United States is given when detainees are rendered to other countries that they will not be tortured.

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

Mr. ROCKEFELLER. I hope my colleagues will support the amendment. I thank the Presiding Officer.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I do have the privilege of being an ex officio member of the Intelligence Committee. I served 8 years on that committee, and my concluding years was as ranking member. I have a very high respect for that committee and find, from my participation, together with others on it, under the leadership of Chairman ROBERTS and Senator ROCKEFELLER, that the committee does a very good job.

Mr. President, I wish to speak in opposition about this question of the need for this country to establish an independent commission to investigate the detention and interrogation operations conducted by the Department of Defense and other elements of the Government in conjunction with the war on terrorism.

Mr. President, I ask unanimous consent to speak in morning business.

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

INDEPENDENT COMMISSION TO INVESTIGATE DETENTION AND INTERROGATION OPERATIONS

Mr. WARNER. Mr. President, in my judgment, a further investigation is simply unnecessary. The Department of Defense has conducted 12 major investigations. Over 400 criminal investigations and hundreds more informal investigations have been or are being conducted to determine the responsibility and, if appropriate, culpability and accountability.

The combined investigations are unprecedented in scope. The CIA and the Department of Justice are also conducting investigations into the actions of their employees related to detention and interrogation activities.

Responsibility and accountability have been assessed. Over 400 criminal investigations have been conducted and 168 remain open; 95 military personnel have been criminally charged with misconduct, and 75 have been convicted to date. In addition, 177 military personnel have been administratively disciplined. Almost 20 percent of those disciplined have been officers.

Congress has held 30 open hearings, received over 40 closed briefings, and countless staff briefings. The Department has been very forthcoming, providing complete investigations that include over 2,800 interviews and over 16,000 pages of related documents.

The combined investigations have made 442 recommendations, over 300 of which have been implemented, and the rest are in progress, including standardization policy and procedures for detention and interrogation operations, revising policies regarding the International Committee of the Red Cross visits and reports, improved training and clear policy guidance for interagency detention activities.

Investigations have universally concluded that there was no policy of abuse and that no policy led to abuse. As the Schlesinger report stated—that was a commission established by the Secretary of Defense, indeed at the urging of the Congress and our committee, but it was Secretary Schlesinger and Secretary Harold Brown, both former Secretaries of Defense, one a Republican and one a Democrat, men who have had extraordinary reputations throughout their lives. I feel that was one of the major landmark investigations connected with this ongoing problem. They stated:

> No approved procedures call for or allow the kind of abuse that, in fact, occurred. There is no evidence of a policy of abuse promulgated by senior officials or military authorities.

Any discussion of detainee abuse must be kept in perspective. Substantiated cases of abusive conduct by DOD personnel are small in comparison to the 70,000 persons who have been detained and the hundreds of thousands of interrogations that have been conducted humanely, safely, and effectively over the past 4 years.

An independent commission would send potentially the wrong message to our Armed Forces of our lack of confidence in their conduct and would seriously undermine ongoing intelligence-gathering activities.

On a daily basis, we collect intelligence from detainees that provides valuable information to our troops in the field, whether it is Iraq or Afghanistan or other farflung posts. Simply put, this information saves American lives, certainly of the men and women in uniform, and I firmly believe it has helped prevent further serious attack, such as 9/11, on our Nation.

The investigative process has reassured the American people, strengthened the Armed Forces, and demonstrated to the world that we are a nation of laws. Last month, 90 Senators voted in the affirmative for an amendment that required civilized treatment of prisoners at detention facilities. That is the McCain amendment, and I have been a partner with him in the very initiation of those efforts.

The amendment banned cruel, inhumane, and degrading treatment. That vote sent a strong signal. Who among us was not affected when Senator MCCAIN said that he and fellow prisoners in Hanoi knew and took great strength from the belief that ''we were different from our enemies, that we were better than they, that we, if the roles were reversed, would not disgrace ourselves by committing or countenancing such mistreatment of them.''

Move on we must to win this war in Iraq and Afghanistan. Replaying these dreadful and inexcusable instances again in public forum will bring no remarkable insights and no lessons learned, nor will it do anything to reduce the fighting. It will, in fact, draw resources from the war effort by placing a heavy burden on senior commanders and key civilian leaders.

The Committee on Armed Services held over half a dozen hearings on this issue. We still have these matters under review. Still, the question of accountability remains, but we have to wait until there is a conclusion of more of the military cases before I think we probably will do our final work on this chapter, a chapter that I characterize—that is Abu Ghraib—as one of the most serious I ever witnessed in my many years of public service, either in the Pentagon or in the Senate as a member of the Armed Services Committee.

Mr. President, I see the distinguished Senator from Georgia. For that purpose, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, on behalf of Senator PRYOR, Senator ISAKSON, and myself, I rise to call up amendment No. 2433 to S. 1042 and request that Senator LANDRIEU be added as a cosponsor. I believe the amendment is at the desk.

The PRESIDING OFFICER. The Senator should be advised that the bill is not currently pending.

Mr. WARNER. Mr. President, on that point, I suggest that we now go to the bill. I believe there is a pending amendment which requires a UC to be laid aside; am I not correct?

The PRESIDING OFFICER. That is correct.

Mr. WARNER. I so ask at this time.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—Resumed

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> A bill (S. 1042) to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.
>
> Pending:
>
> Nelson (FL) amendment No. 2424, to repeat the requirement for the reduction of certain Survivor Benefit Plan annuities by the amount of dependency and indemnity compensation and to modify the effective date for paid-up coverage under the Survivor Benefit Plan.
>
> Allard amendment No. 2423, to authorize a program to provide health, medical, and life insurance benefits to workers at the Rocky Flats Environmental Technology site, Colorado, would otherwise fail to qualify for such benefits because of an early physical completion date.
>
> Reed (for Levin/Reed) amendment No. 2427, to make available, with an offset, an additional $50,000,000 for Operation and Maintenance for Cooperative Threat Reduction.
>
> Levin amendment No. 2430, to establish a national commission on policies and practices on the treatment of detainees since September 11, 2001.

Inhofe amendment No. 2432, relating to the partnership security capacity of foreign military and security forces and security and stabilization assistance.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The Senator from Georgia is recognized.

AMENDMENT NO. 2433

Mr. CHAMBLISS. Mr. President, I call up amendment No. 2433, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. CHAMBLISS], for himself, Mr. ISAKSON, and Mr. PRYOR, proposes an amendment numbered 2433.

Mr. CHAMBLISS. 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 reduce the eligibility age for receipt of non-regular military service retired pay for members of the Ready Reserve in active federal status or on active duty for significant periods)

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

SEC. 538. COMMENCEMENT OF RECEIPT OF NON-REGULAR SERVICE RETIRED PAY BY MEMBERS OF THE READY RESERVE ON ACTIVE FEDERAL STATUS OR ACTIVE DUTY FOR SIGNIFICANT PERIODS.

(a) REDUCED ELIGIBILITY AGE.—Section 12731 of title 10, United States Code, is amended—

(1) in subsection (a), by striking paragraph (1) and inserting the following:

''(1) has attained the eligibility age applicable under subsection (f) to that person;''; and

(2) by adding at the end the following new subsection:

''(f)(1) Subject to paragraph (2), the eligibility age for purposes of subsection (a)(1) is 60 years of age.

''(2)(A) In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after September 11, 2001, the eligibility age for purposes of subsection (a)(1) shall be reduced below 60 years of age by three months for each aggregate of 90 days on which such person so performs in any fiscal year after such date, subject to subparagraph (C). A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

''(B)(i) Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of this title in support of a contingency operation. Such service does not include service on active duty pursuant to a call or order to active duty under section 12310 of this title.

''(ii) Active service described in this subparagraph is service under a call to active service authorized by the President or the Secretary of Defense under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President or supported by Federal funds.

''(C) The eligibility age for purposes of subsection (a)(1) may not be reduced below 50 years of age for any person under subparagraph (A).''.

(b) CONTINUATION OF AGE 60 AS MINIMUM AGE FOR ELIGIBILITY OF NON-REGULAR SERVICE RETIREES FOR HEALTH CARE.—Section 1074(b) of such title is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following new paragraph:

''(2) Paragraph (1) does not apply to a member or former member entitled to retired pay for non-regular service under chapter 1223 of this title who is under 60 years of age.''.

(c) ADMINISTRATION OF RELATED PROVISIONS OF LAW OR POLICY.—With respect to any provision of law, or of any policy, regulation, or directive of the executive branch that refers to a member or former member of the uniformed services as being eligible for, or entitled to, retired pay under chapter 1223 of title 10, United States Code, but for the fact that the member or former member is under 60 years of age, such provision shall be carried out with respect to that member or former member by substituting for the reference to being 60 years of age a reference to having attained the eligibility age applicable under subsection (f) of section 12731 of title 10, United States Code (as added by subsection (a)), to such member or former member for qualification for such retired pay under subsection (a) of such section.

(d) EFFECTIVE DATE AND APPLICABILITY.—The amendment made by subsection (a) shall take effect as of September 11, 2001, and shall apply with respect to applications for retired pay that are submitted under section 12731(a) of title 10, United States Code, on or after the date of the enactment of this Act.

Mr. CHAMBLISS. Mr. President, I ask that Senator LANDRIEU be added as a cosponsor.

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

Mr. CHAMBLISS. First, Mr. President, I wish to thank the chairman of the committee, as well as the ranking member, Senator WARNER and Senator LEVIN, for their great leadership on this bill. This has been a difficult process we have gone through, having spent, I guess, a week and a half at one point in time and having to suspend further proceedings and now we are back on it. In my opinion, all the work in this body is certainly very critical to the Nation itself, but there is no more important legislation we take up every year than the Defense authorization bill. When we are a nation at war, as we are right now, there certainly is no more important legislation to show support by this body, by the House, and by the American people to our men and women in uniform by making sure that we provide quality of life issues for them, whether it is pay raises, looking after their families, or making sure they have better than adequate housing, but to also say to them that we are going to provide you with the best weapons available in the world today, that we are going to provide you with the best training in the world today to make sure that you remain the strongest military in the world, and as you fight for freedom and democracy on foreign soil, as our men and women are doing today, that they know and understand, without any hesitation, the American people and the Members of Congress stand firmly behind the work they are doing.

I wish to preface my comments with regard to this particular amendment by stating something with which no Member of the Senate would disagree, and that is that the way our Nation uses the Reserve components of the U.S. military has fundamentally changed over the last 15 years.

Several of my colleagues already alluded to this fact during discussion of TRICARE coverage for reservists earlier this year. I support that legislation and commend my colleagues, specifically Senator GRAHAM from South Carolina and Senator CLINTON from New York, for their perseverance on this issue of providing TRICARE for Guard and Reserve members.

Over the last decade and a half, the Reserve components have changed from a force in reserve to an absolutely essential component of the war fight in almost every operation the military engages and in every career field represented in the Army, Navy, Air Force, and Marine Corps.

The Reserve components are now, and continue to become, a true operational Reserve that our military cannot operate without. This is reflected primarily in the rate of deployments and mobilizations of the Reserve components.

The contribution of the Reserve components has increased over 60 times from the pre-Desert Shield/Desert Storm time period to the present. From the post-Desert Storm period, from between 1993 and 1997 to the present, the Reserve contribution has increased between 5 and 10 times, depending on which year you consider. The same trends are illustrated if you look at the number of support days reservists have performed over the last 20 years. The trend over the last 5 years is exponential.

My point, which cannot be any more clear, is that the way we are using the Guard and Reserve has fundamentally changed. Based on this fact, I think it is only appropriate to consider that the way we compensate and reward our reservists needs to change.

Another important factor to be considered is the current recruiting trends for the National Guard and Reserve. The overall trend in Reserve component recruiting is negative. In fiscal year 2005, the Army and Air National Guard, the Army Reserve and the Navy Reserve, all did not meet their enlisted recruiting goals. In fiscal year 2002, the Army National Guard exceeded its goal by recruiting 104 percent of its objective, but in fiscal year 2003 and fiscal year 2004 that number dropped to 87 percent. It now stands at 80 percent. A similar story can be told for the Army Reserve where it exceeded its goal for fiscal year 2002 with 108 percent of its objective only to see that percentage drop to 84 percent for fiscal year 2005. Although not a crisis yet, these trends are definitely a cause for concern.

Retention numbers for the Guard and Reserve are holding fairly steady for now. However, I do not believe anyone

expects the retention rate to hold steady if we keep using our Reserves at the current rate. I believe the current rate at which we are using reservists, as well as current recruiting trends, necessitates that we reexamine the way we manage the Reserve.

As the former chairman of the Armed Services Committee, Subcommittee on Personnel, and the current cochairman of the Senate Reserve Caucus, this is an issue with which I have wrestled considerably and want to be sure that we account for as we provide oversight of the personnel policies of the Department of Defense.

The Department of Defense has made changes in this area by improving the process of training and equipping the Reserve and supporting changes in personnel policies that improve quality of life for members of the Reserve. However, with the possible exception of the TRICARE issue, these changes have been at the margins. The amendment I am calling up today makes what I believe is a relatively minor adjustment to the Reserve retirement system. My amendment would lower the age at which a reservist can receive their retirement annuity by 3 months, counting down from age 60, for every 90 days a reservist spends on active duty during a fiscal year. Any service credited under my amendment would have to be served in support of a designated contingency operation. This amendment specifically rewards the members of the Guard and Reserve who have been called or ordered to active duty, had their civilian lives interrupted for an extended period of time, and in many cases placed themselves in harm's way in defense of their country.

Currently, the average reservist, if they collect any retirement pay at all, receives a small fraction of the annuity that an Active-Duty member receives. If this amendment becomes law, that percentage will rise slightly but in no way will this amendment result in a major change with large financial implications.

I do not have a formal CBO estimate for the current version of my amendment. However, based on CBO scoring for an earlier version, I suggest that the cost of this amendment will be approximately $300 million over 5 years.

There have been several other bills and amendments related to Reserve retirement introduced in Congress and for the sake of comparison, I believe my amendment provides the right incentives and rewards, and it is also the least costly alternative which has been offered so far.

I think it is very important that we strike a balance between the Active-Duty forces and the Reserve component with respect to compensation, quality of life, and other assets and incentives that we offer for people coming into Active-Duty service. I know and understand that we can never totally equalize the benefits to the Active Duty along with those of the Guard and Reserve for the simple sake that if somebody joins the Active Duty, they need to be incentivized to come in and do the work that they are assigned to do knowing that they will be compensated in a way that has been provided for them for decades relative to retirement in this case. We cannot do that with the Guard and Reserve, but we do need to provide more incentives to do something about these drastic reenlistment, as well as enlistment, numbers that I alluded to earlier in my comments.

One way I think we can certainly do that, from a retirement standpoint, is to provide some small incentive to our reservists and our Guard men and women so that they will be somewhat comparable, though never totally comparable, to the Active-Duty members. I believe this amendment is significant and important because it recognizes the increased contribution our reservists are making, rewards them for the service in support of the global war on terrorism, and provides reservists in the middle of their careers with an incentive to stay on board.

I have received some very good feedback from the Department of Defense on this amendment because, first, it incentivizes voluntarism. Secondly, it provides a motivation for retention. Thirdly, it is relatively low cost.

The Reserve Officers Association of America, the National Guard Association of the United States, and the Reserve Enlisted Association also support this amendment and see it as an important, responsible step forward in support of our reservists.

There is no more important issue facing the Senate Armed Services Committee than how we treat our men and women in uniform and their families. It is my hope that as we proceed with this bill over this week, and as the committee entertains legislation and policy changes in the coming months, that we keep the people at the receiving end of our decisions and deliberations foremost in our minds.

We will continue to include the members of the Reserve components in those deliberations and ensure that the Senate adopts policies that work to their advantage that are fiscally responsible and that recognize the significant changes that have taken place in the Reserve over the past decade and a half.

I close by saying, again, that without the leadership of Senators WARNER and LEVIN, we simply would not be providing the compensation, nor the incentives, that we have in place today to the members of the Guard and the Reserve. I thank them for not just their great leadership but their cooperation in working through these very difficult issues, a lot of which are driven strictly by budget. That is what makes it particularly difficult when we have to talk about providing incentives like compensation versus buying weapons systems. It makes it very difficult, and to their credit they have provided the great leadership that is necessary to make sure that we continue to be in a position to be the strongest military in the world. And we are because our men and women who volunteer for that military, whether it is Active Duty or Guard or Reserve, are the very finest young men and women America has to offer.

I ask my colleagues to support the amendment, and I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank the distinguished Senator from Georgia. We are studying this amendment very carefully. I am anxious to get the views of my distinguished colleague, the ranking member, and his group.

