MCCAIN, we have been chipping away at this unfair restriction for a number of years. With their help, we have made some progress, I think considerable progress.

At first, it was a tiny bit, and it became bigger and bigger, until last year we took a major step forward. We had been looking for full concurrent receipt, but last year we ended up with a compromise agreement that ends the restriction on current receipt for combat-disabled retirees and those retirees who have a service-connected disability rated at least 50 percent.

Had we had this law changed 20, 30, or 40 years ago, many more people would have been able to apply for it. Sadly, each day of every year more than 1,000 World War II veterans die. Even though we have almost 30,000 people still eligible for these benefits, many who should have received them are now gone. So our step last year was an important step forward, but it was far from perfect.

Many tens of thousands of disabled veterans are still not covered under last year's agreement, and even those who are covered have to wait a full 10 years before their offset in retirement pay is completely eliminated. That is a long time to wait, particularly for the severely disabled and especially for veterans of the Korean conflict and

World War II because the average age of those individuals is 83 for a World War II veteran and over 70 for a Korean war veteran.

My amendment that I offer today does a simple thing. It eliminates the 10-year phase-in period for the most severely disabled; that is, those who are rated 100-percent disabled. As I indicated, there are about 30,000 of those 100-percent disabled veterans. Their average age is 59 years old, which takes into consideration the conflicts in Vietnam, the Persian Gulf war, and many other battles we have fought over the years.

Most of these thousands of veterans are disabled from their military service, and they cannot work anymore. Rarely do we find someone 100-percent disabled who can work, but there are some. Typically, these cases include conditions that run the whole spectrum. Some are medical concerns. Some are as a result of actual injuries received. Remember, these are service-connected disabilities. There are some with chronic illnesses who have been diagnosed during active duty and the disease progression prevented a second career.

Madam President, 100 percent is the highest disability rating given by the Department of Veterans Affairs, and it is always associated with decreased life expectancy. So a 10-year phase-in for these veterans to receive full disability and retirement payment will not be realized by many of them. Many will simply not live long enough to reap the benefits of full concurrent receipt.

Let me give an example about the harsh financial impact caused by this long phase-in period. One disabled veteran from Nevada who served 24 years in the Air Force wrote to me recently. She is 100-percent disabled. Under last year's 10-year implementation scheme, she still forfeits $1,571 of earned retired pay every month. Since retiring from the Air Force in 1991, she has forfeited $275,000 of retired pay. If we keep the 10-year phase-in period as is, she will forfeit an additional $80,000. For a person unable to work because of a service-connected disability, every dollar counts and this offset becomes punitive.

This amendment that is now before the Senate pays the most severely disabled now at a fraction of the cost of last year's concurrent receipt bill. We do not create a new benefit. We simply want to pay those most severely disabled now, instead of waiting until they are dead and, therefore, not able to receive it.

This is a compromise. I want every disabled American veteran not to have to give up any part of their pay. This is a compromise. We are not expanding the law in the sense that we are going to include people rated differently than 50 percent, but we are going to allow these people, the 100-percent disabled, to get their money now. I think they deserve this. I think it is so unfair we do not do it.

This is a matter that will be voted on. If the committee decides not to accept it, we will vote on this issue. I feel confident that it will be very difficult for people to return home and look a 100-percent disabled veteran in the face and say: We couldn't afford to pay you now. Wait a while.

I cannot ask for the yeas and nays, but I will at the appropriate time. 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. REID. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

AMENDMENT NO. 3196

Mr. REID. Madam President, I ask that my amendment be set aside and we return to amendment No. 3196.

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

Mr. REID. Madam President, there is no further debate on this amendment. I, therefore, ask that we vitiate the yeas and nays. The amendment has been reported. This is the Durbin amendment that has been debated this morning.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3196.

The amendment (No. 3196) was agreed to.

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

The motion to lay on the table was agreed to.

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

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

AMENDMENT NO. 3353

Mr. ALLARD. I rise in strong opposition to Reed amendment No. 3353, which fences the funds for ground-based midcourse interceptors pending completion of initial operational test and evaluation.

In effect we have already had that debate, and I find it perplexing that here we are, having that same issue introduced again in the form of another Reed amendment on the floor of the Senate. I think we adequately addressed it yesterday when we had a Reed amendment at that particular time where he put in some requirements for operational testing, and we second-degreed that with the Warner amendment where we talked about modifying that in a way so that we maintain flexibility with the Secretary of the Department of Defense, yet had some accountability.

There was a policy set forward where we could move forward with the missile defense issue and still show the accountability we needed. We had that vote and the Warner amendment was adopted as a second-degree amendment on the Reed amendment. We resolved that issue. But here again we are talking about the same issue.