As I listened carefully to the Senator's remarks, I was reminded by my own experience—I had a very modest career in the military—I think I spent a total of 14 years in the Marine Corps Reserve and witnessed and participated in a callup of the Reserves in connection with the war in Korea. I recall very vividly that war hit us out of the blue in the summer of 1950. The then-Secretary of Defense, Louis Johnson, under President Truman, was cutting and slashing the military right and left. It was down to the raw bone. Suddenly this war engulfed the United States and there were thoughts in the beginning that it would be fairly simple to end the war.

I remember MacArthur was commander in chief of the forces at that time, and he made a famous statement—I think it was in late September or October—that this war will be over and everybody will be home by Christmas.

Well, that was the fall of 1950, and action did not end until 1953, which had many names from the ''forgotten war'' to a ''police action,'' but it did cause over 50,000 casualties.

The point I wish to make is I witnessed with my own eyes the Reserves being brought in. I was with a group that was called up on 30 days' notice. Most of them had been in World War II. I had brief service at the end of World War II in the Navy. We were all basically former World War II veterans and just beginning to reestablish ourselves. It was only an interval of about 4 years since most had been released then in 1946 and, whammo, in 30 days we were in it.

At first I remember in the training detachments down in Quantico there was a decided feeling among the old regulars of the Marine Corps that we were second-class citizens, but once our folks hit the battlefield, whether it was on the ground or in the air—I was assigned to an air unit as a ground officer—Reserve pilots flew right along with the regular pilots, and one could not tell the difference. They pulled equal missions together, took equal risks. I do not know how the casualties bear out, but I know a lot—not a lot, but a number of our Reserve squadron lost their lives, wounded.

So I say to the Senator, as I listened, I thought back of those days and how

in the ensuing years that was the first time in the Korean War that we really involved the number of Reserves that were needed, and our regular forces then, not unlike now, had been pared down in numbers. As a consequence, today I believe 60 percent of the persons serving in Iraq are Reserves at this very moment. I use the term ''reserves'' to apply to the Guard as well. So they are full partners.

Then, fast forwarding, I remember serving in the Pentagon during Vietnam, and we decided to have, under the leadership of an extraordinary Secretary of Defense, Melvin Laird, the concept of a total force; in other words, whether one is Guard, Reserve, or regular, they are a total force. The total force concept moved on through the years.

I think the Senator is right on target. If the Senator will bear with us a little bit, we are trying to determine exactly how we are going to treat this amendment. At the moment I am very impressed with the Senator's objective. I ask forgiveness for taking the time of the Senate to dwell on what I actually saw years ago and have seen, as the Senator has, on our visits to Iraq, one cannot distinguish between the Guard and the Reserves. They are all amalgamated into the regulars. Actually, many Guard and Reserve units are functioning as units, somewhat augmented, I suppose, with some regular officers, and vice versa some of the regular units are augmented with the Reserve and Guard officers. But it certainly is a total force and a magnificent force we have serving today.

The Senator is right, all of these trends with regard to personnel, they begin to—it is like the awakening of the dawn. The sun does not break through, and one begins to wonder what about this cloud cover, and there is some cloud cover associated with the recent statistics regarding the introduction of new Guard and Reserve persons.

I will say I think the retention has been pretty good in many areas of our Guard and Reserves, but nevertheless we need an inducement. I think this amendment has the beginnings of something that is very important.

The Senator is a valued member of our committee. The Senator fought hard for this one. Give us a little time to work it around.

Mr. CHAMBLISS. If the Senator will yield very briefly, I say the passion that the Senator from Virginia has relative to the men and women in our Armed Forces has been exhibited in our committee time and again. It is pretty obvious to see why. It is because of men and women like the Senator who have served in the Guard and Reserve over the last 50 years that we now truly are a blended force. We are a force of military men and women when it comes time to join hands and go to the fight. It truly is a seamless integration between the Active Duty and the Reserve and the Guard today in Iraq. That is why I think it is very important.

I thank the Senator for his comments and his leadership.

Mr. WARNER. Mr. President, just to add a note, the Senator touched on this, but we cannot and do not—and I do not think this will—erode the base of pay and benefits given to the regular force. Those individuals have committed to a career in the military. In a career of 20 years, they will move 10 or 12 times. On the other hand, the reservist is at home, most of them, in a status where there is an ever-present risk of being called up. For that, I think they should be given some special recognition.

I believe the Senator has that embraced in these valuable ideas that the Senator has in this amendment.

That is because they are ready to respond and they have to, not just move on a set of orders, but they have to try to keep their families in place in their homes; they have to try to work out some relationship with their employers so they can go back. They have a whole set of problems that are quite different than those in the regulars.

I do not think in any way this legislation encroaches on the important category of benefits for the regular forces, but does things that recognize the importance of the Guard and Reserve.

I see another distinguished colleague on the floor.

Mr. LEVIN. If the Senator will yield, I say to the Senator from Maine I will be very brief because the Senator is waiting, but I want to comment on the amendment that has been offered by the Senator from Georgia.

First, I commend him for offering this amendment. It is a very fair amendment. It is a very balanced amendment. It takes on a very important subject and deals with it very forthrightly, which is the fact that our Reserve Forces are called upon more and more now and are put under greater demands, and there is a lot of pressure and a lot of stress now.

We do not require our Active-Duty Forces to wait until they are 60. After they get their 20 years in, they are eligible for retirement. What the amendment of the Senator does, as I understand it, is to credit the Reserve personnel for 90 days of mobilized active-duty service toward—it allows them to gain 3 months reduction from the current requirement that they be 60 years of age.

It is a very important amendment. It addresses an inequity that we have, which is we require our Reserve Forces, even after they have been mobilized, even if they are mobilized year after year, not to get any credit for that active-duty service the way our regulars do.

I commend the Senator. It is a very fair amendment. It has a lesser cost than the one that was opposed by the Department of Defense last year. I hope the Department of Defense will not oppose the Senator's amendment. We have not received a statement from the Department of Defense yet, but I hope, even though they opposed the amendment last year, they will not oppose the amendment of the Senator from Georgia.

It is a worthy amendment. It has bipartisan support. As I understand, in addition to his colleague from Georgia, Senators LANDRIEU and PRYOR are cosponsors. We very much support his effort.

Mr. WARNER. Mr. President, if I might add, last year an amendment somewhat similar to this, but considerably more extreme in its reach, was considered by the Senate. At that time I, along with others, established the Commission on the National Guard and Reserve. It was included in our Defense Authorization Act. That commission is now in operation. As a matter of fact, the distinguished Senator from Georgia and I attended the opening meeting here just days ago. It has an extraordinary list of members. I ask unanimous consent to have a fact sheet and a list of membership printed in the RECORD.

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

COMMISSION ON THE NATIONAL GUARD AND RESERVES FACT SHEET

MISSION

The independent Commission on the National Guard and Reserves is charged by Congress to recommend any needed changes in law and policy to ensure that the Guard and Reserves are organized, trained, equipped, compensated, and supported to best meet the national security requirements of the United States. The Commission was established by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

KEY ISSUES REQUIRING REVIEW

Among the questions the Commission will address:

Roles and Missions—What are the appropriate roles and purposes of the Guard and Reserves in meeting the national security needs of the United States?

Capabilities—How can reserve components and personnel best be used to support Armed Forces operations and achievement of national security objectives, including homeland defense, while at the same time meeting disaster response objectives?

Operational Support—How effective is the Department of Defense implementation plan for the new ''Operational Support'' personnel accounting category which has been developed to account properly for reserve members on active duty in support of total force missions?

Organization and Structure—How effective are the current organization and structure of the Guard and Reserves? Are Department of Defense and individual service plans for the future organization and structure of the Guard and Reserves adequate?

Training—Are the current organization and funding of training adequate? What changes are needed to achieve training objectives and operational readiness?

Readiness—How effective are policies and programs for achieving operational readiness—troops trained and equipment on hand, maintained, and functioning—as well as personnel readiness, including medical and family readiness?

Personnel Compensation and Benefits—Are compensation and benefits, including the availability of health care benefits and health insurance, appropriate and adequate? For both regular and reserve components of the Armed Forces, what are the likely effects of proposed compensation and benefit changes? What are feasible options for improving compensation and benefits, particularly in regard to cost-effectiveness and any foreseeable effects on readiness, recruitment, and retention of personnel?

Career Paths—How effective are traditional military career paths? Are there alternative career paths that could enhance professional development and help move personnel toward a continuum of service?

Funding—How adequate is the funding provided for equipment and personnel in both active duty and reserve military personnel accounts? How can funding best be provided?

Other—What other issues relevant to the purposes of the Commission will be included in its assessment?

COMMISSIONERS

As specified in the authorizing legislation, 13 Commission members were appointed by the chairs and ranking minority members of the House and Senate Armed Services Committees and the Secretary of Defense. Appointed are: .

Arnold L. Punaro, Chairman—Chairman Punaro is a retired Marine Corps major general who served as Commanding General of the 4th Marine Division (1997–2000) and Director of Reserve Affairs at Headquarters Marine Corps during the post–9/11 peak reserve mobilization periods. Following active duty service in Vietnam, he was mobilized three times: for Operation Desert Shield in the first Gulf War, to command Joint Task Force Provide Promise (Fwd) in Bosnia and Macedonia, and for Operation Iraqi Freedom in 2003. He worked on Capitol Hill for 24 years for Senator Sam Nunn and served as his Staff Director of the Senate Armed Services Committee for 14 years. He is currently Executive Vice President of Science Applications International Corporation.

William L. Ball, III—Commissioner Ball is currently Chairman of the Board of Trustees of the Asia Foundation, an international NGO operating in 18 Asian countries. He served in the Navy for six years followed by 10 years service on the U.S. Senate staff for Senators Herman Talmadge and John Tower. He joined the Reagan Administration in 1985, serving as Assistant Secretary of State for Legislative Affairs, Assistant to the President for Legislative Affairs at the White House, and Secretary of the Navy in 1988–1989.

Les Brownlee—Commissioner Brownlee was confirmed as the Under Secretary of the Army in November 2004 and served concurrently as the Acting Secretary of the Army from May 2003 to November 2004. He was appointed by both Senators Strom Thurmond and John Warner to serve as the Staff Director of the Senate Armed Services Committee. He is retired from the United States Army and served two tours in Vietnam. He is currently President of Les Brownlee & Associates LLC.

Rhett Dawson—Commissioner Dawson is currently President and CEO of the Information Technology Industry Council. He is the former Senior Vice President, Law and Public Policy, for the Potomac Electric Power Company. During the last two years of the Reagan Administration, he was an Assistant to the President for Operations. He also served as Staff Director of the Senate Armed Services Committee. He served on active duty as a ROTC-commissioned Army officer from 1969 to 1972.

Larry K. Eckles—Commissioner Eckles retired as the Assistant Division Commander for the 35th Infantry Division, headquartered at Fort Leavenworth, Kansas, after 37 years of service. He refired with over 31 years of full-time civil service employment with the Nebraska Army National Guard and has served in numerous positions at state headquarters including Chief of Staff of the Nebraska Army National Guard, battalion commander, and Director of Personnel.

John (Jack) M. Keane—Commissioner Keane is Senior Managing Director and cofounder of Keane Advisors, a consulting and private equity firm. He is a director of MetLife, General Dynamics, and Allied Barton Security. He served as the 29th Vice Chief of Staff of the Army, retiring after 37 years of service. General Keane was a career paratrooper and a combat veteran, who was decorated for valor. He commanded the famed 101st Airborne Division and the legendary 18th Airborne Corps.

Patricia L. Lewis—Commissioner Lewis served over 28 years with the federal government, including service with the Senate Armed Services Committee for Chairmen John Warner, Sam Nunn, and Scoop Jackson. Ms. Lewis began her federal career in 1975 with the Department of the Navy and has held positions in Naval Sea Systems Command, the Office of the Navy Comptroller, and in the Office of the Secretary of Defense. She is currently a partner with Monfort-Lewis, LLC.

Clinton (Dan) McKinnon—Commissioner McKinnon was founder, Chairman and CEO of North American Airlines. He undertook special projects for the Director of Central Intelligence and also served as Chairman of the Civil Aeronautics Board, during which time he implemented airline deregulation. He has owned radio stations in San Diego. Early in his career, he spent four years in the United States Navy as an aviator where he set, and holds, the U.S. Navy helicopter peacetime air/sea record of 62 saves.

Wade D. Rowley—Commissioner Rowley is currently a Military Border Infrastructure Construction Consultant with the Department of Homeland Security, U.S. Customs and Border Protection. He served over 23 years with the California Army National Guard and Army Reserves. His last military assignment was with the California Army National Guard, where he served as an Engineer Officer, Company Commander, and Facility Commander for the California National Guard Counterdrug Task Force in support of the U.S. Border Patrol.

James E. Sherrard, III—Commissioner Sherrard served as Chief of Air Force Reserve, Headquarters USAF, Washington, DC and Commander, Air Force Reserve Command, Robins AFB, Georgia from 1998 to 2004. He is a retired lieutenant general with more than 38 years of commissioned service in the United States Air Force. As Chief of Air Force Reserve and Commander, Air Force Reserve Command, he was responsible for organizing, training, and equipping more than 79,000 military and civil service personnel required to support operations and combat readiness training for 36 flying wings, 14 detached groups, 13 Air Force Reserve installations, three Numbered Air Forces, and the Air Reserve Personnel Center (ARPC). As Chief of Air Force Reserve, he directed and oversaw the mobilization of Air Force Reserve personnel in support of military operations in Kosovo, Afghanistan, and Iraq. During his career, General Sherrard commanded an airlift group, two Air Force Reserve installations, two wings, and two Numbered Air Forces.

Donald L. Stockton—Commissioner Stockton currently owns and operates the Marshfield Drayage Company in Missouri. He is a retired lieutenant colonel from the U.S. Air Force Reserves where he served nearly 30 years. His last command was with the 934th Maintenance Squadron, a subordinate unit of the 934th Airlift Wing, Air Force Reserve, in Minneapolis where he was responsible for the unit's C–130E aircraft and training of some 175 reservists.

E. Gordon Stump—Commissioner Stump retired in January 2003 from his position of Adjutant General and the Director of Military and Veterans Affairs in Michigan after serving for 12 years. He commanded and directed a total of 157 Army and Air National Guard units, two Veterans Nursing Homes, and 12 Veterans Service Organizations. His prior assignments included Squadron Commander 107th TFS and Commander and Deputy Commander of the Headquarters Michigan Air National Guard. He flew 241 combat missions over North and South Vietnam. He also deployed to South Korea during the Pueblo Crisis. He served as President of the National Guard Association of the United States and as a member of the Reserve Forces Policy Board. Prior to his assignment as Adjutant General, he was Vice President of Automotive Engineering for Uniroyal Goodrich Tire Co. He is currently President of Strategic Defense Associates, LLC.

J. Stanton Thompson—Commissioner Thompson is currently an Executive Director for the U.S. Department of Agriculture's Farm Service Agency. He is a retired naval rear admiral with over 35 years of military service. He is the former Special Assistant for Reserve Matters to the Commander, U.S. NORTHCOM and North American Aerospace Command. He also served as a principal advisor to the commander for maritime homeland defense. During his recall to active duty, he provided active duty support to Operation Desert Shield/Desert Storm.

TIMETABLE AND ACTIVITIES

December 2005—First formal meeting of the Commission

March 2006—Ninety-day report to include strategic work plan, discussion of planned activities, and any initial fmdings, submitted to the House and Senate Armed Services Committees and the Secretary of Defense

December 2006—Final report of Commission to include recommended reforms in legislation and Defense Department policies, submitted to the House and Senate Armed Services Committees and the Secretary of Defense

March 2007—Commission terminated.

Mr. WARNER. They have begun their work and they will examine issues related to your amendment and to other structural missions and compensation of the Guard and Reserve Forces in the coming years.

I do not believe this commission, which is underway, should be used as a deterrent for the Senate to consider at this time the Senator's amendment. I point out that the subject he raised, that is intrinsic to this amendment, is under careful study by an extraordinary group of individuals appointed by myself, Senator LEVIN, our leaders, and others. That will be part of the RECORD.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, the Senator from Maine has an amendment. It is one of the 12 amendments we have under the unanimous consent agreement. There is a time limit on it, of which the Senator is aware.

The PRESIDING OFFICER. The Senator from Maine is recognized.

AMENDMENT NO. 2436

Ms. SNOWE. Mr. President, pursuant to the pending unanimous consent agreement, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE], for herself and Ms. COLLINS, Ms. LANDRIEU, Mr. WYDEN, and Mr. CORZINE, proposes an amendment numbered 2436.

Ms. SNOWE. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the Secretary of Defense, subject to a national security exception, to offer to transfer to local redevelopment authorities for no consideration real property and personal property located at military installations that are closed or realigned as part of the 2005 round of defense base closure and realignment)

At the end of subtitle D of title XXVIII of division B, add the following:

SEC. 2887. TRANSFER TO REDEVELOPMENT AUTHORITIES WITHOUT CONSIDERATION OF PROPERTY LOCATED AT MILITARY INSTALLATIONS CLOSED OR REALIGNED UNDER 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

(a) OPTION ON TRANSFER OF REAL PROPERTY AND FACILITIES.—Paragraph (2)(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended—

(1) by inserting ''(i)'' after ''(C)''; and

(2) by adding at the end the following new clause:

''(ii)(I) Except as provided in subclause (II), in the case of any real property or facilities located at an installation for which the date of approval of closure or realignment is after January 1, 2005, including property or facilities that would otherwise be transferred to a military department or other entity within the Department of Defense or the Coast Guard under clause (i), or would otherwise be transferred to another Federal agency—

''(aa) the Secretary shall instead offer to transfer such property or facilities to the redevelopment authority with respect to such installation; and

''(bb) if the redevelopment authority accepts the offer, transfer such property or facilities to the redevelopment authority, without consideration, subject to the provisions of paragraph (4).

''(II) The requirement under subclause (I) shall not apply—

''(aa) to a transfer of property or facilities to a military department or other entity within the Department of Defense or the Coast Guard under clause (i), or to the Department of Homeland Security, if the Secretary of Defense determines that such transfer is necessary in the national security interest of the United States; or

''(bb) to a transfer of property or facilities to an Indian tribe or tribal organization pursuant to section 105(f)(3) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)(3)).''.

(b) OPTION ON TRANSFER OF PERSONAL PROPERTY.—Paragraph (3) of such section is amended—

(1) in subparagraph (C)(i), by striking ''subparagraphs (E) and (F)'' and inserting ''subparagraphs (F) and (G)'';

(2) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(3) by inserting after subparagraph (D) the following new subparagraph (E):

''(E) In the case of any personal property located at an installation for which the date of approval of closure or realignment is after January 1, 2005, including property that is determined pursuant to the inventory under subparagraph (A)(i) to be excess property that would otherwise be transferred to another Federal agency under subchapter II of chapter 5 of title 40, United States Code, pursuant to the authority in paragraph (1)(A)—

''(i) the Secretary shall, unless the Secretary determines that a transfer of such property to a military department or other entity within the Department of Defense or the Coast Guard, or to the Department of Homeland Security, is necessary in the national security interest of the United States, instead offer to transfer such property to the redevelopment authority with respect to such installation; and

''(ii) if the redevelopment authority accepts the offer, transfer such property to the redevelopment authority, without consideration, subject to the provisions of paragraph (4).''.

(c) ECONOMIC REDEVELOPMENT.—Paragraph (4)(A) of such section is amended by striking ''purposes of job generation'' and inserting ''purposes of economic redevelopment or job generation''.

(d) CONFORMING CHANGE.—Paragraph (4)(B) of such section is amended—

(1) by striking ''shall seek'' and all that follows through ''with respect to the installation'' and inserting the following: ''may not obtain consideration in connection with any transfer under this paragraph of property located at the installation. The redevelopment authority to which such property is transferred shall'';

(2) in clause (i), by striking ''agrees'' and inserting ''agree''; and

(3) in clause (ii)—

(A) by striking ''executes'' and inserting ''execute''; and

(B) by striking ''accepts'' and inserting ''accept''.

Ms. SNOWE. Mr. President, in August the Base Realignment and Closure Commission issued its fifth round of base closures since 1988. Soon the Department of Defense will begin implementing the BRAC report, undoubtedly having a direct and lasting impact on States across this country, including my own State of Maine. I rise today as a congressional veteran of all five previous base-closing rounds to introduce this amendment along with my colleague from Maine, Senator COLLINS. It is as well being cosponsored by Senators CORZINE, WYDEN, and LANDRIEU, and endorsed by the Association of Defense Communities, to place the communities that are directly affected by base closures in this recent round in the driver's seat with respect to the critical economic development decisions our base-closing communities are going to be confronting, and not placing the Department of Defense in control of their economic development and their economic futures.

Our amendment would require that, when making determinations concerning the transfer of property and installations, the Secretary of Defense must offer that property first to the local redevelopment authority, or the LRA, that represents the community and is required to be established under the law. If the LRA accepts the offer, the Secretary is required to transfer the property to the LRA free of cost.

Incredibly, the Defense Base Closure and Realignment Act now provides for the first time in any base-closing round the Secretary shall seek fair market value in the case of an economic development conveyance through which the Secretary transfers product to affected communities for economic development purposes. In short, the law now says the first order of business is for the Department of Defense to receive fair market value, no matter the cost in economic development, no matter the cost to the communities themselves.

What kind of a perverse situation do we have, when the taxpayers and communities are facing closures or realignments and they are now confronted with a triple burden? They have already contributed mightily toward the cost of Iraq—more than $200 billion, $28.5 billion of which was spent on redevelopment efforts in that country. Now their facilities are being realigned or closed and now the statute is requiring of them, if you want this property for economic recovery, for economic development—because now they are reeling from the impact of a base closure—you will be required as a community or communities to buy it back from the Department of Defense at fair market value. That obviously is going to cost millions upon millions of dollars to these communities that are already reeling from the economic impact as a result of base closure.

It is no wonder communities are going to feel slighted and, indeed, abandoned by those they have supported for so long. Is this the message we want to send, that we are going to make the recovery process Defense Department centered and not community centered?

As I said earlier, I have been a veteran of five previous base-closing rounds when they first started in 1988. I have been through every one of those rounds. It has always been, What can we do to mitigate the economic impact on the communities directly affected by base closures? But now, regrettably, we are seeing a reversal in that approach under the current statute. Now we are saying the U.S. Defense Department is better equipped to move the development decisions in the Department as opposed to concentrating and allowing the communities to make those decisions.

Are we to believe the Department of Defense is better equipped to make decisions as to which property transfers will be most beneficial to a community's economic development, that the Department of Defense has a greater understanding of the individual challenges confronted by our towns and communities in the aftermath of base closures than the towns and communities themselves?

I suggest such a notion is on its face absurd. Indeed, it is so preposterous I can hardly believe we are standing here today to offer this amendment, that we are in a situation that we have to offer this amendment. Why would we continue to require the economic future of our BRAC-affected communities to be determined by the highest bidder the Defense Department can identify?

So it is going to be the Defense Department that is going to be driving the sale, the transfer, and the future economic plans of a particular community and not the communities themselves. It contradicts the purpose of what we need to do as a result of the base closures. In fact, in the aftermath of decisions that were made by the Base Realignment and Closure Commission, I had the opportunity to speak with one of the commissioners, who said one of the purposes in making this decision—regrettably, on Brunswick—was the fact that we wanted to put the communities in the driver's seat. We wanted the communities to be able to dictate their own future economic destiny, not the Department of Defense, because the original decision was a proposal for realignment, and they recognized they could close the facility, the Navy could take the personnel and transfer the squadrons to Florida and keep the facility and hold the communities hostage to an idle facility that would not generate jobs. So they decided to allow the communities to make those decisions.

They made the decision, regrettably, to close the facility, but because they wanted the community to be able to take charge of its own future economic destiny and be able to dictate what the use of that abandoned base would be. So it makes no sense now to discover that we have in statute where it says the Department of Defense is going to require, is going to insist on fair market value for transferring these properties to the community. Ultimately, obviously, the Defense Department is going to be looking for the highest bidder. Ultimately the Defense Department could potentially dictate the use of those facilities, even if it contravenes the interest, the position, and the decisions by the local communities in terms of how they want to use that facility.

What happens if the Federal Government's idea of opportunity is a Federal prison or an oil refinery that a community strongly opposes? Legislation has already been introduced in the House which, if enacted, could impose oil refineries on these communities. In fact, it has been part of their Energy bill in the House of Representatives.

Ultimately, under current statutes, these decisions would rest not with the State, not with the town, or the city, but with the Department of Defense. Rather, we ought to look at the model established in the State of Maine by the success achieved after I secured a free transfer of land of the former Loring Air Force Base in Limestone, ME, that was closed in the 1991 round and subsequently closed its doors in 1994 as a result of that 1991 round.

At the height of its activity, the Loring Air Force Base augmented the native population of Aroostook County by 10,000 individuals. Today the community is only now beginning to see progress in recovering from its prior base closing loss, replacing 1,100 lost civilian jobs with 1,400 new civilian jobs. I could not imagine where we would be today if not for the free land transfer. Can you imagine if they cannot have the ability to make decisions about their future without being handicapped about paying fair market value for this property? It would have handicapped them from making the kind of decisions to allow them to move forward, if they were first required to pay for this property to the Department of Defense.

It was bad enough they lost the base. It was bad enough they lost 10,000 people who were located on that base.

I might add 10,000 is larger than many of the communities in the State of Maine.

Thousands of jobs depended on that base.

And we now say to the community, Well, sorry. You are now going to have to pay fair market value to get it back. With the current base-closing round, America faces 22 major base closures and 33 alignments. Outside Maine, leaders and residents in States such as California, Georgia, Indiana, Kansas, Michigan, Mississippi, Texas, Utah, Oregon, New Jersey, Virginia, Pennsylvania, Alaska, Wisconsin, and New Mexico will face considerable challenges as they attempt to successfully transition local economies following base closures and realignments.

In fact, according to the data contained in the 2005 base-closing round, almost 33,000 civilian jobs will be lost in base closures and realignments.

The Naval air station had a $211 million direct impact on the local economy in 2004. But now the communities surrounding the air station are expected to directly lose 3,275 military and civilian jobs, as well as indirectly losing another 2,590 jobs, for a total of 5,865 jobs, or 15 percent of this labor market. While there are only 32,000 people who live in Brunswick and the neighboring town of Topsham combined, such a significant loss will cause a catastrophic unemployment increase in the area to an incredible 15 percent.

These communities need tools, not obstacles.

For those of you who are confronting the base-closure process for the first time, I can assure you that this will undoubtedly have a substantial and detrimental impact on these communities.

In the final analysis, the base-closing act, as it stands today, places a very difficult burden on the community because it places an inappropriately high priority on the Secretary of Defense to obtain fair market value at the expense of the best interests of the community's economic recovery.

I know you will hear opponents in the Department of Defense make its arguments. They will say, Well, suppose the community doesn't want to accept the property for any reason. Of course, our amendment says if the community doesn't want it, and it would be mutually beneficial to the community and the Department of Defense to have the property transferred through another channel, the community need only to refuse the offer process.

Similarly, the amendment would not require that the community request or accept all the property at an installation in order to receive any portion of that property.

The Department of Defense will also say we need the funds we would recoup from selling property at fair market value to contribute to the account used for closing or realigning military installations or environmental restoration and mitigation.

The Department of Defense may also claim that it requires the proceeds for the sale of closed base property in order to pay for that property's cleanup and redevelopment. However, history tells us that this is absolutely not the case. In fact, according to the January 2004 GAO report, over the previous four base-closing rounds, proceeds from land transfers account for only 2.6 percent of the Department of Defense budget for cleanup, redevelopment, closure, and realignment costs.

Selling off closed base property is clearly not necessary to these efforts and are certainly unwarranted when one considers the harm that it can cause to these communities that it purports to help.

Finally, it is critical to know that this amendment also incorporates the safeguards currently applicable to these economic conveyances to ensure the integrity of these types of transfers.

For instance, a property conveyance can only be provided to an LRA for economic development or job generation. Moreover, once the property is transferred to an LRA, the proceeds from the sale or lease of the property within the next 7 years must be spent in support of economic redevelopment of the installation.

That is an important point because that would mean that it could reduce the Federal expenditures and environmental mitigation or other expenditures that are required and are associated with the closure of military installations.

In addition, this amendment retains safeguard provisions currently contained in the BRAC Act to ensure the integrity of a transfer to a community.

For instance, it retains the provisions covered under the Comprehensive Environmental Response and Liability Act of 1980 to ensure that the property will be environmentally restored.

The amendment also includes an exception that protects the ability of the Secretary of Defense to make transfers necessary for our national security.

I hope that we can work with my colleagues in addressing these issues with this amendment. I certainly will invite the chairman of the committee and members of the committee to critically think about the impact of the current statute on those communities that will be directly affected by base closures.

Are we intending the Department of Defense to be the economic developer for these communities, for my communities in Maine, for Brunswick and Topsham that will not be able to plan for their economic futures and their economic well-being? They want to be able to dictate those choices. Are we now saying we are going to hamstring them where we say it will require fair market value for the property of the closed installation? Ultimately, they are going to be at the mercy of the Defense Department.

The Defense Department is going to say we are going to sell it to the highest bidder, and it is one of several options under the statute. The Department of Defense could sell it at auction to the highest bidder. It could sell to a private entity, to an LRA. It could do a number of various things under the statute.

In the final analysis, they could override the interests of the community, not to mention the fact that it will require the community to pay fair market value.

This is the first time for this to occur under the base-closing statute. This is the fifth round. In the four previous rounds, this was not the case.

I hope that we will reverse this course because it will have an enormous impact on my communities in Maine and the 22 other States across this country that will be in similar positions.

I hope we can work through these issues.

I implore my colleagues to support this amendment on behalf of the base-closing communities, those directly impacted by the devastating loss of a military installation that will cost hundreds of millions of dollars, the thousands of jobs in my communities in the State of Maine and communities and taxpayers across this country who continue to spend hundreds of billions, $30 billion of which we are spending on the reconstruction of Iraq.

We have even closed bases in order to finance not only the war but the expenditures within the Pentagon. And now we are saying to communities, You are going to pay a price for a third time. We are going to make you pay for those closed installations if you want to develop them. You are going to have to pay fair market value.

I submit that is unacceptable, it is unreasonable, and it is not fair to the communities that are directly on the line.

To dispel any misconceptions, let me clarify the goals of the amendment and what it would and would not do.

If there is property that a community does not want, or it would be mutually beneficial to the community and the DoD to have the property transfer through other channels, the community need only refuse the offer of property. Similarly, the amendment would not require that the community request or accept all of the property at an installation in order to receive any portion of that property.

Moreover, it is critical to note that, while it is true that the revenue that the DoD receives from selling installation property goes into accounts that are used for such purposes as closing or realigning military installations, or environmental restoration and mitigation, this amendment would not significantly deplete those funds to the detriment of affected communities.

The fact remains, the BRAC account has historically been funded primarily with congressional appropriations from the general treasury, rather than proceeds from property sales and leases. While the DoD may point to a few isolated examples where it recently obtained a large amount of money in return for a property transfer—for instance for transfers in places like Orange County, CA—those isolated examples are not indicative of what it can be expected to receive elsewhere in the Nation, where property values are considerably lower.

According to the BRAC Report, there have been a total of 97 base and 5 installation closures categorized by DoD as ''major'' as a result of the 1988 through 1995 processes. In addition, the DoD has stated that there were 55 ''major'' realignments and at least 235 smaller-sized closures and realignments as a result of past actions.

Yet, a January 2005 Government Accountability Office report found that DoD's total land sales and related revenue was only about $595 million for the prior four base rounds combined. The $595 million is minimal in comparison to the approximately $23 billion Congress appropriated to the BRAC accounts for the four prior BRAC rounds. In fact, the revenue from sales only represented about 2.6 percent of those accounts.

Furthermore, that $595 million figure is dwarfed by the amount that the DoD has saved as a result of BRAC closures—about $28.9 billion in net savings through fiscal year 2003 from the prior four closure rounds, according to GAO, and a projected $7 billion annually thereafter. And these are net savings, that already take into account BRAC implementation cost! Unlike these BRAC savings, which accrue to taxpayers across the Nation, the negative impacts of base closures are disproportionately and unfairly borne by the communities where bases have closed.

This amendment also incorporates the safeguards currently applicable to EDCs to ensure the integrity of these types of transfers. For instance, the property conveyances could only be provided to an LRA for economic redevelopment or job generation. Moreover, once the property is transferred to an LRA, the proceeds from a sale or lease of the property, within the next 7 years, must be spent in support of economic redevelopment for the installation.

I have not been informed of any abuses that these safeguards would not address, and from what I understand, the DoD tracks and audits such transactions to ensure compliance. If further oversight is necessary, I would not oppose it.

Some would contend that local towns and communities would not be best served by their own, unsupervised redevelopment efforts. In response, I ask, are we saying that the United States Department of Defense is better equipped to make decisions as to which property transfers will be most beneficial to an individual community's economic development? That the DoD has a greater understanding of the individual challenges faced by our towns and cities in the aftermath of base closures than the towns and cities themselves?

I would suggest that such a notion is, on its face, absurd. So why would we continue to require the economic future of our BRAC-affected communities to be determined by the highest bidder the Department of Defense can identify?

Rather, we should look to the model established in my own State, by the success achieved at the site of the former Loring Air Force Base in Limestone, ME, closed in 1994 as a result of a BRAC round. At the height of its activity, the Loring Air Force Base augmented the native population of Aroostook County by 10,000 individuals. That is why I worked tirelessly to ensure that the base was transferred to the community's redevelopment authority for free.