I certainly don't quarrel with the need to conduct operational realistic testing. We recognized that yesterday. Everyone supports that, so much so that this body voted, as I said, strongly. They didn't just vote for it, they strongly voted in favor of the Warner amendment yesterday, which requires such a test to be conducted next year so we can get that behind us and move on. We address it in terms of realistic testing instead of operational testing, which would be much more restrictive.

But this amendment would cause serious harm to the effort to defend our Nation from missile attack. It is a delay in our moving forward. In fact, it would disrupt the production lines to a point where it may even put the total program in severe jeopardy. By fencing these funds, the amendment would prevent obligation or expenditure of fiscal year 2005 funds for the next ground-based midcourse missile interceptors until completion of initial operational test and evaluation.

I know some Senators have maintained this is not a cut to the program. To plan, conduct, and assess a formal operational test—just one test—would take the Missile Defense Agency and the Director of Operational Test and Evaluation a year or more.

The fact is, the fiscal year 2005 funds requested could not be executed in fiscal year 2005. That is the problem. In effect, this is a deep cut to a very important effort.

This reduction would cause serious disruption in the effort to acquire additional interceptors. The contractors making the interceptors would have to interrupt their efforts. Subcontractors would be lost. Key personnel would be lost. Valuable manufacturing experience and processes would also be lost.

Requalifying, then, these subcontractors and retraining workers and relearning the manufacturing process takes time and money. The projections are it would delay the program up to 2½ years and cost taxpayers more than $250 million extra.

Ironically, the loss of expertise and experienced personnel, and the effort to retrain and requalify, inevitably involves increased technical risk, exactly the opposite result which I know Senator REED hopes to achieve.

Let me make several key points. First of all, the GMD effort is threat driven. North Korean ballistic missiles already pose a serious threat to the United States. The justification for the additional 10 interceptor missiles is to defend the country. It is clear for all those who want to look at the evidence. Delay will leave us critically short of assets to defend ourselves.

Second, the Commander of U.S. Strategic Command has expressed concern

with efforts to reduce the number of GMD interceptors. He supports the early exploitation of the operational capabilities inherent in the BMD test bed and believes the GMD element provides him with a useful military capability and enhances deterrence.

Third, the Director of Operational Test and Evaluation, the Department's chief tester, as I like to refer to him, wrote in a letter to me that operational testing for a GMD element is premature and would not be helpful to the program. I have introduced that letter into the RECORD in previous debates. This is in direct contradiction to the direction of this amendment.

The Director, Mr. Christie, has testified that he supports the BMD test program and how it is being conducted, that the testing of the ground-based midcourse element is appropriate, and that he provides operational assessments on a continuing basis.

Fourth, this amendment offers no real benefit to the GMD test program. It is characteristic of a spiral development program such as the ballistic missile defense development effort to incorporate both developmental goals and operational goals and testing. The GMD testing already incorporates operational goals in each of its tests and, as I noted, the Director of OT&E already provides operational assessments based on this testing.

I believe this amendment provides no benefit, absolutely no benefit to the GMD effort and, in fact, will do significant harm to our national defense.

I urge my colleagues to oppose this Reed amendment.

I yield the floor.

Mr. WARNER. Mr. President, I thank our colleague. That leaves the Reed amendment for further discussion on Monday. Am I correct on that?

Mr. ALLARD. That should do it, yes.

Mr. WARNER. Thank you.

Speaking with the distinguished Democratic whip, I believe we are closing in on the final matters on this bill. One end I am going to try to tie down, then it would be my intention, subject to leadership concurrence, to close out today's activities on the bill and go into a period for morning business; is that correct?

Mr. REID. Madam President, that is true. We already have people lined up for Monday for amendments. We have Senators DAYTON, BYRD, BINGAMAN, LEVIN, and we have a number of people on Tuesday. We are about to finish this piece of legislation.

Mr. WARNER. If I may say, Madam President, I feel we are mutually reaching the goal established by Senator REID and the majority leader and the distinguished Democratic leader. I think we are getting excellent cooperation from all Senators, and we will be able to conclude this matter.

Mr. REID. We have a couple of votes—maybe as many as three votes—on Monday, if necessary, but we will have to see what happens on Tuesday. There could even be more than that on Tuesday. I have heard the possibility that we could have maybe six or seven amendments on Tuesday. If we are fortunate, we will be able to finish the bill sometime late that night.

Mr. WARNER. I again appreciate the Senator's assistance. We, frankly, have no more amendments on our side that I know of. Possibly one. I appreciate the cooperation which the other side has given to this matter.

I suggest the absence of a quorum.