And I can tell you firsthand that the redevelopment of Loring—replacing the 1,100 lost civilian jobs with 1,400 new civilian jobs—would not have been as successful, if the community had not been placed in charge of its own redevelopment and had not received the majority of the installation property for free as an indispensable redevelopment tool.

I am open to continuing to work with my colleagues on any reasonable concerns about this amendment, but would emphasize the importance of passing it now. Should additional reasonable changes be necessary, we can always address those issues through future legislation—but we should not lose this opportunity to enact meaningful and necessary change.

I implore my colleagues to support this amendment on behalf of the BRAC affected communities across our Nation, who continue to contribute to the Iraqi war and reconstruction efforts, while simultaneously struggling to convince our Government to support their economic recovery, right here at home.

I reserve the remainder of my time.

Mr. WARNER. Mr. President, first, I wish to recognize our distinguished colleague from Maine, former member of the Armed Services Committee. We deeply regret that the Senator moved on, but she is now on the Tax Committee. As someone said, that is where the money is.

It is with great reluctance that I say to my good friend that we will have to very strongly oppose this. She makes an equitable argument, persuasive argument. But we have to take a look at the broad picture.

This is the fifth BRAC round. When the original legislation was written, there was quite an analysis put into that bill as to what happens to the properties if the BRAC Commission declares it to be closed. That framework of laws has guided four previous BRAC Commissions.

Let us step back and think. While this particular base, Brunswick—and I know it well, having been Secretary of the Navy—served the Nation magnificently, I was somewhat surprised to see it was closed, but the decision was made. And believe me, BRAC also hit my State severely. The decision was made to close it. That is over. We can't repeal that. But this base property does not just belong to the citizens of Maine but all Americans. It is Federal property. As such, it is owned by all Americans. All Americans, through their tax collections, provided the funds to improve this base over the years and to maintain the base.

We have to be careful as the BRAC Commission lays down a matrix of closure adjustments all over America. In some instances, some communities would benefit enormously. Mind you, this bill governs BRAC decisions, wherever it was in the United States of America on BRAC round 5, the one currently being administered.

When Congress enacted the first BRAC law, they very carefully assessed that there would be so many different locations, different circumstances that we had to put down a series of steps that the BRAC Commission and subsequently those that are entrusted with the closing—namely, the DOD—must follow by law.

For example, when a facility such as this is closed, the first thing to determine is, is there another military operation that could utilize this base? This was primarily a Naval base. It could well be needed by the Army or other departments of the military. That is the first thing. Are there other DOD missions? Second, other Federal agencies are constantly relocating and reestablishing areas. The Federal Government is disbursing a lot of it out of Washington. Could not this property, owned by all citizens of America, be utilized by another Federal agency?

It is rather interesting. Through the years, there has crept in a doctrine that the next priority should be, for example, maybe the Indian tribes. Oftentimes, there are agreements that go back years and years regarding Federal property that was once occupied by the Indians. Sometimes it might revert to the Indians. Maybe the Senator would seek to advise the Senate. I understand that the Senator recently amended the amendment to protect the interests of the Indians. But the Indians are only one small segment. A number of base installations, through the 16 years of BRAC, have been provided as shelters for the homeless.

Then we move down to the public benefit conveyances. Sometimes it was determined that these Federal facilities should be transferred to local transportation or to airport authorities or veterans centers.

In other words, there is another whole category of not quasi-Federal but certainly uses paralleling what the Federal Government provides people—that whole category.

Then they have economic redevelopment conveyances; again, as the Senator said, either at fair market value or DOD can determine certain circumstances so they could follow the very narrow provisions of the Senator's bill, turn it over to the local LRA. That is established maybe at no cost.

It is important that we don't take a carefully crafted, a carefully time-tested framework of laws regarding how the properties are to be used following a closure and suddenly wipe it off the books.

There are a number of old deeds. For example, one installation I have—Fort Monroe, which has been in business for a very long time—under the deed, if BRAC were to close it—and indeed this time BRAC did close it—then it reverts to certain community interests.

This amendment, as I read it, would wipe out that deed.

I am not speaking from a selfish point of view. I am simply saying that there are other Senators who should very quickly, if they are inclined to support Senator SNOWE's amendment, check with your local State to make sure that if you are affected by this round, the fifth round of BRAC, there may be some old deeds, conveyances, and agreements, with a facility having been closed in your State, as to how that facility then reverts to other interests.

This is not a very simple thing. You pull at the heartstrings when you talk about, yes, Maine can use it. I don't doubt that Maine can use it. It is a first-class facility. But it belongs to the taxpayers. They have paid for the construction of it. They have paid for years and years of maintenance.

I suggest the framework of laws which has been in existence these 16 years remain intact and this closure be conducted in a manner consistent with the closures that have taken place in the several States represented in this Senate over a period of some 16 years.

I yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Michigan.

Mr. LEVIN. I, too, must reluctantly oppose this amendment. I have come through significant base closings in my State and am going through them right now. I know exactly what the Senator from Maine is referring to.

There are many occasions when land needs to be granted to a local economic redevelopment authority at no cost. There are many cases like that, but there are other uses that have to come first that she would not allow for, including such things as parks or schools, conveyances for those public purposes which it seems to me must come first if we are using Federal property and deciding what to do with Federal property. In terms of the priority list, it seems to me public purposes such as parks and schools should have priority over the economic redevelopment, as desirable as that can be.

But there is another problem with that amendment, and that is it does not provide discretion. It makes it mandatory that the land always go free to a local reuse even though that land may have tremendous value and the proceeds we have been able to obtain, which are not great, nonetheless have been there to help us clean up property which we want to turn over to local governments. We have huge cleanup costs. We have been able to obtain money for the resale of land. That money has gone into the cleanup of these bases before they are turned back to the local authority.

I have nothing but understanding for the Senator from Maine in the situation she and her State face. We have a number of facilities which have been realigned in my home State which have value. In one case, we have a property where a buyer is willing to purchase it if we could get the military to negotiate with that purchaser. That would be money which would come to the Federal Treasury. The buyer is willing to pay to the Federal Treasury. Instead, the Air Force prefers to auction the property. The question is whether, under all the circumstances that exist, it is fairer to auction that property or to negotiate with a private buyer with whom the Government had long been negotiating.

Without getting into that issue as to which is fairer—an auction or a negotiated sale—neither one of them would be permitted under the amendment of the Senator from Maine. It would have to go for nothing to somebody even though you have a buyer out there who wants to pay for it. We should not take such an absolute position on the disposition of these properties. There will be occasions—and I happen to agree with the Senator from Maine—where property should be turned over to a local development or redevelopment authority for free. That is true. But there are also occasions where the property has tremendous value, where the Government, as our dear friend from Virginia has said, has invested an awful lot of money in this base and where it has great value and where those dollars are needed in the Treasury, in part to pay for the cleanup of

property before it is turned over for any other use. I don't see why we would want to write an absolute rule into the law which says that the property must be given away to a local reuse authority rather than there should be an effort made to obtain fair compensation for it. It does not say that there always must be compensation; it says that there will be an effort to seek fair compensation. There are certain ways of building discretion and flexibility into that.

We have another situation where we have a significant piece of property that will be available as a result of this last round of base closures. This property has immense value. I don't know that we can come close to equating it to the Presidio in San Francisco, but it has, nonetheless, immense value. The question is, What will the military do with this property? It is my belief that the military should keep it because part of the base that was kept open and not realigned needs the property for its own use. But the military may decide it does not need that property. It may decide that property is expendable and can be surplused. Then what?

Under the Senator's amendment, extraordinarily valuable property which any developer would like to get their hands on and pay for it and pay the National Treasury money for must go for nothing to a local redevelopment authority. We cannot get any financial benefit from that land no matter how valuable if it goes to a local redevelopment authority.

That is too rigid. That is too inflexible and deprives the Federal Treasury of desperately needed money, including money for cleanup. We have a huge cleanup bill for these properties. We cannot simply give away the opportunity to recoup some funds for the Federal Treasury from highly valuable land.

I have lost a lot of bases in my home State. All three of our Strategic Air Command bases have been closed. We have lost other facilities, as well. I know firsthand what a complicated process this is. I do know, as the Senator from Maine says, there are occasions when property under all the circumstances should go to a local redevelopment agency without reimbursement to the Government, but there are other occasions when land is extraordinarily valuable and when people are willing to pay for that land where, if it is not going to go for a public use and it will be put up for private redevelopment, there should be some recouping to the National Treasury.

I am afraid this is too rigid, and I cannot support it.

Mr. WARNER. Mr. President, the Senator talks about cleanup, but over the years $1.4 billion has been recouped by the Department of Defense. That money simply goes to the Treasury to an account earmarked for precisely what the Senator from Michigan said, for cleanup and other expenses.

Again, the Federal taxpayers who once owned the land now do not have to add additional burdens out of their pockets for cleanup as a consequence of this existing framework of laws that has been there for 16 years that enable some properties to bring about money for the Federal Government, but it goes precisely into that account for the cleanup, to save Federal taxpayers the added burden of cleanup expenses. The Senator made a key point.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. How much time remains?

The PRESIDING OFFICER. The Senator from Maine has 11½ minutes remaining.

Ms. SNOWE. I respond to several of the issues raised by the chairman and ranking member of the Committee on Armed Services. It is important. We have to establish the fact that this is the first time we are applying the statute in this fashion. It is the first time this statutory language is applying to a base-closing round that allows the Department of Defense to establish and impose fair market value for the use of this property as opposed to transferring it for free to a local redevelopment authority. This is not some special interest authority. These are local communities, State officials who have a genuine interest in the future of their communities, whereas the Department of Defense is interested in a one-time sale.

I hope we would respect the interests of the community that is directly affected. After all, they are the ones who are disproportionately bearing the burden of the base closure. Why isn't it that they wouldn't have a direct interest in shaping it?

This is the first time this statute is going to apply to a base-closing round. Is it fair, at a time we are asking our citizens, our constituents, to pay $200 billion for the reconstruction of Iraq, losing your bases, and then we are saying, If you want them back and you want that property, you pay for it?

We have had four previous base-closing rounds. We had 97 major base closures. Then we had 235 smaller sized closures and 55 major realignments. And we never asked for fair market value. We have never said the Department of Defense was in the business of economic development. We said they were in the business of national security and running the defense of our country and wars, not being real estate developers. Do they have an interest of where the future is going to go in Brunswick and Topsham, ME? I say not.

At Loring Air Force Base, it worked out very well. They had a compatible relationship with the Defense Department. We have a defense agency there which is great. We have Job Corps there. We have private sector entities. We didn't disregard public benefits or the public agencies. In fact, the DOD, under this statute, does not have to consider, does not have to transfer to any public agency, could consider transferring some of this property to another public agency but does not have to. It is no different from the LRA. This is wrong. This is contravening the intent.

The chairman raises the question about deeds. Reversion will stand as it is. It will not revert back to the owner, as the Congressional Research Service said, to the original owner. This language will not do anything to reverse that in any way. I make that clear.

We are moving in an entirely different track. All of America will benefit from the savings, but not all of America is going to bear the disproportionate burden of the base closure. For the Department of Defense now to say we are going to take charge and hold these communities, such as Brunswick and Topsham, hostage to the decisions that are made by the Department of Defense and how they will use that property, frankly, I find it rather surprising, dismaying, and disappointing we are at this point, and I have been through all five base-closing rounds. I have been through it all.

We talk about environmental cleanup. Supposedly, according to the Department of Defense, they have a net savings of $28 billion. They should have been able to clean up all of the bases by now.

Under my legislation, what it would allow is that the LRAs for the next several years, for any money they made, would go back to the installation for job generation and for helping to clean up so it can mitigate the Federal costs for environmental litigation, which, by the way, the Department of Defense is not doing a very good job of in other installations. That is a serious concern. They have diverted those proceeds for purposes other than those for which they were intended.

That is the issue. They have had a net savings, according to their numbers, of $28 billion, but they have not used it for what it was intended, which was to clean up other facilities from the four base-closing rounds. They have not done it, so the local communities would be in control, be able to help dictate their futures, so we do not have the Department of Defense saying: Well, you better take this or else—or else you get nothing.

I do not think that is fair. I do not think that is fair to communities that have embraced the military for generations. At a time in which we are exacting a great cost from our constituents and taxpayers, with more than $200 billion in Iraq—supplemental upon supplemental, reconstruction, schools, security, sewage systems, power—we are saying now to communities that have just lost their bases:

Oh, by the way, you are going to have to pay hundreds of millions of dollars if you want it back and if you want to generate jobs.

Now, tell that to my communities, which are going to lose more than 5,000 jobs, that if they want to create jobs, they are going to have to pay hundreds

of millions of dollars before they can start that process. If they don't, the Department of Defense is going to tell them how their future is going to go. They will tell them whether they want an oil refinery because they are not going to have any choice. I cannot imagine that is the direction we want to take with this statute.

It has worked very well in the past. As I have said, for hundreds and hundreds of base closures, it has worked well. It worked very well for the former Loring Air Force Base. There has been a very compatible relationship up there that has been a success, but that is because I was able to secure a free transfer for facilities like Loring back in 1991 so they could start with the tools they needed to help shape their future. It has worked. Allow that process to work. It has been demonstrated it can work. But let's not create another obstacle by now having the Department of Defense in the business of developing real estate. I think it is a very unfortunate direction.

I hope my colleagues will support this amendment, support what is right for the communities that are going to bear a tremendous burden, and allow this process to work. It is in the best interests of the communities and in the best interests of this country,

Mr. President, I yield the floor.

Ms. COLLINS. Mr. President, I rise in support today of this amendment offered by my colleague from Maine and myself to the fiscal year 2006 Defense/Authorization Bill.

Our amendment focuses on one goal, to provide the communities that are losing bases through the BRAC another opportunity to control their future redevelopment, recovery, and economic well-being.

The ''no-cost conveyance'' amendment that we have proposed would modify the BRAC Act to give the affected communities the ''right of first refusal'' with respect to the transfer of property on the base. Specifically, it would require that when making determinations concerning the transfer of property at a base, the Secretary of Defense must first offer that property to the community through its redevelopment authority. If the redevelopment authority accepts, the Secretary is required to transfer the property to the community at no cost.

This legislation provides for an important exception in the case of national security, in order to allow the Secretary to transfer the property to a military service or other entity within the Department of Defense, the Coast Guard, or the Department of Homeland Security, if such action is necessary in the national security interest of the United States.

I support this amendment because I know personally what the true impact of a devastating base closure can cause to a close-knit community. I grew up just 10 miles from the now-closed Loring Air Force Base. After the base shut its doors in 1994, tens of thousands of people left northern Maine and moved away because of the limited opportunities available to them once the Air Force left town.

Given the rural area of the former Air Force base, the fact that the base was eventually transferred to the community at no cost was critically important to spurring economic growth in an area that had just been devastated by the loss of thousands of jobs overnight.

The collateral damage of the base's closure went far beyond active duty military personnel and their families. It also affected many small business owners who were forced to close their businesses and leave the area permanently. When a base closes, the need to attract new economic development is even more difficult and compounded by the fact that supporting professionals have already left the area. The resulting job losses and their impact on the local economy further highlight the need for providing the option of no-cost conveyance at a time when many areas can ill-afford to spend millions of dollars to purchase vacant buildings.

Much like a decade ago, the Midcoast region of Maine is now suffering the same devastating fate through the closure of the last active duty airfield north of New Jersey, the Brunswick Naval Air Station. Not only will this region lose 2,667 active duty personnel, 5,704 Navy family members, 715 civilian jobs, and an additional 1,300 drilling reservists who contribute to the local economy each month, but also the community will have to pay the Department of Defense fair market value for the base's property.

Communities affected by a large base closure are already reeling from the economic loss of the military as its neighbor, and to add the hardship of forcing the same community to pay the Department for vacating the area is essentially a ''double closure.''

This amendment is not just to assist a base closing in my home State of Maine, but it is to help all bases affected across the country. I urge all of my colleagues to support this amendment, and in doing so support the communities nationwide that are experiencing the far-reaching ramifications of closure or realignment due to the recent base closing round by the Department of Defense.

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia.

Mr. WARNER. Mr. President, I ask unanimous consent that at 5:30 today, the Senate proceed to a vote in relation to the Allard amendment No. 2423, with no amendments in order to that amendment prior to the vote. My understanding is this request has been cleared on both sides.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WARNER. Mr. President, the bill is open for further amendment, as Senator LEVIN and I are here.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

AMENDMENT NO. 2430

Mr. LEVIN. Mr. President, very briefly, on the question of the independent commission, my good friend from Virginia rattled off a bunch of statistics as to how many investigations have taken place, how many hearings have been held, how many witnesses have been interviewed, with something like 12 major investigations. We have had 40 closed hearings, I think he said, 30 open hearings, and 16,000 pages of documents have been obtained.

As I thought was going to happen, those kinds of numbers were going to be utilized. The problem is, they are not particularly relevant to the point which this commission amendment seeks to address, which is there are huge gaps in these investigations. There could be 20 hearings or 50 hearings or 100 hearings, but these investigations have not gotten to 5 major points, such as, What is the role of the intelligence community?

The people who have done the investigating have said they have not gotten to that point, they have not reached that issue. The CIA has not cooperated with them. So we have that huge gap in the investigations that have taken place so far. Are there secret prisons around the world being maintained? What about the ghost detainees? There is not a week that goes by that we are not reading about an issue that relates to the intelligence community, particularly the CIA's role in terms of interrogating detainees. Yet that is an almost complete blank slate.

All of those investigations which have been made, which the Senator from Virginia referred to, have said: Well, we have not gotten into that issue. We were not allowed to get into that issue.

Another major area is the U.S. Government policy on rendition. We have not had any investigation on that.

Another major area is the role of contractors. We have not had any investigation on that.

Another major area is the legality of the interrogation techniques, particularly the two major documents setting forth the techniques which were going to be used, the so-called second Bybee memo and the memo from Mr. Yoo to the Department of Defense general counsel, Mr. Haynes. We have not gotten there. So there has been no investigation of the legality of the interrogation techniques permitted by the Office of Legal Counsel's memos to which I have just referred. And there are a number of outstanding document requests which have been flatout denied relative to what happened at Guantanamo.

Now, it does not make any difference how many hearings have been held—as long as you have those gaps which are greater than the amount covered, you have not had a thorough investigation, or anything close, of detainee abuses and these so-called secret prisons around the world which are allegedly

maintained. That is the point. That is why you need an independent commission. You cannot sweep this under the rug. It is going to pop up again. There is going to be another captain who is going to show up—and my friend from Virginia met with this captain. This is a letter to Senator MCCAIN from Captain Fishback, who is in a parachute infantry regiment in the 82nd Airborne Division at Fort Bragg, talking about the way intelligence personnel were used to give directions to soften up detainees. But we have had no investigation of intelligence.

So you have an honorable member of the U.S. military, CPT Ian Fishback. I had a personal conversation with this captain where he described to me what I just said, that there were directions from the intelligence community to soften up detainees. He says:

Instead of resolving my concerns, the approach for clarification process leaves me deeply troubled.

This is a letter to Senator MCCAIN. I ask unanimous consent it be printed in the RECORD.

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

[From the Washington Post, Sept. 28, 2005]

A MATTER OF HONOR

DEAR SENATOR MCCAIN: I am a graduate of West Point currently serving as a Captain in the U.S. Army Infantry. I have served two combat tours with the 82nd Airborne Division, one each in Afghanistan and Iraq. While I served in the Global War on Terror, the actions and statements of my leadership led me to believe that United States policy did not require application of the Geneva Conventions in Afghanistan or Iraq. On 7 May 2004, Secretary of Defense Rumsfeld's testimony that the United States followed the Geneva Conventions in Iraq and the ''spirit'' of the Geneva Conventions in Afghanistan prompted me to begin an approach for clarification. For 17 months, I tried to determine what specific standards governed the treatment of detainees by consulting my chain of command through battalion commander, multiple JAG lawyers, multiple Democrat and Republican Congressmen and their aides, the Ft. Bragg Inspector General's office, multiple government reports, the Secretary of the Army and multiple general officers, a professional interrogator at Guantanamo Bay, the deputy head of the department at West Point responsible for teaching Just War Theory and Law of Land Warfare, and numerous peers who I regard as honorable and intelligent men.

Instead of resolving my concerns, the approach for clarification process leaves me deeply troubled. Despite my efforts, I have been unable to get clear, consistent answers from my leadership about what constitutes lawful and humane treatment of detainees. I am certain that this confusion contributed to a wide range of abuses including death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation and degrading treatment. I and troops under my command witnessed some of these abuses in both Afghanistan and Iraq.

This is a tragedy. I can remember, as a cadet at West Point, resolving to ensure that my men would never commit a dishonorable act; that I would protect them from that type of burden. It absolutely breaks my heart that I have failed some of them in this regard.

That is in the past and there is nothing we can do about it now. But, we can learn from our mistakes and ensure that this does not happen again. Take a major step in that direction; eliminate the confusion. My approach for clarification provides clear evidence that confusion over standards was a major contributor to the prisoner abuse. We owe our soldiers better than this. Give them a clear standard that is in accordance with the bedrock principles of our Nation.

Some do not see the need for this work. Some argue that since our actions are not as horrifying as Al Qaeda's, we should not be concerned. When did Al Qaeda become any type of standard by which we measure the morality of the United States? We are America, and our actions should be held to a higher standard, the ideals expressed in documents such as the Declaration of Independence and the Constitution.

Others argue that clear standards will limit the President's ability to wage the War on Terror. Since clear standards only limit interrogation techniques, it is reasonable for me to assume that supporters of this argument desire to use coercion to acquire information from detainees. This is morally inconsistent with the Constitution and justice in war. It is unacceptable.

Both of these arguments stem from the larger question, the most important question that this generation will answer. Do we sacrifice our ideals in order to preserve security? Terrorism inspires fear and suppresses ideals like freedom and individual rights. Overcoming the fear posed by terrorist threats is a tremendous test of our courage. Will we confront danger and adversity in order to preserve our ideals, or will our courage and commitment to individual rights wither at the prospect of sacrifice? My response is simple. If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession. I would rather die fighting than give up even the smallest part of the idea that is ''America.''

Once again, I strongly urge you to do justice to your men and women in uniform. Give them clear standards of conduct that reflect the ideals they risk their lives for.

With the Utmost Respect,

CAPT. IAN FISHBACK,
1st Battalion, 504th Parachute Infantry Regiment, 82nd Airborne Division, Fort Bragg, NC.

Mr. LEVIN. He sets forth what has happened here in terms of abuses and how it hurts our military. It hurts him. It is not just hurting our honor, it makes their lives more dangerous in case they are ever captured. And he ends by saying:

If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession. I would rather die fighting than give up even the smallest part of the idea that is ''America.''

Now, that is a member of the U.S. military.

We cannot sweep this under the rug. The investigations so far have swept critical issues under the rug. They are going to surface sooner or later. Better to have an independent commission take a look at them, get it away from any partisanship, and have a commission the way the 9/11 Commission was appointed, with five Democratic appointees, five Republican appointees, and have the President appoint the chairman of the commission.

But we owe it to the Captain Fishbacks of this world. We owe it to all the men and women who serve so honorably, which is 99 percent, probably 99.9 percent, of our military. We owe it to them to protect them. One way to protect them is to make sure we have a thorough investigation, without these major gaps, as to what went wrong.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

GAPS IN THE DOD DETAINEE ABUSE REVIEWS

The carefully-carved out mandates of the nearly a dozen reviews have left significant gaps and critical issues unexamined.

1. Role of CIA: Limited or no cooperation from CIA with investigations.

2. Rendition: No investigation into practice of rendering prisoners to foreign countries for interrogation.

3. Contractors: Insufficient information on role of contractors in interrogations and detainee abuse.

4. Special Operations Forces: Allegations of abuses by Special Operations Forces remain unexamined.

5. Legality of Interrogation Techniques: Investigations have avoided looking at the legality of the interrogation techniques that may have been authorized by DoD officials and others.

6. Key Documents Missing: Key policy and legal documents from the Defense and Justice Departments not provided to Congress.

[From the Washington Post, Nov. 2, 2005]

CIA HOLDS TERROR SUSPECTS IN SECRET PRISONS

(By Dana Priest)

The CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe, according to U.S. and foreign officials familiar with the arrangement.

The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small center at the Guantanamo Bay prison in Cuba, according to current and former intelligence officials and diplomats from three continents.

The hidden global internment network is a central element in the CIA's unconventional war on terrorism. It depends on the cooperation of foreign intelligence services, and on keeping even basic information about the system secret from the public, foreign officials and nearly all members of Congress charged with overseeing the CIA's covert actions.

The existence and locations of the facilities—referred to as ''black sites'' in classified White House, CIA, Justice Department and congressional documents—are known to only a handful of officials in the United States and, usually, only to the President and a few top intelligence officers in each host country.

The CIA and the White House, citing national security concerns and the value of the program, have dissuaded Congress from demanding that the agency answer questions in open testimony about the conditions under which captives are held. Virtually nothing is known about who is kept in the facilities, what interrogation methods are employed with them, or how decisions are

made about whether they should be detained or for how long.

While the Defense Department has produced volumes of public reports and testimony about its detention practices and rules after the abuse scandals at Iraq's Abu Ghraib prison and at Guantanamo Bay, the CIA has not even acknowledged the existence of its black sites. To do so, say officials familiar with the program, could open the U.S. government to legal challenges, particularly in foreign courts, and increase the risk of political condemnation at home and abroad.

But the revelations of widespread prisoner abuse in Afghanistan and Iraq by the U.S. military—which operates under published rules and transparent oversight of Congress—have increased concern among lawmakers, foreign governments and human rights groups about the opaque CIA system. Those concerns escalated last month, when Vice President Cheney and CIA Director Porter J. Goss asked Congress to exempt CIA employees from legislation already endorsed by 90 Senators that would bar cruel and degrading treatment of any prisoner in U.S. custody.

Although the CIA will not acknowledge details of its system, intelligence officials defend the agency's approach, arguing that the successful defense of the country requires that the agency be empowered to hold and interrogate suspected terrorists for as long as necessary and without restrictions imposed by the U.S. legal system or even by the military tribunals established for prisoners held at Guantanamo Bay.

The Washington Post is not publishing the names of the Eastern European countries involved in the covert program, at the request of senior U.S. officials. They argued that the disclosure might disrupt counterterrorism efforts in those countries and elsewhere and could make them targets of possible terrorist retaliation.

The secret detention system was conceived in the chaotic and anxious first months after the Sept. 11, 2001, attacks, when the working assumption was that a second strike was imminent.

Since then, the arrangement has been increasingly debated within the CIA, where considerable concern lingers about the legality, morality and practicality of holding even unrepentant terrorists in such isolation and secrecy, perhaps for the duration of their lives. Mid-level and senior CIA officers began arguing two years ago that the system was unsustainable and diverted the agency from its unique espionage mission.

''We never sat down, as far as I know, and came up with a grand strategy,'' said one former senior intelligence officer who is familiar with the program but not the location of the prisons. ''Everything was very reactive. That's how you get to a situation where you pick people up, send them into a netherworld and don't say, 'What are we going to do with them afterwards?' ''

It is illegal for the government to hold prisoners in such isolation in secret prisons in the United States, which is why the CIA placed them overseas, according to several former and current intelligence officials and other U.S. government officials. Legal experts and intelligence officials said that the CIA's internment practices also would be considered illegal under the laws of several host countries, where detainees have rights to have a lawyer or to mount a defense against allegations of wrongdoing.

Host countries have signed the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as has the United States. Yet CIA interrogators in the overseas sites are permitted to use the CIA's approved ''Enhanced Interrogation Techniques,'' some of which are prohibited by the U.N. convention and by U.S. military law. They include tactics such as ''waterboarding,'' in which a prisoner is made to believe he or she is drowning.

Some detainees apprehended by the CIA and transferred to foreign intelligence agencies have alleged after their release that they were tortured, although it is unclear whether CIA personnel played a role in the alleged abuse. Given the secrecy surrounding CIA detentions, such accusations have heightened concerns among foreign governments and human rights groups about CIA detention and interrogation practices.

The contours of the CIA's detention program have emerged in bits and pieces over the past two years. Parliaments in Canada, Italy, France, Sweden and the Netherlands have opened inquiries into alleged CIA operations that secretly captured their citizens or legal residents and transferred them to the agency's prisons.

More than 100 suspected terrorists have been sent by the CIA into the covert system, according to current and former U.S. intelligence officials and foreign sources. This figure, a rough estimate based on information from sources who said their knowledge of the numbers was incomplete, does not include prisoners picked up in Iraq.

The detainees break down roughly into two classes, the sources said.

About 30 are considered major terrorism suspects and have been held under the highest level of secrecy at black sites financed by the CIA and managed by agency personnel, including those in Eastern Europe and elsewhere, according to current and former intelligence officers and two other U.S. government officials. Two locations in this category—in Thailand and on the grounds of the military prison at Guantanamo Bay—were closed in 2003 and 2004, respectively.

A second tier—which these sources believe includes more than 70 detainees—is a group considered less important, with less direct involvement in terrorism and having limited intelligence value. These prisoners, some of whom were originally taken to black sites, are delivered to intelligence services in Egypt, Jordan, Morocco, Afghanistan and other countries, a process sometimes known as ''rendition.'' While the first-tier black sites are run by CIA officers, the jails in these countries are operated by the host nations, with CIA financial assistance and, sometimes, direction.

Morocco, Egypt and Jordan have said that they do not torture detainees, although years of State Department human rights reports accuse all three of chronic prisoner abuse.

The top 30 al Qaeda prisoners exist in complete isolation from the outside world. Kept in dark, sometimes underground cells, they have no recognized legal rights, and no one outside the CIA is allowed to talk with or even see them, or to otherwise verify their well-being, said current and former and U.S. and foreign government and intelligence officials.

Most of the facilities were built and are maintained with congressionally appropriated funds, but the White House has refused to allow the CIA to brief anyone except the House and Senate intelligence committees' chairmen and vice chairmen on the program's generalities.

The Eastern European countries that the CIA has persuaded to hide al Qaeda captives are democracies that have embraced the rule of law and individual rights after decades of Soviet domination. Each has been trying to cleanse its intelligence services of operatives who have worked on behalf of others—mainly Russia and organized crime.

ORIGINS OF THE BLACK SITES

The idea of holding terrorists outside the U.S. legal system was not under consideration before Sept. 11, 2001, not even for Osama bin Laden, according to former government officials. The plan was to bring bin Laden and his top associates into the U.S. justice system for trial or to send them to foreign countries where they would be tried.

''The issue of detaining and interrogating people was never, ever discussed,'' said a former senior intelligence officer who worked in the CIA's Counterterrorist Center, or CTC, during that period. ''It was against the culture and they believed information was best gleaned by other means.''

On the day of the attacks, the CIA already had a list of what it called High-Value Targets from the al Qaeda structure, and as the World Trade Center and Pentagon attack plots were unraveled, more names were added to the list. The question of what to do with these people surfaced quickly.

The CTC's chief of operations argued for creating hit teams of case officers and CIA paramilitaries that would covertly infiltrate countries in the Middle East, Africa and even Europe to assassinate people on the list, one by one.

But many CIA officers believed that the al Qaeda leaders would be worth keeping alive to interrogate about their network and other plots. Some officers worried that the CIA would not be very adept at assassination.

''We'd probably shoot ourselves,'' another former senior CIA official said.

The agency set up prisons under its covert action authority. Under U.S. law, only the president can authorize a covert action, by signing a document called a presidential finding. Findings must not break U.S. law and are reviewed and approved by CIA, Justice Department and White House legal advisers.

Six days after the Sept. 11 attacks, President Bush signed a sweeping finding that gave the CIA broad authorization to disrupt terrorist activity, including permission to kill, capture and detain members of al Qaeda anywhere in the world.

It could not be determined whether Bush approved a separate finding for the black-sites program, but the consensus among current and former intelligence and other government officials interviewed for this article is that he did not have to.

Rather, they believe that the CIA general counsel's office acted within the parameters of the Sept. 17 finding. The black-site program was approved by a small circle of White House and Justice Department lawyers and officials, according to several former and current U.S. government and intelligence officials.

DEALS WITH 2 COUNTRIES

Among the first steps was to figure out where the CIA could secretly hold the captives. One early idea was to keep them on ships in international waters, but that was discarded for security and logistics reasons.

CIA officers also searched for a setting like Alcatraz Island. They considered the virtually unvisited islands in Lake Kariba in Zambia, which were edged with craggy cliffs and covered in woods. But poor sanitary conditions could easily lead to fatal diseases, they decided, and besides, they wondered, could the Zambians be trusted with such a secret?

Still without a long-term solution, the CIA began sending suspects it captured in the first month or so after Sept. 11 to its longtime partners, the intelligence services of Egypt and Jordan.

A month later, the CIA found itself with hundreds of prisoners who were captured on battlefields in Afghanistan. A short-term solution was improvised. The agency shoved its highest-value prisoners into metal shipping containers set up on a corner of the Bagram

Air Base, which was surrounded with a triple perimeter of concertina-wire fencing. Most prisoners were left in the hands of the Northern Alliance, U.S.-supported opposition forces who were fighting the Taliban.

''I remember asking: What are we going to do with these people?'' said a senior CIA officer. ''I kept saying, where's the help? We've got to bring in some help. We can't be jailers—our job is to find Osama.''