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

AMENDMENT NO. 3297

Mr. WARNER. Mr. President, I see the distinguished Democratic whip on the floor. He has a pending amendment. We are prepared to accept it on this side.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is amendment No. 3297.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 3297) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. WARNER. 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 Virginia.

Mr. WARNER. Mr. President, may I add, in the many years I have worked with the distinguished leader from Nevada, this is an issue which he has singlehandedly, in so many instances, taken the role to care for veterans, particularly those who carry the wounds of war or the wounds that have been incurred in the course of their service to the country.

I say to the Senator, this is a further chapter in that long and distinguished history of your personal intervention on their behalf, and I commend you, sir.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator was off the floor when I gave my statement. Senator SESSIONS was covering the floor. But I was quite effusive in my praise of the chairman and the ranking member. These years we have worked on this issue have been tough years. There have been monetary concerns on what we have to do for the military.

Had it not been for the breaking of new ground by the chairman and ranking member—this law has been in effect for more than 100 years—even though I was the person who was advocating this, but for the understanding of the two people we hold out as being our experts in the area of taking care of our military, it would not have been done.

I am so grateful for the help of Senator LEVIN and Senator WARNER. The veterans around the country know that. They know I was the guy out yelling and screaming. But they know the two individuals who made sure we got something done every year—the first year I introduced this, it was not a shutout. The first year we got a little bit. The second year we got more. We have continued to the point where we now are at 50 percent. Those people who are 100-percent disabled will start receiving their money the minute the President signs this most important bill.

I appreciate the comments of the gentleman from Virginia, because certainly he is that. But, also, I want to pat him on the back because he certainly deserves it.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I say to the Senator, I appreciate your sentiments. Thank you very much. And further I sayeth not, except I want to add, we have had a good day on this bill. We have adopted several amendments. We have laid down others that will be completed on Monday and Tuesday. Again, I thank all colleagues for their cooperation, particularly the leadership.

Mr. BIDEN. Mr. President, in a few months, the administration will announce that a national missile defense has been fielded in Alaska. Nobody in this body will be fooled by that announcement. We know smoke and mirrors when we see them, and that is what the so-called ''rudimentary'' missile defense will be.

The Bush campaign will say that he kept his promise to defend America against an attack by intercontinental ballistic missiles, but they won't admit that it doesn't work. And they won't mention the price, both in dollars and in the diversion of high-level attention from the truly pressing threats to our national security.

For those reasons, it is absolutely vital that we approve the amendment offered by Senator REED of Rhode Island. No complex weapons system should be deployed with as little evidence as we have today that the system could ever succeed in wartime. It is astounding that the President's desire to field a system by this October takes precedence over the need to ensure that the system will work. The administration's pursuit of missile defense has been anything but smooth.

First, it put on hold the program inherited from President Clinton. Then it decided on a defense remarkably similar to that one, but with a requirement that a so-called ''Alaska test bed'' be made operational by October 2004. After a test failed in December 2002, the administration actually reduced the number of intercept tests to be conducted before deployment, in order not to delay the deployment date. It

has not conducted a single intercept test since then, let alone one using the intended booster, the actual kill vehicle, the planned radar, the space-based infrared satellite that would be vital to the success of this system, or anything approaching a realistic test geometry or target set.

Very little, if any, of this will be accomplished before the administration claims its schedule-driven success. General Kadish has already said that the next test might be delayed until the fall.

Mr. Thomas Christie, Director of the Pentagon's Office of Operational Test and Evaluation, wrote in his most recent annual report:

Delays in production and testing of the two booster designs have put tremendous pressure on the test schedule immediately prior to fielding. At this point, it is not clear what mission capability will be demonstrated prior to initial defensive operations.

In February, the General Accounting Office wrote:

No component of the system to be fielded by September 2004 has been flight-tested in its deployed configuration. Significant uncertainties surround the capability to be fielded by September.

Two months ago before the Senate Armed Services Committee, Mr. Christie agreed with Senator REED's statement that:

At this time, we cannot be sure that the actual system would work against a real North Korean missile threat.

The Union of Concerned Scientists has noted that, given the limited capabilities of the Cobra Dane radar in Alaska and the SPY–1 radar on a ship in the Pacific Ocean, this system would leave Hawaii essentially undefended. In fairness, there is a precedent for the administration's approach. It is a very old and famous precedent. You can find it in Chapter 1 of Don Quixote by Miguel de Cervantes.

Don Quixote checks out his old helmet, which he has been restoring:

In order to see if it was strong and fit to stand a cut, he drew his sword and gave it a couple of slashes, the first of which undid in an instant what had taken him a week to do. The ease with which he had knocked it to pieces disconcerted him somewhat, and to guard against that danger he set to work again, fixing bars of iron on the inside until he was satisfied with its strength . . .