Then came grisly reports, in the winter of 2001, that prisoners kept by allied Afghan generals in cargo containers had died of asphyxiation. The CIA asked Congress for, and was quickly granted, tens of millions of dollars to establish a larger, long-term system in Afghanistan, parts of which would be used for CIA prisoners.

The largest CIA prison in Afghanistan was code-named the Salt Pit. It was also the CIA's substation and was first housed in an old brick factory outside Kabul. In November 2002, an inexperienced CIA case officer allegedly ordered guards to strip naked an uncooperative young detainee, chain him to the concrete floor and leave him there overnight without blankets. He froze to death, according to four U.S. government officials. The CIA officer has not been charged in the death.

The Salt Pit was protected by surveillance cameras and tough Afghan guards, but the road leading to it was not safe to travel and the jail was eventually moved inside Bagram Air Base. It has since been relocated off the base.

By mid-2002, the CIA had worked out secret black-site deals with two countries, including Thailand and one Eastern European nation, current and former officials said. An estimated $100 million was tucked inside the classified annex of the first supplemental Afghanistan appropriation.

Then the CIA captured its first big detainee in March 28, 2002. Pakistani forces took Abu Zubaida, al Qaeda's operations chief, into custody and the CIA whisked him to the new black site in Thailand, which included underground interrogation cells, said several former and current intelligence officials. Six months later, Sept. 11 planner Ramzi Binalshibh was also captured in Pakistan and flown to Thailand.

But after published reports revealed the existence of the site in June 2003, Thai officials insisted the CIA shut it down, and the two terrorists were moved elsewhere, according to former government officials involved in the matter. Work between the two countries on counterterrorism has been lukewarm ever since.

In late 2002 or early 2003, the CIA brokered deals with other countries to establish black-site prisons. One of these sites—which sources said they believed to be the CIA's biggest facility now—became particularly important when the agency realized it would have a growing number of prisoners and a shrinking number of prisons.

Thailand was closed, and sometime in 2004 the CIA decided it had to give up its small site at Guantanamo Bay. The CIA had planned to convert that into a state-of-the-art facility, operated independently of the military. The CIA pulled out when U.S. courts began to exercise greater control over the military detainees, and agency officials feared judges would soon extend the same type of supervision over their detainees.

In hindsight, say some former and current intelligence officials, the CIA's problems were exacerbated by another decision made within the Counterterrorist Center at Langley.

The CIA program's original scope was to hide and interrogate the two dozen or so al Qaeda leaders believed to be directly responsible for the Sept. 11 attacks, or who posed an imminent threat, or had knowledge of the larger al Qaeda network. But as the volume of leads pouring into the CTC from abroad increased, and the capacity of its paramilitary group to seize suspects grew, the CIA began apprehending more people whose intelligence value and links to terrorism were less certain, according to four current and former officials.

The original standard for consigning suspects to the invisible universe was lowered or ignored, they said. ''They've got many, many more who don't reach any threshold,'' one intelligence official said.

Several former and current intelligence officials, as well as several other U.S. government officials with knowledge of the program, express frustration that the White House and the leaders of the intelligence community have not made it a priority to decide whether the secret interment program should continue in its current form, or be replaced by some other approach.

Meanwhile, the debate over the wisdom of the program continues among CIA officers, some of whom also argue that the secrecy surrounding the program is not sustainable.

''It's just a horrible burden,'' said the intelligence officials.

ACCOUNTABILITY OF SENIOR-LEVEL OFFICERS

Name	Investigative findings	Accountability
Overall	Schlesinger Panel: ''[T]he abuses were not just the failure of some individuals to follow known standards, and they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels.''	No action taken.
Lt. General Ricardo Sanchez, Commander, CJTF–7	Jones Report: Findings included: CJTF–7 policies memos ''led indirectly to some of the non-violent and non-sexual abuse.'' Sanchez ''failed to ensure proper staff oversight of detention operations.'' Schlesinger Panel Report: LTG Sanchez established ''confused command relationship'' at Abu Gharib.	Army Inspector General finds allegations of dereliction of duty improperly communicating interrogation policies to be unsubstantiated. Rejects 15 findings from the reports of Generals Kern and Jones and the Schlesinger Panel.
Maj. Gen. Walter Wojdakowski, Deputy Commander, CJTF–7.	Jones Report: MG Wojdakowski ''failed to ensure proper staff oversight of detention and interrogation operations.'' Schlesinger Panel Report: MG Wojdakowski ''failed to initiate action to request additional military police for detention operations after it became clear that there were insufficient assets in Iraq.''	Army Inspector General finds allegation of dereliction of duty to be unsubstantiated. Rejects 10 findings in reports of Generals Kern and Jones and of the Schlesinger Panel.
Maj. Gen. Barbara Fast, C/J–2, Director for Intelligence, CJTF–7.	Schlesinger Panel Report: MG Fast ''failed to advise the commander properly on directives and policies needed for the operation of the [Joint Interrogation and Detention Center], for interrogation techniques and for appropriately monitoring the activities of Other Government Agencies (OGAs)'' in Iraq.	Army IG finds allegation of dereliction of duty to be unsubstantiated, rejecting findings in reports of Generals Kern and Jones and of the Schlesinger Panel.
Maj. Gen. Geoffrey Miller, Commander, JTF–GTMO	Schmidt-Furlow Report: Found that: ''the creative, aggressive, and persistent interrogation of [Detainee 063] resulted in the cumulative effect being degrading and abusive treatment.'' MG Miller ''failed to monitor the interrogation and exercise commander discretion by placing limits on the application of otherwise authorized techniques and approaches used in that interrogation.'' Recommendation: MG Miller ''should be held accountable for failing to supervise the interrogation of ISN 063 and should be admonished for that failure.''	General Craddock, Commander, U.S. Southern Command disapproves the recommendation MG Miller be held accountable, saying the interrogation ''did not result in any violation of any U.S. law or policy, and the degree of supervision provided by MG Miller does not warrant admonishment under the circumstances.'' General Craddock forwards report to Army IG for review and action as appropriate.

Mr. LEVIN. Mr. President, I yield the floor. I believe the Senator from Iowa is ready, in case the Senator from Virginia is ready to have his amendment offered.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, first I want to clarify one thing. The distinguished Senator from Michigan, as the ranking member of our committee, participated in all of the hearings of the Armed Services Committee. There were many hearings on the issue of the detainees, Abu Ghraib. Then we went through the series of analyses by the Army inspector general. And on and on we went.

I do hope when he made a reference to sweeping things under the rug—I do not think our committee ever tried to sweep anything under the rug.

Mr. LEVIN. I thank my good friend from Virginia. What our committee has done is held some hearings. They are important hearings. They are valuable hearings. They have not covered five critical areas. Those areas have to be brought to the surface. As to those areas, I am not saying the chairman or our committee has swept them under the rug. We have allowed those issues to be unaddressed.

Mr. WARNER. Mr. President, I say to the Senator, when you use the term ''we,'' let's be more specific. You mean the Congress in its various oversight capacities? Maybe the Intelligence Committee, which basically has primary jurisdiction over intelligence issues, like you point out the intelligence aspects of this? The Foreign Relations Committee has held hearings on this issue. Indeed, the Defense Appropriations Subcommittee has held some hearings. So I judge that the ''we'' you refer to is the broad responsibilities of the several committees in the Congress?

Mr. LEVIN. I thank my good friend for that clarification. The ''we'' applies to the Congress. We, the Congress, have oversight responsibility. We have not carried it out. There are at least five major areas where we have failed to carry it out. We have to address those

areas. We have been unable to do so. I see no evidence that we will. Therefore, the only way we can do this is with an outside, independent, 9/11-type panel.

But I was not in any way suggesting that any one committee has been the source of this failure. It is all of the Congress together, which, obviously, is in the control of the Republican majority. That is a fact. But, nonetheless, we as a Congress have not carried out the oversight responsibility which our troops deserve.

I hope I have assured my friend.

Mr. WARNER. Thank you, Mr. President. I just wanted to make certain.

Mr. LEVIN. I did not mean in any way to impugn—

Mr. WARNER. In our committee, you have sat side by side through almost every minute of the many hours of hearings we have had on this subject. While there may be areas which our committee may yet probe on this matter—as a matter of fact, I do not think the whole series of hearings we have had has come to a conclusion. We still have the issue of the overall accountability. So there may be some point in time—but I have always felt we should allow more of the court-martial and various Uniform Code of Military Justice prosecutions, which are underway, to be completed. I will be discussing that further with the Senator. But I just did not want it indicated that our committee had brushed anything under the table.

Mr. LEVIN. I thank my friend again. I would say of all the committees I know of, our committee, the Armed Services Committee, have carried out their responsibilities better than other committees. I wish to give credit where credit is due—to our chairman. I do not know of any more honorable, decent, hard-working, fair person in this body or any body in which I have ever served.

We have still, overall, as a Congress, failed in five major areas to look at the way in which detainees have been handled. That failure is going to come back to haunt our troops, and it is haunting our Nation right now. But I surely did not mean in any way to single out our committee as being the source of that failure. But we are part of a larger failure in terms of the whole Congress failing to carry out its oversight responsibility.

Now, Mr. President, I wonder if my friend would accept a unanimous consent request that the time we have just taken on this subject be in morning business rather than deducted from the time on this amendment, given the interest in it.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Who yields time?

Mr. WARNER. Mr. President, I see our distinguished colleague from Iowa has taken the floor on a matter relating to the bill.

I yield the floor.

Mr. LEVIN. Will the Senator yield for a unanimous consent request?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that there be 5 minutes provided to Senator SALAZAR prior to the vote at 5:30.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Iowa.

AMENDMENT NO. 2438

Mr. HARKIN. Mr. President, I ask unanimous consent that the pending amendment be laid aside, and I call up an amendment I have pending 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 Iowa [Mr. HARKIN], for himself and Mr. DORGAN, proposes an amendment numbered 2438.

Mr. HARKIN. 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: Relating to the American Forces Network)

At the end of subtitle A of title IX, add the following:

SEC. 903. AMERICAN FORCES NETWORK.

(a) MISSION.—The American Forces Network (AFN) shall provide members of the Armed Forces, civilian employees of the Department of Defense, and their families stationed outside the continental United States and at sea with the same type and quality of American radio and television news, information, sports, and entertainment as is available in the continental United States.

(b) POLITICAL PROGRAMMING.—

(1) FAIRNESS AND BALANCE.—All political programming of the American Forces Network shall be characterized by its fairness and balance.

(2) FREE FLOW OF PROGRAMMING.—The American Forces Network shall provide in its programming a free flow of political programming from United States commercial and public radio and television stations.

(c) OMBUDSMAN OF THE AMERICAN FORCES NETWORK.—

(1) ESTABLISHMENT.—There is hereby established the Office of the Ombudsman of the American Forces Network.

(2) HEAD OF OFFICE.—

(A) OMBUDSMAN.—The head of the Office of the Ombudsman of the American Forces Network shall be the Ombudsman of the American Forces Network (in this subsection referred to as the ''Ombudsman''), who shall be appointed by the Secretary of Defense.

(B) QUALIFICATIONS.—Any individual nominated for appointment to the position of Ombudsman shall have recognized expertise in the field of mass communications, print media, or broadcast media.

(C) PART-TIME STATUS.—The position of Ombudsman shall be a part-time position.

(D) TERM.—The term of office of the Ombudsman shall be five years.

(E) REMOVAL.—The Ombudsman may be removed from office by the Secretary only for malfeasance.

(3) DUTIES.—

(A) IN GENERAL.—The Ombudsman shall ensure that the American Forces Network adheres to the standards and practices of the Network in its programming.

(B) PARTICULAR DUTIES.—In carrying out the duties of the Ombudsman under this paragraph, the Ombudsman shall—

(i) initiate and conduct, with such frequency as the Ombudsman considers appropriate, reviews of the integrity, fairness, and balance of the programming of the American Forces Network;

(ii) initiate and conduct, upon the request of Congress or members of the audience of the American Forces Network, reviews of the programming of the Network;

(iii) identify, pursuant to reviews under clause (i) or (ii) or otherwise, circumstances in which the American Forces Network has not adhered to the standards and practices of the Network in its programming, including circumstances in which the programming of the Network lacked integrity, fairness, or balance; and

(iv) make recommendations to the American Forces Network on means of correcting the lack of adherence identified pursuant to clause (iii).

(C) LIMITATION.—In carrying out the duties of the Ombudsman under this paragraph, the Ombudsman may not engage in any pre-broadcast censorship or pre-broadcast review of the programming of the American Forces Network.

(4) RESOURCES.—The Secretary of Defense shall provide the Office of the Ombudsman of the American Forces Network such personnel and other resources as the Secretary and the Ombudsman jointly determine appropriate to permit the Ombudsman to carry out the duties of the Ombudsman under paragraph (3).

(5) INDEPENDENCE.—The Secretary shall take appropriate actions to ensure the complete independence of the Ombudsman and the Office of the Ombudsman of the American Forces Network within the Department of Defense.

(6) ANNUAL REPORTS.—

(A) IN GENERAL.—The Ombudsman shall submit to the Secretary of Defense and the congressional defense committees each year a report on the activities of the Office of the Ombudsman of the American Forces Network during the preceding year.

(B) AVAILABILITY TO PUBLIC.—The Ombudsman shall make available to the public each report submitted under subparagraph (A) through the Internet website of the Office of the Ombudsman of the American Forces Network and by such other means as the Ombudsman considers appropriate.

Mr. HARKIN. Mr. President, I ask the Chair to notify this Senator when I have spoken for 15 minutes.

This amendment, offered by me, Senator DORGAN, and a number of others, addresses the problem of the extreme imbalance of political programming on American Forces Radio. As my colleagues know, for American servicemembers and their families stationed in more than 177 countries and territories around the world, as well as for Department of Defense civilians and their families, American Forces Radio is intended to broadcast a ''touch of home'' programming that reflects a cross section of what is widely available to stateside audiences. Making U.S. entertainment and news programming available to American servicemembers wherever they are located is important for their morale and to keep them informed. But in order to accomplish this, American Forces Radio needs to provide a wide variety of programming and views. Unfortunately, in recent years, it has failed to do so, in violation of its own guidelines.

The amendment Senator DORGAN and I are offering is designed to address this imbalance. The Department of Defense directive 5120.20R states that: American Forces Radio and Television Services Broadcast Center shall provide a free flow of political programming from U.S. commercial and public networks. It shall maintain the same equal opportunities balance offered by these sources. Outlets should make extensive use of such programming.

That is what is in their directive. It also requires ''reasonable opportunities for the presentation of conflicting views on important controversial public issues.''

That is what we would expect. We would expect that our Armed Forces personnel would have reasonable opportunities to hear the presentation of conflicting views on public issues. Yet in spite of these clear guidelines, the programming offered by American Forces Radio is anything but balanced. Instead, American Forces Radio carries the shows of noted conservatives such as Rush Limbaugh, Dr. Laura Schlesinger, and James Dobson, to the near total exclusion of any progressive talk radio hosts.

On American Forces Radio's talk radio service, 85 percent of the short commentary or talk radio programming with political content is conservative—Mark Merrill, James Dobson, Dr. Laura, and Rush Limbaugh. Only 15 percent is progressive—Jim Hightower and Dave Ross. Here is what it comes down to in hours: More than 10 hours a week of conservative talk radio compared to less than 2 hours of progressive talk radio and commentary.

Mind you, when I said ''offered,'' this is what is offered. The 33 American Forces Radio outlets around the world are offered 85 percent, more than 10 hours of conservative talk radio, and 15 percent, less than 2 hours, of progressive talk radio. Now it gets worse. Again, what I mentioned is what is just offered to the American Forces stations. The programming that is actually used by local stations is even more unbalanced. Of the 33 local stations around the globe, 177 countries and territories that our Armed Forces personnel listen to, 100 percent of what they actually get the chance to listen to is conservative talk radio, 100 percent; zero percent of progressive talk radio. Less than 2 hours of progressive talk radio is what is offered. What they actually get is nothing on the progressive side. But they get 100 percent of Rush Limbaugh, 2,460 minutes a week; Dr. Laura, 1,245 minutes a week; and James Dobson, 60 minutes a week.

That is balanced? That is fair? That is not balanced. That is monopoly. This is propagandizing our troops.

This is wrong. The amendment Senator DORGAN and I are offering, along with Senators OBAMA, DODD, MIKULSKI, LAUTENBERG, KENNEDY, and DAYTON addresses this imbalance in two simple ways. First, it will codify the American Forces Network's obligation to provide political programming that is fair and balanced. What I read before was just a DOD directive. It has no force or effect of law. It says it should be balanced, should provide equal opportunities. We need to make this law. That is what our amendment does. It codifies the directive.

Secondly, it establishes an independent office of the ombudsman to address imbalances, to report annually on whether American Forces Radio is satisfying its mandate to provide fair and balanced political programming.

What this amendment does not do is prescribe specific content or programming. That is not the role of the Senate. But I believe we do have an obligation as Senators to all of our constituents to make the network's talk radio programming representative of the diversity of opinion in America.

While I generally do not agree with Rush Limbaugh's commentaries—I am sure that comes as no surprise to anyone—I do not object to the fact that they are run on the American Forces Network. I have never called for American Forces Radio to pull the commentaries of Rush Limbaugh or any other conservatives from its talk radio service.

On last year's defense authorization bill, we offered an amendment that simply asked that DOD develop appropriate methods of oversight to ensure the network provided fair and balanced political programming. This year, since they haven't done it, we want to codify it. But last year when I pointed out the imbalance in programming—100 percent conservative talk radio, Rush Limbaugh and Dr. Laura Schlesinger, James Dobson; zero for progressives—Rush Limbaugh went ballistic on his radio show: Senator HARKIN is now trying to take me off the air. He said I wanted to deny the troops the opportunity to hear him. He went on and on. I had other reporters and press people ask me about it.

I said: Typical of Rush Limbaugh. He doesn't understand what is happening. He wouldn't know the truth if it hit him in the face. I said: All I'm asking for is balance on taxpayer-funded radio. What Rush Limbaugh wants is monopoly. To him, to have someone oppose him and get equal time might be the same as, in his mind, taking him off the air. That is probably the way he thinks.

But I have never called for taking him off the air. I just think there ought to be some opposing views, representative of the diversity of opinion in America. I take issue with the fact that there is no commentary broadcast on this network that would even begin to balance the extreme views that Rush Limbaugh routinely expresses on his program. And where there is no alternative viewpoint, where there is no balance, what you are left with is one-sided propaganda. And that is not what we want on American Forces Radio. The men and women of our Armed Forces deserve and expect balance, not thinly disguised propaganda.

What I object to is that Rush Limbaugh is on all week, and our troops get to hear him, but they don't get to hear any viewpoints from the other side of the political spectrum.

Let's talk about one specific case in point, the scandal at Abu Ghraib. We all know what happened there. I don't need to remind anybody of the pictures, the torture, the shame and disgrace it brought upon our country. We know what happened just a couple weeks ago with the McCain amendment: 90 to 9, we voted to insist that our Armed Forces and others follow the Army Field Manual on Interrogations; that we will not condone torture, we will not condone the type of thing that we saw at Abu Ghraib. Ninety to nine on the Senate floor.

Here is what Rush Limbaugh had to say about Abu Ghraib: He called it—these are his words, not mine—''a fraternity prank.'' He likened it to a fraternity prank. He dubbed the humiliation of inmates ''a brilliant maneuver, no different than what happens at the skull and bones initiation at Yale.'' This is Rush Limbaugh talking about Abu Ghraib. He described the images of torture as ''pictures of homoerotism that looked like standard, good-old American pornography.'' That is Rush Limbaugh talking to our troops 100 percent of the time. He said of the pictures at Abu Ghraib—this is a quote from Rush Limbaugh—''if you take these pictures and bring them back and have them taken in an American city and put on an American Web site, they might win a video award from the pornography industry.''

I ask, does this represent the views and attitudes of the average American citizen? It may represent a few, but I think the vote in the Senate more accurately reflects the views of the American citizens. Ninety Senators, Republicans and Democrats, conservatives, liberals, and everybody in between, basically said on the McCain amendment, no, we don't want to have what happened at Abu Ghraib ever happen again. We don't want to be engaged in torturing prisoners or detainees.

Now, it is in the newspapers that even Vice President CHENEY is fighting the McCain amendment. Maybe Vice President CHENEY and Rush Limbaugh feel that way, but I don't think too many other Americans do. That is why we had a 90-to-9 vote here. Yet what do our Armed Forces personnel and DoD civilians hear when they tune in the radio from their assignments around the world? They hear Rush Limbaugh telling them it is a prank, a brilliant maneuver, good-old American pornography. That is what they are hearing.

So what are our troops to think? Are they to think, that is Rush Limbaugh and that is what we hear so, therefore, that must represent what the American people back home feel about this? Maybe it wasn't so bad after all.

That is why we need some opposing views on American Forces Radio. Our troops need to hear the other side of

the story to get a balance. I have never said take Rush Limbaugh off. But the network does need someone to give the other side of the story.

Again, that is what this amendment does. It codifies it. Again, 16 months ago, the Senate adopted a sense-of-the-Senate amendment I offered calling on the Secretary of Defense to ensure that the policies of fairness and balance of American Forces Radio were being fully implemented and to develop appropriate methods of oversight to ensure they were followed. That was last year.

Sixteen months later, the Department of Defense has made no progress in balancing out the more than 62 hours a week of conservative programming broadcast on the 33 American Forces Radio stations, compared to zero of progressive, 16 months later, after this Senate adopted a sense-of-the-Senate resolution saying it ought to be fair and balanced.

On October 19, just a few weeks ago, I and 12 of my colleagues sent a letter to Secretary Rumsfeld expressing our concern, once again, with the utter failure to address the lack of political balance.

Sixteen months later, no progress. As I said, we wrote this letter to the Secretary of Defense on October 19. On Thursday of last week, we received a letter from the Deputy Assistant Secretary for Public Affairs, Mr. Lawrence Di Rita. It says:

> The network plans to offer the show of one progressive talk radio host Ed Schultz.

The letter makes absolutely no representations as to how soon or when it plans to offer Mr. Schultz's show on the network.

''Offer,'' it said ''offer.'' They didn't say they would ensure the broadcast. They said they are going to offer it.

As I pointed out earlier, they offer 15 percent per week of progressive talk radio, less than 2 hours, and guess what. None of the AFR stations carry that paltry amount. Not one of their stations out of 33 around the world, even bothers to broadcast any portion of those two hours.

Let me note that in response to a letter Senator DORGAN and I sent to the Department earlier this year, Deputy Assistant Secretary Allison Barber replied that DoD ''recognizes that the domestic political talk market has grown more diverse and that the time has come to consider expanding the AFN choices.''

I respectfully disagree with Deputy Assistant Secretary Barber. It is not that the time has come to consider expanding the choices. We are long past the time for that. The time has come for the DoD to act on expanding and broadening the political discourse on American Forces Radio. There is no reason our servicemembers should receive 10 hours—more than 10 hours—of rightwing conservative talk radio and absolutely zero hours, zero minutes, zero seconds of progressive talk radio. They need competing views.

As I said, that was part of the mandate so our troops would have the ability to get a wide variety of programming to keep them informed, a crosssection of what is widely available to stateside audiences. That is what they should have.

I suppose after my talk today old Limbaugh will come on the radio again blasting me, saying HARKIN wants to take him off the air, wants Congress to tell the radio networks what to carry. I can hear him now talking about it. He got it wrong last year; there is no reason why he would probably get it right this year—correct, I should say; he gets everything right but never gets it correct. Leave Limbaugh on there, but give someone else equal time. I would like to see Ed Schultz have as much time as Rush Limbaugh. Why not? Ed Schultz is entertaining. He has a viewpoint. It is more progressive, obviously, than Rush Limbaugh's, but there is no doubt he is doing well. In fact, I found that in almost every market where Ed Schultz went up against Rush Limbaugh, more people listened to Ed Schultz than listened to Rush Limbaugh.

Oh, now maybe the scales are falling from my eyes. Maybe now I see why Rush Limbaugh doesn't want Ed Schultz on Armed Forces Radio. Our servicemen might tune him out and decide they would like to listen to Ed Schultz more than they would listen to him.

Our amendment is needed because it codifies that fairness and balance on taxpayer-funded radio is an obligation, and sets up an ombudsman to help ensure that goal. That is not unique. We have ombudsmen in other things. We have ombudsmen for both of the other two major federally funded broadcasting agencies. The Corporation for Public Broadcasting and the Broadcasting Board of Governors—that is the Voice of America—have statutory language providing for diversity and balance in their programming and both the Corporation for Public Broadcasting and National Public Radio have an ombudsman in place.

I fully intend, when the Secretary of Defense comes up for his appropriations hearing next year—I happen to be on the Appropriations Committee. I happen to sit on the Defense Appropriations Subcommittee, and I intend to ask him these questions. Why do they think this is fair? Do they think this represents balance, a fair representation of the diversity of American thought? Or do they feel it ought to be more balanced, and if so, let's get on the stick.

I am saying to the Secretary of Defense, time for consideration is past. Move, move now. There is a lot of progressive talk radio in America that gives an opposite view of Rush Limbaugh or Dr. Laura or James Dobson. Get them on there. Let's even the pie. That is all we are asking for—fairness.

Mr. President, I reserve the remainder of my time under my regular time of 15 minutes for other Senators to speak, and I thank the Senator from Virginia for his kindness.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we are going to take this amendment and study it. Senator INHOFE, who is quite interested in this subject, is unable to be here at this time, but tomorrow we will have further opportunity to debate it.

I am advised that the Department does not try to manage these programming agendas in such a way as to exclude, I am told, any particular political bent or bias. Rather they go out and use nationally known and presumably credible organizations that establish ratings and select programs which have very high ratings. In other words, people want to listen to them.

That is the procedure, as I understand it, that is being followed by the Department. I think Mr. Di Rita, who was trusted with this recently, made a statement to the effect that is the process. I will read from at this juncture a letter to Senator LEVIN from Lawrence Di Rita, Principal Deputy Assistant Secretary of Defense for Public Affairs. It says:

> Thank you for your October 19th letter to Secretary Rumsfeld concerning the radio programming distributed by the Armed Forces Radio and Television Services on its American Armed Forces Network.
>
> The [Armed Forces Radio] attempts to make available to forces stationed overseas a breadth of programming that reflects the quality and diversity that would be available to servicemembers and their families if they were in the United States.
>
> AFRTS provides 105,000 hours of programming choices per year to programmers at 33 stations around the world.

I understand we have 33 stations geographically around the world so that the beam can reach even the most remote of men and women in the Armed Forces. I am paraphrasing my own thoughts at this time. They are the ones, the 33 stations, that make pretty much the decision as to their region and the consumer interest among the uniform people in certain programs. So they provide 105,000 hours of programming at 33 stations around the world.

> Programmers at individual stations choose from the . . . mix of content they wish to air on their multiple broadcast channels.

So there is a mix of Armed Forces Radio and Television Services programming, and then each of the 33 has a certain degree of autonomy. They go into that list and pick those programs they think their listeners will enjoy and utilize.

> I am advised that the Armed Forces Radio and Television Service managers are updating the programming mix and have decided to include additional programs, including the Ed Schultz Show, that apparently meet the criteria for that [Armed Forces Radio and Television Service] managers apply to such decisions.
>
> As is the practice, these programs will be made available to local [Armed Forces Radio and Television Service] programmers. Local

programmers decide which programs are broadcast. These programmers typically are military or civil servants who have the best insights into the interests and preferences of their local audiences.

[Armed Forces Radio and Television Service] managers will continue to monitor the programming mix and do their best to provide a broad, high quality range of choices for local station managers.

I think the Senator's points are well taken, but it appears that this system is working well at the moment. But I judge the Senator has views to the contrary. The Senator from Iowa can respond on my time.

Mr. HARKIN. Mr. President, I say to my friend from Virginia, he is a very thoughtful individual. I know he is fair and always has been fair. To air commentary of the nature I discussed earlier—that which Mr. Limbaugh made about Abu Ghraib—with absolutely no counterbalance or rebuttal, sends entirely the wrong message to our troops.

Last year when we had the sense-of-the-Senate resolution—this was posted on CNN.com; they carried an article on it—Deputy Assistant Secretary of Defense Allison Barber said:

It's not about conservative or liberal, it is about the full selection of radio programming based on popularity——

Here in the States. That is ratings.

Still, Howard Stern has millions of fans, and his show is not sent to the troops.

Barber explains:

His issue is one of content that is not appropriate.

They say it is popularity, but then they decide whether it is appropriate.

Are we to believe that the Abu Ghraib comments by Mr. Limbaugh are excusable because of the high ratings his show receives? I partially agree with the Deputy Assistant Secretary's statement. It appears that content is sometimes a factor in deciding which commentaries to run on American Forces Radio. At the same time, I also agree with the directive DoD already has in place. There should be fairness and balance in political programming on American Forces Radio. To use commercial market share ratings as an excuse not to offer fair and balanced programming will no longer suffice. When there are 33 stations around the globe, and they do not even carry 1 minute of an alternative to Rush Limbaugh, that has to say something. That it is not just ratings. Something else is going on there.

One would think that at least they would carry the 15 percent that is offered. They do not even carry that, if the Senator knows what I mean. The 33 stations around the world were offered 15 percent progressive talk radio a week. They are offered it, but they do not carry any of it. So something is going on out there. I do not know what it is, but something is.

Mr. WARNER. I certainly do not want the Senator to feel that we are trying to control these stations in such a manner as to preclude members of the Armed Forces and their families from having an opportunity to hear opinions that differ. So in the course of the evening, I and others will look into this. We thank our friend from Iowa.

Mr. HARKIN. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Would the Senator from Iowa yield 1 minute to me?

Mr. HARKIN. I yielded the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Iowa has 13 minutes 6 seconds remaining.

Mr. HARKIN. I thought I had 14 minutes 30 seconds.

Mr. President, I ask unanimous consent to speak as in morning business. There is no one else on the floor, so I do not want to use up my time. I ask unanimous consent for up to 10 minutes in morning business so I may yield some time to whoever wants it.

The PRESIDING OFFICER. Is there objection?

The Senator from Virginia.

Mr. WARNER. Mr. President, I do not object, but we do have a 5-minute request from the other side of the aisle, I say to my distinguished colleague. We have the proponents of the amendment of the Senator from Colorado and others. I ask unanimous consent that the proponents of the amendment and those in opposition have at least 5 minutes each in addition to that. So that is 15. That would leave time for further debate by others on this amendment. So I would say at the hour of 5:15 that 5 minutes be allocated to Senator SALAZAR; is that correct?

Mr. LEVIN. That is correct.

Mr. WARNER. To be followed by Senator ALLARD, to be followed by those of us who oppose the Allard amendment.

The PRESIDING OFFICER. Is there objection to the request made by Senator WARNER?

Without objection, it is so ordered.

Is there objection to the unanimous consent request by Senator HARKIN that he be allowed to speak as in morning business until 5:15?

Without objection, it is so ordered.

The Senator from Iowa.

Mr. HARKIN. I thank the Senator from Virginia. If anyone shows up to talk on something else, I will obviously yield the floor. But I would yield to the distinguished minority ranking member of the committee whatever time he desires.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from Iowa. I support his amendment. It simply would codify provisions in a directive. It puts some force behind what is already supposed to be in regulation, which is that there be fair and balanced political programming for the Armed Forces network radio broadcast. That is what the Harkin amendment does. It does not do the allocation. It does not make a judgment. It simply says we have to put some stronger teeth behind a regulation because we are talking about political programming. We have to be certain that political programming is fair and balanced. That is what the regulation states it is supposed to be already and just simply codifying it means Congress believes that is essential, as well as in addition to that it establishes an ombudsman to make sure the Armed Forces network adheres to its own programming standards and practices. I think that is a fair request, and I support the amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. I will just take a couple more minutes and then I will yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. As long as there is no one else in the Chamber—if anyone comes here, I would yield the floor to whoever would want it.

Let me go through again what this amendment does for Senators who may be watching from their offices. The ombudsman would be appointed by the Secretary of Defense for a term of 5 years. They could not engage in any prebroadcast censorship. The ombudsman would conduct regular reviews of the integrity, balance, and fairness of American forces radio programming. It would respond to programming issues raised by AFR's audience regarding the network's programming and refer complaints to American forces radio management for response. The ombudsman would make suggestions to American forces radio management regarding ways to correct imbalances, and the ombudsman would prepare and present an annual report to the Secretary of Defense and Congress on whether American Forces Radio is satisfying its mandate to provide fair and balanced political programming.

So that is what the ombudsman basically would do under our amendment, not censor or anything like that. Basically, he would take complaints, pass it on to management, issue a report to us every year on whether the programming is fair and balanced, and any other comments and criticisms that may come into the ombudsman's office. So that is basically the amendment.

I have had my say on it. I think it is pretty clear. I thank the Senator from Michigan for his support. I hope all Senators could support this amendment. As the Senator from Michigan said, it just codifies what is basically a directive right now. It just makes it more clear to DOD, from the Secretary of Defense on down, that we mean it when we say it has to be fair and balanced. We do not mean to take anyone off the air or shut anyone up, but we do mean to have it fair and balanced to represent the diversity of views of America.

Not all Americans agree with Rush Limbaugh. Not all Americans agree

with Ed Schultz or Jim Hightower or me or anyone else, but we do have diversity. That is what is so wonderful about our country. That is what we are proud of as Americans, that we are able to speak our minds and have our opinions heard and we do not have any censorship. Since we do not have it here, we should not have it on the American Forces Radio network, either.