So far, so good. This is what we do whenever an interceptor fails to hit its target in a flight test. My guess is that this is what the Missile Defense Agency did after the December 2002 test.

But note what Don Quixote does next:

. . . and then, not caring to try any more experiments with it, he passed it and adopted it as a helmet of the most perfect construction.

Does that sound familiar? The Missile Defense Agency did about the same thing: they decided to do fewer intercept tests, rather than more, and to defer nearly all of those tests until well after this missile defense ''helmet'' is fielded. So let's give the Pentagon credit where credit is due: they are downright literary. I do wonder, though, whether they ever got beyond Chapter 1. If they had read Chapter 11 of Don Quixote, they would have discovered that his helmet was demolished in its first encounter with an enemy. That is why Don Quixote ended up putting a barber's washbowl on his head.

There is a clear lesson here, and it is a lesson that Cervantes understood fully 400 years ago. Testing is not a one-time exercise. After you make your corrections to the system, you have to test again. and the reason for testing is so as not to field a system that will fail.

The administration will say that it is employing ''spiral development,'' under which weapons are deployed in an initial configuration that is then improved through regular upgrades. That concept assumes, however, that the initial configuration is at least workable. In missile defense, it is not clear that we have even made it to the barber's washbowl.

To declare that a system protects the American people when none of its real components has been tested realistically is really to deceive the American people. The decision to decrease near-term testing in order to maintain a deployment date weeks before the next election demonstrates neither realism nor wisdom.

The administration's fixation on missile defense has also blinded it to the opportunity costs of its pursuit of that goal. As Richard Clarke later reported, the administration was so focused on missile defense and the ABM Treaty in 2001 that it paid too little attention to the growing threat of al Qaeda terrorism.

It also put on hold, throughout 2001, our important nonproliferation programs in the former Soviet Union, which help to keep Russian weapons, materials, and technology out of the hands of rogue states or terrorists.

In the wake of September 11, when the administration was given a choice of spending $1.3 billion on missile defense or on countering terrorism, it still opted to spend the funds on missile defense. The difficult situation in which we find ourselves today regarding North Korea may be yet another result of the administration's missile defense fixation.

The administration inherited a mixed, but hopeful, situation from President Clinton: North Korea's spent nuclear reactor fuel, except for enough to make one or two nuclear weapons, which had been illegally reprocessed in the 1980s, was being safely canned and stored under U.S. and IAEA observation. American access to a suspect underground site had created an inspection precedent that might be enlarged upon in other agreements. Negotiations were proceeding on a deal to end North Korea's long-range missile sales. And while North Korea was engaged in an illegal uranium enrichment program, that was apparently still at an experimental stage.

But the administration refused to build on President Clinton's work. It delayed any engagement with North Korea throughout 2001, insulting South Korea's President and undercutting our own Secretary of State in the process.

There were persistent rumors that administration officials viewed missile defense, rather than negotiations, as the real answer to any North Korean threat. The North Korean threat was, in turn, a widely cited justification for pursuing a national missile defense and withdrawing from the ABM Treaty.

So here we are in 2004, and what do we have? The North Korean missile threat is still uncertain, since there have been no further flight tests of long-range North Korean missiles. But if North Korea ever does field an ICBM, there is a much better chance now that it will carry a nuclear weapon. Four years ago, we guessed that North Korea had one or two nuclear weapons; now we reportedly think they have at least eight, with perhaps more on the way.

Has this administration's policy made us safer? It doesn't look that way to me. What has happened, however, is that the stakes in missile defense have gotten higher. If faulty missile defense were to let a North Korean missile through with a high explosive warhead, or even a chemical weapons warhead, that would be one thing. But if a missile gets through with a nuclear weapon, then say goodbye to Honolulu or Seattle or San Diego.

That gets back to the matter of realistic testing. it is one thing to have ''spiral development'' of a new bomb, or even a new airplane. The loss of life in the ''learning by doing'' phase will be tragic, but limited.

It is quite another thing to tell the American people to put their trust in a ''rudimentary'' missile defense that could well permit the destruction of whole American cities. The Reed amendment won't stop missile defense. All it does is redress the balance, a little, between feckless deployment and desperately needed testing.

Whether we like our missile defense program or not, we should all vote in favor of testing it. If we need a missile defense, then we need one that does more than raise a ''Mission Accomplished'' banner in Alaska. It is time to stop acting like Don Quixote and start heeding the wisdom of Cervantes.

I urge my colleagues to vote for the Reed amendment.

MORNING BUSINESS

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.