I believe having served myself for a long time in the military, as I know the Senator from Virginia has, too, our troops are well educated. They are smarter today than they ever were even when I was in the military. They know how to listen to one side or the other, and they should have that opportunity. That is all we are asking for.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. At this time, the Senator from Alabama will speak to the Allard amendment, which is the subject of a vote in 20 minutes. I give him 5 minutes, plus 2 or 3 other minutes. I thought he was right behind me.

The Allard amendment is rather a technical one. It requires our colleagues to be informed on this amendment. I am opposed to it, but I was asked to provide to the Senator from Alabama the time needed to speak to this amendment.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 2423

Mr. SESSIONS. Mr. President, I thank Chairman WARNER. I chair the Subcommittee on Strategic Forces of the Armed Services Committee. This matter is under our subcommittee's oversight area. I have great respect for Senator ALLARD, who is proposing the amendment. He chaired the same subcommittee. He is very much loyal to his workers in Colorado. He is very much determined they get everything that he can get them, and I think maybe a little more than they would be entitled to under a fair reading of the statute and the contract that is involved.

Therefore, with the greatest respect to Senator ALLARD and others who may be supporting this amendment, I would oppose it. It reaches into a relationship between the contractor employees who are performing the cleanup at Rocky Flats and their employer, who is a company called Kaiser Hill. Kaiser Hill won the contract with the Department of Energy to perform cleanup work, and this deals with their relationship with their employees, not Government employees but employees for Kaiser Hill. How would it amend those terms of that agreement between Kaiser Hill and its private employees? The amendment directs the U.S. Secretary of Energy to instruct Kaiser Hill to grant retirement and health benefits to employees that those employees would have earned if the cleanup had taken longer than it actually did. So that is why, of course, the Department of Energy opposes it.

They have looked at this very carefully. They have indicated they would be open to some sort of discussion about what might be done. I have also indicated that to those who support this amendment but have not heard back from them.

So I believe the amendment as drafted is overreaching, and the Department of Energy objects to it. It is just not good policy for our Government. The cleanup did not take as long as some people projected, but everyone knew the cleanup was going to be accelerated and would end. It was not a limitless timeframe. Rocky Flats is not there anymore. It has been cleaned up. There is empty space. The workers have all been disbursed and gone to other jobs.

I would just note that many Government contracts complete early or they do not run as long as anticipated. So we cannot start down the road of altering the benefits of contract workers when something happens good for the Government because the matter proceeded along and was able to be completed sooner than expected, although it was accelerated and everybody knew it was going to complete and complete sooner than many had projected.

One of the things that every employee has, and this is important to note, every employee has been given a 1-year acceleration of the time and grade they get credit for, the time in service. The collective bargaining that went on as this contract moved forward, and everybody knew the contract would be completed early, they had a collective bargaining process, and they met with the steelworkers and others and they agreed that they would take a $4,200 basic payment because they were completing the work sooner, as an incentive or a thank-you for good work done. That was done, and they received that.

So, again, this amendment would alter the freely entered-into agreement between these workers and Kaiser Hill concerning the early completion.

Now, most of the Kaiser Hill employees were covered under the collective bargaining agreements which anticipated there would be staggered layoffs as the completion of the cleanup neared. Union workers negotiated substantial benefits such as lump-sum incentive payments in addition to providing for early and regular retirement benefits and an extra year in service.

The Senate has recently conducted its debate on budget reconciliation. There has been a lot of debate and consideration about the fiscal situation in which this country finds itself. There was a debate about hard choices that we face as a Nation so we do not burden our children or grandchildren with financial obligations that, in retrospect, we cannot afford.

If we were a private company, I ask my colleagues, would we say we could tell our stockholders that we paid more than we were supposed to pay for a cleanup? I think we are concerned about this mainly because we feel as governmental representatives, sometimes we ought to go further and do more. I know my colleague Senator ALLARD strongly believes we ought to do more and be generous.

I do join him in commending the workers at Rocky Flats for what has been achieved. The cleanup is done and workers have moved on to other jobs and other employers. I cannot support, however, taking this unprecedented step—at least unprecedented to my knowledge—that is embodied in this amendment. It is contrary to good, sound fiscal policy, good governmental policy. It is noble to want a job to be recognized and people to be paid fairly for it. But military bases close around the country all the time. Awards for contracts for aircraft and ships get terminated. Sometimes they complete them sooner than expected. People do not expect to be paid forever. Agreements were reached, as I said, to make sure people would be generously compensated as a result of this early closing.

I urge my colleagues, as difficult as they may find it, to vote ''no'' on this amendment. I think it would be the right thing for the country.

Mr. WARNER. Will the Chair advise the managers with regard to the remaining time?

The PRESIDING OFFICER. The Senator from Colorado, Senator ALLARD, controls 5 minutes. The Senator from Colorado, Senator SALAZAR, has been granted 5 minutes under a unanimous consent agreement.

Mr. WARNER. Basically there is 2 minutes left?

The PRESIDING OFFICER. There is 2 minutes remaining in opposition to the amendment.

Mr. WARNER. My colleague from Alabama has basically stated the case. But I must say this is a unique amendment among those I have encountered. You could induce laborers to have a slowdown at work so as not to finish it and so attenuate this right or some other benefit, while at the same time they were taking inducements for expediting the work.

I commend my good friend from Colorado. I know he fights hard for his constituents. But were we to see this type of precedent distributed to other situations in Government contracting across America, we would be opening up a very interesting line of arguments by a number of contractors and employees. So regrettably I have to oppose the amendment of my good friend from Colorado.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes.

Mr. ALLARD. Mr. President, I will talk about my amendment for a moment or two, but before I do, I have some cosponsors I would like to add to the amendment: Senators SALAZAR, DEMINT, ALEXANDER, and CANTWELL.

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

Mr. ALLARD. Mr. President, I will take a little time to lay out the history of the cleanup of Rocky Flats after it was decided to close the facility. It was a nuclear production facility that produced plutonium triggers which were used for nuclear weaponry. When I first got involved in this issue, the plan called for 60 years to clean up Rocky Flats, costing somewhere around $35 billion.

In 1999, we were able to reach an agreement with the Department of Energy and the contractor that for $7 billion, we could have it cleaned up in 6 years. So here we are in 2005 and we have cleaned up the facility 14 months ahead of what anybody ever imagined.

When we first came up, everybody was snickering and saying that would not happen. But we did a key thing; we put incentives in the contract which encouraged various members of the workforce, including the contractors, to get the job done on time. In this case they got it done ahead of time and ended up saving lots of money.

This means we are cleaned up 14 months ahead of time. That means probably close to $500 to $600 million in savings because we are not going to have to pay for it next year. As a result of this early cleanup we are going to have about 70 workers out at Rocky Flats who are going to get cut short on their health insurance benefits and cut short on their life insurance. It is very difficult to try to get insurance after you have been working around a nuclear facility for 15, 16, 17, or 18 years. Insurance companies don't like to insure them, and if you do get insurance, at least it is very expensive. It seems to me it is a matter of fairness to take care of these 70 workers.

The reason it is important to other cleanup sites around the country, and this is where I think the Department of Energy is shortsighted—if you put in incentive contracts to get cleanup at these other sites around the country, getting them done on time or even early, as we did in Colorado, if you treat the workers fairly, I think the workforce at those cleanup sites will be willing to step in and participate in the early cleanup efforts.

The purpose of my amendment is to take care of the 70 or so workers who got shortchanged because of early closure at Rocky Flats. But more importantly, I want to see cleanup of these nuclear facilities all over the country. There are a number of States that are going to be impacted. A lot of us want to see these sites cleaned up for various reasons, not the least of which is to make sure we have environmental cleanup so we have a better environment in which to live here in the United States.

I urge my colleagues to join me in this particular amendment. I think it is very important. Let me take a couple of examples. Workers such as Doug Woodard and Leo Chavez now find themselves with either severely reduced benefits or no benefits at all. Doug started work at Rocky Flats all the way back in 1982 and then was responsible for monitoring radiation contamination at the site. He missed qualifying for the medical benefits by less than 2 months.

For Leo Chavez, who worked at Rocky Flats for 17 years, DOE's treatment was even worse. The Department of Energy thanked him for his service and showed him to the door 6 working days before he qualified for lifetime medical benefits. Let me repeat that. That was 6 days before he qualified for medical benefits. Yet his workers, then other workers at the plant, walked away with those benefits. It seems to me it is a matter of fairness.

The Department of Energy has made the point they do not want to set any precedent. In this particular amendment, we have narrowed it down to the time length and when they qualify. We have narrowed it down to these workers at Rocky Flats.

I believe this is an important amendment if you want to see rapid cleanup occur at these nuclear sites because the workers have to buy into the program. If they do not buy into the program, then you are not going to have early cleanup.

I understand my colleague from Colorado, Senator SALAZAR, might be down to the floor. I want to take this opportunity, before my time runs out, to thank him for his work and effort. I thank Senator CANTWELL and other Members of the Senate who have agreed to cosponsor this amendment because they have situations in their States similar to ours in Colorado.

We all look forward to getting early cleanup, and hopefully the cleanup at Rocky Flats will set an example for the rest of the country. The faster we have cleanup, the less money the American taxpayers will have to pay. That is the bottom line. We are required to get this cleanup done. If we can do it and save taxpayer dollars, we need to do that. In this case, from the original plan it saves billions upon billions of dollars. Then we modified the plan, and it is well over $500 million we are going to save. We need to encourage this to happen throughout the country. I am proud of the workers at Rocky Flats. It wouldn't have happened without their dedication and effort. We need to make sure every worker at Rocky Flats will walk away from this cleanup being proud and feeling they were treated fairly.

I urge my colleagues, again, to join us in righting a wrong that I think has been perpetrated by the Department of Energy.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ALLARD. Mr. President, may I be recognized for an additional cosponsor, and that is Senator GRAHAM.

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

Under the previous order, the junior Senator from Colorado is recognized for 5 minutes.

Mr. SALAZAR. Mr. President, in a few minutes my colleagues here in the Senate will be voting on an amendment sponsored by Senator WAYNE ALLARD and myself, amendment No. 2423. I am here to speak for a few minutes to urge my colleagues to support the amendment.

This is an important amendment that recognizes the great work the employees at Rocky Flats have been doing on behalf of our Nation for a long time. When Rocky Flats was first proposed to be cleaned up, as the place where plutonium triggers were being manufactured for the United States of America and for national security, it was contemplated that we were undertaking a project that would take many years. Some had suggested it would take as long as 60 years to clean up Rocky Flats at a cost of $35 billion. Yet when all was said and done, because of the great work of both Democratic and Republican administrations, and these dedicated workers, we were able to accomplish the task in just over 5 years as opposed to 60 years and at a cost of $7 billion as opposed to $35 billion.

It was anticipated at the time when the contracts were executed that the cleanup in no way, shape, or form would ever be accomplished any earlier than December 15 of 2006. Yet because of the great work that has been done, the work has now been finished. It is unfair, from my point of view, to penalize the employees who performed this great work on behalf of our national security in this cleanup by simply not providing them with the benefits that had been anticipated with a December 15, 2006 termination date for this contract.

What this amendment will do is provide up to $15 million for the life and health insurance benefits for these employees. These men and women were exposed to radioactive elements and other toxic compounds that we are still trying to identify, and in amounts that even today we can only guess at. We do not know what they were exposed to, how much, or when they were exposed to these radioactive materials. We know for sure many have suffered serious illnesses and many have died as a result of these exposures.

Under the current employment contract, these workers would become eligible for full retirement benefits, including health benefits and life insurance benefits, if the work had been completed on December 15 of 2006. But because the work was completed before that time, these employees will not be eligible for these benefits unless we correct an inequity with the amendment that has been proposed. The extraordinary efforts of these employees

at Rocky Flats who worked long hours under very difficult conditions must be recognized by providing them with these benefits.

We believe these workers are entitled to receive these benefits because the cleanup of Rocky Flats, which was expected to be completed by December 15, 2006, has now been completed. We believe it is important that we recognize the employees at Rocky Flats who, at significant sacrifice to themselves and their families, created an opportunity for this Nation to learn how we can clean up our Department of Energy facilities.

In sum, what I would say to my colleagues here in the Senate is that what we have done at Rocky Flats, through the cleanup effort there, is to demonstrate to the Nation how we can move forward in an expedited fashion and clean up contaminated sites such as the one we had at Rocky Flats. I am grateful for the work of my colleague from Colorado, Senator ALLARD, who has been leading our joint efforts on this amendment. At the end of the day, we hope all of our colleagues will recognize that these employees have done a very valuable job for our national security.

I urge my colleagues to vote in support of this amendment.

I yield the floor.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Utah (Mr. HATCH) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from North Dakota (Mr. DORGAN), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Michigan (Ms. STABENOW) are necessarily absent.

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

The result was announced—yeas 38, nays 53, as follows:

[Rollcall Vote No. 304 Leg.]

YEAS—38

Alexander	DeWine	Leahy
Allard	Domenici	Lieberman
Baucus	Durbin	Mikulski
Bingaman	Feingold	Murkowski
Bond	Feinstein	Murray
Boxer	Graham	Obama
Burns	Harkin	Pryor
Cantwell	Jeffords	Salazar
Conrad	Johnson	Sarbanes
Craig	Kerry	Specter
Crapo	Kohl	Talent
Dayton	Landrieu	Wyden
DeMint	Lautenberg	

NAYS—53

Akaka	Ensign	Reed
Allen	Enzi	Reid
Bennett	Frist	Roberts
Brownback	Grassley	Rockefeller
Bunning	Gregg	Santorum
Burr	Hagel	Schumer
Byrd	Hutchison	Sessions
Carper	Inhofe	Shelby
Chafee	Isakson	Smith
Chambliss	Kyl	Snowe
Clinton	Levin	Stevens
Coburn	Lincoln	Sununu
Cochran	Lott	Thomas
Coleman	Lugar	Thune
Collins	Martinez	Vitter
Cornyn	McConnell	Voinovich
Dodd	Nelson (FL)	Warner
Dole	Nelson (NE)	

NOT VOTING—9

Bayh	Dorgan	Kennedy
Biden	Hatch	McCain
Corzine	Inouye	Stabenow

The amendment (No. 2423) was rejected.

Mr. WARNER. I move to reconsider the vote.

Mr. STEVENS. 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, my understanding is that the majority leader and minority leader have determined that we will not have further votes tonight, but I advise colleagues we have a number of amendments which are almost completed and ready for a vote tomorrow. We anticipate—and I will, hopefully, be joined by my ranking member here—we can, during the course of business tomorrow, hear out the remainder of the amendments. I would hope so.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if we could get a list of pending amendments made, unless the chairman has already done that, as to what amendments are already pending and how much time is left on those amendments.

Mr. WARNER. Mr. President, my understanding is that the clerk will require a period of time within which to compile this list.

MORNING BUSINESS

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

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

ORDER OF BUSINESS

Mr. WARNER. Mr. President, informally, I have been advised that tomorrow morning, in all likelihood, there will be a period for morning business, and that this bill will be brought up somewhere in the area of around 11 o'clock in the morning. So again, I am joined by my colleague from Michigan in urging Senators to complete the remainder of the debate time, an hour being given to each amendment. There are several amendments which have been debated in part. We will provide for the RECORD tonight the list of those amendments and the time remaining. Quite frankly, I am of the opinion we will have been able to have had the full hour of debate on all of the 12 amendments each side has had by the close of business tomorrow.

Now, ''close of business'' leaves a little bit to definition. We will certainly receive some recommendations from our joint leadership, but I would hope we could complete this bill tomorrow night.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Well, Mr. President, if the chairman will yield, that may be optimistic, but I think we are making progress. I will work overnight—I know the chairman will—to try to line up speakers to complete the pending amendments so we can at least have, hopefully, one vote before the caucuses tomorrow, regardless of what hour we start. I am going to try to line up some speakers to complete at least one of these amendments before the caucuses.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I might suggest the Harkin amendment, which was debated very thoroughly today. The Senator from Oklahoma, Mr. INHOFE, desires to speak to that amendment and might possibly have an amendment in the second degree. So that one, in all likelihood, could be concluded. The Chambliss amendment is another amendment that I think will not require a great deal of further debate. It is a very strong amendment. It appears to me at this point to be one which I will recommend colleagues support.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I understand there may be a second-degree amendment to the Chambliss amendment.

Mr. WARNER. Coming from your side?

Mr. LEVIN. That is my understanding. There may be such an amendment, a second-degree amendment. But I would agree with you in identifying the Harkin amendment as a good prospect for completion tomorrow morning. We do have a speaker on our side—at least one—and I am going to try to line that speaker up for the morning.

Mr. WARNER. Well, then, let's work together with a priority to try to have that done.

Mr. President, at this time, my understanding is the parliamentary situation is the bill is no longer before the Senate, to be brought up again tomorrow morning, and that at this point we are in morning business; is that correct?

The PRESIDING OFFICER. That is correct.